

You can sell land without a notary ...

...if you just care to rely on a handshake, like in the good old days. To learn how to conduct a significantly more secure and professional transaction, please continue to read here.

Notarial services in general

In Switzerland, only contracts that have been certified by a notary (“notarized”) are binding on both buyer and seller. This form of contract is also referred to as a “qualified written instrument.” In certain cantons, notaries work on a self-employed basis; in others, they are government officials. With private notaries, you have the freedom to select the notary of your choice. With official notaries, you have to engage the notarial services of the respective municipality. Typically, two to three municipalities are collectively served by one group of notaries. Official notaries tend to be somewhat less expensive; the advantage of private notaries is that they offer a higher level of service (due to the competitive market). Depending on the canton, either the buyer or seller will pay the notary fees. In several cantons, these are split between both parties.



Purchase agreement notarization and transfer of title

The purchase act is divided into two phases: the “in personam” part of the contract, i.e., the obligation imposed on an individual and the “in rem” part of the contract – the action that must be performed). They can take place simultaneously or consecutively, or they may take place later, according to a fixed schedule.

1. The legal obligation transaction = Execution of the purchase agreement

This discussion pertains to the execution (signing) of the purchase agreement. In the presence of the notary, the buyer and seller execute (sign) the Purchase Agreement, which governs the entire legal transaction. The buyer commits to pay the purchase price; the seller commits to

surrender ownership to the buyer (the respective obligation imposed on both parties).

2. The performance transaction = transfer of title (ownership)

Ownership is transferred upon consummation of the performance transaction. This means that in exchange for payment of the purchase price, the buyer is recorded in the land register as the new owner. The transfer of title may transpire immediately after contract execution, or within a specified period (as stipulated in the purchase agreement). With public notaries, it is typical for the notary to deal with the land register transaction directly as well. Private notaries refer the performance transaction to the land register office, which is always a state-run entity.

Overview of notarial costs from selected cantons (as of March 2013; data subject to change):

Canton	Private / public notary	Notary fees	Land register fees	Title transfer fees	Who pays the fees?
Zurich	Public notaries	0.1 %	0.25 %	None	Split
St. Gallen	Public / land register office	0.25 %	0.25 %*	1 %	Split
Aargau	Private notaries	0.4 % up to CHF 600,000; 0.2 % above 600,000	0.4 %	None	Split
Schwyz	Public notaries	0.09 % as well as reimbursement of incidental expenses, up to a maximum of CHF 13,500	Minor expense allowance-reimbursement to set-up the promissory note	None	Split
Zug	Private notaries	Base fee of CHF 500, then hourly rate up to a maximum of CHF 3,300	Expense reimbursement	None	Split
Graubünden	Private notaries	0.25 %	0.25 %	2 to 2.5%, depending on municipality share	Split

* Land Register Office requires 0.5 % for recording and title transfer.

Content of purchase agreement

The purchase agreement essentially governs the following items:

1. Naming of the contract parties (buyer / seller)

In order to firmly establish the identities of the persons involved, the notary requires a passport or identity card at the notarization appointment.

2. Description of the land

Here, the land is described according to the land register. The buyer must accept this content as binding on himself/herself. He or she must understand the content and the meaning of the easements, recorded entries and priority notices. Similarly, there must be a disclosure of any promissory notes that exist on title. In certain cantons, the notary might even read the land description aloud to the buyer and seller (and sometimes even the entire contract as well).

3. Payment of the purchase price

In this section, we describe how the level of the purchase price was negotiated, and how the payments are to be made. Previously, the purchase price was paid in cash or

by check. Today, land sales are always transacted with irrevocable payment promises from Swiss financial institutions.

4. Other terms and conditions:

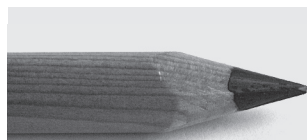
This is the most all-encompassing part. Except for a few points, the contractual principle of “freedom of form” applies to a great extent; however, in practice, the additional terms and conditions of a contract are frequently quite similar – and sometimes, exactly the same – from one purchase agreement to the next. Notaries generally prefer to have the following items stipulated under the other terms and conditions section:

- a. Date of ownership (transfer of title)
- b. Date of possession (transfer of benefits and risk)
- c. Settlement of ongoing costs associated with the contract property

- d. Legal indemnification for material defects / transfer of warranties
- e. Provision on the allocation of costs for notarial and land register fees
- f. Provision / securing of real estate gains taxes and any property transfer taxes
- g. Assignment of existing insurance policies
- h. Surrender of any lease agreements
- i. Entering into contracts and resolutions (primarily applies to condominiums, such as management agreements, capital reserves for renovations or tenant improvements, resolutions of the condominium owners' association)
- j. Instructions on legal provisions affecting rights of retention and arbitration clauses (for condominium apartments)

