

By Senator Lee

24-00181C-15

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A bill to be entitled
 An act relating to powers of attorney; amending 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; amending s.
 709.2202, F.S.; conforming a cross-reference;
 providing an effective date.

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

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. ~~or~~

(b) A financial institution that has trust powers and, ~~has~~
 a place of business in this state, ~~7~~ and is authorized to conduct
 trust business in this state.

(c) A not-for-profit corporation that:

1. Is organized for charitable or religious purposes in
this state;

2. Was qualified as a court-appointed guardian before
January 1, 1996; and

3. Is a tax-exempt organization under s. 501(c)(3) of the
Internal Revenue Code. However, this subparagraph applies only
to a corporation that acts through an individual listed in the
records of the Division of Corporations of the Department of
State as a current officer of the corporation and only upon the

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30 occurrence of any of the following events:

31 a. Posting and maintenance by the corporation of a blanket
32 fiduciary bond of at least \$250,000 with the clerk of the
33 circuit court in the county in which the corporation's primary
34 place of business is located. The corporation shall provide
35 proof of the fiduciary bond to the clerk of each additional
36 circuit court in which the corporation is serving as agent for a
37 resident of that circuit. The bond must cover all principals for
38 whom the corporation has been appointed as an agent at any given
39 time. The liability of the provider of the bond is limited to
40 the face value of the bond, regardless of the number of
41 principals for whom the corporation is acting as an agent. The
42 terms of the bond must cover the acts or omissions of each agent
43 or employee of the corporation who has direct contact with the
44 principal or access to the principal's assets. The bond must be
45 payable to the Governor and his or her successors in office and
46 be conditioned on the faithful performance of all duties of an
47 agent under this chapter;

48 b. Maintenance by the corporation of a liability insurance
49 policy that covers any losses sustained by the principal caused
50 by errors, omissions, or any intentional misconduct committed by
51 the corporation's officers or agents. The policy must cover all
52 principals for whom the corporation is acting as an agent for
53 losses up to \$250,000. The terms of the policy must cover acts
54 or omissions of each agent or employee of the corporation who
55 has direct contact with the principal or access to the
56 principal's assets; or

57 c. Signing by the principal of a separate written
58 instrument containing the following language in 14-point

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59 uppercase type:

60

61 I HAVE BEEN ADVISED THAT OFFICERS OF THE NOT-FOR-PROFIT
62 CORPORATION HAVE DECLINED TO AGREE TO BE JOINTLY AND SEVERALLY
63 LIABLE WITH THE NOT-FOR-PROFIT CORPORATION FOR ACTS OR OMISSIONS
64 OCCURRING IN THE EXERCISE OF THE POWER OF ATTORNEY EXECUTED
65 UNDER CHAPTER 709, FLORIDA STATUTES.

66

67 I HAVE ALSO BEEN ADVISED THAT THE NOT-FOR-PROFIT CORPORATION
68 THAT I HAVE NAMED AS MY AGENT UNDER MY POWER OF ATTORNEY HAS
69 ELECTED NOT TO POST AND MAINTAIN A FIDUCIARY BOND OR MAINTAIN
70 INSURANCE IN ACCORDANCE WITH SECTION 709.2105(1)(c), FLORIDA
71 STATUTES.

72

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

77

78 (2) If none of the requirements in sub-subparagraph
79 (1)(c)3.a., sub-subparagraph (1)(c)3.b., or sub-subparagraph
80 (1)(c)3.c. is satisfied, each officer of the not-for-profit
81 corporation acting with the power of attorney is jointly and
82 severally liable with the corporation for acts or omissions
83 under the power of attorney and this chapter.

84

85 (3)~~(2)~~ A power of attorney must be signed by the principal
86 and by two subscribing witnesses and be acknowledged by the
87 principal before a notary public or as otherwise provided in s.
88 695.03.

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88 (4)~~(3)~~ If the principal is physically unable to sign the
89 power of attorney, the notary public before whom the principal's
90 oath or acknowledgment is made may sign the principal's name on
91 the power of attorney pursuant to s. 117.05(14).

92 Section 2. Subsection (2) of section 709.2202, Florida
93 Statutes, is amended to read:

94 709.2202 Authority that requires separate signed
95 enumeration.—

96 (2) In addition to signing the power of attorney on behalf
97 of the principal pursuant to s. 709.2105(4) ~~s. 709.2105(3)~~, if
98 the principal is physically unable to sign or initial next to
99 any enumerated authority for which subsection (1) requires the
100 principal to sign or initial, the notary public before whom the
101 principal's oath or acknowledgment is made may sign the
102 principal's name or initials if:

103 (a) The principal directs the notary to sign the
104 principal's name or initials on the power of attorney next to
105 any enumerated authority for which subsection (1) requires the
106 principal to sign or initial;

107 (b) The signing or initialling by the notary is done in the
108 presence of the principal and witnessed by two disinterested
109 subscribing witnesses; and

110 (c) The notary writes the statement "Signature or initials
111 affixed by the notary pursuant to s. 709.2202(2), Florida
112 Statutes," below each signature or initial that the notary
113 writes on behalf of the principal.

114

115 Only one notarial certificate in substantially the same form as
116 those described in s. 117.05(14), which states the circumstances

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117 of all signatures and initials written by the notary public, is
118 required to be completed by the notary public.

119 Section 3. This act shall take effect July 1, 2015.