



# Social notary?

## Accessibility of notarial services for citizens and small businesses

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## Summary

The Minister for Legal Protection made a commitment in the Dutch Parliament to commission research into the state of the notarial profession and the accessibility of notarial services in particular. Questions raised in the Dutch Parliament included whether less affluent people have sufficient access to notarial services and whether a social notarial office should be established. These questions prompted this study and the following research questions:

1. How accessible are notarial services for citizens and businesses?
  - a. What is the supply of notarial services on offer?
  - b. What does the demand for notarial services look like?
  - c. What is the financial accessibility of notarial services?
  - d. What is the status of other forms of accessibility (such as comprehensibility and accessibility) of notarial services, also in relation to citizens' legal capabilities and capacity to act?
2. How can potential accessibility issues be addressed?
  - a. If certain target groups are not reached, what options are identified to address them?
  - b. Would the establishment of a social notarial office be a solution to promote accessibility? If so, what are the advantages and disadvantages?

To get a clear picture of the accessibility of notarial services, the supply of services, demand for services, affordability, accessibility, and comprehensibility were examined. From the demand side of the client, we also looked at legal capabilities (knowledge, skills, attitudes, personality traits, available financial, social, cultural resources) and the capacity to act of citizens.

The term 'social notarial office' was defined as a regulated form of financing for the notarial profession to provide notarial services to people who are unable to pay a market-based price for them. The term 'social notarial services' has been used for non-regulated forms of service provision by notaries, for example all kinds of free services or services provided at a reduced rate.

### Research methods

Several sources were used for data collection. Data and documents from the Royal Dutch Association of Civil-law Notaries (KNB) and data from Statistics Netherlands (CBS) were collected. Existing research, literature and information on websites were also used. A total of 48 semi-structured interviews were conducted with representatives of different organisations. Interviews were held with a) (deputy) notaries, employees of different types of (notary) offices or platforms for notarial services; b) representatives of various interest groups; c) social workers or offices where people can go with legal issues, or with professionals who come into contact with specific types of problems; d) representatives of the KNB, the Central Government Real Estate Agency and the Netherlands' Cadastre, Land Registry and Mapping Agency.

### The supply of notarial services

To map the supply of notarial services, a description of: a) the development of the number of (added) notaries, deputy notaries, and office branches over the past five years; b) the types of offices and specialisations; c) the supply of general (first-line) information or help for notarial issues.

In 2024, the Netherlands had a total of 3,427 (added) notaries and deputy notaries: an increase of 77 compared to five years earlier. The number of offices decreased by 23 over the same period to 889 in 2024. So there has been an increase in scale: the number of professionals per office has increased. The number of offices has been decreasing since 2009: there are therefore fewer locations for citizens to visit.

Citizens can choose offices with different specialisations, e.g. for specific areas of law, cross-border cases in specific countries, or services in different languages. Some offices focus on specific target groups such as expats or LGBTQ parents.

For other offers of general (front-line) information or help on notarial issues, citizens can consult various websites, or consult front-line organisations such as the Notary Telephone (Notaristelefoon), the Legal aid counter (Juridisch Loket), social counsellors, and legal shops. They can also get advice or assistance through some memberships or, for instance, death or legal expenses insurance policies. This assistance is often limited to specific topics, such as drafting a will, or is only provided in the case of legal conflicts.

### The demand for notarial services

The demand for notarial services was mapped out by describing a) the development of the number of notarial deeds over the past five years; b) the need for notarial services among the population; c) target groups that do not consult a notary or drop out, for which a notary does offer added value.

Between 2013 and 2021, the number of deeds passed rose sharply. In 2021, about 2 million deeds were passed, then that number dropped to over 1.7 million in 2023. This decline is mainly in the registry practice. The demand for deeds in family practice has been rising for years, especially for wills and living wills. In 2023, for the first time, the number of deeds passed in family practice (42% of all deeds) exceeds that in registry estate practice (38% of all deeds).

Population research shows that about 45 per cent of Dutch people have visited a notary at some point in their lives. Some of these people visit the notary mainly because they have to, for example in connection with the purchase of a house.

For front-line social and legal aid workers, demand for notarial services is low compared to the total number of requests for help they receive. However, the exact volume of requests for assistance with a notarial aspect is not known. Some requests for assistance can be answered by front-line social and legal aid workers themselves, while others require advice, assistance, or a deed from the notary. The unmet need for notarial services is mainly in the area of family property law. Various target groups and situations are mentioned where people drop out or do not consult a notary at all even though it is advisable, also for people with few financial assets.

