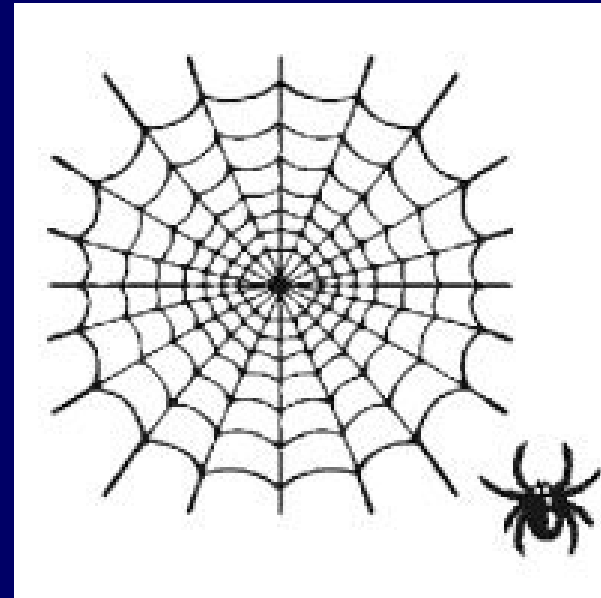


The Dutch notary in a real property transaction: spider or web?

COST G9 Workshop and MC 8
Thessaloniki, Greece, 9-11 June 2005



Jaap Zevenbergen

June 10, 2005

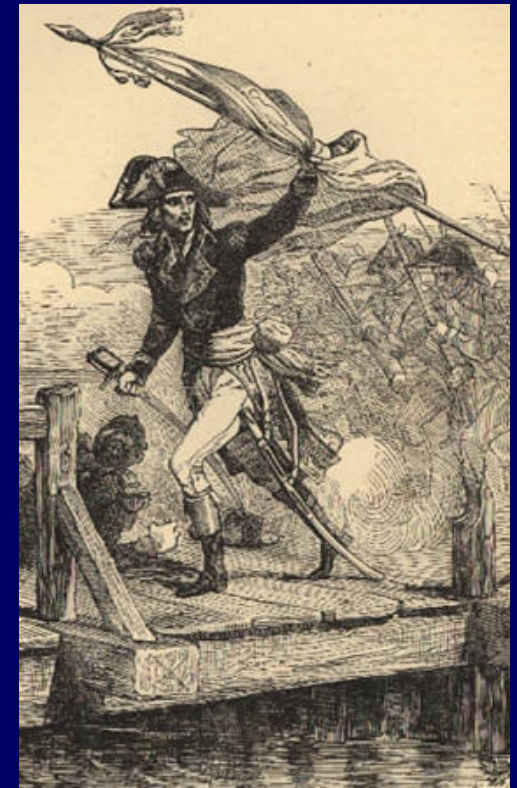
1

The Notary

- he who can write
- he who can witness
- he who can advise
- he who has official mandate(s)
- he who has (certain) monopolies
- he who is liable for damages due to mistakes

The Notary

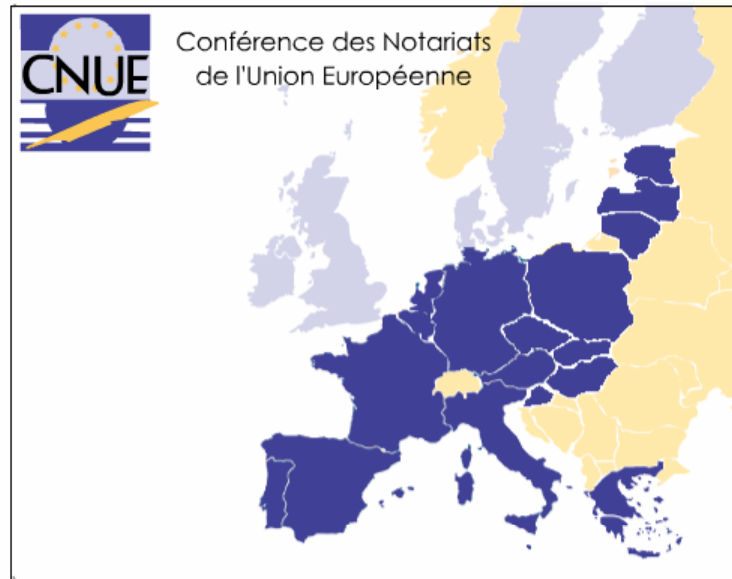
- Involvement differs between countries:
 - verification of signatures
 - improving status of deed (evidence)
 - checking and verifying facts
 - mandatory involvement
- Predates Napoleon
- But in his time the profession became regulated and certain functions were officially attributed to them





