

**403.352 Power of attorney for temporary delegation of parental rights and responsibilities regarding care and custody of a child.**

- (1) A parent or legal guardian of a child, by a properly executed power of attorney, as established in this section and KRS 403.353, may temporarily delegate to another person, named in the instrument as the attorney-in-fact, for a period not to exceed one (1) year any of the traditional parental rights and responsibilities regarding care and custody of the child except the following authorities:
  - (a) Consent for the child to marry;
  - (b) Consent for an abortion or inducement of an abortion to be performed on or for the child; or
  - (c) The termination of parental rights to the child.
- (2) A temporary delegation of rights and responsibilities under this section shall not:
  - (a) Operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order; or
  - (b) Deprive the parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.
- (3) The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by this section at any time.
- (4) Upon the termination, withdrawal, expiration, or revocation of the power of attorney established by this section, the child shall be returned to the custody of the parent or legal guardian as soon as reasonably possible.
- (5) The attorney-in-fact named in the instrument as established by this section shall not be compensated for serving as the attorney-in-fact pursuant to this section.
- (6) Unless the power of attorney established by this section is terminated, revoked, or withdrawn, the attorney-in-fact named in the instrument shall exercise parental or legal authority on a continuous basis for the duration of the power of attorney established by this section.
- (7)
  - (a) An attorney-in-fact properly appointed pursuant to this section and in compliance with this section shall not be subject to any statutes dealing with the licensing or regulation of foster care homes or other child-care facility licensing statutes, and the appointment of an attorney-in-fact pursuant to this section and KRS 403.353 shall not constitute an out-of-home child placement.
  - (b) The child or children subject to the power of attorney established in this section shall not be considered placed in foster care, and the parties involved in the power of attorney established in this section shall not be subject to any requirements, monitoring, or other regulation for foster care or community care solely because of the execution of an instrument authorized pursuant to this section or KRS 403.353.
- (8) Except as otherwise provided pursuant to the Kentucky Revised Statutes, the execution of a power of attorney as established pursuant to this section by a parent or legal guardian shall not by itself constitute evidence of abandonment, abuse, or

neglect, unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after the one (1) year time limit has elapsed. Nothing in this subsection shall be interpreted to prevent an investigation of abuse, neglect, abandonment, other mistreatment of a child, or other crime.

- (9)
  - (a) A parent or legal guardian shall not execute a power of attorney pursuant to this section or KRS 403.353 with the intention of permanently avoiding or divesting himself or herself of parental or legal responsibility for the care of the child or for any other illegal or fraudulent purpose.
  - (b) An attorney-in-fact or prospective attorney-in-fact designated or potentially designated pursuant to this section or KRS 403.353 shall not demand or request that a parent or guardian enter into an instrument established pursuant to this section or KRS 403.353 as a result of any person's financial or other debt or obligation, or for any other illegal or fraudulent purpose.
  - (c) A power of attorney established pursuant to this section and KRS 403.353 shall not be used solely for the purpose of establishing residency for school attendance purposes unless the child actually resides with the attorney-in-fact in the school district where the enrollment is sought, or the child otherwise resides in the district.
  - (d) Violation of this section shall be punishable under Kentucky law.
- (10) If a parent or legal guardian of a child chooses to delegate powers pursuant to this section regarding the care and custody of the child to a person or persons other than a grandparent, aunt, uncle, or adult sibling of the child, a full criminal history and child abuse and neglect background check shall be conducted on the person or persons prior to the execution of the power of attorney authorized by this section. The results of the background check shall be kept with the instrument establishing the power of attorney pursuant to this section. A child shall not be placed with an individual whose background check indicates that he or she has a criminal history of child abuse and neglect.
- (11) Any period of time during which a child resides with an attorney-in-fact under an unexpired and valid power of attorney properly executed pursuant to this section and KRS 403.353, shall not be included in determining whether the child has resided with the attorney-in-fact for the minimum period required to be designated a de facto custodian pursuant to KRS 403.270(1).

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 94, sec. 34, effective June 29, 2021. -- Created 2016 Ky. Acts ch. 107, sec. 1, effective July 15, 2016.