

**164A.350 Ownership of contributions and interest -- Cancellation of participation agreement -- Transfer of ownership rights -- Penalty on earnings refunded due to cancellation or nondistribution -- Exemption from creditor's execution.**

For all purposes of Kentucky law, the following shall be applicable:

- (1) The trust shall exercise ownership of all contributions made under any participation agreement and all interest derived from the investment of the contributions made by the participant up to the date of utilization for payment of higher education costs for the beneficiary. All contributions made under any participant agreement and interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;
- (2) Any participant may cancel a participation agreement at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee. In the event the participation agreement is terminated in part, the trust shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and not returned to the participant. The participant shall retain a reversionary right to receive upon termination the actual market value of the participant's account at the time of the cancellation, including interest, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;
- (3) Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth postsecondary education prepaid tuition trust fund established in KRS 164A.701, and in compliance with administrative regulations promulgated by the board for the savings plan trust;
- (4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;
- (5) The institution of higher education shall obtain ownership of the distributions made from the participant's account for the higher education costs paid to the institution at the time each payment is made to the institution;
- (6) Any amounts received by the trust pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section shall be owned by the trust;
- (7) A participant may transfer the participant's rights to another eligible participant, including, but not limited to, a gift of the participant's rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be effected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;
- (8) Notwithstanding any other law to the contrary, if any earnings on contributions

are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board may charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:

- (a) The death, permanent disability, or mental incapacity of the beneficiary; or
  - (b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and
- (9) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

**Effective:** July 13, 2004

**History:** Amended 2004 Ky. Acts ch. 111, sec. 9, effective July 13, 2004. -- Amended 2003 Ky. Acts ch. 180, sec. 5, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 163, sec. 10, effective July 14, 2000; and ch. 382, sec. 7, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 6, effective March 26, 1998. -- Amended 1992 Ky. Acts ch. 190, sec. 10, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 11, effective July 15, 1988.