

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; amending s.
 6 709.2202, F.S.; conforming a cross-reference;
 7 providing an effective date.

8

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

10

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

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

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

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

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

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

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

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

25 3. Is a tax-exempt organization under s. 501(c)(3) of the
 26 Internal Revenue Code. However, this subparagraph applies only

27 to a corporation that acts through an individual listed in the
28 records of the Division of Corporations of the Department of
29 State as a current officer of the corporation and only upon the
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 an agent
37 for a resident of that circuit. The bond must cover all
38 principals for whom the corporation has been appointed as an
39 agent at any given time. The liability of the provider of the
40 bond is limited to the face value of the bond, regardless of the
41 number of principals for whom the corporation is acting as an
42 agent. The terms of the bond must cover the acts or omissions of
43 each agent or employee of the corporation who has direct contact
44 with the principal or access to the principal's assets. The bond
45 must be payable to the Governor and his or her successors in
46 office and be conditioned on the faithful performance of all
47 duties of an 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
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 (3)(2) A power of attorney must be signed by the principal
 85 and by two subscribing witnesses and be acknowledged by the
 86 principal before a notary public or as otherwise provided in s.
 87 695.03.

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
108 the 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
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.