

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.

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

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 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. was organized for charitable or religious purposes in
 25 this state on or after January 1, 1980; is qualified to do
 26 business in this state; has been in continuous existence in this

27 state for at least 30 years; has never been administratively
 28 dissolved; is tax-exempt under s. 501(c)(3) of the Internal
 29 Revenue Code and designated as a public charity for purposes of
 30 determining deductibility; does not charge a fee or cost to a
 31 principal for services, although it may require reimbursement
 32 for actual expenses; and serves only principals who reside in
 33 communities that provide housing for older persons as defined in
 34 s. 760.29(4) and former residents of such communities.

35 b. Requires each principal who signs a power of attorney
 36 on or after July 1, 2016, to sign a separate written instrument
 37 containing the following language in 14-point uppercase type:
 38

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

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

50
 51 c. Allows the clerk of the circuit court for the circuit
 52 in which the corporation maintains its primary place of business

53 to, at any time, audit the books and records of the corporation
54 upon request.

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

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

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

66 (III) Has been adjudicated bankrupt in the previous 10
67 years.

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

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

79 | in the principal's best interest.

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

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

102 | 2. Any person who acts on behalf of a non-profit
103 | corporation pursuant to this paragraph in its role as an agent
104 | under a power of attorney has a fiduciary responsibility to the

105 principal and must comply with all provisions of this chapter.

106 3. In addition to any other penalty provided by law, any
107 person acting on behalf of a not-for-profit corporation in its
108 role as an agent pursuant to this paragraph is subject to s.
109 825.103

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

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