

INFORMATION FOR GRANDPARENTS SEEKING TO GAIN CARE, PHYSICAL CUSTODY AND CONTROL OVER THEIR GRANDCHILDREN WITHOUT CHANGING LEGAL CUSTODY

Ohio law changed on July 20, 2004, to provide grandparents two processes to gain “care, physical custody, and control” over their grandchildren without obtaining legal custody of the children. If you desire full legal custody over your grandchildren, you should instead file a complaint for custody as Ohio law currently provides. It is important and advisable that you first consult with an attorney to insure that you choose the procedure that best meets your needs and the needs of your grandchildren.

To obtain care, physical custody and control, the new law allows you to execute a (1) power of attorney with the consent of the parents, or (2) a caretaker authorization affidavit if parents cannot be located or are unable to care for the children. Please note that the new law and existing law require this Court to report child abuse, neglect and dependency to Holmes County Children Services. Your filing may prompt such a report.

NOTE THAT THE NEW LAW SPECIFICALLY STATES THAT IT MAY NOT BE USED FOR THE SOLE PURPOSE OF ENROLLING THE CHILD IN A SCHOOL OR A SCHOOL DISTRICT TO ALLOW THE CHILD TO PARTICIPATE IN THE ACADEMIC OR INTERSCHOLASTIC ATHLETIC PROGRAMS PROVIDED BY THAT SCHOOL OR DISTRICT. VIOLATION OF THIS PROVISION SUBJECTS YOU TO PROSECUTION FOR FALSIFICATION, A FIRST DEGREE MISDEMEANOR. FURTHERMORE, DOCUMENTS SO PREPARED ARE VOID FROM THE DATE OF THEIR CREATION UNDER THE NEW LAW.

CLERKS OF THIS COURT ARE PROHIBITED FROM PROVIDING YOU WITH LEGAL ADVICE OR ASSISTING YOU IN THE PREPARATION OF LEGAL DOCUMENTS.

At the time you file your power of attorney or caretaker authorization affidavit, you will need to provide to the Court your full name, address and telephone number, and the school district where the child will attend school. You also need to provide to the Court a certified mail receipt to prove that you mailed a copy of the executed document to any parent who did not sign the document or a written statement demonstrating why such notice is not required.

Grandparent Power of Attorney (POA) Checklist

Check off all statements that are true. If any statement is not true, do not check the statement. The POA cannot be filed unless **ALL** statements are checked as being true.

- The POA form is identical in content to the form prescribed by the Revised Code of Ohio.
- The form is legible (all information is readable).
- The POA is signed by at least one of the child's parents.
- The POA contains the address of each signing parent.
- The POA contains the name, address, and county of residence of the grandparent(s) names as having the POA.
- The grandparent's residence is in the state of Ohio.
- The POA contains the name of the child and the child's date of birth.
- The child is under the age of 18.
- The POA is accompanied by a completed "Affidavit in Compliance with §3109.27 of the Ohio Revised Code."
- There are no pending proceedings regarding the child for: the appointment of a guardian or for an adoption; temporary, permanent, or legal custody, or for placement in a planned permanent living arrangement; an ex parte emergency order; divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities.
- The POA is correctly notarized (signed and dated by an Ohio notary public, sealed and stamped).
- The POA was signed and notarized within the past five days.
- There is no other non-expired POA or Caretaker Authorization Affidavit (CAA) existing with this Court or any other Court regarding the child.

Page 2 – POA Checklist

The following statement must be true if only one parent has signed the POA and the address of the non-custodial parent is known.

- The POA is accompanied by a receipt showing that notice of the creation of the POA was sent by certified mail to the non-custodial parent.

If you are proceeding on the basis that the address of the non-custodial parent is unknown to you, please state specifically what efforts you have made to locate that address.

DATE: _____ SIGNATURE: _____

NOTICE OF CREATION OF POWER OF ATTORNEY

IN THE MATTER OF:

CASE NO: _____

(child's name)

(child's date of birth)

Please take notice that a Grandparent Power of Attorney (POA) was created on _____
and filed in the Holmes County Juvenile Court, 1 East Jackson Street, Suite 201, Millersburg, OH
44654.

