

1 A bill to be entitled
 2 An act relating to powers of attorney; amending s.
 3 709.2105, F.S.; providing that certain not-for-profit
 4 corporations may act as an agent on behalf of a
 5 principal under a power of attorney; providing
 6 qualifications; providing that a person acting on
 7 behalf of the corporation in its role as an agent
 8 under a power of attorney has a fiduciary
 9 responsibility to the principal; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (1) of section 709.2105, Florida
 15 Statutes, is amended to read:

16 709.2105 Qualifications of agent; execution of power of
 17 attorney.—

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

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

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

23 (c)1. A not-for-profit corporation that:

24 a. Is qualified to do business in this state; is organized
 25 for charitable or religious purposes in this state; has served
 26 as a court-appointed guardian before January 1, 1996; is tax-

27 exempt under s. 501(c)(3) of the Internal Revenue Code; does not
 28 charge a fee or cost to a principal for services, although it
 29 may require reimbursement for actual expenses; and serves only
 30 principals who reside in communities that provide housing for
 31 older persons as defined in s. 760.29(4) and former residents of
 32 such communities.

33 b. Requires each principal who signs a power of attorney
 34 on or after July 1, 2016, to sign a separate written instrument
 35 containing the following language in 14-point uppercase type:
 36

37 I UNDERSTAND THAT THE AGENT IS A NOT-FOR-PROFIT CORPORATION
 38 THAT IS NOT CHARGING A FEE FOR SERVICES TO ME (BUT MAY BE
 39 REIMBURSED FOR ACTUAL EXPENSES) AND THAT THE INDIVIDUALS
 40 WHO WILL PROVIDE ME SERVICES ARE VOLUNTEERS WHO MAY NOT
 41 HAVE A STATE LICENSE OR CERTIFICATION.
 42

43 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT
 44 CORPORATION MAY NOT BE SUFFICIENT TO COVER LIABILITY
 45 ARISING FROM AN ERROR, AN OMISSION, OR ANY INTENTIONAL
 46 MISCONDUCT COMMITTED BY A DIRECTOR, OFFICER, EMPLOYEE,
 47 VOLUNTEER OR AGENT OF THE CORPORATION.
 48

49 c. Allows the clerk of the circuit court for the circuit
 50 in which the corporation maintains its primary place of business
 51 to, at any time, audit the books and records of the corporation
 52 upon request.

53 d. Does not allow a person to act on behalf of the non-
54 profit corporation in its role as an agent who:

55 (I) Has been convicted of a felony or who, from any
56 incapacity or illness, is incapable of discharging the duties of
57 an agent, or who is otherwise unsuitable to perform the duties
58 of an agent.

59 (II) Has been arrested for and is awaiting final
60 disposition of, who has been found guilty of, regardless of
61 adjudication, or entered a plea of nolo contendere or guilty to,
62 any offense involving dishonesty or listed in s. 435.04(2), or
63 similar law of another jurisdiction.

64 (III) Has been adjudicated bankrupt in the previous 10
65 years.

66 (IV) Provides substantial services to the principal in a
67 professional or business capacity, or is a creditor of the
68 principal, and retains that previous professional or business
69 relationship.

70 (V) Is in the employ of any person, agency, government, or
71 corporation that provides service to the principal in a
72 professional or business capacity unless such person so employed
73 is the spouse, adult child, parent, or sibling of the principal
74 or a court determines that the potential conflict of interest is
75 insubstantial and the ability of such person to act on behalf of
76 the non-profit corporation in its role as agent would clearly be
77 in the principal's best interest.

78 e. Requires all directors, officers, and employees of the

79 not-for-profit corporation, and any person who acts on behalf of
80 the non-profit corporation in its role as an agent, to submit,
81 at their own expense or at the expense of the corporation, but
82 never at the cost of any principal, to a credit history
83 background check before acting as an agent. A credit history
84 background check shall be completed again at least once every 2
85 years after the initial check. The corporation shall maintain a
86 file on each director, officer, and employee, and any person who
87 acts on behalf of the non-profit corporation in its role as an
88 agent, and retain in the file documentation of the result of any
89 credit history background check conducted under this sub-
90 subparagraph. The corporation must allow a principal to review
91 the criminal history background check as to any person acting on
92 behalf of such principal. The clerk of court may audit such
93 credit history background files.

94 f. Keeps on file in the community in which the corporation
95 is acting an updated listing of each person who is authorized to
96 act on behalf of the corporation as an agent along with a copy
97 of the background check requirements. Any principal may request
98 a copy of the list of authorized persons.

99 2. Any person who acts on behalf of a non-profit
100 corporation pursuant to this paragraph in its role as an agent
101 under a power of attorney has a fiduciary responsibility to the
102 principal and must comply with all provisions of this chapter.

103 3. In addition to any other penalty provided by law, any
104 person acting on behalf of a not-for-profit corporation in its

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105 | role as an agent pursuant to this paragraph is subject to s.
106 | 825.103.

107 | Section 2. This act shall take effect July 1, 2016.