



KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA



December 6, 2010

Ryan Safar
44224 W. Eddie Way
Maricopa, AZ 85139

Re: Notary Kristen B. Lindner; Complainant Ryan Safar

Dear Mr. Safar,

Pursuant to A.R.S. § 41-331(A), the Attorney General's Office ("AGO") has investigated the complaint brought against Notary, Kristen B. Linder ("Notary"), by Ryan Safar ("Complainant"). The Complainant alleged that the Notary notarized a Substitution of Trustee and an Assignment of Deed of Trust on April 2, 2010, even though the signer could not have been in the State of Arizona to sign the documents in the Notary's presence.

The investigation into the complaint made against the Notary does not purport to conduct an exhaustive legal analysis on whether the document(s) is/are valid. These disputes should be resolved before the proper tribunal. The Secretary of State ("Secretary") does not have the authority to assess whether any signature(s) on the document(s) were forged or to settle any legal disputes regarding the document(s). The Secretary only has authority to determine if under the notary statutes, the Notary fully and faithfully discharged the duties of a notary public, and properly notarized the document(s).

A. The Notary Failed to Address the Allegations.

Notaries are required to respond to an AGO investigation about their notarial services. A.R.S. §§ 41-331(B) & 41-313(B)(4).

As part of the investigation, the AGO forwarded to the Notary the complaint form and report filed by the complainant which describes the allegations in detail. In this instance, in her response letter the Notary failed to directly address the allegations regarding the signer not being in the State of Arizona in order to sign the documents in the Notary's presence. Therefore, the Notary has failed to comply with any investigations that are initiated by the secretary of state or the attorney general and provides grounds suspension or revocation. A.R.S. §§ 41-313(B)(4), 41-330(A)(4) and 41-331(B).

B. The Notary Provided Her Journal.

Notaries must maintain a journal and produce a copy if the Attorney General or a member of the public requests it. A.R.S. §§ 41-313(B)(1), 41-319(A)&(F).

Here, the Notary provided a copy of her notary journal as requested. In doing so, the Notary has met the standards of the law.

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C. The Notary's Journal is Problematic.

Notaries are required to maintain a journal and produce a copy if the Attorney General or a member of the public requests it. A.R.S. §§ 41-313(B)(1), 41-319(A)&(F). A notary public must record a journal entry for each notarial act. A.R.S. § 41-319(A). A notary's journal must contain the following: (1) the date of the notarial act; (2) the document description or type of notarial act; (3) the printed name of the signer as well as his or her address and signature; (4) the type of evidence for the signer's identity; (5) the specific identity information of the signer; and (6) the fee, if any, charged for the notarization. A.R.S. § 41-319. When a Notary accepts an identification document that meets requirements set forth in A.R.S. § 41-311(11)(a)(b), they must record a description of the identification document including but not limited to; (a) a description of the identification document, (b) its serial or identification number, and (c) its issuance or expiration date. A.R.S. §§ 41-313(B)(1), 41-319(A)(5).

1. *The Notary's Journal Does Not Meet Statute Requirements.*

In this instance, the copy of the Notary's journal does not include the following required information for any of the entries provided: the printed name of the signer(s) as well as his or her address; the type of evidence for the signer's identity; the specific identity information of the signer; and the fee, if any, charged for the notarization. In failing to keep a journal in compliance with A.R.S. § 41-319, the Notary has failed to fully and faithfully discharge the duties of a notary public providing grounds for suspension or revocation. A.R.S. §§ 41-313(B)(1), 41-319 and 41-330(A)(4).

2. *The Notary's Journal Entries Lack Requisite Journal Information.*

The journal entry in question (9th from bottom, TS#: T10-60681-AZ) includes the notarization date and two (2) circled designations for the respective title of each document in question. It further identifies two signers, although our copy of each document identifies one signer (David Martinez); one the signer in the entry is identified by ditto-marks as David Martinez and another by a printed name as Teresa Fernandez. Additionally, on the journal copy provided there are a total of thirty (30) entries, including the entry in question, that do not include the address, signature, or ID information of signer(s); and it does not contain a line or information for a notarization fee to be recorded in any is charged. In failing to record all requisite journal information the Notary has failed to fully and faithfully discharge the duties of a notary public providing grounds for suspension or revocation. A.R.S. §§ 38-411, 41-313(B)(1), 41-319 and 41-330(A)(4).