Needs that are identified concern, for example, the settlement of an inheritance and arranging a will, living will, cohabitation contract or prenuptial agreement. On the one hand, it concerns situations where problems in the future can be avoided by arranging a will, living will, prenuptial agreement or cohabitation contract with the notary. On the other hand, it concerns situations in which citizens are faced with a problem, such as settling an inheritance, get stuck in it and have no means of calling in a notary. This may apply, for example, to minor children or people with debts who have to accept an inheritance on a beneficial basis.

Target groups that do not consult notaries or drop out are, according to interviewees: people with few economic resources (low income, debts, the partner has debts, people dealing with protective guardianship, or mentorship) in relation to various family property law matters; elderly people and people with disabilities in connection with the prevention of problems in case of incapacity or prevention of problems after death; singles, cohabitants and blended families in order to prevent problems in case of inheritance and/or divorce; small entrepreneurs or self-employed persons in connection with preventing problems in case of debts and inheritance and people with a migration background who are not familiar with the added value of notarial deeds or prefer to arrange matters differently. Also mentioned are groups that lack certain skills and therefore do not consult notaries or drop out, such as people with low literacy.

### Financial accessibility

Financial accessibility was described using the following characteristics: a) the development of fees for notarial services; b) perceived financial accessibility; c) the functioning and accessibility of Article 56 Wna; d) the provision of social services from the notarial profession.

Between 2015 and 2023, fees for notarial services in all legal areas increased by about 35 percent. This is a stronger increase than the prices of service providers in general; these increased by 22 percent. However, the variation in fees for the same type of deeds is large and cheaper options exist for standard deeds through online platforms. Clients can also get wills at low rates through some funeral or healthcare organisations. Cost can be a major barrier for people to engage a notary. This is especially true for people from lower income groups and in the area of family property law. Sometimes there are also additional costs (for interpreters, translations, private international law issues, medical tests of capacity to make a will). There are groups who cannot pay, such as people on welfare or those in debt. There are also citizens who can, but do not want to, or have other priorities, do not see the urgency and are less focused on security for the future. Article 56 Wna should ensure that citizens covered by the Legal Aid Act can arrange certain deeds in family property law at a notary by setting a capped fee. To qualify for that fee, less well-off persons must apply for a declaration of income and assets from the Legal Aid Board and then submit a request to the president of the competent notarial chamber. During the period 2018-2022, only a few requests (12 to 13) were submitted annually to the four notarial chambers. Moreover, most requests were withdrawn prematurely by the applicants. This is because for the amount of this capped fee, the chambers use the maximum co-payment according to the Wrb (952 euro in 2024). This amount is very high for the less well-off and, moreover, this fee is usually above the average fee for deeds in family practice. Therefore, for many people, the scheme does not provide any benefit. Other disadvantages of the scheme are the required self-reliance of citizens to apply, the unfamiliarity of both citizens and professionals with the scheme, the limited scope of the scheme (limited type of deeds, no advice). In addition, the scheme designates a notary. This may come at the expense of service quality and if the fixed fee does not cover costs, a notary is forced to work below cost. Notary offices provide various forms of social services. For instance, there are offices that offer free consultation hours (in a community centre or otherwise) and some offices help clients who have limited financial resources with a reduced fee or instalment scheme. There are also offices that do work for charities, associations, and foundations for free or at reduced rates. However, these initiatives are local, mostly ad hoc (the client must ask for it) and dependent on notaries' goodwill. Moreover, some notaries are opposed on principle to offering reduced rates.

### Non-financial accessibility

Non-financial accessibility factors from the supply side are the (in)comprehensibility of notarial documents and the availability and conveyance of comprehensible information, the 'posh' image of the notarial profession that may deter certain groups, and physical accessibility for people with disabilities. The interviews suggest that these supply factors can hinder access to the notarial profession. Digital tools can both worsen and enhance accessibility.

In addition to the supply of services from the notarial practice, citizens' legal capabilities play a role in accessing it. These factors from the 'demand side' include, first, knowledge about the usefulness and necessity of arranging something at the notary's office. Second, consulting service providers requires certain skills: to find and understand information or make contact, certain language, social or digital skills are required. Not all citizens possess these. Third, the attitude of the citizen matters. Having confidence in notaries and feeling that they are there for you. Citizens have the idea that notaries are mainly there for people with a certain wealth. Some cultural habits can also be a barrier. Fourth, personality traits may play a role. For example, some citizens lack the self-confidence to contact a notary. Some people need certainty and want things settled, while others live from day to day and are willing to take risks. They will only visit a notary when they have to. Finally, available resources are important. Besides the financial resources discussed earlier, having social (network that can provide help) or technological resources (internet access, availability of devices) can also be important. About 16 percent of the Dutch population is found to have low economic as well as social, cultural and personal capital.

