**MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE**

**National Aviation University**

**Law Institute**

**Department of Criminal Law and Process**

## «Preparation of Notarial Procedural Documents»

**Methodical recommendations for self-training**

**before taking classes**

**Specialties: 081 "Law"**

Educational Professional Program**: "Jurisprudence"**

Approved at the meeting of the department "\_\_\_" \_\_\_\_\_\_ 20\_\_\_, protocol No. \_\_\_\_

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KYIV – 2017

**CONTENT**

**P**

**INTRODUCTION**

**Topic 1. Organizational basis for the activities of the notary in Ukraine.**

**Topic 2. Notarial process. 6**

**Theme 3. General rules for notarial acts. 9**

**Topic 4-5. Certificate of undisputed facts. The certificate is indisputable**

**Right 19th**

**Topic 6. Notarial actions aimed at providing executive documents**

**strength 22**

**Reference**

**Introduction**

Students' independent work is an important component of training in higher education institutions of highly skilled specialists.

The informational and methodological support of independent work of students is a list of questions for self-training, which are envisaged by the plans of practical classes, as well as a list of literature on the topic.

The main recommendation for self-education and deepening of knowledge on discipline is the elaboration of normative legal acts governing the organizational development of the notarial process in Ukraine, the competence of notarial bodies regarding the commission of notarial acts, general rules and peculiarities of the commission of certain types of notarial acts, elaboration and critical reflection of the recommended literature on these issues, as well as resolving incidents and drafting procedural documents.

Independent work of students is intended to help achieve the goal set before the academic discipline. When starting to work independently, the student must understand the purpose of the discipline and the tasks that face it. The purpose of academic discipline is the acquisition of students basic knowledge in the field of the notarial process, the formation of students' contemporary views on the rights and responsibilities of the notary and its role in ensuring the rights and interests of citizens and legal entities, helping students comprehensively and deeply understand the nature and essence of notarial procedural relations , the development of students' ability to make informed decisions and prepare them for practical work as qualified specialists in the field of notary public services.

Tasks for independent work are aimed at consolidating the educational material. Their implementation involves assimilating the main content of discipline topics. At the same time, the execution of such tasks requires a creative approach from the student side, the ability to raise additional questions themselves, respond to them, evaluate their own work and compare them with others, analyze typical and non-standard situations.

**Topic 1. Organizational basis for the activities of the notary in Ukraine.**

**Plan**

**1. Analysis of the main legal and regulatory sources of the notarial process**

Guidelines

     Studying this subject, the student must clearly understand and determine the functions of the notary, the subject, system and methods of the notarial process, as well as the principles on which the notarial process and the legal acts regulating it are built.

     The legal basis for a notary is the Constitution of Ukraine, which establishes a number of important general provisions of fundamental importance for a notary.

The Constitution of Ukraine proclaimed the transition to the formation of a free market-competitive economy and democratic principles of the construction of a state system. These constitutional provisions have a direct connection with the notary, since now the land can be owned not only by the state but also by citizens, legal entities, which makes it possible to transfer property rights to such objects that must be certified in a notarial manner.

     In addition, the right to qualified legal aid is one of the fundamental human and civil rights that is proclaimed by the Constitution. Yes, Art. 8 stipulates that human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is responsible for its activities, affirmation and assurance of human rights and freedoms is its main duty, and notaries, as authorized by it to perform notarial acts of a person, are obliged to observe these provisions in their activities. For notarial activities to correspond to the high law enforcement agency's mission, the theory of the notarial process has to be continuously developed. It should outweigh the changes and additions to the legislation so that they have a substantiated and positive content.

     Legislation on notarial acts is a structured system of legal norms, the subject of regulation of which is the legal relationship that arises in the organizational structure of the notary, the notarial process and regulate the procedure for the commission of notarial acts. Such acts should include specific legal acts: the Law of Ukraine "On the notary", the Procedure for the performance of notarial acts by notaries of Ukraine, the Regulations on the procedure for the performance of notarial acts in diplomatic missions and consular offices, the rules for notarial deed and a number of other by-laws, which approved by resolutions of the Cabinet of Ministers of Ukraine or by orders of the Ministry of Justice of Ukraine. The sources of the theory of the notarial process are also the Civil Code, the Family Code, the Land Code and other systematic acts of substantive law, the norms of which specify and define the tasks of notaries, and also implemented on the basis of the notarial procedure.

     The notarial process is also influenced by decrees and orders of the President of Ukraine, resolutions of the Verkhovna Rada of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine.

     Briefly describe the main sub-legal acts that govern notaries in the implementation of the notarial process.

     The procedure for the performance of notarial acts by notaries of Ukraine, approved by the order of the Ministry of Justice of Ukraine dated February 22, 2012 No. 296/5, registered with the Ministry of Justice of Ukraine on February 22, 2012 under No. 282/20595 (as amended) consists of two chapters and 38 chapters respectively.

     The first section is entitled "General Provisions" and consists of 16 chapters, which discloses the issue of the place and time of the notarial act, establishment of a person, determination of the extent of his civilian capacity, verification of the powers of the representative of a natural person and a legal person, determination of the will and actual intentions of the person in committing notarial acts, as well as requirements for documents provided for the performance of notarial acts, requirements for documents coming from a notary public. In addition, this section provides for the registration of notarial acts, as well as the question of the grounds and procedure for refusal to perform notarial acts, the procedure for appealing such refusal in court.

    In the second section, "Procedure for the commission of certain types of notarial acts" (22 chapters), the issues of the implementation of the main notaries of notarial acts are regulated by the peculiarities of the commission of certain types of notarial acts. in particular, the certificate of transactions on alienation and pledge of property, unilateral transactions, the certification of certain facts, the procedure for the execution of inheritance rights with the issuance of the relevant certificates, as well as the procedure for issuing certificates of title to the share in the joint property of the spouses in the event of the death of one of the spouses, certificates about the acquisition of property from public auction (auctions). In addition, this section regulates the issue of notarization of executive writings, protests of promissory notes, maritime protests, acceptance of cash deposits and securities in a deposit, as well as the procedure for committing other notarial acts stipulated by Article 34 of the Law of Ukraine "On Notary".

