

INTERDICTION CHECKLIST

**Prepared by the Elder Law Task Force
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The Louisiana Elder Law Task Force developed the Interdiction Checklist after review of the available resources in Louisiana, for use by attorneys, judges and the public. The Interdiction Checklist is intended to provide general guidance only. The information contained may be outdated. This information does not constitute, nor should it be treated, as legal advice. While reasonable efforts have been made to assure the accuracy of this information, neither the Elder Law Task Force nor its members, including individuals, organizations, agencies and financial sponsors, warrant any part thereof, and none will be responsible for any reliance upon this information or forms. There are no warranties, express or implied. All persons utilizing this information and/or forms must verify state of the law and update all information to ensure accuracy.

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PRE-INTERDICTION

A court may order the full or limited interdiction of a person of the age of majority (or an emancipated minor), who due to an infirmity, is unable consistently to make or communicate reasoned decisions regarding the care of his person and property, and whose interests cannot be protected by less restrictive means. see [CC](#).

[Art. 389 and 390](#)

Have *less restrictive alternatives* to interdiction been considered?

- ___ Power of Attorney (*Mandate*)
- ___ Medical Consent laws **R.S. 40:1159.1 to R.S. 40:1159.9.**
- ___ Representative payeeship over Social Security or SSI benefits.
- ___ Home health care services.
- ___ Case management (*such as a geriatric care manager or other professional case management agency*).
- ___ Community mental health center programs or partial hospitalization programs.
- ___ Alzheimer's Association services.
- ___ Adult day care or other adult day programs.
- ___ Councils on Aging programs (*transportation, companion services, homemakers, Meals on Wheels*).
- ___ Supplemental needs trust, asset management trust or an *inter vivos* trust.
- ___ Consumer credit counseling. ___ Reverse mortgage.
- ___ Church programs and services (*i.e., Lutheran Social Services, Catholic Social Services*).
- ___ Gate-Keeper services (through the U.S. Postal Service, utility workers).
- ___ Pharmacy and grocery delivery services.
- ___ Assistive technology devices.
- ___ Lifeline necklace/telephone.

____ Service animals.

____ Prepaid credit cards (*True Link Financial VISA* or *Green Dot MasterCard*) that can be monitored on-line.

INTERDICTION PROCEEDINGS

Any person can file a PETITION FOR INTERDICTION, and it must include:

see CCP Art. 4541 and

4542

- ____ 1. The petitioner's name, domicile, age, current address and relationship to defendant.
- no ____ 2. The defendant's name, domicile, age, current address and where defendant is domiciled or resides, or if domicile, then where he is physically present.
- _____ 3. Where petitioner proposes defendant will reside.
- ____ 4. Reasons why interdiction is necessary.
- ____ 5. Defendant's infirmities.

- ____ 6. If **FULL** interdiction is requested, reasons why limited interdiction is inappropriate.
- ____ 7. If **LIMITED** interdiction is requested:
- ____ A. The capacity sought to be removed from the limited interdict; and
- ____ B. The powers sought to be conferred upon the limited curator.
- ____ 8. Name and address of spouse, if any.
- ____ 9. Name and address of adult children; or if none, name and address of parents and siblings; or if none, _____ nearest adult relative; and if none, explain.
- ____ 10. Name and address of legal representative (*i.e.*, defendant's attorney, power of attorney/mandatary, agent, representative payee or trustee).
- ____ 11. Name and address of any person, designated in a signed writing by the defendant to act as curator, if known to the petitioner.
- ____ 12. Name and address of any previous curator.
- ____ 13. Name, domicile, age and address of proposed curator and reasons why proposed curator should be appointed, including education, training, and other qualifications to act as curator.
- ____ 14. A **VERIFICATION** that all of the allegations of the petition are true and correct, to the best of the petitioner's knowledge, information and belief, signed by petitioner before a notary, must be attached to the petition.

Caveat: *If petitioner knows or should have known that any material factual allegations concerning grounds for interdiction were false, then petitioner can be liable for damages.* see **C.C. Art.**

399

SERVICE of the PETITION FOR INTERDICTION:

- ____ The petition for interdiction must be personally served on the defendant. see **CCP Art.**

4543

Caveats: *Domiciliary service on the defendant is **not** sufficient.
Long arm service on defendant is **not** sufficient.*

*If the defendant is out of state, then personal delivery of a certified copy of petition, citation, and all attachments, to the defendant by anyone over the age of 18 **is** sufficient service.*

*An appointed attorney is **not** empowered to accept service on behalf of a defendant.*

NOTICE TO ALL INTERESTED PARTIES:

_____ Within 3 days of the filing of the petition for interdiction, each person whose name appears in the petition must be sent a copy of the petition by certified mail.
see **CCP Art. 4543**

EXPERT EXAMINATION:

see **CCP Art. 4545**

_____ The court may appoint any person, including a health care professional, with training or experience in the type of infirmities alleged, to visit and examine the defendant.

