



Lost in Translation: Texas Notary Public v. Mexico *Notario Publico* by Jonathan A. Pikoff and Charles J. Crimmins

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I. Introduction

When you are told the Mexican *Notario Publico* will charge \$3,000 dollars to make you the beneficiary of a trust on a Mexican beachfront condo, you certainly know things are different in Mexico. This article will clarify the misconception that commonly occurs when individuals familiar with the Texas Office of Notary Public encounter a Mexican *Notario Publico*.

Despite sharing a common linguistic derivation, these two titles convey vastly different responsibilities upon their respective officeholders. The differences between Notary Public and *Notario Publico* are profound; according to Texas law the "literal translation of the phrase 'Notary Public' into Spanish is prohibited."ⁱ The intent of this legislation is to prevent Spanish speakers from confusing the roles of the Mexican *Notario Publico* with the limited services offered by the Texas Notary Public.

In this article, we will compare Texas with the Federal District of Mexico (Mexico City) to illustrate our points; although there may be differences in other American or Mexican states, these two jurisdictions are generally reflective of their countries' systems.

II. History

The root of "notary" is from the Latin "notarius" for clerk and can be traced back to the time of Cicero. Cicero was often longwinded and his secretary, M. Tullius Tiro, was said to have invented a new form of shorthand. This shorthand, named after his secretary, was called Notae Tironinae. In the 13th Century, the Notary emerged as a Papal appointee. These Roman appointees were given ecclesiastical jurisdiction. Under the imprimatur of the church, the Notary was an official whose acts and records were revered and acknowledged internationally. At the same time in England, a region geographically distant from the Roman seat of power, a unique system based on customary law, rather than Roman law, emerged.ⁱⁱ Today's Mexican *Notario Publico* is heir to the Roman system while the Texas Notary Public is a descendant of its English cousin.

III. Qualifications

<p>A candidate to be a Texas Notary Public must</p> <ul style="list-style-type: none"> • fill out an application • be at least 18 years of age 	<p>A candidate to be a <i>Notario Publico</i> in the Federal District of Mexico must</p> <ul style="list-style-type: none"> • be Mexican by birth • be older than 25 but younger
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<ul style="list-style-type: none"> • be a legal resident of the State of Texas • be a legal resident of the United States or a permanent resident alien • pay applicable fees and post a \$2,500* dollar bond.ⁱⁱⁱ 	<p>than 60</p> <ul style="list-style-type: none"> • be in good health • have a good reputation • not be the leader of a church • not have a criminal record • have studied under a notary for at least 6 months prior • take a written exam • be a legal professional with the title of lawyer.^{iv}
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In Texas, virtually anyone can qualify and become a Notary Public. The population of the state of Texas is roughly 22.5 million people^v and is served by approximately 360,000 registered notaries.^{vi} In comparison, Mexico City has a population of 9 million^{vii} people and is served by only 243 *Notario Publicos*.^{viii} While Texas is served by a notary pool roughly equivalent to 1.6% of its population, Mexico City is served by a population of notaries that equates to roughly 0.0027% of its population. Mexican Notary positions are extremely sought after due to the limited number of positions and the high earning potential that accompanies the office. Even if a candidate has met the above qualifications and scored well on the written exam, a position is far from guaranteed as new positions are available only when there is a vacancy.^{ix}

IV. Powers and Duties

<p>A Texas Notary Public may</p> <ul style="list-style-type: none"> • take acknowledgements • protest instruments • administer oaths • take depositions • certify copies of documents not recordable in the public records • show that a disinterested party duly notifies the validity of a document • show that the signer is indeed who s/he says s/he is and that his/her reasons for signing are genuine^x 	<p>A <i>Notario Publico</i> in Mexico City may</p> <ul style="list-style-type: none"> • be an arbitrator • be a mediator • issue judicial opinions • intervene in judicial proceedings^{xi} • ensure that documents such as bylaws of companies, wills, deeds, powers of attorney, real estate purchases and establishments of trusts do not include any legal inconsistencies^{xii} • ensure payment of taxes • protocolize public deeds
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In Mexico, the incorporation of every company, the buying and selling of all types of real estate, the establishment of deeds and wills, the creation of mortgages, among other transactions, must be protocolized by a *Notario Publico*. Additionally, in certain cases, failure by a *Notario Publico* to properly calculate and withhold taxes can result in personal liability. Francisco Visoso, *Notario Publico* number 145 for Mexico City notes, "It is the *Notario Publico's* responsibility to labor over the document and make sure it is in conformance with the law." In many respects, the Mexican *Notario Publico* serves not only as a lawyer but also as a judge in his role as protector of the law.^{xiii} For example, next to the *Notario Publico's* signature on a document is the phrase "I Give Faith" (Doy Fe).