    The rules for conducting notarial proceedings approved by the order of the Ministry of Justice of Ukraine dated December 22, 2010 No. 3253/5, registered with the Ministry of Justice of Ukraine on December 23, 2010 under No. 1318/18613, consist of 16 sections, in which the procedure for documenting notarial activity and storage of the archive and the procedure for organizing work with documents in state notary offices, state notary archives, private notaries shall be determined, in particular, regulated by:

 - office management, archive of private notary;

- Responsibility for the organization of record keeping and archiving;

- procedure of acceptance-transfer of documents of notarial office work in

in the case of changing the head of the office or the person responsible for keeping records, replacement (suspension of notarial activities) of a private notary;

- drawing up and registration of organizational and administrative documents;

- drawing up and registration of notarial documents:

- procedure for keeping and filling registers for registration of notarial acts;

- reception, consideration and registration of correspondence;

- control over the execution of documents;

- Requirements for the formation of cases (outfits):

- peculiarities of the formation of hereditary cases;

- registration of cases for archival storage;

- drawing up descriptions of cases (outfits);

- archival storage of notarial documents by a private notary;

- transfer of cases to the state notary's archive;

- Issuance and removal (extraction) of notarial documents.

The rules for conducting notarial affairs have 49 applications, which

establish a list of requisites or the form of relevant acts, books, magazines, registers, nomenclature of cases, descriptions, certifying and certifying inscriptions.

Sources: [1]; [2]; [5]; [6]; [7]; [14]; [17].

Questions for self-checking:

1. To characterize the Law of Ukraine "On Notary" as a source

notary process.

2. To name sections of the Procedure for making notarial acts by notaries of Ukraine

and give a description of their content.

3. List issues governed by the Rules of conduct

notarial case management.

**Tema 2. Notarial process.**

**Plan**

**1. Stage of the commission of notarial acts as one of the stages of the notarial process.**

Guidelines

     As a result of the study of this topic, the student must master the issues of the classification of notarial proceedings, their stages, as well as the stages of the notarial process and understand the content and characterize each of the stages of the notarial process.

     The stage of direct commission of notarial proceedings differs from the preparation for its commission by the fact that at this stage the notary takes the final decision about the possibility of notarial act taking into account the preparatory actions carried out by him. For example, all documents necessary for the commission of a notarial proceeding are collected, established by all interested parties, verified documents confirming it, verified their legal capacity, their consent for the commission of notarial proceedings is properly executed, all the procedural deadlines provided by the law are observed, the draft has been prepared an agreement agreed with the parties, costs paid, etc.

    Thus, the stage of direct commission of a notarial proceeding is the stage of the notarial process, which is a set of procedural actions of the notary and other participants of the process, aimed at the direct commission of the transaction and the certification of a lawful and substantiated notarial act.

    The given stage is reduced to the commission by the notary and the persons participating in the notarial conduct of the following procedural actions:

    1) the notary's verification of the actual intentions of persons who participate in the notarial procedure (parties to the contract, the applicant) on the certification of the transaction;

    2) the notarization of the transaction on a special form of the notarial document (original);

    3) the signing of a notarized transaction by its participants or their representatives (persons who take part in the notarial procedure), other persons, if the applicant has physical defects (part of Article 45Закону), чи особисте підтвердження особами своїх підписів на документі, який посвідчується;

4) the notary certifying the inscription on the document which is certified, or issuing the certificate by his signature with the application of the seal;

    5) registration of a notarial deed in paper and electronic registers (in cases provided for by law, for example, registration of a will in the Hereditary Registry);

    6) issue of the original of the notarial act to the participants of the transaction.

    Thus, this stage consists of several parts: preparatory; direct affidavit or issuance of a certificate; registration of notarial acts.

    Let's dwell on the analysis of the components of this stage of the notarial process.

As to the preparatory part, it should include the above paragraphs 1-3, that is, the verification by the notary of the actual intentions of the persons involved in the notarial proceedings (parties to the contract, the applicant) to certify the transaction (paragraph 1). Such a check, according to Art. 44 of the Law, must be carried out before the notary certifies the inscription on the transaction. Establishment of real intentions of each of the participants of the transaction is carried out by establishing by a notary the same understanding of the parties' significance, terms of the transaction and its legal consequences. In order to exclude the possibility of extraneous influence on the will of one of the parties establishing by the notary actual intentions of the parties to the transaction may be made in the absence of the other party. The lawyer is certified by a notary if each party understands equally the meaning, the terms of the transaction and its legal consequences. The text of the contract is set out on a special form of the notarial document (clause 2) and signed by the participants or their representatives, or the signature is confirmed personally by the person who committed it (Part 2 of Article 45 of the Law), or, in accordance with Art. 45 of the Law, by other persons who made a signature instead of a person with physical defects (paragraph 3). Signatures indicate that individuals understand the essence, meaning, conditions and consequences of an authenticated transaction.

    Concerning the second component - direct commission of a notarial proceeding (clause 4), it is reduced to the commission by the notary in the text of the transaction, which is set out on a special notarial letter signed by its participants, a certificate of identity with the indication of his signature and the use of the seal (Part 1 of Art. 48 of the Law) or issue of a certificate, which is set out on a special form of a notarial document in a certain sense and form, which is also signed by a notary public (Part 2 of Article 48 of the Law). That is, this component actually ends with a certificate of a notarial deed.

    The third component (paragraph 5) consists in the registration of notarial acts in paper and electronic registers after the notary has made a certifying inscription on the document or will sign the document issued by him (Article 52 of the Law). Each notarial act is registered under a separate serial number, which is indicated in the attestation or in the document issued by the notary public.

    The fourth component (clause 6) consists in the issuance of the original of the notarial act to the parties to the transaction at their discretion (Section 2, Chapter 1 of the Chapter of the Procedure for the Notarial Acts by the Notaries of Ukraine), about which they must make a personal signature in the paper register.

Sources: [1]; [5]; [6]; [7]; [11]; [14]; [17].

Questions for self-checking:

1. To define the stage of the commission of notarial acts.

2. List the procedural actions of the notary in this stage.

3. To reveal the content of the component of the preparatory part of the stage of commission

notarial acts.

