



To: Kimberley Springmyer, William Ortiz, Michael Kattou, Bridgette Thornton Richard

From: Yaneris Figueroa, Special Counsel to the City Attorney's Office

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Power Of Attorney Sufficiency

Date: June 12, 2013

I reviewed the Power of Attorney in question and it is insufficient. As such, we will need a new one if Ms. Castaneda wishes to have Silvana Castaneda represent her. The Power of Attorney is not valid under Florida statutes because it is not properly notarized and does not have the required two (2) witnesses. Florida Statute § 709.2105(2) states: "A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in s. 695.03." Fla. Stat. § 709.2105(2). I have attached the statute, for your reference. The document only has the signatures of Ms. Enriqueta Castaneda, which would be the principal and therefore would not qualify as a witness under the §709.2105(s), and Ms. Silvana Castaneda. As such, only one witness has signed and the instrument is insufficient. Additionally, the notarization is also invalid.

It should be noted that for a notarization to be legally sufficient under Florida law, it must comply with Florida Statutes Section 117.02 (which is attached hereto). A legally commissioned notary public should be well aware of and familiar with the requirements contained within Section 117.02. However, we can provide more information should it become necessary.

Hernandez, Cristina

From: Thornton Richard, Bridgette
Sent: Wednesday, June 12, 2013 12:45 PM
To: Springmyer, Kimberley; Ortiz, William; Kattou, Michael
Cc: Hernandez, Cristina; Figueroa, Yaneris; Franqui, Susan; Leen, Craig
Subject: RE: Code Enforcement Violation Warning-5001 Maggiore Street
Attachments: Florida Notarization Statute 117.05.pdf

Yaneris' below legal opinion is correct; however, it should be noted that for a notarization to be legally sufficient under Florida law, it must comply with Florida Statutes Section 117.02 (which is attached hereto). A legally commissioned notary public should be well aware of and familiar with the requirements contained within Section 117.02. However, we can provide more information should it become necessary. Please let us know if you have further questions or require additional follow up.

Thank you!
Bridgette

Bridgette N. Thornton Richard
Deputy City Attorney for the City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Office: (305) 460-5084
Cell: (305) 801-5797
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NOTICE: This e-mail is from the law office of the City of Coral Gables, and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you properly received this e-mail as a client, co-counsel or retained expert of the office of the City Attorney, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

From: Figueroa, Yaneris
Sent: Wednesday, June 12, 2013 11:22 AM
To: Springmyer, Kimberley; Ortiz, William; Kattou, Michael; Thornton Richard, Bridgette; Franqui, Susan
Subject: RE: Code Enforcement Violation Warning-5001 Maggiore Street

Good Morning Kim,

I reviewed the Power of Attorney in question and it is insufficient. As such, we will need a new one if Ms. Castaneda wishes to have Silvana Castaneda represent her.

The Power of Attorney is not valid under Florida statutes because it is not properly notarized and does not have the required two (2) witnesses. Florida Statute § 709.2105(2) states: "A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in s. 695.03." Fla. Stat. § 709.2105(2). I have attached the statute, for your reference. The document only has the

signatures of Ms. Enriqueta Castaneda, which would be the principal and therefore would not qualify as a witness under the §709.2105(s), and Ms. Silvana Castaneda. As such, only one witness has signed and the instrument is insufficient. Additionally, the notarization is also invalid.

Please feel free to contact me if you have any questions and/or concerns.

Best Regards,
Yaneri Figueroa, Esq.

From: Springmyer, Kimberley
Sent: Wednesday, June 12, 2013 10:04 AM
To: Ortiz, William; Kattou, Michael; Thornton Richard, Bridgette; Figueroa, Yaneri; Franqui, Susan
Subject: FW: Code Enforcement Violation Warning-5001 Maggiore Street

Is this sufficient for any violations / issues at 5001 Maggiore? This affidavit is close to 2 years old, do we need a new one?

Kimberley A Springmyer

City of Coral Gables Code Enforcement Officer
427 Biltmore Way, Suite 100
Coral Gables, FL 33134
305-460-5273 office
305-460-5268 fax

From: Silvana Castaneda [<mailto:wiltzinvestments@gmail.com>]
Sent: Wednesday, June 12, 2013 9:13 AM
To: Springmyer, Kimberley
Subject: Re: Code Enforcement Violation Warning-5001 Maggiore Street

Dear Ms. Springmyer,

Attached is the power of attorney from my mother to myself.

Please explain procedure. All my mother has received is a warning dated and received late in May. Does this warning equal

violation to the City?

Please advise,

I am

Silvana Castaneda
2333 Brickell Ave #704
Miami, FL 33129

On Tue, Jun 11, 2013 at 3:29 PM, Springmyer, Kimberley <kspringmyer@coralgables.com> wrote:

Please be advised that your mother left me a voice mail wanting to know when I will be inspecting the property. I will not be performing any visual inspections until after we have a Code Enforcement Board Meeting. The date for that has not been set yet.