Private Practitioner

- e.g. Notary, Licensed Surveyor, Advocat, G.P., ..
 - advisory and/or mandatory tasks
 - their work checked or accepted 'in trust'
 - professional bodies, e.g. to
 - monitor and enforce 'code of conduct'
 - arrange Quality Assurance and CPD
 - assure liability insurance
 - try to preserve monopoly ('guilds')



Passer l'introduction *Flash*

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the Netherlands

- small country (37,330 sq. km)
- large population (16.3 Million)
- land use heavily regulated, land transfer virtually left to market forces
- institutions of system of land reg.:
 - Cadastre & Public Registers Agency (Kadaster)
 - notaries

Conveyance (system of land registration)

- deeds registration (improved)
- 'public registers' holds deeds
- 'cadastre' is summary of the deeds ('objects' and 'subjects')
- entry in cadastre is not proof, but reliable assumption of ownership

Conveyance (transfer)

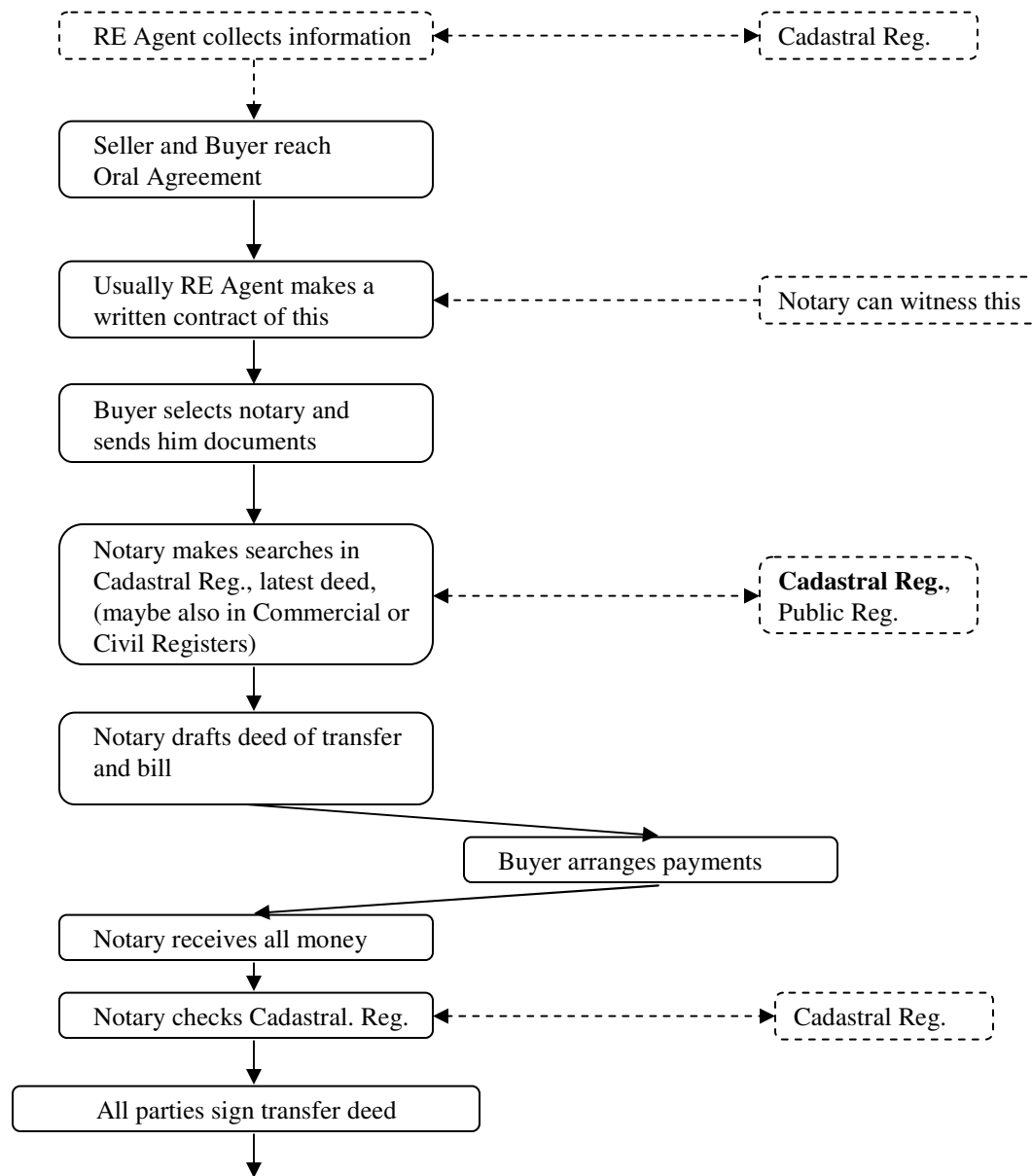
- transfer of a whole property:
 - parties negotiate terms (including price)
 - parties are bound to the agreement
 - parties send agreement to notary
 - notary researches cadastre (and other public registers if necessary)

