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Guidelines on strengthening gender equality in notarial practices South-East Europe



With the technical collaboration of:



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GUIDELINES ON STRENGTHENING GENDER EQUALITY IN NOTARIAL PRACTICES SOUTH-EAST EUROPE



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PREFACE

In their transition from state-run to free market economies, all the countries of the Western Balkans have opted for an economic model that seeks to ensure a fair and equal access of all citizens to the benefits of the free market. Their legal systems rely on the precautionary principle, i.e. the conviction that the preventive control of essential economic transactions is preferable to a laissez-faire approach which tends to lead to costly and time-consuming private litigation to police the observance of market rules ex-post.

In all the countries of the Western Balkans, notaries are public officers who advise parties and confer authenticity to deeds in some of the most important areas of the law, in particular real-estate law, family law inheritance law and company law. As a general rule, notarial deeds are an essential requirement for the registration of property rights in public registers. Notaries are devoted to creating the highest possible level of legal certainty and to enabling parties to make well-informed and prudent decisions in sensitive legal matters. They ensure that all legal rules are observed, and it is their duty to offer special advice and protection to weaker parties, including women.

Even though many women have assumed leading positions in the societies of the Western Balkans, the statistical data shows that properties, in particular in rural areas, are overwhelmingly registered in the name of the husband, son or brother. Hence, in many situations, women can be weaker parties in need of special protection by notaries and there are two important ways in which the participation of notaries can improve their situation.

On the one hand, notaries who are aware of the vulnerable position of many women will be able to provide the necessary advice and protection to women who seek their service. In such situations, they will inform women about their rights and create an environment in which they feel comfortable to make informed decisions without undue influence.

On the other hand, notaries are under the duty to take into account the rights of women and ensure their protection even in cases in which women do not appear in their offices. In particular, their statutory right to a share in the inheritance or matrimonial property often requires their participation. And, in many cases, women must be registered as lawful (co-) owners according to the applicable legal rules even if they do not directly participate in the transaction. Hence notaries are in an ideal position to ensure the protection of women's rights and prevent that they are circumvented.

It is the great merit of the gender guidelines that they identify the unique position of notaries in the context of gender equality in property rights and create the necessary awareness among the notaries in the region. Even though the guidelines are not binding and drafted on the basis of general principles found in several jurisdictions, they offer practical guidance for the exercise of due diligence in the situations in which women's rights are at stake. They were drafted with the assistance of legal practitioners and can readily be used by notaries in their daily work.

The project leading to these guidelines was inspired by the journal of a notary and her concern regarding the protection of women and their property rights. The contribution of our colleagues in this project is proof of our commitment to legal certainty and equality. Due to the excellent cooperation with our partners from FAO and GIZ, to whom we are particularly grateful for their motivation, expertise and dedication, we are confident that the guidelines will have a lasting effect for achieving gender equality, not only in the Western Balkans. We are convinced that this project will also be an inspiration for promoting gender equality in other parts of the world. We remain committed to its goals and will ensure that its results are made known to all the members of UINL in all five continents of the world. In the Western Balkans, legal frameworks have made huge advances towards strengthening gender equality in land ownership and control. Waves of legal reforms have eliminated gender-based discrimination and provided legal safeguards for women's property rights in marriage, cohabitation and inheritance. In some cases, special measures have been adopted to give effect to these provisions, including providing incentives for joint registration of property acquired during marriage.

Despite these advances, data from the region show that properties are still overwhelmingly registered in the sole name of the husband, partner or brother. There is therefore a clear need to bridge the implementation gap between the law (*de jure*) and the practice (*de facto*), to strengthen the property rights of women and daughters.

Notaries, as legal service providers have a key role to play in ensuring that the rights of all parties to the notarial services that they provide are identified, protected and secured.

José Marqueño de Llano, President of the International Union of Notaries (UINL)

Lionel Galliez, chairman of the UINL GT

Dr. Lovro Tomasic, member of the UINL GT

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LIST OF ABBREVIATIONS

CEDAW

Convention on the Elimination of All Forms of Discrimination against Women

FAO

Food and Agriculture Organization of the United Nations

UINL

International Union of Notaries

INTRODUCTION

In the Western Balkans, legal frameworks have made huge advances towards strengthening gender equality in land ownership and control. Waves of legal reforms have eliminated gender-based discrimination and provided legal safeguards for women's property rights in marriage, cohabitation and inheritance. In some cases, special measures have been adopted to give effect to these provisions, including providing incentives for joint registration of property acquired during marriage.

Despite these advances, data from the region show that properties are still overwhelmingly registered in the sole name of the husband, partner or brother. There is therefore a clear need to bridge the implementation gap between the law (*de jure*) and the practice (*de facto*), to strengthen the property rights of women and daughters.

Notaries, as legal service providers have a key role to play in ensuring that the rights of all parties to the notarial services that they provide are identified, protected and secured.

In the Western Balkans, notaries are public officials appointed by the State to confer authenticity on legal deeds and contracts contained in documents drafted by them or presented for authentication to them and to advise persons who call upon their services. These services include all judicial activities in non-contentious matters, affording legal certainty to clients¹. Notaries are also a part of the preventive administration of justice. The involvement of notaries in contracts and inheritance proceedings is regulated in national law, and, while there are variations across legal systems, their functions include the protection of constitutionally guaranteed rights and the application of the broader legal framework. This puts them in a privileged position to accelerate the realisation of *de facto* gender equality in land ownership and control, making them important agents of change. The procedure of full or partial notarial authentication is considered as one of the effective ways to protect the property rights in general and address equality through lending adequate assistance to whichever of the parties might be in a position of inferiority.

National chambers of notaries are members of the International Union of Notaries (UINL) which promotes, co-ordinates and develops the functions and activities of notaries across the world. The UINL has developed Principles of notarial ethics² which, among other important premises, emphasize the duty of notaries to exercise due diligence when carrying out their professional duties. By extension, this principle requires notaries to apply the law, including by ensuring that they uphold gender equality in their professional activities.

¹ Definition provided by the International Union of Notaries (IUNL) (<http://www.uinl.org/principio-fundamentales>)

² Deontology and Rules of Organization for Notariats (http://www.uinl.org/en_GB/organizacion-de-la-funcion)

In the region, all national laws on notaries follow the UINL principles. Besides, national chambers of notaries have developed their own Codes of Ethics which mirror these principles. The role of the notary as an independent and impartial public servant with the competences to advise the parties on the rights and obligations arising from the legal deed to be concluded, as well as protect the overall legal system, is set forward by the national laws.

The UINL Principles of notarial ethics therefore offer a sound basis to guide notaries in strengthening gender equality in their daily activities. Following these principles, a notary's duty is to ensure that the rights and interests of all parties to a contract are identified, respected and protected. The notary's impartiality imposes the duty of providing adequate information and advice to protect the rights and interests of all parties, particularly those who are vulnerable or at a disadvantage.