Person designated as attorney in fact of the minor child:

(grandparent's name)

(address)

(address)

(city, state, zip)

This notice was sent by certified mail within five (5) days after the POA was created, to the non-custodial parent:

_____ who resides at _____
(non-custodial parent's name)

(non-custodial parent's address)

(signature of parent, guardian, or custodian
who created Power of Attorney)

**HOLMES COUNTY JUVENILE COURT
PARTY INFORMATION FORM REQUIRED FOR FILING POWER OF
ATTORNEY/CARETAKER AUTHORIZATION AFFIDAVIT**

Name of Child: _____

Case No. _____

1. Child

Name: _____

Date of Birth: _____

Sex: Male or Female

Social Security #: _____

2. Biological Father

Name: _____

Alias Name: _____

DOB: _____

Social Security #: _____

Complete Address: _____

Phone No. _____

3. Biological Mother

Name: _____

Alias/Maiden Name: _____

DOB: _____

Social Security #: _____

Complete Address: _____

Phone No. _____

4. Grandparent(s)

Name(s): _____

DOB (each): _____

Social Security #(s): _____

Complete Address: _____

Phone No.(s): _____

5. Current Address of Child: _____

Page 2 – Party Information

6. School District: _____

7. Name of person(s) currently providing care and supervision: _____

8. Was a Child Custody Affidavit filed? (see following document) ___Yes ___No

9. Has either parent of the child been ordered to pay child support? ___Yes ___No

10. Does any other person(s), excluding the biological parents, have any Court-Ordered custody or visitation rights concerning this child? _____Yes _____No

If so, please list:

Name: _____

Complete Address: _____

Social Security No. _____ Phone No. _____

Relationship to the Child: _____

11. Are any Social Service Agencies currently involved with this child or these children?
_____Yes _____No

If so, list Agency:

Name _____ Caseworker _____

I CERTIFY THAT I HAVE COMPLIED WITH OHIO LAW IN EXECUTING AND FILING THESE DOCUMENTS. I UNDERSTAND THAT FILING FALSE INFORMATION SUBJECTS ME TO CRIMINAL PROSECUTION FOR FALSIFICATION.

DATE: _____

SIGNATURE: _____

**HOLMES COUNTY JUVENILE COURT
AFFIDAVIT IN COMPLIANCE WITH
OHIO REVISED CODE SECTION 3109.27**

Name of Child: _____

Case No. _____

Upon being duly sworn, the undersigned states the following:

1. The child(ren) currently reside with _____, at the address of _____, Phone: (____) _____.

2. The child(ren) have lived with the following person(s) at the respective addresses during the past five (5) years:

Name of Person(s) Lived With Complete Address & Zip Code Dates(from-to)

3. List the current address of each person listed above in item (2) if they no longer live at the address provided above.

4. The undersigned has has not have have not participated as a party, witness or in any other capacity in any other litigation concerning custody of this child or children either in this state or any other state. If you have participated, please explain:

5. The undersigned has has no have have no information or knowledge of custody proceedings concerning this child or these children, either in this or any other state. If the undersigned has information or knowledge, please explain:

6. The undersigned knows know does not know do not know of any other person or persons having physical custody or claims to have custody or visitation rights of this child or these children, who is not included as a party in this proceeding. If so, please list the name, complete address and relationship to the child or children:

7. The child or children was was not were were not the subject of any divorce proceedings involving the biological parents in this or any other state. If affirmative, describe (1) where; (2) when; (3) the ruling concerning custody and visitation.

8. The biological parents are: Currently Married Divorced Separated but Legally Married Never Married
9. A social service agency such as Children Services or the Department of Jobs & Family Services is is not currently involved with the welfare of this child or these children. If an agency is involved, explain the involvement:

POWER OF ATTORNEY

I, the undersigned, residing at _____, in the County of _____, State of _____, hereby appoint the child's grandparent, _____, residing at _____, in the County of _____, in the State of Ohio, with whom the child of whom I am the parent, guardian, or custodian is residing, my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, physical custody, and control of the child, _____, born _____, having social security number (optional) _____, except my authority to consent to marriage or adoption of the child _____, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. The rights I am transferring under this power of attorney include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child.