**Theme 3. general rules for notarial acts.**

**plan**

**1. deferment of notarial proceedings and complications in**

**notarial process.**

**2. stop the commission of the notarial proceeding and its features.**

**Guidelines**

     studying on this subject, students must understand the meaning of the concepts of "deposition", "stop", as well as navigate in the established by the current legislation notarial procedural terms and the order of their calculation.

    at the stage of direct commission of a notarial act, certain complications may occur. based on the analysis of part 2 of article 42 of the law of ukraine "on notary" (hereinafter - the law), we can conclude that the complications of the notarial process should include:

    1) postponement of the commission of the notarial proceeding;

    2) suspension of the commission of a notarial proceeding.

    let's dwell on the analysis of each of the complications in the notarial process.

    the postponement of the commission of a notarial proceeding is the transfer of his commission to another, specific date.

    with the legislative consolidation of the stage of the notarial process, this complication should be enshrined in the section, which will regulate the stage of direct commission of notarial acts.

    parts 2.3 of article 42 of the law provide for reasons for postponing the commission of a notarial proceeding and its term. notarial proceedings may be postponed for a term not exceeding one month. the reasons for the deposition are:

    1) the need to request additional information or documents from individuals or legal entities;

    2) sending documents for examination;

    3) establishment of the circle of interested persons and the need to ensure that they have no objections to the commission of this action.

    but first of all, it should be noted that such procedural actions, as a rule, take place at the stage of preparation for the commission of a notarial act, although cases can not be excluded, when such a situation may arise even during the commission of a notarial act.

    in addition, such a complication of the notarial process as a deposit differs from the suspension by the fact that when a notary performs (postponed) the commission of a notary's performance, a notary must establish a specific date when he again begins to perform a notarial proceeding. therefore, when it comes to the examination of the notary, it is not possible to know exactly the date when the expert conducts such an examination, and will give him a conclusion. therefore, this ground should be attributed to such complication as the suspension of the commission of a notarial proceeding, as stipulated in article 5, paragraph 1, article 202 of the civil procedural code of ukraine (hereinafter - the cpc), "the right of the court to suspend the proceedings." in addition, article 203 of the criminal procedure code provides for the periods on which proceedings are suspended, in particular, in paragraph 2, concerning the examination of the time-limits, is determined as follows: at the time of the examination. as we see, such a term is not precisely defined, therefore sending of documents for examination, that is, appointment by the notary of the examination, should be the basis for stopping the commission of notarial proceedings.

     taking into account the reasons for postponing the commission of a notarial proceeding, the following should be attributed:

    1) the need to request additional information or documents from individuals or legal entities;

    2) establishment of the circle of interested persons and the need to ensure that they have no objections to the commission of this action;

    3) in case of necessity to appeal to the court of persons between whom there was a dispute about the right during the commission of a notarial act;

4) in case of appeal by the persons who take part in the notarial proceedings, the notarial acts (notarial acts);

    5) in the case of a petition of persons who take part in the notarial proceedings regarding the postponement of the commission of a notarial proceeding in the event of their illness or for other valid reasons (for example, when certifying the main contract, if the concrete agreement established the specific date and time of his certificate);

    6) if the notary determines that the legal representative improperly fulfills his powers with regard to the ward "for the purpose of applying to the authorities of guardianship and guardianship for its replacement;

    7) in case one of the parties to the transaction appeared to the notary in the state of alcohol, narcotic, toxic intoxication;

    8) if the notary at the time of the commission of a notarial act reveals a violation of the legislation by the persons who take part in the notarial process, in order to immediately notify the law-enforcement bodies for taking necessary measures.

    But it should be noted that this list is not exhaustive, taking into account the peculiarities of different types of notarial proceedings, we can talk about other reasons for postponing his commission. In addition, the above grounds for postponing the commission of a notarial proceeding, in the presence of certain evidence, may in the future become grounds for suspending the commission of a notarial proceeding.

    Let's dwell on the analysis of the following reasons:

    1. If, at the time of the notarial act, the notary determines that the documents submitted by the applicant are insufficient, in order to facilitate citizens and legal entities in the exercise of their rights, they may, on their own initiative, request such documents from individuals or legal entities or at their request. In addition, he may apply for additional information. In particular, if a document raises doubts about its authenticity, it addresses the individuals and bodies that issued it. According to Article 43 (4) of the Law, a person under the age of 16 is established on the birth certificate. However, the law relating to her may be committed only on condition that the parents or one of them confirms that the person is their child;

    2. If at the time of the commission of the notarial procedure the notary establishes other interested persons whose rights and duties may be influenced by the notarial act being performed, he shall ensure that they have no objections regarding the certification of the given transaction. If such objections are, he is obliged to explain to them the order of their solution, for example, to apply to the court. Consequently, at first, he can postpone the commission of a notarial proceeding for a precisely defined period of time and notify the interested persons that they should apply to the court within this time limit. In the event of a claim to a court, individuals must inform the notary about this, providing him with proof of such appeal, for example, a copy of the statement of claim with the court mark and the registration number. If such information is in doubt, the notary may apply to the court for its verification, ie, a request for a court to consider such a case. The evidence provided by the person or the court's response will be grounds for suspending the notarial conduct of the notarial proceedings before the court decision.

As to the limits on the right of the notary to postpone the commission of the notarial proceedings, and in which cases - the obligation to stop it, we consider it expedient to consider the case of notarial practice.

    3. The notarial process is characterized by an indisputable character, which should be manifest at the moment of appeal of the interested persons to the notary. However, in the course of a notarial act between persons participating in a notarial proceeding (for example, heirs for separating the inheritance), a dispute may arise about the right, so the notary should explain to them the right to apply to the court with a suit on the division of inherited property. He must also postpone the notarial act so that the parties can apply to the court. If the court receives notification of the appeal of the interested parties for the resolution of the dispute, the notarial proceeding should stop before the court decision and the decision of legal force, which will be the basis for closing the notarial proceeding. If these individuals do not go to court, the notary must leave their application for the certificate of the right to inherit without consideration, if they do not appear to him and will not find compromise variants of the division of the inheritance. Such a decision does not deprive them of the right to appeal to a notary public again.

    4. During the commission of a notarial act, persons who take part in the commission of a notarial proceeding may appeal a procedural act (notarial act), the behavior of a notary to a court, the Commission on professional ethics,

##### Ministry of Justice. Consequently, if such circumstances occur, the notary must postpone the notarial proceedings and allow individuals to appeal to those bodies. If there is information that individuals have exercised their right, they must stop the proceedings until the matter is resolved in substance. If not, and also, if they did not appear to him in the course of a notarial act, leave their application without consideration, that is, a proceeding without committing, what to make a decision about.

