

## **11 KAR 17:060. Amendment of a prepaid tuition contract.**

RELATES TO: KRS 164A.700, 164A.707, 26 U.S.C. 529

STATUTORY AUTHORITY: KRS 164A.704(1), (6), 164A.707(2)(e), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, EO 2003-652

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. KRS 164A.707(2) authorizes a purchaser to amend certain terms of a prepaid tuition contract, including provisions of the prepaid tuition contract as permitted by the board. 2003 Ky. Acts ch. 156, Part IX, Section 46, and EO 2003-652 transferred the governance and administration of the Prepaid Tuition Program from the Department of Treasury to the Kentucky Higher Education Assistance Authority. This administrative regulation establishes the requirements for amending a prepaid tuition contract.

Section 1. Amendments in General. Any purchaser desiring to make an amendment to a prepaid tuition contract as authorized in KRS 164A.707(2) shall submit a written request accompanied by the applicable administrative fee established in 11 KAR 17:100 to the office and comply with all other applicable procedures relating to the amendment. A requested amendment shall be subject to, and become effective upon, approval by the office.

Section 2. Change in Beneficiary. (1) In accordance with KRS 164A.707(2)(a), a purchaser may amend a prepaid tuition contract to change the qualified beneficiary at any time.

(2) In submitting a written request to change the qualified beneficiary, the purchaser shall include proof of Kentucky residency or a statement of intent for the new beneficiary as required under 11 KAR 17:040, Section 2, and sufficient documentation evidencing the relationship between the new and current beneficiary of the prepaid tuition contract.

(3) If amendment to a prepaid tuition contract changes the projected enrollment date of a qualified beneficiary, the purchaser shall pay the additional amount necessary to properly fund the amended prepaid tuition contract, as determined by the office. The office shall notify the purchaser of any additional amounts due and owing under the amended prepaid tuition contract.

Section 3. Change in Purchaser. A request for a change in purchaser shall comply with the requirements established in this section, 26 U.S.C. 529 and regulations thereunder.

(1) A purchaser may assign ownership of the prepaid tuition contract to a successor purchaser upon acceptance of the office. The assignment shall only be effective if the assignment:

(a) Is to a purchaser as defined in KRS 164A.700(13);

(b) Is irrevocable;

(c) Fully and completely assigns all ownership rights, title and interest including, without limitation, reversionary rights and powers of appointment (i.e., power to substitute beneficiaries) and the right to direct the distribution of benefits; and

(d) Is in writing with notarized signature of the purchaser and is accepted by the office.

(2) Upon the death, disability, or marital dissolution of a purchaser, an assignment of ownership, and all rights and obligations of a prepaid tuition contract, shall be made in accordance with this section.

(3) Sufficient documentation of the purchaser's death, disability, or dissolution of marriage shall be submitted to the office, and the successor-in-interest shall accept the status as successor-in-interest by notarized signature.

(4) A purchaser shall have the right to designate a successor-in-interest to retain all rights and interest in his prepaid tuition contract upon his death. Upon the death of a purchaser, all rights and obligations of the purchaser under a prepaid tuition contract shall be assigned to the named individual or entity as stated in the purchaser's written designation accepted by the office. Absent written designation accepted by the office, the purchaser's prepaid tuition contract shall be assigned to the purchaser's surviving spouse.

(5) Upon disability of a purchaser, all rights and obligations of the purchaser under a prepaid tuition contract shall be assigned to the named individual or entity as stated in the purchaser's written designation accepted by the office. Absent written designation, the purchaser's duly appointed attorney-in-fact or court ordered legal guardian or conservator, if applicable, shall become the purchaser's successor-in-interest. Sufficient documentation evidencing the purchaser's attorney-in-fact or legal appointment of guardian or conservator shall be submitted to the office.

(6) A purchaser's prepaid tuition contract may be assigned upon the marital dissolution of a purchaser and his spouse in accordance with a court order assigning the prepaid tuition contract in a form accepted by the office. Upon the dissolution of marriage of a purchaser, all rights and obligations of the purchaser under a prepaid tuition contract shall only be assigned pursuant to a court order assigning the prepaid tuition contract to the purchaser's ex-spouse.

(7) Any assignment of a prepaid tuition contract in accordance with this section shall be considered valid upon approval by the office and the assignee shall then become the purchaser of the prepaid tuition contract with all rights and obligations of the original purchaser. Upon the valid assignment of a prepaid tuition contract in accordance with this section, the prior purchaser shall retain no rights or interest in the prepaid tuition contract. (30 Ky.R. 760; 1195; eff. 12-1-2003; Crt eff. 9-28-2018.)