If you would like me to continue keeping you updated on the status on this or any other possible violations on the properties please supply me with a copy of the "power of attorney" given to you regarding this.

Thanks.

Kimberley A Springmyer

City of Coral Gables Code Enforcement Officer

427 Biltmore Way, Suite 100

Coral Gables, FL 33134

305-460-5273 office

305-460-5268 fax

From: Springmyer, Kimberley
Sent: Tuesday, June 04, 2013 10:27 AM
To: 'Silvana Castaneda'
Cc: Kattou, Michael; Ortiz, William

Subject: RE: Code Enforcement Violation Warning-5001 Maggiore Street

Ms. Castaneda.

Your mother does not need to be at my office tomorrow morning. There will be a Code Enforcement Hearing at a later date in which she will receive a summons. Someone will be required to attend that hearing.

Your mother also filled out a public records request for a copy the file. The City Attorney's office is still working on that.

Please provide me with a copy of the power of attorney and any mailing address you would like copies of future correspondences to be forwarded to.

Kimberley A Springmyer

City of Coral Gables Code Enforcement Officer

427 Biltmore Way, Suite 100

Coral Gables, FL 33134

305-460-5273 office

305-460-5268 fax

From: Silvana Castaneda [<mailto:wiltzinvestments@gmail.com>]

Sent: Monday, June 03, 2013 11:16 PM

To: Springmyer, Kimberley

Subject: RE: Code Enforcement Violation Warning-5001 Maggiore Street

Dear Ms. Springmyer:

I am the daughter of Mrs. Enriqueta Castaneda, I have power of attorney to inquire and represent her in matters pertaining to that house (5001 Maggiore Street, Coral Gables, FL, 33146). She handed me the warning, a couple of days ago, and I just want to make sure of what procedures are to be taken.

First, I would like to know if she has to attend your office on June 5? Mrs. Castaneda seems to think that there is a meeting in front of the Board that day.



All requirements in section 4-4101 of the zoning code are met.

Please advise,

Sincerely,

Silvana Castaneda



Under Florida Law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



West's Florida Statutes Annotated

Title X. Public Officers, Employees, and Records (Chapters 110-123)

Chapter 117. Notaries Public (Refs & Annos)

West's F.S.A. § 117.05

117.05. Use of notary commission; unlawful use; notary fee; seal; duties;
employer liability; name change; advertising; photocopies; penalties

Effective: June 29, 2004

Currentness

(1) No person shall obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State if so requested. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) The fee of a notary public may not exceed \$10 for any one notarial act, except as provided in s. 117.045.

(b) A notary public may not charge a fee for witnessing an absentee ballot in an election, and must witness such a ballot upon the request of an elector, provided the notarial act is in accordance with the provisions of this chapter.

(3)(a) A notary public seal shall be affixed to all notarized paper documents and shall be of the rubber stamp type and shall include the words "Notary Public-State of Florida." The seal shall also include the name of the notary public, the date of expiration of the commission of the notary public, and the commission number. The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary public shall print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned. An impression-type seal may be used in addition to the rubber stamp seal, but the rubber stamp seal shall be the official seal for use on a paper document, and the impression-type seal may not be substituted therefor.

(b) Any notary public whose term of appointment extends beyond January 1, 1992, is required to use a rubber stamp type notary public seal on paper documents only upon reappointment on or after January 1, 1992.

(c) The notary public official seal and the certificate of notary public commission are the exclusive property of the notary public and must be kept under the direct and exclusive control of the notary public. The seal and certificate of commission must not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the seal or for the commission.

(d) A notary public whose official seal is lost, stolen, or believed to be in the possession of another person shall immediately notify the Department of State or the Governor in writing.

(e) Any person who unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(a) The venue stating the location of the notarization in the format, "State of Florida, County of _____."

(b) The type of notarial act performed, an oath or an acknowledgment, evidenced by the words "sworn" or "acknowledged."

(c) That the signer personally appeared before the notary public at the time of the notarization.

(d) The exact date of the notarial act.

(e) The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(f) The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in subsection (5).

(g) The notary's official signature.

(h) The notary's name, typed, printed, or stamped below the signature.

(i) The notary's official seal affixed below or to either side of the notary's signature.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

(a) For purposes of this subsection, "personally knows" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

(b) For the purposes of this subsection, "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

- a. That the person whose signature is to be notarized is the person named in the document;
 - b. That the person whose signature is to be notarized is personally known to the witnesses;
 - c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;
 - d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and
 - e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or
2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:
- a. A Florida identification card or driver's license issued by the public agency authorized to issue driver's licenses;
 - b. A passport issued by the Department of State of the United States;
 - c. A passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services;
 - d. A driver's license or an identification card issued by a public agency authorized to issue driver's licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;
 - e. An identification card issued by any branch of the armed forces of the United States;
 - f. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;
 - g. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;
 - h. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or

i. An identification card issued by the United States Bureau of Citizenship and Immigration Services.