#####     5. If the persons involved in the notarial proceedings concern the deferral of the commission of a notarial proceeding in the event of their illness and for other valid reasons, the notary shall postpone the commission of the notarial proceedings, agreeing with them the date and time for which he transfers the certificate of the transaction. For example, when certifying a previous contract, the parties specified a specific date and time of the certificate of the main contract with a specific notary. However, one of the parties to the transaction - the seller was on business trip (on treatment) and could not appear to the notary. In this case, it may request the postponement of a notarial act, as otherwise it may have negative consequences.

#####     6. If, at the time of the notarial act, the legal representative of the notary determines that he improperly exercises his powers as a trustee, he shall postpone the commission of the notarial deed to apply to the authorities of guardianship and guardianship to replace him.

#####     In addition, if the notary detects in the actions of the legal representative or other persons involved in the commission of the notarial proceeding, signs of the offense, he should immediately inform the law enforcement authorities to take the necessary measures. For example, when a legal representative of an apartment, which belonged to the private property of a minor child, was notarized, the notary determined that the representative had given him a false permission (instruction) to the guardian and guardianship body on such alienation.

##### However, for checking by the prosecutor's office these circumstances take some time, therefore the prosecutor must take immediate measures to inform the notary and provide him with a document that may be the reason for the suspension of the notarial proceedings, that is, to clarify the results of verifying the legality of the actions of the abovementioned persons.

#####     7. In Article 49 of the Law, there are no grounds for refusing to perform a notarial act, if the person applying for a notarial act appeared to the notary in the state of alcohol, narcotic, toxic intoxication. Therefore, in our opinion, such a state of a person may be grounds for postponing the commission of a notarial act. Such a fact can be confirmed by the notary public, since he is empowered by law to verify more serious legal facts, in particular, the capacity to act, the will of the person.

#####     Deadlines for the commission of a notarial act. The notary may postpone the commission of a notarial proceeding for a specified term based on the provisions specified in part 2 of Article 42 of the Law. In accordance with Part 2 of Article 42 of the Law, the time-limit is postponed

the commission of a notarial act in the cases specified in part 2 of this norm, can not exceed one month. That is, the general limits of such a term are determined by law, but the notary may, at its discretion, act within this time limit. This means that in each particular case for the specific actions he sets the time limit, but which should not exceed one month. That is, the term "can not exceed one month" is relatively well-defined.

However, for such a complication of the notarial process, such as the postponement of the notarial act, the term on which the commission of the notarial process is postponed must be specific, that is, the notary must establish a specific date when the commission of the proceedings can be renewed again. For example, he requests a request to provide evidence to a bank, so he must specify in this request the date on which such evidence should be provided. Such a term should be in line with the date on which the extension of the notarial proceeding is intended, that is, to be absorbed by it. Consequently, amendments to the Law should be made and the deadlines for postponing the commission of the notarial proceedings should be harmonized with the very essence of such complication as the deposition.

    Stop the commission of a notarial proceeding.

    Stopping the commission of a notarial proceeding is a temporary cessation of the commission of a notarial proceeding for a precisely indefinite period, which arises in the course of certain circumstances precisely defined in the law and in the presence of which a notary can not perform a notarial act.

    But such grounds, depending on their nature and consequences, can be divided into two groups: compulsory and optional.

    Mandatory grounds are those in the presence of which the notary can not perform the notarial act, so must stop the notarial proceedings.

    Optional grounds are grounds arising on the basis of petitions of persons involved in the commission of a notarial proceeding, and the notary, taking into account the content of the notarial conduct, decides on the expediency of stopping the notarial proceeding at its discretion.

    Mandatory grounds for stopping the commission of notarial proceedings:

    1) the presence of a substantiated written statement of the interested party who appealed to the court in disputing the right or fact, which the applicant applied to the notary, and the notification of the court to find in his proceedings the statement of claim of the person concerned challenging the right or fact whose certificate is requested other interested person (original applicant);

    2) in the case of appeal by the person concerned to the procedural actions of the notary, the notarial deed, his conduct, if the appeal was made during the notarial procedure;

    3) in the case of inspection by the law-enforcement bodies on the notice of the notary in accordance with Article 51 of the Law of the circumstances regarding the violation of the persons who take part in the notarial proceedings, the law;

    4) in resolving the issue of procedural succession, if the legal relationship is allowed;

5) merger, division, accession, transformation of a legal entity that was a person who participates in a notarial proceeding;

    6) the application of a notary with a request to provide legal assistance in the notarial proceedings with a foreign element to foreign notaries, consular offices and diplomatic missions and other competent authorities of a foreign state.

    Optional grounds for stopping the commission of a notary:

    1) prolonged illness of a person who participates in the commission of a notarial proceeding;

    2) the presence of a person on a business trip;

    3) appointment by a notary of an examination, valuation of property.

    Let's dwell on the analysis of these grounds.

    1. If the interested person applies to the notary with a substantiated written application that he or she challenges the law or fact in the court upon which the applicant applied to the notary, as well as if the notary is in possession of a notice to the court to find such a statement in his proceedings, he is obliged to stop the commission of a notarial proceeding before the decision of the case by a court (appellate court).

    2. The notary must necessarily stop the commission of a notarial proceeding, if the notarial act is performed incorrectly or the denial of its commission or the procedural actions of the notary, the notarial act is contested by the person concerned during the notarial process. This situation can occur when unification of notarial proceedings. For example, in the case of the process of inheritance, a notary may at the same time execute several notarial acts - issuing a certificate of the right to inheritance, taking measures to protect hereditary property, certifying the fact that a legal or natural person is the executor of the will, and issuing a certificate to the executor of the will, person to another person. The notary appointed the executor of the will, but did not request his written consent, which subsequently led to negative consequences, because the performer considered his actions to be unlawful. He appealed to the court and referred to the pp 2.3 clause 2 chap. 14 Procedure where it is stated that a person may be appointed notary by the executor of the will only with its written consent, and in this case only his prior consent took place, without reconciling all the nuances of his activity. In addition, he reasoned his claim that the notary did not agree with him and successors the amount of payment for the exercise of his powers (Part 2 of Article 1291 of the Civil Code of Ukraine) (hereinafter - the Central Committee), therefore, he addressed the court in resolving this issue. At the time of the notarial procedure for the issuance of the certificate of the right to inheritance, the notary refused the heirs to take measures to protect hereditary property, referring to the fact that there is no sense in its protection, since this property belongs to a person under a contract of life maintenance (care), despite that the heirs explained to him that in court there is a case of controversy over this contract. Therefore, in such circumstances, the notary must necessarily stop the united notarial proceedings concerning the inheritance of the property before the resolution of these claims in the court, because the executor of the will can not exercise his powers both in taking measures to protect hereditary property, and in other cases, for example, under the time for preparation for such proceedings, such as the issuance of the certificate of the right to inheritance. In another case, the notary also had to take measures to protect hereditary property, because the court could declare such a contract invalid. Then the property would have passed to the heirs, but the non-use of such measures led to the loss of property, as the court also did not take such measures on repeated appeals to the plaintiffs.

