

This article details the Company's requirements for insuring transaction documents executed outside of the United States.

According to FNF's signing procedures (2005-RC-04), documents executed by foreign (meaning the documents are not executed on U.S. soil) individuals, entities and military personnel, are exempt from the Company's document execution guidelines. However, this does not mean that we should not take precautionary measures when documents are signed in a foreign country.

We must be sure that the signing party can and will accomplish the signing, notarization and authentication of the documents. Determining the status and processes is critical to a successful closing. When the executed documents are returned to escrow, copies of the recordable documents should be transmitted to the title officer immediately to determine if they are properly signed, notarized and authenticated. Do not wait until you are releasing your documents for recordation to find out if the documents are acceptable to your title officer.

Members of the United States Military Service and their dependents stationed abroad may have their signatures notarized by certain commissioned officers. In such cases, a notarial seal is normally not required. However, the commissioned officer must include his/her rank and commission/serial number in the notarial certificate. Documents bearing a military notary acknowledgement should be approved by the title officer prior to closing.

The procedures for notarizing documents for non-military persons abroad might differ depending on if the documents are being signed in a country that is a member of the Hague Convention Treaty. To determine if the principal is in a Hague Convention member country, visit the U.S. Department of State Web site at www.state.gov or the Hague Conference on International Law at www.hcch.net/index_en.php.

Parties signing documents in a Hague Convention Member Country should:

- Contact the local American consulate for an appointment to have the documents notarized. The parties need to inform the consulate in advance that the documents were prepared in the United States to consummate a real estate transaction; or
- Go to a duly appointed Notary Public of that country, in which case each certificate of acknowledgement of a foreign notary must be authenticated with an Apostille. Apostille is a French word which means "a certification." Apostilles may only be issued by a competent authority designated by the state on whose territory the public document has been executed.

Parties signing documents in a non-member Hague Convention Country should:

- Contact the local American consulate for an appointment to have the documents notarized. The parties need to inform the consulate in advance that the documents were prepared in the United States to consummate a real estate transaction; or

- Go to a duly appointed Notary Public of that country, in which case each certificate of acknowledgement of a foreign notary must be authenticated by a judge of a court of the country or from the government agency that regulates notaries in the country in which the acknowledgement was taken. The certification is most often called a Certification of Authentication.

The Certification of Authentication or the Apostille must contain certain information and be of a certain format. The certificate is not an escrow form and is not something the escrow officer should attempt to prepare or provide. Errors in the Certificate of Authentication or Apostille may render the document unacceptable or voidable. The certification should be provided by the issuing office or court.

Apostilles may only be issued by a Competent Authority designated by the State on whose territory the public document has been executed. Visit www.hcch.net/index_en.php to find a list of documents that may be Apostilled and a list of Competent Authorities designated by each country.

The signing party will have to bear any expense of the notary services and authentication at the time services are provided. The signing, notarization and authentication process can take additional time, so early planning is essential to ensure an on-time closing and that loan documents and interest rates do not expire.

Oftentimes, due to the formal nature of authentication in foreign countries, the notarized documents will be returned to our offices with brass brads and ribbons attaching the authentication to the signed documents. It is permissible to remove the brads and ribbons on those original documents in order to record the documents with the county recorder's office.

Be sure the manner in which the documents will be signed and notarized is in compliance with any lender requirements pertaining to the signing and notarizations of the documents. Some lenders may have specific requirements and restrictions for the execution of the seller's documents as well as the borrower's. It may be necessary to get written approval from the lender for out-of-country signings. Read the loan closing instructions carefully, and keep in mind the lender cannot authorize a variance from FNF signing procedures, underwriting guidelines or from any legal requirement for documents signed in a foreign country.

Lastly, be familiar with state laws, or in the case of an out-of-state closing, the laws of the state where the property is located. All states have statutes regarding conveyances, and the method of notarization used by the principals must be in compliance with specific state laws.