The sequence of a real estate sale

- The purchase agreement may be preceded by a reservation contract, especially when it comes to new construction, but also with existing real estate. The reservation contract is not legally binding, except that it has the content of the primary agreement, and is officially certified. In most cases, the reservation contract is the equivalent of a “gentlemen’s agreement.” The seller commits to take the property off the market, and to cease showing the property to other potential buyers. In exchange, the buyer commits to pay a reservation fee and to execute the purchase agreement within a specified period. If the reservation contract is terminated, then any advanced payments must be paid back, pursuant to applicable federal court practice. However, the seller may not deduct any verifiable costs (e.g., notarial service fees and travel expenses).
- If buyer and seller are in agreement on the salient points of a real estate transaction, then one can either send the draft purchase agreement to the notary’s offices, or request the notary to set up such a draft agreement. In the case of a reservation contract, it is advisable to enumerate the essential contract elements, like purchase price, transfer date and other supplemental terms and conditions.
- Customarily, it takes at least 5–10 business days until you can get an appointment at the notary’s offices for the notarization. This period may be shorter with private notaries. If there is consensus on all the contract points, then you go to the notary and have the purchase agreement notarized.
- The transfer of title, with the conveyance of benefits and risk, may transpire subsequent to a notarization, or at a specified later date. In this respect, bear in mind that in those cantons with private notary services, the notary is not responsible for dealing with the land register. In Zurich, it is a personal union, whereas in other cantons (such as Graubünden or Aargau), the notary has to drop off the agreement with the land register office for recordation.



CHECKLIST / DOCUMENTS THAT YOU NEED FOR NOTARIZATION!

✔ Irrevocable payment promise (or “Commitment Letter”)

Customarily, an advanced payment of the purchase price is required at notarization. In addition, the institution providing financing (bank, insurance company, possibly a retirement fund) typically must provide the seller with an irrevocable payment promise regarding the advanced payment and, if need be, the remainder of the purchase price. Checks and cash payments have long since been consigned to the past. Today, practically all real estate sales are settled through an irrevocable payment promise.

✔ **Certification of legal capacity**

A few cantons require that the buyer submit a certification of legal capacity. The form for this must be requested from the residents' registration office in the municipality. It is used to verify that the buyer bears the full capacity to act. Buyers from abroad cannot produce this certification; however, some cantons do not require it at all. The canton of Zurich is very strict in this regard. The seller is exempt from this requirement. If he or she does not have legal capacity, then this circumstance would be recorded in the land register.

✔ **Identification card or passport and foreign resident permit**

In order to validate identification, all contract parties need a passport or identification card. Non-Swiss citizens additionally need either Foreign Resident Permit B or C. For holiday properties, additional authorizations (e. g., for secondary residences) or a residence certificate for primary domiciles may be required.

FACT SHEET

WHAT IS REQUIRED FOR THE NOTARIZATION AND THE TRANSFER OF TITLE TO A PROPERTY?

1. NOTARIZATION

You must bring the following documents with you to the notarization appointment:

Buyer / Acquiring Party

- ID / identification card*
- For foreigners: Foreigner Identification / Resident Permit B or C
- Certificate of Legal Capacity
- Original of the Irrevocable Payment Promise from the bank or insurance company, to the attention of the seller's bank

Seller / Disposing Party

- AID / identification card*
- A copy of all privately secured insurance policies (e.g., building flood insurance, third party liability, etc.) in advance, for informational purposes.
- Copy of any lease agreement(s)
- Copy of the management agreement
- Low Voltage Installation Inspection Certificate, if conducted within the last 5 years

2. TRANSFER OF TITLE (OWNERSHIP)

The following documents must be brought to the transfer of title appointment:

Buyer / Acquiring Party

- AID / identification card*
- Foreigner Identification / Foreign Resident Permit B or C
- Any irrevocable payment promises, if not already submitted at the notarization.

Seller / Selling Party

- ID / identification card*
- Originals of all existing, privately secured insurance policies
- Original lease agreements
- Existing floor plans (originals)
- Warranty certificates and owner's manuals for all building equipment and systems
- All keys to the property; existing plans of locking system

For condominium apartments

- Copy of the existing management agreement
- Any existing management records (invoices, memoranda, resolutions from the past years)

* If necessary, a notarized power of attorney for any representation.

Important information on transfer of ownership:

If there is any **promissory note increase**, then the original promissory note must also be available at the notary's office for the transfer of title!

The **selling party** will be requested to complete the **following actions** by the date of title transfer (date of possession):

- Arrange to have the utility company read the meters for power, gas, water and sewage.
- Read the heating oil meter and provide any calculation of the remaining heating oil supply.
- Notify service agreement partners (e.g., heating company) of the sale.
- Prepare a closing invoice in favor of / at the expense of the acquiring party.
 - The heating oil supply can be invoiced at the acquisition price (price of the last purchase).
 - The insurance premiums for the cantonal building insurance, paid in January for the whole year in advance, may be credited to the seller on a pro rata basis (state insurance does reimburse these premiums)
 - Any additional invoices that were paid in advance, such as basic fees for rubbish service (exists in a few municipalities).
 - For leased properties, the rents received may be credited to buyer on a pro rata basis as of the date of transfer.
 - For condominium apartments, the quarterly or biannual invoice (management down payment), paid in advance or pending payment, can be credited to the appropriate party on a pro rata basis (management issues no interim statement).
- Notify the post office of your relocation, and arrange to have your mail forwarded for one year.
- For condominium apartments, remember to notify management about the change in ownership.

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Claude A. Ginesta is a federally licensed real estate fiduciary (registered with the SVIT, the Swiss Federation of Real Estate Fiduciaries) and owner and CEO of Ginesta Real Estate AG. The company was founded in 1944 and specializes in the sale of properties in the Zurich and Grisons markets. With offices in Küsnacht, Horgen and Chur, the company operates as real estate broker throughout Switzerland for properties located across the country.

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