    3. If during the course of the notarial act the notary determines that the persons who take part in the notarial procedure violated the law, according to Art. 51 of the Law, the law enforcement agencies should immediately report these circumstances. For this purpose, he may initially postpone the commission of a notarial proceeding. If, after such a notary's signal, the law enforcement authorities will check the circumstances, they should inform it. Such a written communication should be a compulsory basis for stopping the commission of a notarial proceeding.

    4. If, in the course of a notarial act, for example, in the case of its postponement, suspension or if there is a multi-stage notarial proceeding which is carried out for a long time (for example, the issuance of a certificate of the right to inheritance), the individual involved in the case will die or will declared dead, the notary has to decide the issue of procedural continuity, if the legal relationship is allowed. Under these circumstances, the commission of a notarial proceeding should be stopped until the assignee enters the process. If the given legal relationship does not allow procedural continuity, the notarial proceedings must be closed. For example, in the notarial procedure, an alimony agreement was signed for the maintenance of a young child, the commission of which was postponed. The person owes responsibility during the postponement died These legal relationships do not allow procedural continuity, so the notary has to close such proceedings.

    5. In the event of a merger, division, accession, conversion of a legal entity that was a person participating in a notarial proceeding, it is necessary to stop the proceedings before joining the process of the successor. For example, a legal entity applied to the notary for obtaining the certificate of the right to inheritance by will. At the time of the commission of the notarial proceeding it was established that there was a transformation of the legal entity, so the notary had to stop the issuance of the certificate until such time as the legal successor did not enter into the process.

6. In the case of the application of a notary with a request for legal assistance in the notarial proceedings with a foreign element to foreign notaries, consular offices and diplomatic missions or other competent authorities of a foreign state, proceedings in the case must necessarily stop.

    Terms of mandatory and optional termination of notarial proceedings.

    The terms of such a complication in the notarial process, such as the suspension of the commission of a notarial proceeding, shall be determined by law. However, notarial law is established not for all reasons for stopping the commission of the notarial proceedings mentioned above.

    The deadlines for stopping the commission of a notarial proceeding should be attributed to the relatively defined ones, since their duration is connected with the occurrence of an event, for example, before a court decision (part 4 of Article 42 of the Law). As we see, this period depends on the decision of the court by the court, therefore it can not be precisely defined by law, not a notary public.

    As for other reasons for stopping the commission of the notarial proceedings offered above, the period of its suspension and termination may be determined by the onset of such events.

    Concerning Clause 1 of the compulsory reasons for stopping the commission of a notarial proceeding, it can be stopped for a term - until the decision of the case by the court, more precisely, before the court decision comes into force.

    Concerning Clause 2 of the mandatory conditions for stopping the commission of a notarial proceeding, if in the course of the commission of a notary's action the person will apply to the court for appealing against the procedural actions of the notary, the notarial deed or the behavior of the notary, the proceedings must be suspended for a period - until the decision of the issue in accordance with the court, the Commission issues of professional ethics, etc.

    As regards P., in the case of a notary's address to law enforcement authorities in the course of establishing violations of the law by persons involved in the commission of a notarial act, until the completion of verification of these facts by law enforcement agencies.

    In resolving the issue of procedural succession, if the legal relationship is allowed (paragraph 4) - before joining the process of the successor or legal representative, if the question of its introduction has not been resolved by postponing the commission of the notarial proceeding.

In the case of merger, division, merger, conversion of a legal entity that was a person involved in a notarial proceeding (paragraph 5), before joining the process of the successor.

    In the case of the application of a notary with a request to provide legal assistance in notarial proceedings with a foreign element to foreign notaries, consular offices and diplomatic missions and other competent authorities of a foreign state (paragraph 6) - on receipt of a response from a competent authority of a foreign state to a court order to a notary public about legal aid.

    Regarding optional terms, in this case:

    1) a prolonged illness of a person who participates in the commission of a notarial proceeding, it may be stopped at the time of illness of the given person;

    2) the presence of a person on a business trip - at the time of the official's business trip;

    3) the appointment by a notary of an examination, assessment of property - at the time of examination, valuation of property.

    Therefore, on this basis, these terms can be called by the notarial procedural lines. Proceeding from the functions entrusted to the notary in Ukraine, namely, the law-enforcement and human rights activist, it is necessary to consider the validity of the notarial procedural deadlines, which are stipulated by the Law now (Article 42).

    Thus, notarial proceedings may be postponed for a period of up to one month, but this period is determined not only by the actions of the notary, but also by actions of other persons not involved in the notarial proceedings: expert institutions, institutions that hold the originals of documents, and others. Therefore, in case the term expires and the response from these persons will not be received, the notary must in any way react in this legal situation: to renew or to continue this term, to refuse to perform a notarial act. In case if there are no answers within the specified time period, the notary will have to stop the commission of the notarial proceedings and apply for the appeal of actions of those officials who violated the requirements of Articles 4, 46 of the Law, since Article 46 (2) of the Law states that the information and documents , necessary for the commission of notarial acts, must be filed in accordance with Art. 4 of the Law, enterprises, institutions, organizations, officials, officials within the term determined by a notary, but this period can not exceed one month.

    Based on the answer to the question that, under the terms of examination or for other valid reasons, these officials can not answer the questions posed by the notary, the notary in this case should renew the term of the postponement of the notarial proceeding. But one way or another, he can not make unreasonable actions only because the term of the postponement of the notarial proceedings has expired.

     Sources: [1]; [2]; [4]; [5]; [6]; [7]; [11]; [12]; [14] [17].

