



611090

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/WD/2R

.

04/28/2015 03:10 PM

.

.

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. ~~or~~

(b) A financial institution that has trust powers, ~~has a~~



611090

12 place of business in this state, and authorization is authorized
13 to conduct trust business in this state.

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

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

25 2. The not-for-profit corporation must have each principal
26 who signs a power of attorney on or after July 1, 2015 sign a
27 separate written instrument containing the following language in
28 14-point uppercase type:

29
30 I UNDERSTAND THAT THE AGENT IS A NOT-FOR-PROFIT
31 CORPORATION THAT IS NOT CHARGING A FEE FOR SERVICES TO
32 ME (BUT MAY BE REIMBURSED FOR ACTUAL EXPENSES) AND
33 THAT THE INDIVIDUALS THAT WILL PROVIDE ME SERVICES ARE
34 VOLUNTEERS WHO MAY NOT HAVE A STATE LICENSE OR
35 CERTIFICATION.

36
37 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT
38 CORPORATION MAY NOT BE SUFFICIENT TO COVER LIABILITY
39 ARISING FROM AN ERROR, AN OMISSION, OR ANY INTENTIONAL
40 MISCONDUCT COMMITTED BY A DIRECTOR, OFFICER, EMPLOYEE,



611090

41 VOLUNTEER OR AGENT OF THE CORPORATION.

42
43 3. The not-for-profit corporation must allow the clerk of
44 the circuit court for the circuit in which the corporation
45 maintains its primary place of business to, at any time, audit
46 the books and records of the corporation upon request.

47 4. No person shall act on behalf of the not-for-profit
48 corporation in its role as an agent who:

49 a. Has been convicted of a felony; who, from any incapacity
50 or illness, is incapable of discharging the duties of an agent;
51 or who is otherwise unsuitable to perform the duties of an
52 agent.

53 b. Has been arrested for and is awaiting final disposition
54 of, has been found guilty of, regardless of adjudication, or has
55 entered a plea of nolo contendere or guilty to, any offense
56 involving dishonesty or listed at s. 435.04(2), or similar law
57 of another jurisdiction.

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

59 d. Provides substantial services to the principal in a
60 professional or business capacity, or is a creditor of the
61 principal, and retains that previous professional or business
62 relationship.

63 e. Is in the employ of any person, agency, government, or
64 corporation that provides service to the principal in a
65 professional or business capacity unless such person so employed
66 is the spouse, adult child, parent, or sibling of the principal
67 or a court determines that the potential conflict of interest is
68 insubstantial and the ability of such person to act on behalf of
69 the not-for-profit corporation in its role as agent would



611090

70 clearly be in the principal's best interest.

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

86 6. The not-for-profit corporation shall require all
87 directors, officers, and employees of the not-for-profit
88 corporation, and any person that acts on behalf of the not-for-
89 profit corporation in its role as an agent, to submit, at their
90 own expense or at the expense of the corporation, but never at
91 the cost of any principal, to a criminal history background
92 check prior to acting as an agent. The corporation shall
93 maintain a file on each director, officer, and employee, and any
94 person that acts on behalf of the not-for-profit corporation in
95 its role as an agent, and retain in the file documentation of
96 the result of any criminal history background check conducted
97 under this subparagraph. The corporation must allow a principal
98 to review the criminal history background check as to any person



611090

99 acting on behalf of such principal. The clerk of court may audit
100 such criminal history background files.

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

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

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

115 (2) A power of attorney must be signed by the principal and
116 by two subscribing witnesses and be acknowledged by the
117 principal before a notary public or as otherwise provided in s.
118 695.03.

119 (3) If the principal is physically unable to sign the power
120 of attorney, the notary public before whom the principal's oath
121 or acknowledgment is made may sign the principal's name on the
122 power of attorney pursuant to s. 117.05(14).
123

124 ===== T I T L E A M E N D M E N T =====

125 And the title is amended as follows:

126 Between lines 2 and 3

127 insert:



611090

128 s. 709.2105, F.S.; revising the qualifications of an
129 agent in the execution of power of attorney to include
130 certain not-for-profit corporations; providing
131 criteria for such corporations; providing that a
132 person acting on behalf of the corporation in its role
133 as an agent under a power of attorney has a fiduciary
134 responsibility to the principal; amending
135