I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because on of the following circumstances exists:

1. I am:
 - a. Seriously ill, incarcerated or about to be incarcerated;
 - b. Temporarily unable to provide financial support or parental guidance to the child;
 - c. Temporarily unable to provide adequate care and supervision of the child because of my physical or mental condition;
 - d. Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or
 - e. In or about to enter a residential treatment program for substance abuse.

2. I am a parent of the child, the child's other parent is deceased, and I have authority to execute the power of attorney; or
3. I have a well-founded belief that the power of attorney is in the child's best interest.

I hereby certify that I am not transferring my rights and responsibilities regarding the child for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.

I understand that this document does not authorize a child support enforcement agency to redirect child support payments to the grandparent designated as attorney in fact. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

If there is a court order naming me the residential parent and legal custodian of the child who is subject of this power of attorney and I am the sole parent signing this document, I hereby certify that one of the following is the case:

1. I have made reasonable efforts to locate and provide notice of the creation of this power of attorney to the other parent and have been unable to locate the parent;
2. The other parent is prohibited from receiving a notice of relocation; or
3. The parental rights of the other parent have been terminated by order of a juvenile court.

This POWER OF ATTORNEY is **valid** until the occurrence of whichever of the following events occurs first:

1. I revoke this POWER OF ATTORNEY in writing and give notice of the revocation to the grandparent designated as attorney in fact and the juvenile court with which this Power of Attorney was filed;
2. The child ceases to reside with the grandparent designated as attorney in fact;
3. This POWER OF ATTORNEY is terminated by court order;
4. The death of the child who is the subject of the power of attorney; or
5. The death of the grandparent designated as the attorney in fact.

WARNING: DO NOT EXECUTE THIS POWER OF ATTORNEY IF ANY STATEMENT MADE IN THIS INSTRUMENT IS UNTRUE. FALSIFICATION IS A CRIME UNDER SECTION 2921.13 OF THE OHIO REVISED CODE, PUNISABLE BY THE SANCTIONS UNDER CHAPTER 2929. OF THE REVISED CODE, INCLUDING A TERM OF IMPRISONMENT OF UP TO 6 MONTHS, A FINE OF UP TO \$1,000, OR BOTH.

Witness my hand this _____ day of _____, 20_____.

Parent/Custodian/Guardian’s signature

Parent’s signature

State of Ohio)
) ss:
County of Holmes)

Subscribed, sworn to, and acknowledged before me this _____ day of _____, 20_____.

Notary Public

Witness my hand this _____ day of _____, 20_____.

Grandparent designated as attorney in fact

State of Ohio)
) ss:
County of Holmes)

Subscribed, sworn to, and acknowledged before me this _____ day of _____, 20_____.

Notary Public

NOTICES

1. A power of attorney may be executed only if one of the following circumstances exists:
 1. The parent, guardian, or custodian of the child is:
 - a) Seriously ill, incarcerated, or about to be incarcerated;
 - b) Temporarily unable to provide financial support or parental guidance to the child;
 - c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition;
 - d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or
 - e) In or about to enter a residential treatment program for substance abuse;
 2. One of the child's parents is deceased and the other parent, with authority to do so, seeks to execute a power of attorney; or
 3. The parent, guardian, or custodian has a well-founded belief that the power of attorney is in the child's best interest.
2. The signatures of the parent, guardian, or custodian of the child and the grandparent designated as the attorney in fact must be notarized by an Ohio notary public.
3. A parent, guardian, or custodian who creates a power of attorney must notify the parent of the child who is not the residential parent and legal custodian of the child unless one of the following circumstances applies:
 - a) The parent is prohibited from receiving a notice of relocation in accordance with section 3109.051 of the Revised Code of the creation of the power of attorney;
 - b) The parent's parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code;
 - c) The parent cannot be located with reasonable efforts;
 - d) Both parents are executing the power of attorney. The notice must be sent by certified mail not later than 5 days after the power of attorney is created and must state the name and address of the person designated as the attorney in fact.