Questions for self-checking:

1. Grounds for postponing the commission of a notarial proceeding.

2. Deadlines for the execution of the notarial proceeding.

3. Grounds for compulsory suspension of the commission of a notarial proceeding.

4. To recount cases of an optional stopping of the commission

notary proceedings.

5. Legal consequences of the postponement and suspension of the notarial deed

proceedings.

**Topic 4-5. Certificate of undisputed facts. Certificate of indisputable rights.**

**Plan**

**1. Certificate of fact that the citizen is alive, the fact of stay**

**a citizen in a certain place.**

Guidelines

       Questions to be learned by students on the results of the study of this topic relate to the activities of notaries regarding the certification (certification) of uncontested facts and their procedural design.

     When certifying the fact that a citizen is alive, the notary must adhere to the general rules of the performance of notarial acts and rules of notarial proceedings, but also take into account the special rules that are inherent in the procedure for commissioning notarial proceedings.

    The reason for opening a notarial proceeding with a certificate of fact that the person is alive and the fact of the individual's stay in a certain place is, according to the general rule, the personal application of the applicant to the notary with an oral statement. Such a fact can not be certified through a representative. Exceptions are:

    - when the establishment of this fact concerns a young child, an incapacitated individual, then the legal representative (parents, adoptive parents, guardians) applies to the notary for his or her certificate;

- regarding a minor child, as well as a physical person whose civil capacity is limited, the certificate of fact is made on the basis of their oral personal statement, but with the consent of their legal representatives.

     The establishment of such facts belongs to the competence of the notary provided that they are indisputable and after their certification will have a legal significance for the applicant, that is, he will have a certain subjective right to change or end.

    The certificate of the fact that an individual is a living, a notary is carried out in order to confirm the presence of the subject of legal relationships and may be caused by the following circumstances:

    - occurrence of a debtor residing in another place where the court judgment is being executed, doubts that the payer is alive, for example, in the payment of alimony and other means of maintenance, reimbursement of damage caused by injury or other damage to health, the transfer of property ;

     - in the case of international inheritance, when the heritage was opened abroad. For example, under French law, if the heritage was opened in France and the heirs live in Ukraine, in order to reduce the inheritance tax, in the case of the heirs, at least three underage children are required to submit birth certificates of children, as well as notarial evidence that the children are alive;

     - in the case of persons received from abroad (other locality), where the court decisions are executed, periodic payments, such as pensions, alimony, funds for the compensation of damage by the state caused by injury or other damage to health as a result of a crime, if not the person who committed the crime or if it is insolvent is established;

     - in order to provide social security benefits;

     - in all legal cases, when the person himself / herself or other interested persons must confirm the fact that the person is alive;

     - as evidence in deciding on the cancellation of a decision to recognize a person as missing and declaring her dead (Article 250 of the Criminal Code);

      - as evidence that can be given by the guardian to cancel the custody of the property of a person who is absent or where the place of stay is unknown, when such guardianship was established by a notary, until the court decides to recognize a person as missing;

     - as evidence in resolving the issue of the power of attorney in case of challenging the question of the death of the person who issued it.

     Regarding the fact of the physical presence of a person in a certain place, he can be certified in order to establish the place of residence of an individual, that is, in cases where the place of residence has a legal significance, namely:

     - for the establishment of alimony obligations - confirmation of the fact of finding a child at the place of residence of one of the parents;

    - as evidence for filing a statement of claim to the court on the recognition of the right to use the residential space belonging to the state housing stock;

    - as evidence for confirmation of the non-appearance of a job, for example, the fact of being on a business trip, if the business card is not issued for a business trip;

    - for confirmation by a person who is in a helpless condition, the fact of staying at the place of residence of the person who provides her with maintenance;

    - as evidence of permanent residence with the heir at the time of the opening of the inheritance;

   - to deny a person information that his place of residence is unknown in the case of submitting to the court an application for recognition as missing, declaring the deceased or declaring that he has lost the right to use the living space belonging to the state housing stock;

   - as evidence for confirmation of the circumstances of non-fulfillment by persons of secured obligations, for example, failure to perform or improper performance of the terms of the deposit agreement;

   - to provide an alibi.

   As we see, the rules of the material, in some cases, and procedural law provide for the conditions (purpose) of the application of an individual to the notary for the commission of data of notarial proceedings.

     Upon the direct commission of this notarial action, the notary certifies that the individual is alive and gives her a certificate. Concerning the establishment of the fact of staying a physical person in a certain place, a certificate is also issued to confirm his certification by a notary public.

Зразок свідоцтва про посвідчення

 факту, що фізична особа є живою

СВІДОЦТВО

Місто Київ, Україна

Десятого вересня дві тисячі п’ятнадцятого року

Я, Іванов П.І., приватний нотаріус Київського міського нотаріального округу,

посвідчую, що Петров Семен Петровичу, 17 січня 1950 року народження є живим, проживає у місті Києві по вул. Срібній, будинок 2 квартира 1, з’явився до мене Іванова П.І., приватного нотаріуса Київського міського нотаріального округу, за адресою: м. Київ, вул. Гарматна, 6 особисто сьогодні о 12 годині 40 хвилин.

 Особу його встановлено.

 Зареєстровано в реєстрі за № 1234

 Стягнуто плати за домовленістю

Печатка

 Приватний нотаріус підпис

**Sources: [4]; [5]; [6]; [7]; [8]; [10]; [17].**

**Questions for self-checking:**

1. What are the grounds for opening a notarial proceedings on the certificate

the fact that the person is alive.

2. What are the grounds for opening a notarial proceeding for a certificate

the fact of a physical presence in a certain place.

3. What documents are issued by the notary to confirm these facts.

**Theme 6. Notarial actions aimed at providing executive power documents.**

**Plan**

**1. The concept and significance of maritime offensive marine protests.**

**2. Procedural procedure for the execution of protests.**

**Guidelines**

According to the results of the study of this topic, the student should understand the issues of the grounds and procedure for the protection of civil rights of individuals and legal entities, as well as other participants in civil relations with a notary public.

     The material basis of a notarial proceeding for maritime protests is the provisions governing the contract of carriage (Articles 908-928 of the Civil Code), as well as the provisions of a special regulatory act which is the Code of Merchant Shipping of Ukraine (hereinafter referred to as KTM), entered into force by the Verkhovna Rada of Ukraine Decree No. 277/94-BP dated 09.12.94 (with amendments and supplements).

