

The Role of The Notary in The Conclusion of a Mediation Agreement

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Received: 28 Feb 2026 | Received Revised Version: 16 Mar 2026 | Accepted: 04 Apr 2026 | Published: 30 Apr 2026

Volume 08 Issue 04 2026 | Crossref DOI: 10.37547/tajpslc/Volume08Issue04-15

Abstract

This article examines the role of the notary in the conclusion and certification of mediation agreements, with particular reference to the legal system of the Republic of Uzbekistan. The study proceeds from the premise that the preventive function of the notariat — the avoidance of legal disputes before they arise — is conceptually continuous with mediation as a method of extrajudicial dispute resolution. Drawing on the Law "On Mediation" and on the amended Law "On the Notariat", which since 20 October 2025 expressly permits notaries to act as mediators, the article analyses the form, content and enforceability of mediation agreements. It identifies a doctrinal tension between the notary's preventive mission and the statutory prohibition on notarial intermediation, and compares the position in Uzbekistan with German and Russian practice. Particular attention is devoted to family and succession disputes, to mediation clauses in marriage contracts, and to the prospects opened by electronic notarial practice.

Keywords: Notariat; mediation; mediation agreement; extrajudicial dispute resolution; notarial certification; family law disputes; conciliation procedures.

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Cite This Article: Sardora Abduvaliyeva. (2026). The Role of The Notary in The Conclusion of a Mediation Agreement. The American Journal of Political Science Law and Criminology, 8(04), 85–91. <https://doi.org/10.37547/tajpslc/Volume08Issue04-15>

1. Introduction

One of the fundamental precepts governing notarial activity is formulated as follows: "Do not forget that your mission is directed towards ensuring that disputes do not arise between people." This precept is likewise enshrined in the Code of Professional Ethics of Notaries of the Republic of Uzbekistan, where it is affirmed alongside the following principles: respect for the truth, acting with prudence, giving advice in accordance with conscience, and adherence to the principle of justice.

Since the emergence of the institution of the notariat, one of the most important tasks of notarial activity has consisted in assisting in the elimination of disputes, or of particular disagreements, between persons who apply for

the performance of notarial acts. To date, however, the role and significance of the notary as a conciliator have not been sufficiently examined in the scholarly literature. In substance, the notariat is an institution oriented towards the prevention of legal disputes and of controversies concerning rights.

Mediation is recognised in international practice as one of the distinct (private) methods of extrajudicial dispute resolution. This procedure emerged in the United States in the second half of the twentieth century and, within a short period, spread widely across numerous States belonging to both the continental and the Anglo-Saxon legal traditions, demonstrating a high degree of efficacy in the peaceful settlement of disputes.

In those countries in which the Latin-type notarial system operates, notaries are among the principal mediators assisting the parties in the resolution of their disputes. In the Republic of Uzbekistan, the Law "On Mediation" has been adopted and is applied in practice (hereinafter — the Law "On Mediation").

2. The Concept and Legal Nature of the Mediation Agreement

Where the mediation procedure is successfully concluded, its outcome takes the form of a mediation agreement [1]. Such an agreement may be executed in simple written form or may be certified by a notary.

Pursuant to the fourth paragraph of Article 4 of the Law "On Mediation", a mediation agreement is an agreement reached by the parties to mediation as a result of the application of mediation. Expressed more broadly, a mediation agreement is an agreement reached between the parties, and executed in written form, in respect of a particular dispute, several disputes, or individual disagreements arising within the scope of such disputes, as a result of the application of the mediation procedure.

The parties to a mediation agreement are those persons who participated in the mediation procedure and who are the subjects of the disputed legal relationship. They determine the content and the terms of the agreement independently. Neither the mediator nor the organisation engaged in arranging the mediation procedure is a party to the mediation agreement [2].

In concluding a mediation agreement, the participants in the mediation comply with the requirements of Article 16 of the Law "On Mediation". The agreement must be concluded in written form and must reflect the following particulars:

- (1) information concerning the parties that participated in the mediation procedure;
- (2) the subject matter of the dispute;
- (3) information concerning the mediation procedure conducted;
- (4) information concerning the mediator who conducted the mediation;
- (5) the mediation-based obligations agreed upon by the parties;
- (6) the conditions and time limits for the performance of those obligations.

Where the dispute has arisen out of civil-law relations and the mediation has been conducted in lieu of an application to a court, such a mediation agreement is treated by the legislature as a civil-law transaction [3]. Where the mediation has been conducted in respect of a dispute that constitutes the subject matter of judicial proceedings, the mediation agreement may be confirmed by the court.

