



Québec and the U.S.:

Differences in Real Estate Law

- In the Province of Québec, Real Estate Law derives from the Civil Code (the "CCQ", formerly the Civil Code of Lower Canada, as updated on and since January 1st 1994), and, obviously, Court cases.
- Even though codified, the basics of Real Estate Law of Québec do not differ that much from the rest of Canada (or of the US for that matter).
- In the Province of Québec, real estate law is practiced by Lawyers and Notaries (who are not Notary Public). Both professionals must have a 3 year bachelor of law degree, before attending a 4th year of specialization given by the Bar School or the Notarial School of Law, in each case followed by 6 months of articling.
- Notaries act as solicitors, but mostly as public officers when they act for both parties (generally in residential real estate matters), and are not allowed to litigate in Court.
- Some Notaries are empowered with a certified electronic signature allowing them (i) to attest and certify the identity of signing representatives to documents transmitted by email that have to be considered authentic documents, or (ii) to file instantly on land title registers the hypothecs or transfer agreements they are recording in notarial form.
- Hypothecs (Québec term for mortgages) affecting real estate property must be in notarial form and recorded by a Notary who then issues certified copies thereof. The deed of hypothec must indicate the specific sum for which the hypothec is granted. The sum would normally correspond to the maximum amount of the indebtedness.
- In real estate, unless instantly registered on title electronically by a Notary, there is normally a 24-48 hour gap for registration and subsearch purposes; this gap is normally covered by an escrow agreement or by title insurance.
- Point of interest: the CCQ defines a servitude (or easement) as a charge registered in perpetuity against a property (the servient land) in favour of

another (the dominant land). The CCQ furthermore allows the owner of the servient land to restrict the use thereof, therefore the practice of restrictive covenant agreements, in commercial land developments, that legal counsels register against the servient land, to run with the title thereto, in favour of a dominant land or a specific commercial activity operated thereon. Competitors of such beneficiaries have recently been seen acquiring the servient land and petitioning the Courts, successfully, in having restrictive covenant servitudes discharged from the title thereto on the basis that these covenants are not easements for the benefit of the dominant land but for the personal benefit of the operator of the commercial activity. Hence, restrictive covenant agreements are now drafted not only as real servitudes (as defined by the CCQ), but as a personal servitude and personal obligations that the owner of the servient land undertakes to respect, with the obligation of having an eventual purchaser to respect same.

- To exercise any of the hypothecary recourses, a prior written notice of 60 days must be served on the debtor. The notice of default must also be served on the grantor (if different) and on any other person against whom rights are to be exercised. This notice is apart from the 10 day notice prescribed by the Bankruptcy and Insolvency Act. The two notices may run concurrently.

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