Notaries are sworn by oath and bound by law to exercise due diligence in the services that they provide, identify potential infringements of the weaker party's rights that are guaranteed by the law. It is a notary's duty not only to identify the risks associated with certain services and the consequences of not addressing those risks, but also to recommend an approach in order to address risks that he/she has detected.

These guidelines are intended as a practical assistance document that notaries can use to strengthen gender equality in the services that they provide. It offers quick and easy steps, and checklists to help notaries exercise due diligence in the services they provide under the law, by identifying and protecting the rights of all women and daughters with a legal interest in the service. It also provides additional information for notaries wishing to enhance their knowledge and understanding of the gender implications of the services they provide, and tips on how to engage in advocacy. The guidelines are without prejudice to notaries' legal duties according to the national laws in force.

KEY DEFINITIONS³

Cohabitation:	Cohabitation: a situation where an unmarried couple lives together in an intimate relationship, but who are not married in accordance with the marriage law of the country. It may also refer to relationships that are recognized by the state but that are not considered a marriage – for instance a civil partnership and a de facto relationship that is registered with the state. The term “unmarried couples” is often used interchangeably with “de facto unions,” “consensual unions” or “irregular unions.” The members of an unmarried couple are referred to as “partners.” The law may grant specific rights, obligations and protections to partners when the cohabitation meets certain requirements.
Consent:	Consent: the requirement that the other spouse or partner (in an unmarried couple) agrees to the land transaction prior to the land transaction taking place.
Deceased’s spouse’s estate:	Deceased’s spouse’s estate: the legal rights, interests and entitlements to property of any kind (not only land) that the deceased spouse or partner enjoyed at the time of death, less any liabilities. Depending on the legal system, marital property may be excluded fully from the calculation of deceased’s estate, or the deceased’s 50 percent share in the marital property will be included.
Family home:	Family home: the house that is or has been the main residence of the family. This can be property registered in the name of one or both spouses and may or may not constitute marital/joint property. This term is frequently used interchangeably with the “family residence” or “matrimonial home” in legal and policy frameworks.
Inheritance:	Inheritance: property passing at the owner’s death to the heir or those entitled to succeed.
Jointly owned property:	Jointly owned property: property that is collectively owned by a married or unmarried couple. In some cases this may be ownership as an undivided share (known as tenancy by entirety, joint tenancy or common ownership), in other cases this may be ownership divided by specific shares (known as tenancy in common or co-ownership by proportion) or a variation of these two.
Joint registration:	Joint registration: where the names of both spouses – or both partners in an unmarried couple – are entered into the land registry as the owners or principal users of the land being registered. Joint registration signifies a form of shared tenure over the land – usually either a joint tenancy/ occupancy or a tenancy in common. In legal systems that include a framework for land titling, joint registration is commonly referred to as joint titling.
Land transactions:	Land transactions: major land transactions, specifically the sale and encumbrance (mortgage) of land.
Marital property:	Marital property: property jointly owned by the spouses following their marriage. The content of this property will depend on the marital property regime applying to the marriage. The term is sometimes used interchangeably with “matrimonial property.” In legislation, marital property can be referred to using the umbrella terms “common,” “community” or “joint” property or the “joint estate.”

³ FAO. 2018. Realizing women’s rights to land in the law, Rome, Italy
<http://www.fao.org/3/I8785EN/i8785en.pdf>

Marital property regime: the regime of property ownership between spouses providing for the creation or absence of a marital property, and if created, what properties are included in that estate, how and by whom it is managed, and how it will be divided and inherited at the end of the marriage. The term can be used interchangeably with “matrimonial regimes” or marital property “systems.”

Marriage/Married couples: couples that are recognized as being validly married under the marriage law(s) of the country being assessed. Although requirements for a valid marriage vary between legal systems, in many legal systems they require the government to preside over the marriage ceremony, for the marriage to be conducted at a particular location or for certain documents to be signed.

Property: all immovable property – for instance the house, the land upon which a house is built and land that is used for other purposes, such as agricultural production. It also encompasses any other structures built on land to meet permanent purposes. Legal frameworks commonly use the terms “immovable property” or “real property” when referring to land.

Marital property regime:

Marriage / Married couples:

Property:



DUE DILIGENCE

Due diligence⁴ requires notaries to act suitably and constructively in the discharge of their duties, to inform and advise the parties as to the possible consequences of their instructions, and to act in accordance with the law. In addition, it requires them to provide the parties with any clarification requested or necessary to help them make a decision in full awareness of the implications of such decision for their rights and interests. For notaries to exercise due diligence, they must therefore anticipate any risk that the weaker party – in this case the wife, the partner or the daughter – could face during the proceedings and provide any additional information that may be needed to ensure that they are able to protect their rights and interests. The notary has to ensure that all parties understand the meaning of every word in the legal deed. This may require the services of a translator, in cases where the parties speak different languages.

Notaries are responsible for authenticating property transactions and for acting as court appointees in inheritance proceedings and probate proceedings. It requires notaries not only to protect the property rights as recorded in the property registry, but to uncover hidden rights and interests in application of a range of laws and regulations (e.g. civil code, land laws, laws on personal status, laws on gender equality, laws and regulations on property registration). Although the legal frameworks in the Western Balkans grant legal protection to spouses, partners and daughters, in practice these do not translate into joint registration or link to a higher rate of female registration of property. Indeed, although in all legal systems the default marital property regime is joint ownership or co-ownership, the property that spouses acquire during marriage is still all too often registered in the name of the husband. Similarly, although the law extends these protections to unmarried couples who meet certain requirements, female partners face the double challenge of having to prove that their cohabitation creates rights and interests before they can even exercise these rights to refuse consent to a transaction, or to be awarded half of the value of the property upon separation⁵.

⁴ http://www.uinl.org/en_GB/principios-de-deontologia

⁵ A summary of the bottlenecks identified in the legal systems can be found in the Annex I

Notaries have a responsibility towards these parties and should exercise due diligence in the Identification of all lawful right-holders, inviting them to the proceedings, explaining the rights and obligations arising from the legal deed, advising the parties as to the implications of a certain decision on their rights and interests. In a notarial authentication procedure, the notaries give legal effect and validity to the will of the parties and are bound by the statements and facts presented by the parties and have no right or duty to take up investigations against the will of the parties. Even though the notary may, as a general principle, trust the parties and rely on the information presented to him, as a public officer of the law, he must verify whether the facts presented correspond with available data from the public registers available to him/her and whether they are plausible. In cases of doubt, he has the duty to ask further questions and, if his doubts are not dispelled, he has to take appropriate measures. In serious cases of doubt, the notary may choose to state these doubts in the act or even refuse to authenticate.