The mediator records in written form the agreements reached during the mediation procedure, without introducing into their content any new terms or provisions. The draft mediation agreement incorporates the methods of resolving the dispute agreed upon by the parties at the earlier stages of the mediation, together with the conditions for their implementation.

A mediation agreement may be concluded in simple written form or may be certified in notarial form (Article 61¹ of the Law "On the Notariat"). Where the case is pending before a court and the parties have resorted to mediation in the course of the proceedings and concluded a mediation agreement, the court confirms a settlement agreement.

Where a mediation agreement is certified by a notary, it acquires the force of a writ of execution (Article 7, paragraph 21, of the Law "On the Enforcement of Judicial Acts and Acts of Other Bodies").

3. The Legislative Framework for Notarial Mediation in Uzbekistan

The institution of the mediation agreement has been introduced into notarial practice incrementally. Mediation was first consolidated in national legislation by Law No. ZRU-482 "On Mediation" of 3 July 2018.

Substantial amendments and additions were subsequently introduced into the Law "On the Notariat" of 26 December 1996, No. 343-I, as well as into the Civil Procedure Code, the Economic Procedure Code and the Code of Administrative Court Procedure. Taken as a whole, this legislation is directed towards the development of judicial conciliation and conciliation procedures within civil and administrative proceedings, and towards the improvement of the activity of notaries.

By Law of the Republic of Uzbekistan No. ZRU-1089 of 20 October 2025, a new Article 61¹ was introduced into Chapter 8 of the Law "On the Notariat" (hereinafter — the Law "On the Notariat"). That instrument entered into force on 20 October 2025.

Pursuant to Article 61¹ of the Law "On the Notariat", a rule entitled "Performance of the Functions of a Mediator" has been introduced. Under that provision, a notary is entitled to perform the functions of a mediator in the manner prescribed by the Law "On Mediation".

In addition, an amendment was made to paragraph 4 of Article 5 of the Law "On the Enforcement of Judicial Acts and Acts of Other Bodies", introducing a new category of enforcement document, namely "notarially certified agreements on the payment of maintenance".

The legal regulation of the application of mediation procedures in notarial activity is secured by the following principal instruments:

- Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [4];
- the European Code of Conduct for Mediators, developed by an initiative group of practising mediators and adopted in Brussels on 1 April 2004 [5];
- the Law "On the Notariat";
- the Law "On Mediation".

4. Obstacles to the Application of Mediation in Notarial Practice

Notwithstanding the adoption and continued operation of the Law "On Mediation" in the Republic of Uzbekistan, this procedure is not in fact widely applied by notaries. This situation may be explained by a number of factors.

First, the conduct of a mediation procedure requires specialised knowledge, skills and professional competence.

Secondly, mediation constitutes intermediary activity, whereas under the Law "On the Notariat" a notary is not entitled to render intermediary services in the conclusion of contracts. A certain contradiction thus arises: on the one hand, the professional duty of the notary consists in the prevention of civil-law disputes; on the other, the notary is deprived of the right to engage in precisely that intermediary activity which serves this very purpose. In substance, the professional activity of the notary is directed towards the prevention of civil-law controversies [6] — including, for example, property or family disputes between spouses and questions concerning the determination of a child's place of residence.

5. Comparative Experience: Notarial Mediation in Latin-Type Systems

In those countries in which the Latin-type notarial system operates, the possibility for a notary to perform the functions of a mediator has been introduced at the legislative level.

In Germany, in particular, the procedure for the conduct of mediation by a notary is enshrined in the normative legal acts regulating the professional activity of notaries, including the German Federal Code of Notaries. There, the intermediary activity of the notary is carried out in two principal forms: in the course of the certification of notarial instruments, and through the conduct of formal conciliation procedures.

The notary conducts discussions and consultations with the parties, arranges negotiations aimed at eliminating the disagreements between them, and also certifies agreements concluded within the framework of the private mediation model outside notarial proceedings.

Intermediary activity is in no way inconsistent with the fundamental objectives of notarial activity. On the contrary, the participation of the notary in the peaceful resolution of disputes constitutes one of the forms of protection of the rights of citizens and legal entities, as is confirmed by the legal practice of many developed States. Among the legal professions, the notary appears, in the present author's view, to be the most suitable candidate for the performance of the functions of a mediator, since the cardinal principles of notarial professional activity are neutrality and impartiality. The notary, moreover, possesses considerable experience in reconciling the parties.