This is very distinct from the Texas system where, as Guy Joyner, Chief of the Legal Support Unit to the Office of the Texas Secretary of State notes, "A Texas Notary Public's primary duty is to verify a signer's identity and signature, and attest that the signer personally appeared before the Notary at the time the notarization was taken. The Notary is not verifying the truth of the statements in the document. The individual appearing before the Notary and signing the document is responsible for the truth of such statements. The Notary is only responsible for the truth of the statements in the notarial certificate that the Notary completes, which says the person appeared before the Notary and that such person signed or acknowledged his signature on the document on a specified date."^{xiv}

V. FEES

<p>Texas Notary Publics may charge</p> <ul style="list-style-type: none"> • a fixed fee for their services established by the state of Texas • never exceeding \$6 dollars^{xv} 	<p>A Mexican <i>Notario Publico</i> must charge based on an established fee schedule</p> <ul style="list-style-type: none"> • Percentages range from .015% to 1.12%, of the cost of the transaction.^{xvi} In many cases fees reach thousands of U.S. dollars.
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The largest fee a Texas Notary Public may charge for his/her services is six dollars. Few, if any, people in Texas earn a living solely from notarial services. In contrast, the Mexican *Notario Publico* may earn fees into the many thousands of dollars and most *Notario Publicos* work full time in their notarial practices. In Mexico, it is not uncommon to see many lawyers and secretaries preparing paperwork for the review and approval of the *Notario Publico*. Given the extensive need for the *Notario Publico* in all kinds of transactions and their limited availability, good relations with a *Notario Publico* are vital to the expeditious processing of documentation.

VI. Conclusion

The principal difference between the Mexican *Notario Publico* and a Texas Notary Public is that the Mexican *Notario Publico* is responsible for the legality of the content of the document while the Texas Notary Public only certifies the identity of the signer. As *Notario Publico* Visoso notes, "That is a substantial difference."^{xvii}

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Footnotes:

***Note: Bond is now \$10,000.**

- ⁱ Texas Young Lawyers Association and the State Bar of Texas . *Texas State Notary Handbook*. Section: Unauthorized Practice of Law, 406.017 c Texas Government Code. Austin : Texas State Notary Bureau, 1994
- ⁱⁱ Holliwell, Tom. "The Notary: A Short History" 24 Oct. 2004
- ⁱⁱⁱ Texas Young Lawyers Association and the State Bar of Texas . *Texas State Notary Handbook*. Section: Appointment and Qualification. Austin : Texas State Notary Bureau, 1994
- ^{iv} "Ley del Notario Publico," Gobierno del Distrito Federal . Estados Unidos Mexicanos. Article 54. 21 November 2004.
- ^v "Population, Population change and estimated components of population change: April 1, 2000 to July 1, 2004" US Census Bureau. United States Census Bureau, 14 Feb. 2005
- ^{vi} Joyner, Guy. Chief of the Legal Support Unit to the Office of the Texas Secretary of State. Telephone Interview. 23 February 2005.
- ^{vii} "Censo General de Población y Vivienda," Sistemas Nacionales de Estadística Geografía y Información, Instituto Nacional de Estadística Geografía y Información, 17 Feb. 2005.
- ^{viii} Visoso, Francisco Jose. Mexico City Notary Public Number 145. Personal Interview. 15 Feb 2005 .
- ^{ix} Visoso, Francisco Jose. Personal Interview. 15 Feb 2005.
- ^x Texas Young Lawyers Association and the State Bar of Texas. *Texas State Notary Handbook*. Section: Powers and Duties, 406.016 Texas Government Code. Austin : Texas State Notary Bureau, 1994
- ^{xi} "Ley del Notario Publico," Gobierno del Distrito Federal. Estados Unidos Mexicanos. Article 33, 21 November 2004.
- ^{xii} Visoso, Francisco Jose. Personal Interview. 15 Feb 2005.
- ^{xiii} Visoso, Francisco Jose. Personal Interview. 15 Feb 2005.
- ^{xiv} Joyner, Guy. Telephone Interview. 23 February 2005.
- ^{xv} Texas Young Lawyers Association and the State Bar of Texas.
- ^{xvi} "Gaceta Oficial del Distrito Federal," Gobierno del Distrito Federal. Estadis Unidos Mexicanos. Article 15 and 22, 7 February 2005.
- ^{xvii} Visoso, Francisco Jose. Personal Interview. 15 Feb 2005.