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SOLICITORS

Swearing Declarations. Do I need a Notary or a Solicitor?

By Phil Robinson, Head of Residential Conveyancing

I have been sent an affidavit by my solicitor to swear before a Commissioner for Oaths. Do I need to see a Notary?

A Commissioner for Oaths is a person who has been commissioned by the Lord Chancellor with the power to take oaths or administer Affidavits/ Statutory Declarations.

In England and Wales all practising solicitors are automatically commissioned as Commissioners for Oaths upon qualification and as such an affidavit for use in the UK should normally be sworn before a solicitor. Fellows of the Institute of Legal Executives (FILEX) are also classed as Commissioners for Oaths and Barristers also have the power to administer most affidavits. A Solicitor or Legal Executive who is involved in the transaction or who has drafted the document, should not administer the swearing of the document and the declarant should always visit an independent Commissioner for Oaths.

As such you do need to specifically see a Notary Public for this service, but as most Notaries are also Solicitors it is a service that we can offer.

The affidavit I have been asked to swear is to be used in South Africa does this make any difference?

The English legal system is recognised throughout the Commonwealth and as such most commonwealth countries use the same or very similar terminology when dealing with legal documents.

Whilst the South African legal system does acknowledge that English Solicitors and FILEX are Commissioners for Oaths it will be dependent upon the individual practice as to whether they are happy and insured to swear documents to be used outside of the UK.

The majority of Solicitors in England and Wales are not qualified to act on transactions outside of their jurisdiction and this will be considered when accepting the instruction. This decision will also depend upon where the document will be relied upon (i.e. in court, by the land registry, border control etc) and potentially the financial details of the transaction.

In this instance, a Notary Public would likely be the best choice to administer the declaration within the notarial practice as our role is to specifically act where documents are leaving the UK.

When I swear the document with a Notary Public, does this mean that the document will become “Public” and be available for all parties to see?

No, whilst a Notary Public does owe a duty to the transaction, as well as to the client, the documents will remain private whilst within the custody of the Notary (normally 12 years). There are some parties to whom the Notary will confirm the authenticity of the documents but in all other respects, no other information will be shared with third parties without the client's explicit consent.

Unless specifically instructed to do so, a Solicitor will not normally keep a copy of the document which they have sworn.