Conveyance (transfer)

- notary draws up deed
- buyer (and his bank) pay all monies to notary
- notary checks cadastre for recent deeds
- parties and notary sign deed
- notary acknowledges official copies
- notary sends/brings two copies to Agency
- Agency informs notary of safe arrival of copies
- notary checks cadastre for recent deeds

Conveyance (transfer)

- notary pays out to seller, his bank, tax department, Agency, and keeps his own fee
- Agency enters copy in public register (*passive*) and updates information in cadastre (*active*)
- Agency stamps and returns other copy
- notary presents it to buyer as 'ownership-doc.'



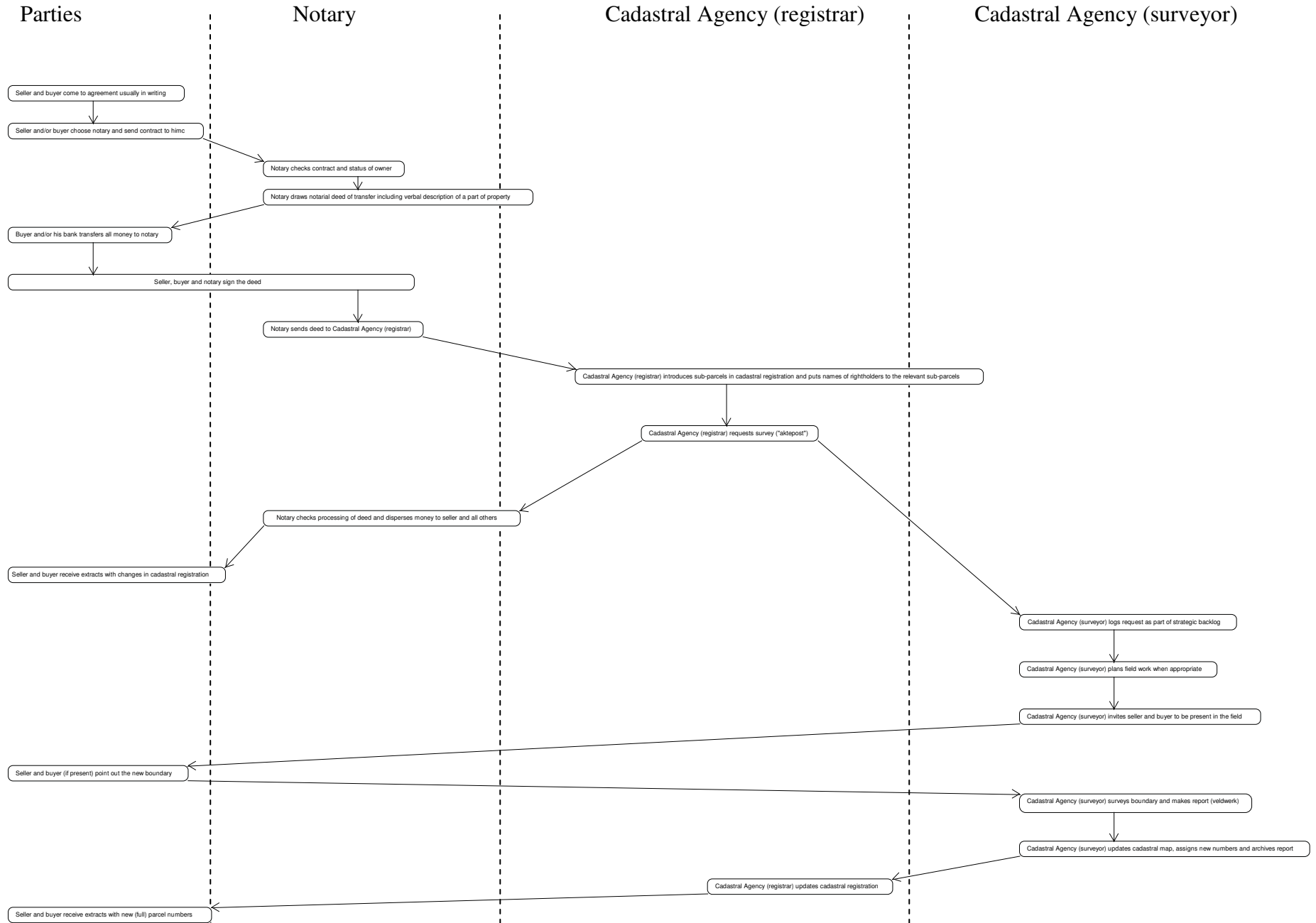
Conveyance (subdivision)