Agreements concluded as a result of notarial mediation may be certified by the very same notary, and a writ of execution may be issued for their enforcement, which constitutes an important guarantee for the participants in the mediation. In this connection, V. V. Ralko and V. A. Fomin take the view that the legislative norm prohibiting notaries from rendering mediation services fails to meet contemporary requirements and must be regarded as obsolete [7].

6. The Application of Mediation in Family Law Disputes

Turning to the application of the mediation procedure in the sphere of family law, it should be emphasised that such a procedure may be employed only in the resolution

of certain categories of dispute. These include, in particular, the determination of a child's place of residence where the parents live separately, the establishment of the procedure for the exercise of parental rights by the parent living apart from the child, and the elimination of obstacles to communication with the child. By contrast, the application of mediation to questions of deprivation or restriction of parental rights is not practicable, since disputes of this kind are resolved exclusively in judicial proceedings, with the participation of a prosecutor and of a representative of the guardianship and trusteeship authority.

In the sphere of family relations, citizens may apply to a notary in order to conclude, for example, an agreement on the payment of maintenance or an agreement determining a child's place of residence. In recent years a tendency towards the peaceful resolution of disputes has been taking shape, as citizens increasingly appreciate that a judgment rendered by a court does not always satisfy one or both of the parties. The parties have an interest in concluding an agreement that corresponds to their mutual interests. At the same time, by concluding an agreement with the participation of a notary, they save time and avoid judicial proceedings.

In many instances, citizens are inclined to shift the responsibility for decision-making onto a third party. The process of negotiation conducted within the framework of mediation enables the parties to arrive at a common view of the existing situation, to reach a compromise, to preserve family relations, and to resolve, so far as possible without conflict, the psychological and legal problems associated with property, maintenance and the upbringing of children.

Where an agreement is concluded on the determination of a child's place of residence, the legislation requires that the opinion of the child be taken into account without fail from the age of ten.

In a considerable number of cases, the parties to a dispute do not contemplate the existence of alternative methods of dispute resolution and immediately resort to judicial proceedings as, in their view, the only available course of action. In reality, the insufficient awareness among citizens of the opportunities for the peaceful settlement of disputes — in particular, through the mediation procedure or by reaching an agreement with the participation of a notary — is a significant cause of the emergence of numerous court cases.

7. Mediation Clauses as an Instrument of Dispute Prevention

The parties may also avail themselves of an additional instrument of dispute resolution: they may incorporate into any contract they conclude a mediation clause (a mediation proviso) providing for the extrajudicial resolution of future disputes.

In practice, such a mediation clause is most frequently incorporated by parents into agreements determining the place of residence of minor children and the procedure for their upbringing. The incorporation of a mediation clause into marriage contracts is comparatively rare.

8. The Division of Inherited Property as a Means of Preventing Disputes

One of the principal categories of notarial act is the issuance of certificates of the right to inheritance (Article 59 of the Law "On the Notariat"). Where there are several heirs, they accept the property of the deceased on the basis of shares, that is to say, a right of common shared ownership arises.

Pursuant to Article 219 of the Civil Code, the possession and use of property held in shared ownership are effected by agreement of all the participants; where such agreement is not reached, the relevant procedure is determined by the court.

In addition, each participant in shared ownership is obliged to participate, in proportion to that participant's share, in the payment of taxes, levies and other charges in respect of the common property, as well as in the costs associated with its maintenance and preservation (Articles 221 and 174 of the Civil Code).

If, over a prolonged period, one of the co-owners fails to make the housing and utility payments corresponding to that co-owner's share, the utility service providers are compelled to recover the debt from all the co-owners jointly and severally through the courts. In practice, however, recovery is frequently effected at the expense of the person who has an income. The result is a situation in which a single person pays on behalf of all, and this in turn gives rise to a dispute.

In such circumstances, the person who has paid the utility charges on behalf of the other co-owners is entitled to demand reimbursement of those sums from them and, in the absence of payment, is compelled to bring an action before the court for the recovery of the funds by way of recourse. Can such a problem be avoided? A solution

certainly exists, although, regrettably, not all heirs are aware of it.

Had the heirs, after obtaining their certificates of the right to inheritance, agreed upon which items of property were to belong to whom, such problems would not have arisen at all. The division of inherited property may be effected by concluding an agreement on the division of the estate.

Notarial certification of such an agreement is not mandatory: it may be concluded either in simple written form or in notarially certified form. There is, however, an important condition — such an agreement must be concluded no later than three years from the date of issuance of the certificate of the right to inheritance.

The optimal situation is one in which the notary issuing the certificates to the heirs knows in advance that a division of the estate is contemplated; in that case, the estate may be divided immediately after the issuance of the certificates, thereby forestalling future disputes between relatives concerning utility payments or other expenses.

