CAO 2014-011

To: William Ortiz; Christina Hernandez

From: Bridgette Thornton, Deputy City Attorney for the City of Coral Gables

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

RE: Legal Opinion Regarding Jurats For Notarizations – Oaths v. Acknowledgments

Date: February 10, 2014

It has come to my attention that there may be some confusion regarding the notarization language for code enforcement liens as well as code enforcement related releases of liens. More specifically, I noticed that from time to time an acknowledgment jurat has been used instead of an oath jurat. This is problematic. To clarify, where a notary is notarizing a document reflecting that someone attested to the authenticity of a code enforcement board order or otherwise attesting to the truthfulness of a statement, etc., then the individual should be put under oath and the below oath jurat, or an oath jurat that is substantially similar, should be used for notarizing the individual's signature:

> Sworn to or affirmed, and subscribed before me this __ day of _____, in the year 2014, by _____who is personally known to me or has produced _____ as identification.

Meaning, that an acknowledgment jurat should not be used. Indeed, Florida Statutes § 117.03 states, in relevant part, **"[t]he notary public may not take all acknowledgment of execution in lieu of an oath if an oath is required."** Fla. Stat. § 117.03 (emphasis added). An acknowledgement, moreover, is only utilized to attest that a signature is authentic not to attest to the substance or truthfulness of a document or statement. To be clear, the oath jurat and the acknowledgment jurat, govern two distinct mutually exclusive scenarios. As the Fifth District recognized in *Gaynor Hill Enterprises, Inc. v. Allan Enterprises*, LLC, "[a]n affidavit is ... a statement in writing under an oath ... **An oath is an unequivocal act, before an officer authorized to administer oaths, by which the person knowingly attests to the truth of a statement and assumes the obligations of an oath ... In contrast, all acknowledgment is a formal declaration made ... by someone who signs a document and confirms that the**

signature is authentic ... An acknowledgment is a verification of the fact of execution, but is not a verification of the contents of the instrument executed." 113 So. 3d 933, 936 (Fla. 5th DCA 2013) (citations omitted) (emphasis added). Additionally, please note that a notary should not notarize a signature unless the signator signs in the presence of the notary and is present when the signature is being notarized. In fact, Florida Statutes§ 117.107(9) provides that:

> A notary public **may not notarize a signature on a document if the person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding $5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties.** It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.1 05.

Fla. Stat. § 117.107(9) (emphasis added). Thus, failure to comply with Section 117.107(9) could result in significant financial and/or criminal penalties accruing to a notary public.

In conclusion, anyone that notarizes documents should be cognizant of and comply with the above outlined statutory provisions and dictates, and, as such, notarizations for code enforcement related documents must be compliant with the above discussed statutory provisions to avoid potential legal frailties. I hope this memo will clarify these issues for your Staff, but please let me know if you have any questions or concerns.

Hernandez, Cristina

From: Thornton, Bridgette
Sent: Monday, February 10, 2014 5:35 PM
To: Hernandez, Cristina
Subject: FW: Legal Opinion: Jurats for Notarizations -- Oaths Versus Acknowledgements

Cristy,

Please place the below in the opinion binder.

Thanks!
B

Bridgette N. Thornton
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
Fax: (305) 476-7795

From: Thornton, Bridgette
Sent: Monday, February 10, 2014 5:33 PM
To: Ortiz, William; Hernandez, Cristina
Cc: Leen, Craig; Figueroa, Yaneris; Cutie, Ivonne
Subject: Legal Opinion: Jurats for Notarizations -- Oaths Versus Acknowledgements

Good Evening Will,

It has come to my attention that there may be some confusion regarding the notarization language for code enforcement liens as well as code enforcement related releases of liens. More specifically, I noticed that from time to time an acknowledgment jurat has been used instead of an oath jurat. This is problematic. To clarify, where a notary is notarizing a document reflecting that someone attested to the authenticity of a code enforcement board order or otherwise attesting to the truthfulness of a statement, etc., then the individual should be put under oath and the below oath jurat, or an oath jurat that is substantially similar, should be used for notarizing the individual's signature:

> Sworn to or affirmed, and subscribed before me this ____ day of _____, in the year 2014, by_____who is personally known to me or has produced _____as identification.

Meaning, that an acknowledgment jurat should ***not*** be used. Indeed, Florida Statutes § 117.03 states, in relevant part, "***[t]he notary public may not take an acknowledgment of execution in lieu of an oath if an oath is required.***" Fla. Stat. § 117.03 (emphasis added). An acknowledgement, moreover, is only utilized to attest that a signature is authentic not to attest to the substance or truthfulness of a document or statement. To be clear, the

oath jurat and the acknowledgment jurat, govern two distinct mutually exclusive scenarios. As the Fifth District recognized in *Gaynor Hill Enterprises, Inc. v. Allan Enterprises, LLC*, "[a]n affidavit is . . . a statement in writing under an oath . . . ***An oath is an unequivocal act, before an officer authorized to administer oaths, by which the person knowingly attests to the truth of a statement and assumes the obligations of an oath. . In contrast, an acknowledgment is a formal declaration made . . . by someone who signs a document and confirms that the signature is authentic . . . An acknowledgment is a verification of the fact of execution, but is not a verification of the contents of the instrument executed.***" 113 So. 3d 933, 936 (Fla. 5th DCA 2013) (citations omitted) (emphasis added). Additionally, please note that a notary should not notarize a signature unless the signator signs in the presence of the notary and is present when the signature is being notarized. In fact, Florida Statutes § 117.107(9) provides that:

> A notary public ***may not notarize a signature on a document if the person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding $5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties.*** It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.105.

Fla. Stat. § 117.107(9) (emphasis added). Thus, failure to comply with Section 117.107(9) could result in significant financial and/or criminal penalties accruing to a notary public.

In conclusion, anyone that notarizes documents should be cognizant of and comply with the above outlined statutory provisions and dictates, and, as such, notarizations for code enforcement related documents must be compliant with the above discussed statutory provisions to avoid potential legal frailties. I hope this memo will clarify these issues for your Staff, but please let me know if you have any questions or concerns.

Thank you,
Bridgette

Bridgette N. Thornton
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
Fax: (305) 476-7795