D. The Notary Executed a Notarial Certificate Known to be False.

To perform an "acknowledgment" properly, a notary must (1) identify the signer and (2) put the ID information in his or her notary journal; and the signer must (3) be present with the notary when the notary affixes the notary stamp and signature to the document. A.R.S. § 41-311(1) and 41-319.

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Because the Notary's journal entry does not include ID information or a signature of either signer identified in the entry, the entry does not clearly show that the Notary identified either signer; and it does not clearly indicate that either signer was present with the Notary for the notarization. Therefore, the Notary failed to properly perform the acknowledgment and executed a notarial certificate containing a false statement providing the Secretary grounds for suspension or revocation. A.R.S. §§ 41-319 and 41-330(A)(10).

E. The Notarial Certificate is Incomplete.

Per A.R.S. § 41-313(B)(3), on the date each document was notarized --although not presently required-- the Notary was required to authenticate with the official seal all official acts, and affix the date of the expiration of the notary's commission as the notary on every certificate or acknowledgment signed and sealed by the notary. In this case, the Notary's commission-expiration date on each document is stated only in her affixed stamp. In failing to include all the required information for a proper notarial certificate, the Notary has failed to fully and faithfully discharge the duties of a notary public providing grounds for suspension or revocation. A.R.S. §§ 41-313(B)(3) and 41-330(A)(4).

F. Conclusion.

The Secretary possesses special knowledge and expertise in interpreting the notary statutes and believes that the definitions, requirements (i.e. oath & bond) and duties outlined in A.R.S. § 41-311 through A.R.S. § 41-332 are standards with which each notary must comply.

The Secretary believes that in addition to the specific offenses outlined by the Arizona legislature which would warrant action against a notary's commission, in cases where there is substantial evidence that the notary's actions fail to meet the standards described in the notary statutes, the Secretary has grounds to refuse, revoke or suspend a notary's commission for "failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public." A.R.S. § 41-330(A)(4).

Therefore, the Secretary of State has determined to revoke the Notary's commission effective immediately. The revocation of the Notary's commission is based on the following violations of Arizona notary law:

1. The Notary failed to record requisite journal information. A.R.S. §§ 41-319 & 41-313(B)(1).
2. The Notary has failed to record the notarization fees in her journal records. A.R.S. §§ 38-411 and 38-414.
3. The Notary failed to respond to any requests for information and comply with the any investigations that are initiated by the secretary of state or the attorney general. A.R.S. §§ 41-313(B)(4) and 41-331(B).
4. The Notary failed to accept satisfactory evidence of identity. A.R.S. § 41-319(A)(4) & (B).
5. The Notary failed to properly perform the acknowledgment. A.R.S. § 41-313.

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6. The Notary failed to state her commission-expiration date in the notarial certificate. A.R.S. § 41-313(B)(3).
7. The Notary executed a statement known to be false. A.R.S. § 41-330(A)(10).
8. Failure to discharge fully and faithfully the duties of a notary public. A.R.S. § 41-330(A)(4).

The Notary is required to deliver his or her notary seal, notarial journal(s) and notarial records to our office. All correspondence and surrendered items should be sent by certified mail or other means providing a receipt. Items are required to be sent within three months of a notary's revocation or the notary shall forfeit not less than \$50 or more than \$500 to the state. A.R.S. § 41-317.

The Notary has a right to request an evidentiary hearing pursuant to A.R.S. § 41-1092.03 by filing a written notice of appeal with the Office of the Arizona Secretary of State within thirty (30) days of receipt of this notice. If the Notary request an evidentiary hearing as referenced above, **he or she may also request an informal settlement conference pursuant to A.R.S. § 41-1092.06.** If a hearing is not requested within the time provided by the statute, the decision will stand.

If you have any concerns regarding this issue, you may contact Yolanda Morales directly at 602-542-6315.

Sincerely,



Holly Textor, Notary Unit Supervisor
Business Services Division

Cc: Attorney General's Office
Notary File