

GOVERNMENT OF JAMMU AND KASHMIR
Department of Law, Justice & Parliamentary Affairs
(Notary Section) Civil Secretariat,
Srinagar/Jammu

CIRCULAR

Subject: Registration/Notarization of Sale Agreements including with regard to the State land by the Notaries in the Union Territory of Jammu and Kashmir in violation of the legal provisions.

The Notaries Act, 1952 and the Notaries Rules, 1956 made in exercise of the powers conferred by Section 15 of the said Act regulate the profession of notaries including inter-alia, their appointment, renewal of their Certificate of Practice upon expiry of validity period, functions and duties of Notaries, fees payable to a Notary for any notarial acts, etc. The functions and duties of Notaries have been delineated in terms of Section 8 of the Notaries Act, 1952. Rule 11 of the Notaries Rules, 1956 provides for transaction of business by a Notary.

Section 8(1) of the Notaries Act, 1952 specifies the following duties and functions of the Notaries:-

"8. Functions of notaries.—

(I) A notary may do all or any of the following acts by virtue of his office, namely:—

- (a) verify, authenticate, certify or attest the execution of any instrument;*
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;*
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (26 of 1881), or serve notice of such note or protest;*
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;*
- (e) administer oath to, or take affidavit from, any person;*
- (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;*
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;*

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- (h) translate, and verify the translation of, any document from one language into another; (ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;
- (hb) act as an arbitrator, mediator or conciliator, if so required;
- (i) any other act which may be prescribed.”

In addition to above, the Rule 11 of the Notaries Rules, 1956 provides for the transaction of business by a Notary and provides as under:-

“11. Transaction of business by notary –

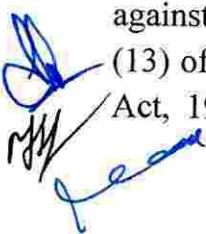
- (1) *A notary in transacting the business under the Act shall use the Forms set forth in the Appendix to these rules.*
- (2) *Besides recording a declaration of payment for honour or notary shall also register noting and protest made. Every notary shall maintain a Notarial Register in the prescribed Form XV.*
- (3) *Where any demand of acceptance or payment or better security has been made by a clerk, a notary shall, after examination of the entry in the Register relating to such demand, affix his signature thereto, and cause the clerk to affix his signature also to the entry.*
- (4) *Each notary shall, before bringing the Notarial Register into use, add a certificate on the title page specifying the number of pages it contains. Such certificate shall be signed and dated by the notary.*
- (5) *Every notary shall permit the District Judge or such officer as the appropriate Government from time to time appoint in this behalf to inspect his register at such times, not often than twice a year, as the District Judge or officer may fix. District Judge or officer appointed by the appropriate government will have power to lodge a report to the appropriate Government for taking action against a notary.*
- (6) *When the original instrument is in a language other than, English, any noting or protest or entry in his register which has to be made in respect of the instrument by a notary may be made either in that language or in English.*
- (7) *In making presentment of bills or notes a notary shall observe the provisions of chapter V of the Negotiable Instruments Act, 1881 (26 of 1881).*
- (8) *The notary may –*
 - (1) *draw, attest or certify documents under his official seal including conveyance of properties;*
 - (2) *note and certify the general transactions relating to negotiable Instruments;*
 - (3) *prepare a will or other testamentary documents; and*

(4) prepare and take affidavits for various purposes for his notarial acts.

(9) Every notary shall grant a receipt for the fees and charge realized by him and maintains a register showing all the fees and charges realized."

It is clear upon the perusal and reading of the aforesaid legal provisions that Notaries can only draw, verify, authenticate, certify or attest the documents but cannot exercise powers of Registering Authorities as provided under the Registration Act, 1908, which consolidates the enactments relating to the registration of documents. There is a marked difference between the attestation and registration of the documents. Section 3 of the Transfer of Property Act, 1882 provides that "attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary. While on the other hand, the "registered" means registered in any part of the territories to which the Act extends under the law for the time being in force regulating the registration of documents, which would mean the Registration Act, 1908.

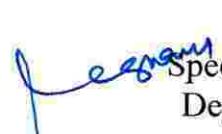
Despite aforesaid clear and unambiguous legal position, it has come to the notice of this department that the Notaries Public are attesting and registering documents in the manner unknown to the law and in gross violation of the aforesaid legal provisions including the documents related to immovable properties like Agreements to Sell and that too in absence of the parties. It has been also found that some of the notaries are also indulging in notarization of the documents related to the State land, which on the face of it is illegal and any such document being void ab-initio and non-est in the eyes of law cannot confer any right. It is well settled law that an agreement of sale does not, of itself, create any interest in or charge on such property and attestation of the said documents in violation of the legal provisions by illegal exercise of powers on part of the Notaries akin to that of Registering Authorities as envisaged under the provisions of the Registration Act, 1908 amounts to gross professional misconduct within the purview of Notaries Act, 1952 and the Notaries Rules, 1956 and the concerned Notary found violating any of the said provisions or dealing with any such document related to State land would be dealt in accordance with the provisions of the Rule 13 of the Notaries Rules, 1956 and action against the said Notary shall be taken in accordance with Sub-rule (12)(b) and Sub-rule (13) of Rule 13 of the Notaries Rules, 1956 and Clause (d) of Section 10 of the Notaries Act, 1952. The name of any such Notary found, upon inquiry under Rule 13 of the



Notaries Rules, 1956, to be guilty of such professional or other misconduct, shall be removed by the Government from the Register maintained by it under Section 4 of the Notaries Act, 1952

Therefore, it is brought to the notice of the concerned Notaries discharging duties and functioning in the Union Territory of Jammu and Kashmir appointed by the Government of Jammu and Kashmir to refrain from such illegal activities and functions contrary to the provisions of the Notaries Act, 1952 and the Notaries Rules, 1956 and not to register any document including the Agreements to Sell and any document with regard to the State land by illegal exercise of powers akin to that of the Registering Authorities as prescribed under the Registration Act, 1908 and to discharge their duties and functions strictly within the ambit of the Notaries Act, 1952 and the Notaries Rules, 1956 and any deviation thereof shall be taken seriously and will tantamount to misconduct within the purview of Rule 13 of the Notaries Rules, 1956 and action against the said Notaries found guilty of misconduct shall accordingly be taken in accordance with the provisions of the Notaries Act, 1952 and the Notaries Rules, 1956.


(Sajad Ali Nabroo)
Special Secretary to the Government
Department of Law, Justice and PA


16.12.2025

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4. Office Copy.