By way of illustration, three heirs at law may each acquire a one-third share in an apartment, a garage and monetary deposits. Under an agreement on the division of the estate, one of them becomes the sole owner of the apartment, the second of the garage, and the third of the monetary deposits. The question of the distribution of the property is thereby fully resolved and is not revisited thereafter. Such an agreement serves as the legal basis for the registration of title in the State Register of Rights to Immovable Property.

9. Mediation and the Division of Spousal Property

Mediation may be applied in the resolution of disputes

arising in a variety of spheres, including that of family relations.

It is well known that the notarial certification of the division of property between spouses is encountered in the practice of foreign States. In the Russian Federation, for instance, since December 2015 agreements on the division of property between spouses have been subject to mandatory notarial certification, with the result that citizens have begun to apply to notaries in relation to this matter with considerable frequency. As a rule, spouses have applied to a notary concerning the division of jointly acquired property at the stage of the dissolution of the marriage.

In the present author's view, the establishment of a practice of notarial certification of agreements on the division of property upon the dissolution of a marriage is likewise a matter of pressing importance for Uzbekistan. This in turn places the following questions on the agenda: in what manner may property properly be divided; what legal powers does the notary possess; should an application be made to the notary during the marriage or after its dissolution; and which instruments does the notary certify where disputes exist between the spouses?

Where the spouses are formally married and share a common objective concerning the division of jointly acquired property, they may either conclude an agreement on the division of property or execute a marriage contract.

Where the spouses have already dissolved their marriage, the sole legal option available to them is the notarial certification of an agreement on the division of property (see Table 1).

Table 1

Comparison of the marriage contract and the agreement on the division of property

	Marriage contract	Agreement on the division of property
When it may be concluded	– before the marriage; – during the marriage	– during the marriage; – after the dissolution of the marriage
Moment of entry into force	– from the moment the marriage is concluded;	– from the moment of notarial certification

	Marriage contract	Agreement on the division of property
	– from the moment of notarial certification	
Shares of the spouses (former spouses) upon division of property	The division may be unequal	The requirement of equal shares (½ each) must be observed

In accordance with the civil legislation in force, where a marriage contract is certified in notarial form, the spouses are entitled to determine in advance which items of property are to remain at the disposal of which spouse following the dissolution of the marriage. At the same time, property belonging to a spouse by right of personal ownership may also be included in the marriage contract (for example, property received by way of gift or acquired by inheritance) [8].

A marriage contract may establish differing shares of the spouses in the property, an outcome that cannot be achieved by means of an agreement on the division of property, since in an agreement on the division of property the requirement that the shares of the spouses be equal must be strictly observed.

One of the most effective means of preventing disputes that may arise between spouses in the course of the dissolution of a marriage and the division of property is the conclusion of a marriage contract. In such a contract the parties are able to agree in advance which items of property are to belong to which spouse in the event that the marriage is terminated.

It is likewise possible to incorporate into a marriage contract a mediation clause (a mediation proviso), which may be formulated as follows: "All disputes arising out of or in connection with this contract shall be resolved by means of the mediation procedure. The parties undertake to comply with this procedure before applying to a court."

10. Conclusion

In conclusion, it should be emphasised that the notary, who by the very nature of his or her professional activity is empowered to reconcile the differing interests of the parties, is capable of participating effectively in conciliation procedures — both within the framework of

Article 61¹ of the Law "On the Notariat" and beyond it. The advantage of the notary's involvement lies in the fact that the agreements executed by the notary acquire additional stability and freedom from conflict, while at the same time securing the confidentiality that the parties require.

Furthermore, in connection with the development of the institution of the "electronic notariat" and the conferral upon notaries of the right to perform notarial acts remotely, the conduct of mediation by a notary in cooperation with a mediator, or the conduct of conciliation procedures through the use of modern information technologies — in particular videoconferencing facilities — likewise constitutes a promising avenue of development.

At present, citizens may apply to a notary in order to formalise particular agreements reached as a result of a conciliation procedure conducted by a mediator (for example, for the purpose of the notarial certification of an agreement on the payment of maintenance). Agreements of this kind, once certified in notarial form, acquire the force of a writ of execution in accordance with Article 5 of the Law "On the Enforcement of Judicial Acts and Acts of Other Bodies".

The availability of compulsory enforcement in respect of other categories of agreement reached as a result of mediation likewise serves as an important guarantee for the protection of the rights of the party acting in good faith in the mediation against possible abuses on the part of the other party.

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