This section pinpoints the areas in notarial practices where efforts could be made to ensure that the rights of wives, partners and daughters are equally identified and protected. It looks at contractual property transactions, a) from the perspective of an unmarried seller or buyer, b) from the perspective of a married seller or buyer and c) from the perspective of an unmarried buyer or seller living in a legally recognized cohabitation. It then looks at the special case of inheritance, to show how the rights and interests of a surviving spouse, partner, and daughter(s) can be protected.

1. Contractual property transactions⁶

In contractual property transactions, the notary takes full responsibility for the content of the legal deed (contract). He/she has duty to explain the provisions contained in the contract and to advise all parties as to its implications. Where appropriate, he/she should adapt the terms of the contract in order to reflect the will of the parties. He/she takes full responsibility for the terms and effects of the contract, is liable towards all parties and has the responsibility to protect the weaker party. In some jurisdictions however, the law does not require a full notarial authentication of property transfers, preferring instead a form of “solemnisation”. In this case, the notary refers the drafting of the agreement to other legal professionals or the parties themselves. In a “solemnisation” the notary gives public effect to a private transaction that has been concluded without his/her prior advice. While he/she must verify the validity of the contract, check its conformity with the legal system and make sure that the parties understand the rights and responsibilities arising from it, he/she is not fully responsible for its contents towards the parties and is often not in a position to immediately bring about adaptations or amendments, even if they seem necessary to protect an identified weaker party. In both cases, by exercising due diligence and ensuring that the contract is in conformity with the broader legal framework, the notary is in a position to strengthen gender equality. This includes the protection of the fundamental human rights, such as freedom from discrimination and the right to property.

1.1. Determination of the status of the property

The property transaction process starts with the determination or the verification of:

- The registration status of the property in the property registry,
- The name(s) that appear on the property registration document
- The date of acquisition of the property
- The legal basis for prior acquisition

These are important questions that help determine the rights and obligations of the client in relation to the property.

⁶ Only immovable assets were taken into consideration in the assessment. Movable property and valuables (including money) are not within the scope of these guidelines.

QUESTIONS:

1. Is the property registered in the property registry?
2. Is your client the registered owner?
3. Are there any other registered owner(s)?
4. Are there any encumbrances registered in the property registry?
5. What is the legal basis of prior acquisition? [if the data not included in the property certificate]
6. When was the property originally acquired?

CHECKLIST

- Property registration document
- Property conveyance contract, court decision or state institution decision (legal basis for prior acquisition of the property)

1.2. Determination of the personal status of the parties involved in the transactions

The personal status of the clients may influence their rights over the property, as well as, the rights of other undisclosed, lawful owners. The next steps in the process of due diligence conducted by the notary depend on the client's personal status.

CHECKLIST

- Birth certificate, family certificate or marriage certificate

Next steps to be considered in accordance with the determined personal status per type of contract:

Sales contracts

A notary's obligation under the law and code of ethics in sales contracts includes the identification of the parties to the transaction, conducting a substantial due diligence process and ensuring impartiality on both the seller's and the buyer's part, on top of the preparation or solemnisation of the actual legal document for the property transaction. As mentioned previously, in the Western Balkans there remains lawful property right-holders whose rights are recognized by the law, but are undisclosed (not registered) in property registries.

A client's current or prior personal status can help determine the rights of a current or former spouse or partner. When these rights aren't identified and respected this can lead to a serious breach of more than one constitutionally guaranteed right (eg. property ownership and freedom from discrimination). Furthermore, notaries have a responsibility to explain the rights and responsibilities of their clients arising from a transaction, to check if the deed between the parties complies with the broader legal framework and to protect the rights of a weaker party, if such a party is identified in the process.

1.2.1. Unmarried client selling property

a. Determine the existence of any prior marriages

A client may be unmarried at the time of the transaction, but the property object of the sale may have been acquired previously during marriage. If, at the time of acquisition, the property was registered in the client's name only, the client will appear as the sole owner of the property on the registration document. However, unless the spouses were married under a regime of separate ownership of property or decided to enter into a special agreement on the administration of property, the spouse is a joint owner of the property. In this case the notary should exercise due diligence by uncovering the existence of any rights and interests in the property. The unregistered party (spouse) should be identified and included in the sale of the property under joint ownership or co-ownership. The notary should seek the written consent of the unregistered spouse to the transaction.

QUESTIONS:

1. What is the client's personal status?
2. Was the client previously married? If yes:
 - Has the division of property been formally established?
 - Are there any ongoing non-contentious proceedings over the division of property?
3. Was your client married under a regime of joint ownership/co-ownership of property? If yes, then:
 - Did your client acquire the property during marriage?
 - Was the property registered in your client's name only?
4. [Where the law allows it], did your client enter into a special agreement with his/her spouse regarding the ownership, administration and transfer of property?
 - Under this agreement, what share of the property is your client entitled to?
 - Is the consent of your client's spouse required prior to the transaction under this agreement?
 - Is your client's former spouse aware of his/her intention to sell the property?
 - Invite the former spouse to the meetings
 - Inform the former spouse of their rights and interests in the property
 - Inform the former spouse of their right to provide written consent to the transaction, or to refuse it

CHECKLIST:

- Birth certificate, family certificate, marriage certificate, or other relevant document
- Determination whether the property was acquired during a previous marriage and whether it can legally be considered as jointly owned/co-owned property (review of the documents per step 1.1 and 1.2) is required
- Court decision on the property division after the divorce or
- If the non-contentious proceedings for property division are still ongoing
 - the consent from the former spouse is required in writing or may be subject to stricter legal requirements (i.e. certification of signature, notarial authentication).

b. Duty to protect the rights of the cohabitating partner

When the law extends the rights, protections and obligations of spouses in marriage to partners living in a legally recognized cohabitation, the notary should ensure that these rights, protections and obligations are identified, respected and protected.

The law usually sets criteria for a cohabitation to be established. These criteria are important as they determine whether the cohabitation generates rights and obligations for the partners and whether they are entitled to the same protections as spouses in marriage. The conditions attached to cohabitation usually consist of a minimum duration of the relationship, and a requirement of joint place of residence. These requirements are often difficult to establish, particularly for the notary.

The lack of regulation in most of the legal systems contributes to the fundamental nature of the cohabitation as an informal union, but when it comes to identifying and protecting the property rights over the property acquired during cohabitation, this informality creates challenges for notary and for the parties. A notary must first determine the existence of a legally recognised cohabitation, even though an individual may appear as “single” in the family certificate. Where the law extends the same property rights to partners in cohabitation as to married couples, cohabitating partners enjoy the same rights in terms of property ownership, administration and transfer as married couples. Consequently, most of the questions, checklists and actions identified above for individual buyers and sellers would also apply to partners in cohabitation. The only additional bottleneck would be the way and procedure for determining the existence of such a union and including the rightful partner in the property transaction, which are currently either not harmonized or not determined at all in the countries in the region.

