

Canada's Accession to the Apostille Convention January 11, 2024: Impact on U.S. Transactions

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On January 11, 2024, the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the “**Convention**”) comes into effect in Canada. In this client alert, we explore how the Convention will impact the recognition of Canadian notarized documents in U.S. commercial real estate transactions.

What is the Purpose of the Convention?

The purpose of the Convention is to facilitate the use of public documents (including, among other things, notarized documents) abroad among countries that are contracting parties, by replacing the traditional requirement of legalization with the issuance of a single standardized certificate (the “**Apostille Certificate**”), issued by a Competent Authority (as defined below) in the country where the documents are being signed and notarized. In Canada, starting on January 11, 2024, each of the following governmental offices will be deemed a “Competent Authority”:

- the Ministry of Public and Business Service Delivery of Ontario (for documents issued or notarized in Ontario);
- the Ministry of the Attorney General of British Columbia (for documents issued or notarized in British Columbia);
- the Ministry of Justice of Alberta (for documents issued or notarized in Alberta);
- the Ministry of Justice and Attorney General of Saskatchewan (for documents issued or notarized in Saskatchewan);
- Ministère de la Justice du Québec (for documents issued or notarized in Québec); and
- Global Affairs Canada (for documents issued or notarized in any of the remaining provinces).

The U.S., among other countries, is a contracting party to the Convention.

What Does This Mean for Canadian Businesses Engaged in U.S. Commercial Real Estate Transactions?

U.S. commercial real estate transactions often require parties to sign and notarize documents that will be submitted for recording in the public real property records of a U.S. county (e.g., a deed, mortgage, easement, restrictive covenant). Prior to January 11, 2024, the formal process for having such documents authenticated for recording in the U.S. required the following:

1. Notarization of the applicable documents by a notary public in the province where such documents are executed;
2. Authentication by either the Ministry of Justice in the province of notarization or the office of Global Affairs Canada;
3. Authentication by the office of Global Affairs Canada, assuming a provincial authority issued the initial authentication;
4. Authentication by a U.S. embassy or consulate; and

5. Verification by the U.S. Department of State – Office of Authentications (the “USOA”).

Effective January 11, 2024, the prior, lengthy authentication process will be replaced with the single requirement of obtaining an Apostille Certificate from a Competent Authority once the applicable documents have been notarized in Canada.

The Canadian government has advised that Apostille Certificates will initially be issued in print form only and that Global Affairs Canada expects to offer electronic apostilles, or “e-apostilles,” in the future. Estimated processing times to receive Apostille Certificates following January 11, 2024 have not been confirmed. Each Competent Authority will have the discretion of whether or not to impose a fee for issuing the Apostille Certificate.

Once an Apostille Certificate has been received, a document notarized in Canada is authenticated for recordation in the U.S. public records, removing the additional time and cost associated with the prior authentication process.

Observations and Conclusion

Historically, recording authorities in the U.S. have applied different authentication standards (varying by jurisdiction) in connection with the recording of an instrument that contains a Canadian notarization. In some U.S. jurisdictions, instruments including a Canadian notarization have been accepted for recording without requiring compliance with any additional authentication process.

From and after January 11, 2024, with respect to U.S. authorities and jurisdictions that have historically required compliance with the traditional authentication process, the new Apostille Certificate process should be a welcome simplification. However, with respect to U.S. authorities and jurisdictions that have not historically required compliance with the traditional authentication process, the impact of the Apostille Certificate process is less clear. It is possible that the governing authorities may continue to accept Canadian notarized instruments for recording without requiring any further process (e.g., an Apostille Certificate), or the authorities in these jurisdictions may transition from simply accepting a Canadian notarization, to now also requiring an Apostille Certificate.

Haynes Boone will continue to monitor related developments and provide updates as they become available. Please do not hesitate to contact a member of our [Commercial Real Estate](#) group if you have any questions.