

By the Committee on Judiciary; and Senator Lee

590-01675-15

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1 A bill to be entitled
2 An act relating to powers 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 an
6 effective date.

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

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

12 709.2105 Qualifications of agent; execution of power of
13 attorney.—

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

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

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

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

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

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

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

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

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

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

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

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

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 AN EMPLOYEE OR AGENT OF THE CORPORATION.

d. Designation of the corporation by a principal as an agent under a power of attorney and the corporation acts as an agent for the principal. However, each officer of the corporation is jointly and severally liable with the corporation for acts and omissions under the power of attorney and this chapter which occur when there is no fiduciary bond as provided in sub-subparagraph a., liability insurance as provided in sub-subparagraph b., or signed acknowledgement as provided in sub-subparagraph c.

(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.

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88 695.03.

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

93 Section 2. This act shall take effect July 1, 2015.