Notaries should exercise due diligence in determining whether the cohabitation generates rights, obligations and protections, and the steps to take in order to protect the rights and interests of the unregistered partner and to safeguard their right to provide or withhold consent to the transaction.

QUESTIONS:

1. What is your client’s personal status?
2. Is your client living in cohabitation? If yes:
 - Does the cohabitation meet the requirements of the law to generate rights, protections and obligations for the partners?
3. Has your client acquired property since the start of the cohabitation?
4. Is there a special agreement between the two partners on the property regime acquired in the cohabitation? If not:
 - Was the property registered in your client’s name only?
 - Is your client’s former spouse aware of his/her intention to sell the property?
 - Invite the partner to the meetings
 - Inform the partner of their rights and interests in the property
 - Inform the partner of their right to provide consent in writing to the transaction or subject to the legal requirements even in a stricter form (i.e. certification of signature, notarial authentication), or to refuse it

CHECKLIST:

- Statement of cohabitation
- Determination of additional legal facts for existence of such union different per country (duration, joint place of residence etc.)
- Agreement determining specific property regime
- Written consent from the partner

1.2.2. Unmarried client buying property**a. Duty to protect the rights of the cohabitating partner**

Considering the nature of cohabitation in comparison to marriage, in cases when the client's personal status is identified as single, the due diligence process includes a) the determination of the possible existence of a cohabitation and b) whether it generates rights, obligations and interests. To this end, a notary should identify and protect the rights and interests of the unregistered partner, including their right to provide or withhold consent to the transaction.

QUESTIONS:

1. Is the client currently cohabitating with a partner?
2. Does the cohabitation meet the requirements of the law to generate rights, interests and obligations for the partners? If yes:
 - Is there an agreement determining specific property regime over the property acquired in the cohabitation between the partners?
 - Is the consent of your client's partner required prior to the purchase under the agreement?
3. Is the default regime of joint ownership or co-ownership applicable to your client?
 - Are the statutory requirements to consider the future property as jointly owned co-owned fulfilled?
All facts should be considered including whether the assets used for purchase are considered under the joint/co ownership regime, time of commissioning of the property and/or other facts of interest

If yes:

- Is your partner aware of your intention to buy a property?
- Does your partner consent to the transaction?
 - Inform your client on the property rights of the partner and the obligations arising from the cohabitation
 - Inform your client that the consent of the partner is required prior to the transaction
 - Invite your client's partner to the transaction
 - Inform your client's partner of their rights and interests in the property to be acquired
 - Inform your client's partner of their right to provide consent in writing to the transaction or subject to the legal requirements even in a stricter form (i.e. certification of signature, notarial authentication), or to refuse it
 - Inform your client and their partner of the benefits of registering the property jointly

If no:

- Not necessary to involve the spouse in the transaction process
State the main facts with regard to the determination of the status of separate property of the client in the notarial deed

CHECKLIST:

- Statement of cohabitation
- Determination of additional legal facts for existence of such union different per country (duration, joint place of residence etc.)
- Agreement determining specific property regime
- Written consent from the partner

1.2.3. Married client selling property**a. Determine what regime of marital property applies to your client**

Marital regimes govern the financial relations between husband and wife and determine the rights and obligations of each spouse in relation to property, including land. Under a regime of joint ownership, the property acquired by the spouse during marriage belongs to both spouses in equal undivided shares. Under a regime of co-ownership, the property acquired by the spouse during marriage belongs to both spouses in equally divided shares. Under a regime of separate property, each spouse retains ownership of the property that they acquire during marriage.

In a regime of joint ownership or co-ownership, the law usually provides for joint administration of property and requires the spouse's consent for any transfer of rights to the property to third parties. However, joint ownership and co-ownership do not always translate into joint registration in the property registry. If a notary relies solely on the information provided in the registration document, the property may be registered in the name of one spouse only and not show the rights and interest granted to the other spouse under the law. To ensure that the rights and interests of non-registered spouses are protected, notaries should exercise due diligence by asking the following questions:

QUESTIONS:

1. What regime of marital property applies to your client?
2. [Where the law allows it], did your client enter into a special agreement with his/her spouse regarding the ownership, administration and transfer of property?
 - Under this agreement, what share of the property is your client entitled to?
 - Is the consent of your client's spouse required prior to the transaction under this agreement?
3. If your client is currently married under a regime of joint ownership or co-ownership:
 - Was the property acquired during marriage?
4. Is your spouse registered as joint owner/co-owner in the property registry?

If no:

 - Is your spouse aware of your intention to sell the property?
 - Does your spouse consent to the transaction?
 - Inform your client that the consent of the spouse is required prior to the transaction
 - Invite your client's spouse to the transaction
 - Inform your client's spouse of their rights and interests in the property
 - Inform your client's spouse of their right to provide written consent to the transaction, or to refuse it
 - Inform your client and their spouse of the benefits of registering the property jointly

CHECKLIST:

- Birth certificate, family certificate, marriage certificate, or other relevant document
- Any agreement between the spouses regarding the ownership, administration and transfer of property or
- Written consent from the spouse

1.2.4. Married client buying property**a. Determine what regime of marital property applies to your client**

The prescribed default regime of joint ownership or co-ownership stipulates that the property acquired during marriage is considered as jointly owned or co-owned property, with certain statutory limitations (e.g. personal gifts, inheritance). The property, even when acquired by only one of the spouses under a contractual purchase agreement, will be considered jointly owned or co-owned under the law regardless of the fact that only one of the spouses is registered in the property registry. The above situation creates legal uncertainty for both spouses, as the spouse who is not involved in the process will acquire rights over a property under the law, but such right will not be reflected and confirmed through registration, while the other spouse (as a sole contacting party) might not be aware that his/her ownership right over the property is in fact shared with his/ her spouse. In relation to this situation, the assumption under the default matrimonial regime is that the assets used for the purchase are joint property as well, and the spouse who did not declare an explicit consent to the purchase has grounds for initiating litigation proceedings.

To ensure that the rights and interests of both spouses are protected, the notary should exercise due diligence by asking the following questions:

QUESTIONS:

1. What regime of marital property applies to your client?
2. [Where the law allows it], did your client enter into a special agreement with his/her spouse regarding the acquisition, ownership, administration and transfer of property?
 - Under this agreement, what share of the property is your client entitled to?
 - Is the consent of your client's spouse required prior to purchase?
3. If your client is currently married under a regime of joint ownership or co-ownership:
 - Are the statutory requirements to consider the property as jointly owned/co-owned fulfilled?