Besides legal capabilities or having various forms of 'capital', people's capacity to act is also important, the extent to which people can effectively manage their own behaviour. And this capacity to act is diminished in

stressful situations, such as the death of a loved one or divorce. However, the capacity to act on its own is not enough. Actually, taking action, 'getting a grip on the environment', requires that there are also sufficient financial resources and enough availability of adequate assistance. For people with little legal capabilities and capacity to act, a good cooperation of notaries and front-line legal assistance, such as the legal aid office (Juridisch loket), debt assistance, social counsellors, or legal clinics, is therefore of significant importance. However, cooperation between the notarial profession and front-line legal aid is still limited. Moreover, front-line legal aid workers do not always have sufficient knowledge of family property law and about the value and necessity of settling something with a notary. Settlement of inheritances is often mentioned as a key problem area. Settling inheritances can be complex and often beyond the abilities of many citizens. Especially debt relief providers and legal representatives such as guardians express a strong need for financial support for notarial services. Notaries themselves and front-line legal aid workers do not have many people coming forward with requests for notarial legal aid. If the financial barriers become less, the question remains whether citizens will turn to notaries. As described above, a financial resource is only one of the legal capabilities that play a role.

### Addressing bottlenecks

For the reported bottlenecks around both financial and non-financial accessibility of notarial services, several directions for solutions are discussed.

Various initiatives exist at the national level (by the KNB) and by individual notary offices to remove barriers to access. Especially in the field of comprehensibility and knowledge, all kinds of activities are being developed, such as holding information meetings, information campaigns, offering courses in comprehensible communication for notaries, and making deeds more comprehensible. Cooperation between the notarial profession and the legal aid office has also started. In addition, there are local initiatives for social services. A social notary office is considered desirable for prevention of problems of certain groups of citizens in the future and, consequently, prevention of future costs for citizens with small budgets. The urgency is also seen for help in settling difficult inheritances, especially a settlement procedure is beyond the capacity of many citizens. Not all notaries are convinced of the need for a social notary office. Partly because they do not or rarely encounter the target group in their practice and, when the occasion arises, make arrangements themselves. The disadvantages mentioned are expected capacity problems within the notarial practice if the demand for services by a social notarial office increases. It is also expected that there will be little enthusiasm for it among notaries, given the problems with legal aid solicitors.

Interviewees mention several funding options for a social notarial office:

- adapting Section 56 Wna so that it better suits the needs of the target group;
- adding the notary to the system of subsidised legal aid;
- including notarial services in legal expenses insurance or other forms of insurance or subscription;
- sharing the costs between notary offices through a fund or other form of financing
- government funding through special social assistance benefits from the municipality.

A combination of, for example, government and notarial funding is also mentioned.

Points of attention for a new financing system are: the establishment of an income and assets test, the scope of the scheme in terms of areas of law, an equal distribution of costs between notary offices, limited administrative burdens of the system and the reimbursement of additional costs (e.g. for an interpreter, translations).

Besides financial accessibility, other aspects of accessibility are also important. Here, too, the establishment of a social notary office can be a solution. By linking up with the existing infrastructure of (first-line) legal aid workers when setting up a social notary office and, for instance, organising consulting hours at locations where target groups can walk in more easily than at a notary's office, thresholds can be lowered. A counter where people can go with legal questions and problems, without having to make their own assessment of which legal professional a question belongs to. However, the interviews also show that currently, legal aid

workers do not always adequately recognise when a situation requires notarial advice or a deed. Additional education or training of these staff is therefore important.

Another direction of solution that was put forward is to amend legislation, especially in family property law, so that matters are already preventively regulated by law and fewer people need the services of a notary. For example, cheaper and simpler arrangements for 'standard cases' for a living will or cohabitation contract that can be entered in national registers without involving a notary. Proposals are also made to make the settlement of inheritances easier and more accessible by facilitating partial dispute procedures and simplifying powers between the court and subdistrict court. For any legislative changes, it is advised that these should also be evaluated against the bar of the WRR's capacity to act (*doenvermogen*) test.

Furthermore, it is recommended that research is done on the possible (negative) effects on legal certainty and legal protection of proposals to amend legislation for 'standard cases', in which the notary's duty-of-care role is removed.