    If an event, which may be the reason for the presentation of the property owner's claims by a shipowner, has a foreign element, the international acts should be guided. Thus, the Hamburg Rules (United Nations Convention on the Carriage of Goods by Sea, March 31, 1978) stipulate that the carrier's liability under these rules is based on the principle of summary judgment. This means that the burden of proving that the carrier does not have the characteristics that led to damage to the owner of the property, as a rule, relies on him. Based on the list below, the grounds for liability of the notary must be a certain idea of ​​what particular circumstances must enter the maritime protest.

    Yes, Art. 5 of the UN Convention on the Carriage of Goods by Sea provides some grounds for liability, namely:

     1. The carrier shall be liable for the damage resulting from the loss or damage to the goods, as well as for delay in the event that the circumstances causing loss, damage or delay occurred during the time when the goods were under his control, unless the carrier proves that he, his servants or agents took all possible measures to avoid such circumstances and their consequences.

    2. A delay in the transfer occurs if the cargo is not delivered at the port of unloading provided for in the contract of sea transportation within the time limit specified by the agreement, or in the absence of such an agreement, within a period which it would be reasonable to require from the caring carrier taking into account specific circumstances.

    3. A person authorized to claim a loss of cargo may consider the goods to be lost if they were not delivered in accordance with the requirements provided for by this. The Convention within 60 calendar days after the expiration of the term of delivery in accordance with paragraph 2 of this article.

    4. The carrier is responsible for:

    - for loss or damage to the cargo, or delay in delivery, caused by a fire, if the person claiming it proves that the fire originated from the fault of the carrier, its servants or agents;

    - for such loss, damage or delay in delivery, which, if proved by the claimant, was due to the fault of the carrier, its servants or agents, when taking all reasonable measures to eliminate the fire and to avoid or reduce its consequences.

     In the case of a fire on board the ship concerned, and if the requesting person or the carrier wishes it, an expert review of the practice of maritime traffic should be conducted regarding the causes and circumstances of the fire and a copy of the relevant report must be provided to the carrier or person , which claims, upon request.

    5. In respect of live animals, the carrier shall not be liable for loss, damage or delay in the event of the occurrence of any particular risks inherent in this type of carriage. If the carrier proves that he has complied with the special animal instructions given to him by the consignor and that, in these circumstances, loss, damage or delay in delivery could be attributed to such risks, it is assumed that the loss, damage or delay in delivery were caused by these risks if there is no evidence that it was wholly or partly due to the fault of the carrier, its servants or agents.

    6. The carrier shall not be liable except in the general accident in cases where loss, damage or delay in the delivery occurred as a result of life-saving measures or reasonable measures to rescue the property at sea.

    7. In the event that other circumstances, which together with the first one results in loss, damage or delay in delivery, are combined with the fault of the carrier, its servants or agents, the carrier shall be liable only to the extent that the loss, damage or delay in delivery is due to his fault, the fault of employees or agents, provided that he proves the amount of damages not caused by the fault on his part.

    Consequently, in the presence of the abovementioned grounds of liability, the master of a ship may apply to the persons specified in Article 242 of the CTM with a statement on the commission of a maritime protest.

Thus, Part 1 of Article 341 of the CTM provides: if during an voyage or a ship's parking there was an event that may be a reason for presentation of the property claims by the shipowner, the captain, in order to provide evidence for the protection of the rights and legitimate interests of the shipowners, in accordance with the established procedure, marine protest.

    Based on the analysis of the KTM, such an application may be appended:

    1) captains:

    - cargo and passenger ships, mixed-swimming vessels (river-sea);

    - inland navigation vessels with access to foreign ports;

    - inland navigation vessels in the event of a collision in seas or other seagoing vessels or in the event of the salvage of inland navigation vessels by sea;

    - commanders of Ukrainian warships, if they saved ships that are in safety;

    - foreign ships (application is submitted to the consul or the Ukrainian notary);

    2) other crew leaders:

    - in the case of death or illness of the captain, another person who, in accordance with the Statute of Service on ships of the navy, replaces the captain;

    - skippers - on non-self-propelled vessels of the navy;

    - captains - directors - on vessels of the fleet of the fishing industry.

    Place of Marine Protest (Article 342 KTM) and the person to whom the application is filed:

    - in the port of Ukraine - to a notary or other official, to which the legislation of Ukraine is entrusted with the performance of notarial acts;

    - in a foreign port - a consul of Ukraine or competent officials of a foreign state in accordance with the procedure established by the legislation of this state.

    Terms of Marine Protest:

    I. The general deadline for the submission of a statement by the notary to commit a maritime protest is 24 hours. He begins his countdown, depending on where the event occurred.

    1) if an event occurred during a voyage, then from the moment when the ship arrived at the port (Part 1 Article 343KTM) (confirmation - the certificate of the port master);

    2) in the case of a shipwreck or if the ship has sunk, the period of 24 hours starts from the moment of arrival at the port of the captain with the crew or part thereof (confirmation - the certificate of the master of the port);

    3) if the event occurred in the port, the statement of the marine protest must be filed within 24 hours from the moment of the occurrence of the event (Article 343 KTM);

    4) if the event is of a long-term nature, such as a fire, a hurricane, landing on a shallow shrine, then the following period shall be taken into account:

    - in the case of fire and landing of the ship on shoal - until the end of the action to eliminate these emergencies. In particular, such situations are conditioned by the need for assistance from other vessels, which is why the latter also do not carry out a schedule of transportation and declare the need for a maritime protest;

    - regarding the hurricane, then the fact of its action on the way of the ship should be confirmed by the help of weather forecasters.

    II. Exceptions:

    1) if it is impossible to file a protest within the prescribed time, the reasons for this should be indicated in the statement of maritime protest (the notary must, at his own discretion, determine the gravity of such reasons);

    2) if there is reason to believe that an event that has occurred has caused damage to the cargo on board, a statement of the marine protest must be made before the opening of the hatch. As to the confirmation that the hatches were not open, it is not enough to declare the master of the ship in a statement on a sea protest (Part 2 of Article 344 of the KTM). Such a fact must be confirmed by the notary, since it is he who is responsible for the consequences of the notary's conduct, that is, the authenticity of the facts recorded by him, therefore, personally must ensure that the hatches are sealed. For this purpose, he can leave at the location of the vessel in the port, where he will perform a notarial act. Such motivation is due to the expediency of questioning the crew members at the place of their location. This also applies to the actions of the consul.