- transfer of part of a property:
 - party-agreement and notarial deed include 'description' of subdivision of the parcel
 - Agency creates administrative part-parcels and makes internal request for survey
 - Agency invites parties in the field to indicate the position of the boundary

Conveyance (subdivision)

- Agency surveys and processes indicated boundary if parties agree and when in line with 'description' in the deed
- if not, one attempt to solve this (otherwise left to the parties)
- notaries not very concerned with unambiguous description that relates to reality (see Preadvies)

Subdivision on Sale Subject Netherlands



Workload Agency (2004)

- 437,000 deeds of transfer and others
- 579,000 mortgage deeds
- 76,000 subdivisions (75% after transfer)
- 15.8 Million individual requests for info.
- (in 2002 13.5 Million:
 - 8.6 million by notaries (64%)
 - 690,000 by banks (5%)
 - 94,000 by private citizens (<1%))

Notary (1)



- private practitioner who
 - has special type of law degree
 - worked as assistant notary for > 6 years
 - appointed by the Government (Crown) for a certain area, once business plan has been approved viable (before limited number)
- has legal mandate for main functions
- is trusted, independent advisor (Belehrung)
- also looks at some 3rd party interests (see HR'95)

Notary (2)

- non-partisan expert (unlike advocat/lawyer)
- monopoly on drawing notarial deeds, which are mandatory for real estate transfers and mortgaging
- de facto branch of tax department (s/he collects transfer duty)
- financial escrow; all financial streams around transfer go via him/her

Notary (3)

- s/he thoroughly checks contract and other data before completing the deed
- s/he will check the cadastre (on line)
- s/he will check last deed, and occasionally also check some previous deeds, the companies register or the persons register (e.g. marriage)
- **his/her cooperation with Agency makes the system run very smooth**

Costs

- not easy to determine
- fee of the private practitioners is not (no longer) regulated: price competition
- real estate agent: 2-3% of sales price, seller has one most of the time; buyer regularly also
- expensive is obligatory notary: € 1000 - 2000 for a house around € 200,000 (average in the West)
- recordation fee € 75 + 42 for searches (incl. VAT) for deed + € 94 + 42 for mortgages + €442/new parcel

Concluding Remarks

- electronic lodging deeds by notary starts Fall 2005
- on-line searches in public registers (paper deeds of last few years are now scanned)
- pivotal role for notaries, rather expensive
- competition among notaries:
 - prices down (?)
 - quality under pressure (??)
- early discussion on role notaries also in EU context

Readings

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