(6) The employer of a notary public shall be liable to the persons involved for all damages proximately caused by the notary's official misconduct, if the notary public was acting within the scope of his or her employment at the time the notary engaged in the official misconduct.

(7) Any person who acts as or otherwise willfully impersonates a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Any notary public who knowingly acts as a notary public after his or her commission has expired is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) Any notary public who lawfully changes his or her name shall, within 60 days after such change, request an amended commission from the Secretary of State and shall send \$25, his or her current commission, and a notice of change form, obtained from the Secretary of State, which shall include the new name and contain a specimen of his or her official signature. The Secretary of State shall issue an amended commission to the notary public in the new name. A rider to the notary public's bond must accompany the notice of change form. After submitting the required notice of change form and rider to the Secretary of State, the notary public may continue to perform notarial acts in his or her former name for 60 days or until receipt of the amended commission, whichever date is earlier.

(10) A notary public who is not an attorney who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and in the language used for the advertisement. The notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF FLORIDA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(11) Literal translation of the phrase "Notary Public" into a language other than English is prohibited in an advertisement for notarial services.

(12)(a) A notary public may supervise the making of a photocopy of an original document and attest to the truthness of the copy, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.

(b) A notary public must use a certificate in substantially the following form in notarizing an attested copy:

STATE OF FLORIDA

COUNTY OF _____

On this ___ day of _____, (year), I attest that the preceding or attached document is a true, exact, complete, and unaltered photocopy made by me of (description of document) presented to me by the document's custodian, _____, and, to the best

of my knowledge, that the photocopied document is neither a vital record nor a public record, certified copies of which are available from an official source other than a notary public.

(Official Notary Signature and Notary Seal)

(Name of Notary Typed, Printed or Stamped)

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ___ day of ___, (year), by (name of person making statement).

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of ___, (year), by (name of person acknowledging).

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of ___, (year), by (name of person) as (type of authority, e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed).

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(14) A notary public must make reasonable accommodations to provide notarial services to persons with disabilities.

(a) A notary public may notarize the signature of a person who is blind after the notary public has read the entire instrument to that person.

(b) A notary public may notarize the signature of a person who signs with a mark if:

1. The document signing is witnessed by two disinterested persons;

2. The notary prints the person's first name at the beginning of the designated signature line and the person's last name at the end of the designated signature line; and

3. The notary prints the words "his (or her) mark" below the person's signature mark.

(c) The following notarial certificates are sufficient for the purpose of notarizing for a person who signs with a mark:

1. For an oath or affirmation:

(First Name) (Last Name)

His (or Her) Mark

STATE OF FLORIDA

COUNTY OF _____

Sworn to and subscribed before me this ___ day of _____, (year), by (name of person making statement), who signed with a mark in the presence of these witnesses:

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

2. For an acknowledgment in an individual capacity:

(First Name) (Last Name)

His (or Her) Mark

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, (year), by (name of person acknowledging), who signed with a mark in the presence of these witnesses:

(Signature of Notary Public--State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(d) A notary public may sign the name of a person whose signature is to be notarized when that person is physically unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary to sign in his or her presence;
2. The document signing is witnessed by two disinterested persons;
3. The notary writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances of the signing in the notarial certificate.

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who directs the notary to sign his or her name:

1. For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) before me this ___ day of _____, (year), by (name of person making statement), and subscribed by (name of notary) at the direction of and in the presence of (name of person making statement), and in the presence of these witnesses:

(Signature of Notary Public--State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

2. For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of ___, (year), by (name of person acknowledging) and subscribed by (name of notary) at the direction of and in the presence of (name of person acknowledging), and in the presence of these witnesses:

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

Credits

Laws 1889, c. 3874; Rev.St.1892, § 221; Gen.St.1906, § 306; Rev.Gen.St.1920, § 417; Comp.Gen.Laws 1927, § 483; Laws 1981, c. 81-260, § 8; Laws 1991, c. 91-291, § 4; Laws 1992, c. 92-209, § 3; Laws 1993, c. 93-62, § 4; Laws 1995, c. 95-147, § 747. Amended by Laws 1998, c. 98-129, § 33, eff. July 1, 1998; Laws 1997, c. 97-241, § 1, eff. May 30, 1997; Laws 1998, c. 98-246, § 5, eff. Jan. 1, 1999; Laws 1999, c. 99-2, § 46, eff. June 29, 1999; Laws 2004, c. 2004-5, § 7, eff. June 29, 2004.

Notes of Decisions (6)

West's F. S. A. § 117.05, FL ST § 117.05

Current with chapters in effect from the 2013 1st Reg. Sess. of the 23rd Legislature through June 6, 2013

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