All facts should be taken into consideration including whether assets used for purchase are considered under the joint ownership/co-ownership regime, time of commissioning of the property and/or other facts of interest

If yes:

 - Is your spouse aware of your intention to buy the property?
 - Does your spouse consent to the transaction?
 - Inform your client that the consent of the spouse is required prior to the transaction
 - Invite your client's spouse to the transaction
 - Inform your client's spouse of their rights and interests in the property to be acquired
 - Inform your client's spouse of their right to provide written consent to the transaction, or to refuse it
 - Inform your client and their spouse of the benefits of registering the property jointly

If no:

 - Not necessary to involve the spouse in the transaction process
 - State the main facts with regard to the determination of the status of separate property in the notarial deed

CHECKLIST:

- Birth certificate, family certificate, marriage certificate, or other relevant document
- Any agreement between the spouses regarding the ownership, administration and transfer of property
- Written consent from the partner

Exchange contracts

Considering the nature of the exchange contracts, each party has rights and responsibilities as both seller and buyer in the transaction.

The situations identified for both buyers and sellers as clients (for sale contracts under this chapter) are relevant for exchange contracts. The steps to follow apply to all parties in the transaction for this type of contract.

Gift contracts

Considering the type of the contract, the only party in the notarial procedure considered for due diligence for this type of contract is the benefactor. The bottlenecks identified with regard to sales contracts occurring on the sellers' side (depending on the seller's personal status) are relevant for this type of contract and should be considered by the notary in the process of exercising due diligence. The respective questions and checklists to guide the due diligence process apply accordingly.

Contracts for life care and contracts for assignment and distribution of property during life

[Where the law allows it], the relevant party for the due diligence would be the owner of the property subject to this type of contracts. The bottlenecks identified are typically identical to those already identified on the seller's side for sales contracts depending on their personal status. The questions and checklists provided to guide the due diligence process for a client as a seller (for sales contracts under this chapter) should be followed.

1.3. Cross border marriages and determination of the respective marital property regime

In a situation where two individuals of different nationalities or holders of multiple nationalities conclude marriage, a specific set of rules applies with regards to the applicable marital property regime in accordance with international private law and the national transposition of the international and supranational laws.

The legal systems in the region follow the general rule of territorial jurisdiction when determining the default regime over joint property acquired during marriage, meaning that the jurisdiction is established in accordance with the physical location of the jointly owned/co-owned property while, at the same time, the spouses have an autonomy to choose a different regime under an agreement and applicable law to matrimonial property from the following options:

- Law applicable in the country of nationality of one of the spouses in the case when spouses have different nationalities;
- Law applicable in the country where one of the spouses has their habitual residence;
- Law applicable in the country where the immovable property is located.

In the process of identification of the parties during the contractual property transactions explained above, notaries should also determine their jurisdiction over the transaction and the default marital regime applicable in the specific case by asking the following questions:

QUESTIONS:

1. Are any of the clients not nationals of the country of respective notarial jurisdiction or holders of multiple nationalities?

If yes:

2. Is there a special agreement with his/her spouse regarding acquisition, ownership, administration and transfer of property where the spouses have agreed on jurisdiction and applicable law?

If no:

3. Is the immovable property subject to the transaction located in the country where the notarial jurisdiction is established?

If yes:

- Inform your client that the default property regime in accordance with the national law is applicable and proceed with the transaction as per type of the contract and status of the client
- Proceed with the due diligence steps as per type of the contract above

If no:

- Inform your client that the transaction can be concluded in the jurisdiction where the property is located and in accordance with the default property regime applicable in the respective country

CHECKLIST:

- Proof of nationality
- Any agreement between the spouses regarding the ownership, administration and transfer of property
- Documentation of the reasons for the determination of the jurisdiction

1.4. General Recommendation

- Carry out a proper due diligence process to determine: the personal status of the respective parties to the transaction, the date and personal status of the parties at the time of the initial acquisition of their respective properties, the date of the registration of the property and the name(s) listed for the property in the registry, the existence of a special property regime agreed between the spouses or partners. Notaries should base their enquiries on the facts presented by the parties and the documents made readily available to them through access to public registers. A notary may assume that the provided information is correct; however, he/she should request more information, if needed to ensure compliance with the broader legal framework.

- Exercising due diligence requires that the parties to the contract are determined, including the owners with undisclosed property right through registration in the property registry. Their inclusion in the transaction process should be ensured through an appropriate set of protection mechanisms (differing from the type of deed and/or the side or the party in the contract).

- The undisclosed owners should be identified through the process of due diligence and, subject to the requirement of professional secrecy, be informed on the rights and responsibilities arising from the legal deed. The notary is required to protect the interests of the weaker party, when such party is identified and is included in the procedure.

- Inform the weaker party of their rights and interests over the property and ensure that they understand the legal implications of their decision. Hold a one-to-one meeting, if necessary, to avoid pressure and influence from other parties.
- On the buyers' side, special focus should be placed on the time of acquisition of the property.
- When the parties are married or in a legally recognised cohabitation, the notary should inform them of the legal implications of sole versus joint registration. This will help break the chain of sole property registrations and contribute to a more accurate reflection of the legal status of a property in the property registry.
- The findings from the due diligence process should be adequately reflected in the notarial act.

2. Inheritance

In the region, the law makes provision for statutory inheritance orders and prescribes relatively limited freedom of testation thus providing some degree of protection to statutory heirs, including the surviving spouse and the deceased's descendants. The law limits the ability of the testator to fully disinherit the surviving spouse, children or other heirs by granting them a minimum statutory share in the deceased's estate. Despite these safeguards, and despite the prohibition of gender-based discrimination in the law, the traditions and customs that permeate society put certain heirs at a disadvantage when it comes to securing the share of inheritance that is rightfully theirs under law. The notary has an important role to play in ensuring that the law is applied in inheritance proceedings, and that the rights and interests of all heirs are equally protected. He/she also has to remain impartial and respect the requirements of professional secrecy.

In inheritance proceedings, due diligence requires notaries within the scope of their duties in this procedure to identify all parties with an interest in the succession, and:

- To ensure that the surviving spouse who was married under a regime of joint ownership or co-ownership of property is able to retain their share of the property prior to the division of the estate between the heirs. The deceased's spouse may not appear on the property's registration document but under the law he/she is entitled to half of the property if he/she meets the conditions.
- To ensure that the surviving partner – who was living in an unmarried relationship (cohabitation) that meets the requirements of the law to generate rights, obligations and protections for the partners – is able to retain their share of the property prior to the division of the estate between the heirs. Female surviving partners are particularly vulnerable to being left out of the succession. Although the law grants them the same rights as married spouses [where applicable], they will have to demonstrate that their relationship meets the requirements laid out in the law before they can benefit from these protections. If the partners acquired property during the relationship it is likely that the property will have been registered solely in the name of their male partner. However, as it is often very difficult to establish whether a union meets the requirements laid out in the law, the notary may rely on the facts presented to him/her and should refer contentious cases to the competent courts.
- To ensure that the right to disclaim (relinquish) interest in the succession is exercised freely and with the heir's full understanding of the implications of relinquishing for themselves and, where applicable, for their descendants. Daughters are particularly at

risk of being pressured or led to believe that property should be passed down to their brothers. In this regard, if appropriate, the notary may consider sending a draft of the act of renouncement to the party and should allow the heir sufficient time to reflect upon their decision. Furthermore, if appropriate, the notary may choose to conduct the procedure separate from other parties so that no pressure is exercised and, upon request, may decide not to disclose the content of the declaration to other interested parties immediately.

