Senator Lee moved the following:

**Senate Amendment (with title amendment)**

Before line 86
insert:

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

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

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

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

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

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

1. The not-for-profit corporation must be qualified to do business in the state; must be organized for charitable or religious purposes in this state; must have served as a court-appointed guardian before January 1, 1996; must be tax-exempt under s. 501(c)(3) of the Internal Revenue Code; may not charge a fee or cost to a principal for services but may be reimbursed for actual expenses; and must serve only principals who reside in communities that provide housing for older persons as defined in s. 760.29(4) and former residents of such communities.

2. The not-for-profit corporation must have each principal who signs a power of attorney on or after July 1, 2015 sign a separate written instrument containing the following language in 14-point uppercase type:

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

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

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

4. No person shall act on behalf of the not-for-profit corporation in its role as an agent who:
   a. Has been convicted of a felony; who, from any incapacity or illness, is incapable of discharging the duties of an agent; or who is otherwise unsuitable to perform the duties of an agent.
   b. Has been arrested for and is awaiting final disposition of, has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense involving dishonesty or listed at s. 435.04(2), or similar law of another jurisdiction.
   c. Has been adjudicated bankrupt in the previous 10 years.
   d. Provides substantial services to the principal in a professional or business capacity, or is a creditor of the principal, and retains that previous professional or business relationship.
   e. Is in the employ of any person, agency, government, or corporation that provides service to the principal in a professional or business capacity unless such person so employed is the spouse, adult child, parent, or sibling of the principal or a court determines that the potential conflict of interest is insubstantial and the ability of such person to act on behalf of the not-for-profit corporation in its role as agent would
clearly be in the principal’s best interest.

5. The not-for-profit corporation shall require all directors, officers, and employees of the not-for-profit corporation, and any person that acts on behalf of the not-for-profit corporation in its role as an agent, to submit, at their own expense or at the expense of the corporation, but never at the cost of any principal, to a credit history background check prior to acting as an agent. A credit history background check shall be completed again at least once every 2 years after the initial check. The corporation shall maintain a file on each director, officer, and employee, and any person that acts on behalf of the not-for-profit corporation in its role as an agent, and retain in the file documentation of the result of any credit history background check conducted under this subparagraph. The clerk of court may audit such credit history background files.

6. The not-for-profit corporation shall require all directors, officers, and employees of the not-for-profit corporation, and any person that acts on behalf of the not-for-profit corporation in its role as an agent, to submit, at their own expense or at the expense of the corporation, but never at the cost of any principal, to a criminal history background check prior to acting as an agent. The corporation shall maintain a file on each director, officer, and employee, and any person that acts on behalf of the not-for-profit corporation in its role as an agent, and retain in the file documentation of the result of any criminal history background check conducted under this subparagraph. The corporation must allow a principal to review the criminal history background check as to any person
acting on behalf of such principal. The clerk of court may audit such criminal history background files.

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

8. Any person that acts on behalf of a not-for-profit corporation pursuant to this paragraph in its role as an agent under a power of attorney has a fiduciary responsibility to the principal and must comply with all provisions of this chapter.

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

(2) 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.

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

xi

And the title is amended as follows:
Between lines 2 and 3
insert:
s. 709.2105, F.S.; revising the qualifications of an agent in the execution of power of attorney to include certain not-for-profit corporations; providing criteria for such corporations; providing that a person acting on behalf of the corporation in its role as an agent under a power of attorney has a fiduciary responsibility to the principal; amending