    Statement on the commission of a maritime protest, its content and form.

    A statement of marine protest is submitted to the notary in writing. According to the content, it must comply with the requirements provided for in Article 341 (2) of the CMU and pp. 1.2 Clause 1 of Chapter 18 of the Order and contain the following details:

    - a description of the circumstances of the incident;

    - measures taken by the captain to ensure the integrity of his trusted property.

   The following statement should also be included in this statement:

   - the status of notary, consul, surname, name and patronymic, citizenship and place of residence of the master of the ship (or other persons entitled to apply), name of the ship, flag, ownership and port of registration of the ship, port of departure, port of destination, the signature of the person submitting the application, the date and time of submission of the application and the seal of the vessel.

    As for the description of the circumstances of the incident, the master of the vessel is obliged to indicate when the event occurred, ie the date, time and place (during the voyage or the boat), participants of the event, and briefly outline the circumstances of the event itself, that is, their essence .

    In the case of measures taken by the captain, they must be clearly stated with indication of concrete actions that indicate the proper performance of the duties of the captain for the maintenance of the ship, cargo, people, crew members, which is assigned to him by law.

     In confirmation of the circumstances set forth in the statement of maritime protest, the master of the vessel simultaneously with the application must submit to the notary or other official (Article 343 KTM) for inspection of the ship's magazine and an extract from him certified by the captain. If the boat magazine and the captain certified by the captain have not been filed with him along with the application for a maritime protest, such documents may be submitted within a period of not more than seven days from the moment of arrival at the port or from the moment of the event if it took place in the port. And in case of impossibility to do it in a timely manner, the captain in the written statement must indicate the relevant reasons.

    The application must also indicate the list of documents to be attached to it, in particular: the logbook (for review); an extract from the ship's log, certified by the master of the vessel; documents confirming the ship's status; certificate of the port master on arrival of the vessel in port; references from other authorities indicating that the event took place, for example, a weather report of a hurricane; documents confirming the captain's status.

    As to the procedural procedure for the commission of this notarial proceeding, the notary must do it in accordance with the general rules of the performance of notarial acts, special rules governing the procedure of this proceeding and stipulated by Articles 94-95 of the Law and Chapter 18 of the Procedure, as well as the Rules for notarial proceedings and norms Code of Merchant Shipping.

    This notarial act belongs to a one-stage notarial proceeding, which in its development takes place in three stages, which are reduced to the notary's commission of such procedural actions.

    The stage of the opening of this notarial proceeding is associated with the submission by the master of the vessel, in person, of a written statement of maritime protest, except for the exceptions provided by the CTM.

    The stage of preparation for the commission of this notarial proceeding consists of the following procedural actions of the notary:

    1) verification of the place of commission of the notarial act;

    2) establishment of deadlines for lodging an application for a maritime protest (checking of the time of arrival of the vessel to the port (certificate of the master of the port);

3) establishing the status of the vessel, in particular, its identification (Article 21 KTM), checking for its access to navigation (Articles 24 KTM), checking the registration in the State Ship Register of Ukraine - a certificate of the right to sail under the State Flag of Ukraine (ship's patent) or registration in the Ship Book of Ukraine (ship's ticket).

    4) verification of the right and ability, status and powers of the master of the vessel and other persons who are entitled to submit such applications;

    5) checking the compliance of the form and content of the application for maritime protest with the requirements of the law;

   6) verification of the evidence necessary for the performance of a notarial act.

   In the event that the application for a maritime protest does not meet the requirements of the law, no evidence has been provided that is necessary for the maritime protest, the terms missed without valid reasons, and the justified gravity of their passage, and these deficiencies have not been removed by the master of the vessel, the notary must refuse to perform the notarial act.

     The stage of direct commission of notarial proceedings consists of the following actions of the notary:

    1) a survey of the captain (Article 346 KTM). The captain must verbally confirm the details of the event that he sets out in the Marine Protest Statement and provide evidence to prove them. The captain's statements must be reflected in the maritime protest act and signed by him personally in the presence of a notary public;

    2) a survey of at least four witnesses from among the members of the ship's crew, including two members of the command staff. It is advisable not to reduce the status of such persons to the status of witnesses, but to call them witnesses of the event and explanatory ones;

    3) a review of the ship's magazine. When reviewing a ship's magazine, the notary shall verify the compliance of the circumstances set forth in the event with the facts set forth in the statement of maritime protest;

    4) in the context of the inspection of the ship's log, the final verification of other evidence provided to the notary in support of the facts set forth in the application, such as statements by the port master, documents confirming the status of the vessel, the status and powers of the captain, etc.

    5) statement of the act of maritime protest on a special notarial document and on certain content.

    Thus, according to the form No. 83 of Appendix 25 to the Rules of notarial proceedings, the maritime protest act must include the following details:

    - the name of the procedural document;

    - date of the act of maritime protest;

    - surname, name, patronymic of the notary, address of his workplace or state notary's office (last name, first name, patronymic of the consul, address of consular establishment);

     - information about the name and flag of the vessel, its affiliation, owner, consignment note, registration number;

    - time of arrival of the vessel (captain, crew) to the port;

    - time for lodging an application for a maritime protest;

    - surname, name, patronymic of the master of the ship, his citizenship, place of residence;

    - content of the captain's statement (description of the event and measures taken);

    - information about the review by the notary of the ship's magazine and a reference to the norms of legislation;

    - the contents of the explanations of the captain and his signature;

    - the contents of the testimony of four witnesses (separately each) with their surname, name, patronymic, place of residence and their signatures;

   - the issuance of a certificate stating the number of the act in the register of notarial acts and data on the size of the state fee or payment for the notarial act;

   - certification by the notary of the act of maritime protest with its signature and sealing.

    The Marine Protest Act is made up of two copies and is registered in the register for registration of notarial acts.

    One copy of an act of maritime protest under a receipt in the register is issued to the captain or his authorized person, and the second, with the statement of the captain and the extract from the logbook, remains in the affairs of the state notary public (private notary) or the consular establishment.

 Sources: [2]; [5]; [6]; [7]; [8]; [10]; [12]; [17].

Questions for self-checking:

1. What information should be indicated in the application for maritime affairs

protest

2. List the persons entitled to apply for such applications.

3. Place of appeal for maritime protest.

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