The role of notaries in strengthening gender equality in inheritance proceedings is extremely important. In inheritance cases, notaries usually provide the following services:

- Identification of the deceased's heirs;
- Determination of the jurisdiction for the inheritance law
- Establishing the rights of each heir to the deceased's estate;
- Verification of the validity of signatures, documents and statements provided by the heirs;
- Informing the heirs of the implications of accepting or renouncing to the succession;
- Drawing up the notarial deed of succession

There are specific risks associated with being the surviving spouse and daughter:

- When the deceased was married or lived in a cohabitation under the regime of joint ownership/co-ownership of property, and when the surviving spouse/partner is unregistered, there is a risk that the share of the property that they are entitled to under the law will not be taken out of the estate and protected during the succession.
- Cases where the division of the deceased's estate leaves certain heirs without a shelter. This is usually the case when the heir has been living with the deceased in a family house, and after the division of the estate, he/she loses their home. In this regard, the notary may suggest that parties provide for user-rights on behalf of the surviving spouse or partner in the will or that other measures are taken (such as the allocation of the family house to the surviving spouse/partner).
- Even where the law is gender neutral, tradition may push daughters and other female heirs to relinquish their right to inheritance in favour of their brother(s) and/or male heirs, e.g. the oldest son retains the agricultural holding, male children receive the farm to cultivate agricultural land, etc.), although the law itself is not discriminatory. While the notary is not in a position to prevent such wilful discrimination, he/she should create a safe space in which any party can make an autonomous and informed decision without outside pressure.

2.1. Determination of the deceased's personal status

If the deceased was married at the time of death, his/her surviving spouse is entitled to inherit in the 1st inheritance line together with the deceased's children or if there are no children in 2nd inheritance line together with the deceased's parents. The same applies to the deceased's partner, when the law allows partners in a legally established cohabitation to inherit from each other.

Notaries should also determine if any property was acquired during marriage or cohabitation. If the deceased was married or living in a legally recognised cohabitation at the time of death, or was previously married or living in a legally recognised cohabitation, the property acquired at any stage during marriage or cohabitation under the applicable marital regime, should be considered jointly owned or co-owned, depending on the applicable national law unless the spouses or partners retained separate ownership of property, or is subject to special agreement.

This is an important fact to determine, particularly if the deceased was single at the time of death but was married or living in cohabitation in the past. In all these cases notaries should make sure that recommendation under 2.5 is applied.

QUESTIONS:

1. Was the deceased married at the time of death?
2. Was the deceased living in cohabitation?
 - Does the cohabitation meet the requirements under the law to generate rights and entitlements for the surviving partner?
3. Was the deceased married or living in cohabitation at any stage during their lifetime?
4. Was the deceased married under joint ownership/co-ownership of property or living in a legally established cohabitation?

If yes:

 - Did the deceased acquire property during marriage or cohabitation?
5. Is the immovable property subject to inheritance located in the country?

If no:

 - Is there written renouncement of jurisdiction from a relevant institution in the country where the property is located?

CHECKLIST:

- Birth certificate, family certificate, marriage certificate, or other relevant document
- Statement on existence of cohabitation
- Divorce judgment
- Birth certificate of the surviving spouse or partner
- Agreement determining specific marital property regime
- Property registration document
- Property conveyance contract, court decision or state institution decision (legal basis for prior acquisition of the property)

2.2. Duty to identify, inform and invite all heirs to the inheritance proceedings

Notaries should ensure that all heirs with an interest in the succession are identified, and formally informed and invited to attend the meetings. National law regulates the procedures to follow in cases where the heirs are not known, are living abroad or their residence is unknown or there are other impediments to reach them. Notaries should identify all the heirs and their place of residence, and that they are properly informed, invited and represented in the hearings by proper implementation of the law and proper due diligence.

QUESTIONS:

1. Did the deceased have children born during marriage, prior to marriage, or after the marriage?
2. Did the deceased have a spouse or partner?
3. Did the deceased have parents, brothers and sisters, or other relatives?
4. What is their address?
5. Do any of them live abroad? If yes, state the country and address.

CHECKLIST:

- Birth certificate, family certificate, marriage certificate, or other relevant document
- Birth certificate of each heir
- Special power of attorney

2.3. Safeguard the rights and interests of statutory heirs in testate successions

If the deceased left a will excluding any statutory heir from the estate, the heir may request the statutory (indefeasible) share of inheritance to be applied.⁷ Notaries should determine if legal heirs accept or contest the will or if any of the statutory heirs request the necessary part (subject to the requirements of the applicable law). If there is no agreement between the heirs, the notary should refer the subject-matter to the court.

QUESTIONS:

1. Did the deceased leave a will?
2. Which form does the will have: private or notarial form?
3. Are there any other wills?
4. Are any of the heirs entitled to a statutory share of inheritance?
5. Do all heirs accept the will?
 - If the will threatens the interest of an heir, inform them of their right to request the statutory share to be applied
 - Inform the heirs of the consequences of not challenging the will
 - If necessary, hold a separate meeting with any heir whose rights and interest in the succession is being threatened by the will
6. Does any heir wish to challenge the will?

CHECKLIST:

- The deceased's will
- Birth certificate for every heir

⁷ In most jurisdictions, the statutory share is the minimum share of inheritance that an heir is entitled to under the law.

2.4. Inform the surviving spouse that he/she can request the separation of their share in marital property from the deceased's estate

If only the deceased is registered in the land register on the real property, the spouse should be informed of his/her right to ask for the separation of his/her share in marital property from the estate. Otherwise his/her share might be distributed to the heirs. The notary should advise the parties on their legal rights, especially since the laws of the region apply a presumption of joint ownership/co-ownership even if only one of the spouses is registered in the land registry.

QUESTIONS:

1. When was the property acquired?
2. On which basis was the property acquired?
3. Was the deceased married at the time of acquiring the property?
4. Does the spouse require the separation of his/her share in marital property from the estate?
5. Do other heirs agree or contest to that?

