

The Mexican Notary Public and The Apostille,

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In Mexico, the ONLY authority permitted to draft a deed transferring real property (either in fee simple or in *fideicomiso*) is the Mexican Notary Public. This person is different from a notary public in the United States where a simple exam, a bond, and a rubber stamp can make a notary public out of most people. Nor is it similar to Canada's Notary Public who must meet a few more stringent requirements to qualify. Not so many, however as the Mexican Notary.

The Notary Public in Mexico must be an attorney, must have a minimum of five years of practical experience in the profession, must pass a technical examination and then be appointed as a Notary Public by the Governor of the state in which he or she is working.

The number of Notaries Public depends upon the number of people in the state. A new Notary is appointed only as the population grows above a certain number.

The Mexican Notary Public has many duties, but one of the most important is the drafting of deeds for transfer of real property. Anytime a signature is required on a deed of transfer it must be made before the Mexican Notary Public.

As of now, foreigners buying and selling their rights in property in the "restricted" zone, through *fideicomiso* rights, do not always have to appear before the Mexican Notary Public in order to transfer their interest in the real estate. These transfers in many cases may be made by having instructions signed in the buyer or seller's place of residence and "legalized" or "authenticated" for use in Mexico. This same process can be used for a power of attorney document in the event a buyer's or seller's signature is required.

And what is a "legalized" or "authenticated" document?

No matter what the document, it must be signed before a Notary Public in the place of residence; California, Arizona, Calgary, Vancouver.....or wherever. Once signed before the Notary Public in the place of residence it must be "legalized" or "authenticated" in order to be considered as valid in Mexico.

This means that a designated public official performs a government act and certifies to the genuineness of the signature and the seal, and the position of the official who has executed, issued or certified a copy of a document.

In 1981, the Convention Abolishing the Requirement of Legalization for Foreign Public Documents entered into force in the United States. Under the Convention (signed

in the Hague, Holland) signatory countries, including both the United States and Mexico, but not Canada, agreed to mutually recognize each other's "public documents" so long as such documents are authenticated by an apostille, a form of internationally recognized notarization. The apostille ensures that public documents issued in one signatory country will be recognized as valid in another signatory country.

Thus, if the document required for a Mexican transaction has been notarized in the United States, it must then be sent to the nearest office of the Secretary of State and an "Apostille" obtained. A search under state government in the yellow pages should reveal the telephone and location of the closest office of the Secretary of State. The document to be authenticated through an Apostille can probably be sent through the mail and should not cost more than \$25.00 U.S. dollars. It is important to allow for extra time to accomplish this step.

Other countries that are signatories to the Hague Convention are, to name a few; Germany, Argentina, Australia, Austria, Bahamas, Spain, Israel, France, Greece and Norway.

All countries which are not signatories to the Hague Convention, such as Canada, must authenticate documents to be used in Mexico by obtaining a "legalization" or ratification of their document from the nearest Mexican Consulate. It maintains a list of authorized Notaries with samples of their signatures and is able to ratify the authenticity of the Notary's signature.

Many persons object to the time involved and the additional step required to "authenticate" a signature for legal use in Mexico. It is less expensive and less time consuming, however, than making a special trip to Mexico in order to sign a document before a Mexican Notary.

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