4. A parent, guardian, or custodian who creates a power of attorney must file it with the juvenile court of the county in which the attorney in fact resides, or any other court that has jurisdiction over the child under a previously filed motion or proceeding. The power of attorney must be filed not later than 5 days after the date it is created and be accompanied by a receipt showing that the notice of creation of the power of attorney was sent to the parent who is not the residential parent and legal custodian by certified mail.
5. This power of attorney does not affect the rights of the child's parents, guardian, or custodian regarding any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child.
6. A person or entity that relies on this power of attorney, in good faith, has no obligation to make any further inquiry or investigation.
7. This power of attorney terminates on the occurrence of whichever of the following occurs first:
 1. The power of attorney is revoked in writing by the person who created it and that person gives written notice of the revocation to the grandparent who is the attorney in fact and the juvenile court with which the power of attorney was filed;
 2. The child ceases to live with the grandparent who is the attorney in fact;
 3. The power of attorney is terminated by court order;
 4. The death of the child who is the subject of the power of attorney; or
 5. The death of the grandparent designated as the attorney in fact.

If this power of attorney terminates other than by the death of the attorney in fact, the grandparent who served as the attorney in fact shall notify, in writing, all of the following:

- a) Any schools, health care providers, or health insurance coverage provider with which the child has been involved through the grandparent;

- b) Any other person or entity that has an ongoing relationship with the child or grandparent such that the other person or entity would reasonably rely on the power of attorney unless notified of the termination;
 - c) The court in which the power of attorney was filed after its creation; and
 - d) The parent who is not the residential parent and legal custodian of the child who is required to be given notice of its creation. The grandparent shall make the notifications not later than one week after the date the power of attorney terminates.
8. If this power of attorney is terminated by written revocation of the person who created it, or the revocation is regarding a second or subsequent power of attorney a copy of the revocation must be filed with the court with which that power of attorney was filed.

Additional Information

To the grandparent as attorney in fact:

1. If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this power of attorney. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the power of attorney unless notified. The notification must be made not later than one week after the child stops living with you.
2. You must include with the power of attorney the following information:
 - a) The child's present address, the addresses of the places where the child has lived within the last 5 years, and the name and present address of each person with whom the child has lived during that period;

- b) Whether you have participated as a party, a witness, or in any other capacity in any other litigation, in this state or any other state, that concerned the allocation, between the parents of the same child, or parental rights and responsibilities for the care of the child and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of the same child;
 - c) Whether you have information of any parenting proceeding concerning the child pending in a court of this or any other state;
 - d) Whether you know of any person who has physical custody of the child or claims to be a parent of the child who is designated the residential parent and legal custodian of the child or to have parenting time rights with respect to the child or to be a person other than a parent of the child who has custody or visitation rights with respect to the child;
 - e) Whether you previously have been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously have been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication.
3. If you receive written notice of revocation of the power of attorney or the parent, custodian, or guardian removes the child from your home and if you believe that the revocation or removal is not in the best interest of the child, you may, within fourteen days, file a complaint in the juvenile court to seek custody. You may retain physical custody of the child until the fourteen day period elapses or, if you file a complaint, until the court orders otherwise.

To School Officials:

1. Except as provided in section 3313.649 of the Revised Code, this power of attorney, properly completed and notarized, authorizes the child in question to attend school in

the district in which the grandparent designated as attorney in fact resides and that grandparent is authorized to provide consent in all school-related matters and to obtain from the school district educational and behavioral information about the child. This power of attorney does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.

2. The school district may require additional reasonable evidence that the grandparent lives in the school district.
3. A school district or school official that reasonably and in good faith relies on this power of attorney has no obligation to make any further inquiry or investigation.

To health care providers:

1. A person or entity that acts in good faith reliance on a power of attorney to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the power of attorney, is not subject to criminal liability or to civil liability to any person or entity, and is not subject to professional disciplinary action, solely for such reliance if the power of attorney is completed and the signatures of the parent, guardian, or custodian of the child and the grandparent designated as attorney in fact are notarized.
2. The decision of a grandparent as attorney in fact, based on a power of attorney, shall be honored by a health care facility or practitioner, school district, or school official.