CHECKLIST:

- Property registration document
- Property conveyance contract, court decision or state institution decision (legal basis for prior acquisition of the property)
- Family certificate, marriage certificate, or other relevant document

2.5. Inform the surviving family member that they may retain user rights on the immovable property, subject to the approval of all co-heirs (concept of homestead)

This is particularly relevant when the heir lives in a family property, registered in the deceased's name, and has no other place to reside in. By dividing it among the heirs, he/she would be deprived of a shelter. Notaries should explain to the heirs that any family member may retain user rights on the immovable property, subject to the consent of the other co-heirs.

QUESTIONS:

1. Is the property that is to be divided the primary place of residence of any of the co-heirs?
2. Do the other co-heirs agree to grant user rights for life on the property?

CHECKLIST:

- Consent from the heirs
- Notarial deed granting user rights for life to the co-heir(s)

2.6. Inform the heirs about the consequences of relinquishing their right to inherit their share of the property

Notaries should advise heirs that the decision to relinquish interests and rights in the succession is irrevocable and applies to the deceased's entire estate. The advice is especially important in jurisdictions in which relinquishment also applies to the heir's descendants. Notaries should always determine if such a statement is given with a free will and whether the one who is giving it understands the consequences of signing such a statement. If there is reason to suspect that the statement to relinquish interests and rights might not be signed freely or is being given without proper understanding of the consequences of the decision, the notary should adjourn the meeting to allow the heir sufficient time to reconsider their decision. The notary should have a clear understanding of the reasons motivating the decision to sign a statement of relinquishment.

It is the notary's role to ensure that decisions that could affect the party's interests are made freely and with the proper understanding of the implications of the decision, notwithstanding the principle of party autonomy and the obligation of the notary to remain neutral. This duty extends to the party who is acting as a proxy.

QUESTIONS:

1. Do all the heirs accept the inheritance?
2. Do any of the heirs wish to relinquish their interests and rights in the succession?
If yes:
 - Is the heir aware of the consequences of relinquishing their interests and rights in the succession?
 - [In jurisdictions where this applies] is the heir aware that the statement to relinquish interests and rights in the succession will also apply to his/her descendants?
3. Is the heir aware that this statement must be signed freely and with the full understanding of the implications that it carries?

CHECKLIST:

- Written statement of relinquishment of interests and rights in the succession, in accordance with the requirements prescribed by the law.



COOPERATION WITH COLLEAGUES AND SELF-LEARNING

Notaries are expected to act towards their colleagues in a spirit of respect, cooperation and solidarity, promoting mutual exchange of ideas, service and counsel.

1. Self-learning

According to the international standards of conduct set by the UINL and as laid out in national laws, notaries have to obtain the maximum legal qualifications needed to have the necessary legal knowledge to effectively and accurately check the legality of the acts and documents that they draw up.

For notaries to carry out their professional activity, competence and adequate trainings are needed, especially for the key functions of advice, consultation, interpretation and application of the law in relation to gender issues. Technical and legal knowledge need to be up to date. Knowledge can be obtained in various forms, such as trainings, workshops, courses, conferences, forums, etc.

In addition to technical knowledge, notaries should engage in self-learning activities to keep up to date with any legal changes and crucially, to perfect their understanding of any matter that touches upon their sphere of activity. This includes taking part in courses, discussions, workshops and reading material that bring out the gender implications of their activities.

Notaries have to retain an ethical personal attitude in the exercise of their function by refraining from any behaviour that may entail losing the confidence of citizens in the notarial institution or that are contrary to the dignity of the Notariat. The principles of notarial activity (legality – rejection of and prevention against illegal behaviour, impartiality, highest professional standards, independence, respect for Fundamental Rights (human rights, the environment, justice, freedom, truth, honesty, reliability), professional secrecy, willingness, diligence and professional responsibility, professional autonomy, incompatibility and public supervision of the notarial activity) must to be respected.

RECOMMENDATIONS:

- Identify the learning opportunities on gender equality in notarial services through the national Chamber of notaries
- Participate in academic discussions related to gender equality
- Include national and international updates on gender equality in regular review of laws and legal news
- Consider enrolling in professional training programs, including those

2. Proactivity

Notaries are expected to exercise their function to the highest level of professionalism and competence. As implementers of the law, they have specific responsibilities with regard to human rights and property rights, a fact that requires proactivity in identifying ways to uphold the protection of the guaranteed rights. Through the process of direct application of the law, notaries are in a unique position to identify and propose necessary legal reforms or strategies that would support effective implementation of existing laws, including the ones related to gender equality.

Working through the national Chambers of notaries, they can advocate strengthening tenure security and promote effective, transparent and equitable enforcement of existing legal protection for women's property rights.

As part of the due diligence requirements, notaries are expected to identify the risks associated with being the weaker party, and inform all parties of the consequences of not addressing them.

RECOMMENDATIONS:

- Flag areas where legal reform is needed to strengthen gender equality through the national Chamber of notaries
- Consult and exchange with colleagues in order to identify areas where women and daughters may be at a disadvantage and where due diligence requires enhanced protection of their rights and interests
- Share good practices in relation to gender equality and property rights
- Be proactive in identifying the factors that could put women and daughters at a disadvantage in the services provided under the law

3. Relations with colleagues and professional bodies

According to the UINL Principles of notarial ethics notaries should act towards their colleagues in a spirit of respect, cooperation and solidarity, promoting mutual exchange of ideas, service and counsel. Notaries must not harm the reputation of the profession or of their colleagues. Notaries must participate as far as possible in developments within their profession by sharing their knowledge and experience with colleagues and students. Notaries should extend cooperation to their professional bodies, enabling them to discharge their duties efficiently, and they should also be willing to undertake responsibilities within the profession as a whole and perform tasks allotted to them.

3.1. Relations with colleagues

Relationship with colleagues is regulated by codes of ethics, with both national and the international principals governing notary work. Notaries' relations with colleagues should be on a peer-to-peer basis. Notaries should consider other Notaries as colleagues united in the pursuit of a common objective, namely the efficient exercise of the Profession, and not as competitors. The behaviour of a Notary towards other Notaries has to be diligent, and should be aimed at seeking co-operation and solidarity, by promoting the exchange of support, services and advice. The Notary should not discredit other Notaries.

Notaries are obliged to provide their services willingly, objectively and accountable by fostering a united spirit among notaries in the protection of gender equality. Notaries as a collegial administrative body have a duty to avoid any form of discrimination by elaborating in detail their ethical notary code to accomplish this task.

RECOMMENDATIONS:

- Promote the exchange of ideas, services and counsel in relation to gender equality and property rights with colleagues
- Share experiences where women and daughters were pressured or led to relinquish their rights in favour of male relatives
- Report in a systematic way the good or bad practices in relation to gender equality to the national Chamber of Notaries

3.2. Relationship with professional bodies

As members of a professional body, notaries are expected to render their services with willingness and objectivity, constantly and effectively exercising their powers and responsibilities and promoting a spirit of unity amongst notaries. Any violations of the law by notaries should be prosecuted and punished.

