

Buying or selling property abroad? Why documentation authentication matters

At some point while buying or selling property overseas, one is bound to go through some frustration due to certain documentation being rejected as it has not been properly authenticated.



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Although technology helps in many cases to get documents back and forth, there is still a need to present physical proof of identity or ownership, as this prevents (or helps prevent) fraudulent transactions from taking place, says Rene Barry, partner at Henkes Nolte-Joubert Attorneys.

Levels of authentication

The level of authentication does depend on the countries the involved parties reside in or are citizens of (according to whether the country is a signatory to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents), so it is best to seek advice from your attorney (even better if the firm has an in-house notary public) who can assist with ensuring all the paperwork involved in legal transactions across countries are valid, she says.

Where countries are party to the Hague Convention, documents are signed and/or executed in the presence of a notary public. The notary public will attach a Certificate of Authentication to the documents which must bear his/her signature, stamp and seal. The documents are then forwarded to the high court in the area in which the notary public practices. The court will then attach an apostille certificate authenticating the notary public's signature.

Additional steps in non-signatory countries

If the documents are to be used in a country which is not a signatory to the Hague Convention and the parties are in South Africa, there are two additional steps to the ones above. The documents are processed as per usual and then submitted to the Legalisation Section at DIRCO (Department of International Relations and Co-operation) based in Pretoria to be legalised. Once legalised by DIRCO, the documents are then forwarded to the embassy/consulate of the country in which they are intended to be used for further authentication.

It is interesting to note that documents signed in Antarctica do not have to be authenticated. Documents signed in Namibia (unlike documents signed in Botswana, Lesotho, Swaziland, Zimbabwe and United Kingdom of Great Britain) may not be authenticated before a notary public, however, as Namibia is a party to the Hague Convention, documents can be authenticated by following the steps set out above.

Barry says that many clients call on her services for powers of attorney – where they have sold property here or abroad but are not able to physically be present at the signing of documents, or where they are abroad and need their identity documents, marriage certificates, etc., authenticated so as to be able to open bank accounts or apply for finance. These processes can be tricky even when in the country of birth, so it is always best to be prepared and ensure all documentation is in order beforehand, she says.

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