

By Senator Lee

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1 A bill to be entitled
2 An act relating to the power of attorney; amending s.
3 709.2105, F.S.; revising the qualifications of an
4 agent in the execution of power of attorney to include
5 certain not-for-profit corporations; providing
6 criteria for such corporations; providing that a
7 person acting on behalf of the corporation in its role
8 as an agent under a power of attorney has a fiduciary
9 responsibility to the principal; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 709.2105, Florida Statutes, is amended
15 to read:

16 709.2105 Qualifications of agent; execution of power of
17 attorney.—

18 (1) The agent must be one of the following:

19 (a) A natural person who is 18 years of age or older, or

20 (b) A financial institution that has trust powers, has a
21 place of business in this state, and authorization is authorized
22 to conduct trust business in this state.

23 (c) A not-for-profit corporation that complies with the
24 requirements of subparagraphs 1.-7.

25 1. The not-for-profit corporation must be qualified to do
26 business in the state; must be organized for charitable or
27 religious purposes in this state; must have served as a court-
28 appointed guardian before January 1, 1996; must be tax-exempt
29 under s. 501(c) (3) of the Internal Revenue Code; may not charge

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30 a fee or cost to a principal for services but may be reimbursed
31 for actual expenses; and must serve only principals who reside
32 in communities that provide housing for older persons as defined
33 in s. 760.29(4), and former residents of such communities.

34 2. The not-for-profit corporation must require each
35 principal who signs a power of attorney on or after July 1,
36 2016, to sign a separate written instrument containing the
37 following language in 14-point uppercase type:

38
39 I UNDERSTAND THAT THE AGENT IS A NOT-FOR-PROFIT
40 CORPORATION THAT IS NOT CHARGING A FEE FOR SERVICES TO
41 ME (BUT MAY BE REIMBURSED FOR ACTUAL EXPENSES) AND
42 THAT THE INDIVIDUALS THAT WILL PROVIDE ME SERVICES ARE
43 VOLUNTEERS WHO MAY NOT HAVE A STATE LICENSE OR
44 CERTIFICATION.

45
46 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT
47 CORPORATION MAY NOT BE SUFFICIENT TO COVER LIABILITY
48 ARISING FROM AN ERROR, AN OMISSION, OR ANY INTENTIONAL
49 MISCONDUCT COMMITTED BY A DIRECTOR, AN OFFICER, AN
50 EMPLOYEE, A VOLUNTEER, OR AN AGENT OF THE CORPORATION.

51
52 3. The not-for-profit corporation must allow the clerk of
53 the circuit court for the circuit in which the corporation
54 maintains its primary place of business to, at any time, audit
55 the books and records of the corporation upon request.

56 4. A person may not act on behalf of the not-for-profit
57 corporation in its role as an agent if the person:

58 a. Has been convicted of a felony; is incapable of

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59 discharging the duties of an agent as a result of any incapacity
60 or illness; or is otherwise unsuitable to perform the duties of
61 an agent.

62 b. Has been arrested for and is awaiting final disposition
63 of, has been found guilty of, regardless of adjudication, or has
64 entered a plea of nolo contendere or guilty to any offense
65 involving dishonesty or specified in s. 435.04(2), or similar
66 law of another jurisdiction.

67 c. Has been adjudicated bankrupt in the previous 10 years.

68 d. Provides substantial services to the principal in a
69 professional or business capacity, or is a creditor of the
70 principal, and retains that previous professional or business
71 relationship.

72 e. Is employed by any person, agency, government, or
73 corporation that provides service to the principal in a
74 professional or business capacity unless the employed person is
75 the spouse, adult child, parent, or sibling of the principal or
76 a court determines that the potential conflict of interest is
77 insubstantial and the ability of such person to act on behalf of
78 the not-for-profit corporation in its role as agent would
79 clearly be in the principal's best interest.

80 5. The not-for-profit corporation shall require all
81 directors, officers, and employees of the not-for-profit
82 corporation, and any person that acts on behalf of the not-for-
83 profit corporation in its role as an agent, to submit at their
84 own expense or at the expense of the corporation, but never at
85 the cost of any principal, to a credit history background check
86 before acting as an agent. A credit history background check
87 shall be completed again at least once every 2 years after the

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88 initial check. The corporation shall maintain a file on each
89 director, officer, and employee, and any person acting on behalf
90 of the not-for-profit corporation in its role as an agent, and
91 retain in the file documentation of the result of any credit
92 history background check conducted under this subparagraph. The
93 clerk of court may audit such credit history background files.

94 6. The not-for-profit corporation shall require all
95 directors, officers, and employees of the not-for-profit
96 corporation, and any person that acts on behalf of the not-for-
97 profit corporation in its role as an agent, to submit at their
98 own expense or at the expense of the corporation, but never at
99 the cost of any principal, to a criminal history background
100 check before acting as an agent. The corporation shall maintain
101 a file on each director, officer, and employee, and any person
102 acting on behalf of the not-for-profit corporation in its role
103 as an agent, and retain in the file documentation of the result
104 of any criminal history background check conducted under this
105 subparagraph. The corporation must allow a principal to review
106 the criminal history background check of any person acting on
107 behalf of the principal. The clerk of court may audit the
108 person's criminal history background files.

109 7. The not-for-profit corporation must keep on file in the
110 community in which the corporation is acting an updated listing
111 of each person authorized to act on behalf of the corporation as
112 an agent, along with a copy of the background check results. Any
113 principal may request a copy of the list of authorized persons.

114 8. Any person that acts on behalf of a not-for-profit
115 corporation pursuant to this paragraph in its role as an agent
116 under a power of attorney has a fiduciary responsibility to the

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117 principal and must comply with all provisions of this chapter.

118 9. In addition to any other penalty provided by law, any
119 person acting on behalf of a not-for-profit corporation in its
120 role as an agent pursuant to this paragraph is subject to s.
121 825.103.

122 (2) A power of attorney must be signed by the principal and
123 by two subscribing witnesses and be acknowledged by the
124 principal before a notary public or as otherwise provided in s.
125 695.03.

126 (3) If the principal is physically unable to sign the power
127 of attorney, the notary public before whom the principal's oath
128 or acknowledgment is made may sign the principal's name on the
129 power of attorney pursuant to s. 117.05(14).

130 Section 2. This act shall take effect July 1, 2016.