Membership of a national Chamber of notaries is a requirement in all relevant jurisdictions and provides a compass in the exercise of the profession.

Notaries are expected to cooperate with state institutions, especially as a part of the preventive administration of justice. As legal practitioners in non-contentious matters and delegates of State authority, Notaries and the Chambers representing them should cooperate with the judicial authorities in the performance of their public function towards improving the development and application of the justice system.

Expected behaviour and professional relations of notaries with other professional bodies:

- Coordinate and exchange ideas and experiences with the respective professional bodies in the juridical branch in terms of court practices towards gender protection, as well as with the lawyers' organizations
- Enhance transparency during the transaction process and registration of immovable property, coordinating the actions and documentation required with the registration offices

3.3. Networks and awareness-raising

Professional networks serve as platforms to share experiences, discuss challenges and advocate for change. Being a member of a professional network contributes to personal development and to building a critical mass that can be a powerful voice for change.

Networks can help build bridges between different institutions and professions, thus expanding the reach of information. Notaries, lawyers, members of public administration bodies, real estate registry officials, civil society and academic staff all have an important contribution to make to advance gender equality in land ownership and control.

Trainings organized with the participation of academics and public administration representatives in relation to gender equality in property rights would encourage notaries to provide more effective solutions to some of the barriers that women and daughters face.

RECOMMENDATIONS:

- Sign up for membership of a professional network
- Expand your personal network to include lawyers, members of public administration bodies, real estate registry officials, civil society and academic staff

ANNEX I

Gender considerations in all legal systems

Property acquired during marital union and cohabitation is considered as joint and undivided (the legal assumption is 50/50) or respectively in co-owned with determined 50/50 shares, and while the right-holders are protected under the law through recognition of the ownership right, the registration of the title to both parties (spouses or partners) in the property registry is not always done in practice, due to the fact that the legal framework provides a window for registration of the property in the name of only one of them as an exception of the general rule for joint registration. To be more specific, the property is considered as joint property if acquired during marital union or cohabitation regardless of the official owner in the property register. The exception providing the possibility for registering only one spouse/partner in the property registry has been widely used instead of the general rule of joint registration of the spouses and partners in all jurisdictions in the region.

In all jurisdictions, property registries are considered to be true and complete under the law on one side and that there is lack of provisions or guidelines for identification and inclusion of the unregistered right-holders in the property transaction process (mostly in front of the notaries); on the other side, such conflicting situation leaves a significant group of right-holders infringed in both property transactions and inheritance proceedings by having their property right recognized by the law, but undisclosed and unregistered in the property registers. The identified problem further produces a chain reaction in the upcoming property transactions (including inheritance proceedings) exposing such a group (mainly female spouses and partners) to legal uncertainty and leaving them court proceedings as an only legal remedy for the protection of the lawful ownership right.

The responsibility for joint management and disposal of the property by the spouses (partners), mutually and in agreement, as well as the ban for single-sided disposal or encumbrance, is clearly stipulated in the cases of joint ownership acquired during marriage and cohabitation in Albania, FYR Macedonia, Serbia and Montenegro, while in Bosnia and Herzegovina, considering the different approach towards the property acquired in marriage and cohabitation, the co-owners have pre-emption right over the property in cases of disposal, but could encumber their own part without a consent from the spouse. In the cases where both spouses are registered as owners, the above situation is not considered as a bottleneck and the legal norm could be enforced without any danger of infringement of property rights, while in the cases where only one of the spouses (partners) is registered, the unrecorded property right may be valid proof of ownership between the parties in litigation, but has no effect upon bona fide third-party claims until disclosed and recorded, unless such situations are identified and addressed prior to the property transaction.

Addressing the problems and improvement of the current inharmonious notary practice on this issue could be achieved by a step-by-step checklist per legal deed. Careful review and assessment of relevant documents and collection of specific statements from the parties in the due diligence process can contribute towards identification of undisclosed owners, their protection and/or inclusion in the process, all while equally protecting all parties involved in the transaction.

In all cases where the property ownership right is contractually transferred, the notary should determine or verify the status of the property, and the personal status of the parties involved. The notary should just ask the parties after their personal status, if there are no stricter national investigation rules (e.g. marriage certificate). Notaries should trust the information provided by the parties if there are no special circumstances that would give rise to doubts.

ANNEX II

Brief overview of the best practices identified in the countries from the region

- Gender disaggregated data is generated from the property registration and cadastre IT systems in all Western Balkans countries.
- Spousal consent is mandatory for any transaction involving matrimonial property - spouses manage and dispose of matrimonial property jointly and consensually in Albania, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia.
- Property acquired throughout the duration of a consensual/non-marital union is considered co-ownership or joint ownership in Bosnia and Herzegovina, Montenegro, Serbia and the Former Yugoslav Republic of Macedonia.
- Property Registration law requires mandatory registration of both spouses as co-owners/joint owners of the matrimonial property in Albania and Serbia.
- Simplified procedure for ex officio joint registration of both spouses (joint ownership), based on the marriage certificate and on the statement of both spouses for subsequent registration of unregistered spouse for properties obtained during the marriage in Serbia as of 08/06/2018.
- Special measures for reduction of property registration fee by introduction of an incentive tax costing just a token fee of 3 euros, aiming to stimulate and increase women's ownership and control over land, in cases when both spouses/ partners/ are registered as co-owners of the property and for the property registration of people with disabilities - in Serbia (Law on Public Administration Taxes).
- The surviving spouse is granted user right of the matrimonial house for life (right of life use) if the spouse is second in inheritance rank in the Former Yugoslav Republic of Macedonia, Serbia and Montenegro.
- Mobile registration service centres are established to improve the access to property registration services for women, the poor and vulnerable groups in Serbia.
- Strategic Plan for the Development of Agriculture and Rural Areas that provides a financial incentive of 5% if a woman is a farm holder adopted in Bosnia and Herzegovina - Republic of Srpska.
- Draft Notary Law in Albania is aligned with other existing laws, to make mandatory registration of both spouses/partners as co-owners of the property possible.
- An order of the Ministry of Justice of Albania to regulate inheritance cases and already registered property has been drafted. As a result, already registered matrimonial properties that are only under a single name can now be amended and registered in the name of both spouses.
- Notaries and the Agency for Real Estate Cadastre are organising open days for providing free legal and professional assistance to citizens in the Former Yugoslav Republic of Macedonia.
- Civil register and Property Register are interoperable, which facilitates inheritance procedures and transfer of ownership in Albania and the Former Yugoslav Republic of Macedonia and planned in Serbia and Bosnia and Herzegovina.
- Raising awareness of the benefits of registering both spouses in all Western Balkans countries.
- Discount of notary fees are foreseen when spouses conclude legal transactions on the acquisition or transfer of common matrimonial property in Republic of Srpska, Bosnia and Herzegovina.



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