_____ The examiner must send a written report to the court, counsel, and any unrepresented parties, not less than 7 days prior to the hearing.

TEMPORARY or PRELIMINARY INTERDICTION

can be requested **as part of** a Petition for Interdiction: see **CC Art. 391 and CCP Art. 4549**

_____ When there is a substantial likelihood that grounds for interdiction exist and substantial harm to the health,

safety, or property of the defendant is imminent.

____ May be ordered *ex parte*, without notice, and without an adversarial hearing, but a preliminary interdiction hearing *must be held within 10 days* after the signing of the *ex parte* judgment of temporary interdiction.

____ Pleading for *ex parte* temporary interdiction must be accompanied by:

____1. An affidavit by a physician or psychologist attesting to facts supporting the claim that all grounds for temporary interdiction exist.

see **CCP Art. 4549(A)(2)(a)**

____2. A verified petition or affidavit attesting to facts supporting the claim that immediate and irreparable injury, loss or damage will result to the person or property of the defendant before defendant or his attorney can be heard.

Art. 4549(A)(2)(b)

see **CCP**

____3. An affidavit by petitioner or his attorney about efforts to give notice to the defendant or the reasons why notice should not be required.

4549(A)(2)(c)

see **CCP Art.**

JUDGMENT OF TEMPORARY INTERDICTION must include:

____ 1. The date of termination of the temporary interdiction.

____A. The judgment of temporary interdiction terminates 10 days after signing, *unless*:

____1. The defendant asks for an extension, or

____2. The court extends it for another 10 days after finding extraordinary reasons at a contradictory hearing.

Art. 4549(A)(1)

see **CCP**

____ 2. The appointment of an attorney to represent the defendant.

____ 3. Reasons why judgment was granted without notice and adversarial hearing.

____ 4. A hearing date for preliminary interdiction scheduled within 10 days.

____ A. NOTICE of the preliminary interdiction hearing date shall be personally served on the defendant and his attorney no less than 72 hours prior to the hearing and reasonable notice to all persons whose names appear in the petition.

see CCP Art. 4549(B)(2)

Caveat: *A temporary curator cannot place the defendant in long term care facility without good cause shown at a contradictory hearing.*

see CCP Art.4566(I)

PRELIMINARY INTERDICTION:

____ Cannot be granted prior to an adversarial hearing.
CCP Art. 4549(B)(1)

see

____ Adversarial hearing shall be held within 20 days of signing the order scheduling the hearing.

____ Orders, pleadings, and supporting documents shall be personally served on the defendant and his attorney no less than 72 hours prior to the hearing and reasonable notice given to all persons whose names appear in the petition.
see CCP Art. 4549(B)

JUDGMENT OF PRELIMINARY INTERDICTION:

____ Terminates 30 days after being signed unless extended for good cause for another 30 days. see CC Art.

397

_____ The date of termination must be written on the judgment.
see **CCP 4551(C)**

APPOINTMENT OF ATTORNEY:

_____ The court shall appoint an attorney to represent the defendant unless the defendant hires his own attorney.

_____ Petitioner has responsibility to have an attorney appointed for the defendant. **see CCP Art. 4544**

_____ Attorney for defendant *must personally visit* and, to the extent possible, discuss the case with the defendant, unless excused by the court.

Caveat: *Failure to comply may lead to sanctions.*
CCP Art. 4544(B)

see

HEARINGS:

_____ Shall be heard summarily and by preference.

see CCP

Art.4547 _____ Defendant must be present at the hearing unless court determines good cause exists to conduct hearing in _____ the defendant's absence.

_____ Judge may hold a hearing where defendant is located and judge may close the hearing for good cause.

_____ Defendant has the right to present evidence, cross examine witnesses, and otherwise participate.

_____ Court may call its own witnesses and may require presence of the proposed curator.

_____ Standard of proof is clear and convincing evidence.

_____ Usual rules of evidence apply, including health care provider privilege.

see CE Art.

510(B)(2)(g)(i)

JUDGMENT OF PERMANENT INTERDICTION shall:
CCP 4561

see CCP Art. 4551 and

_____ Appoint a curator.

_____ Curator to be chosen by the court is the person best able to fulfill the duties of the office.

_____ Order to be chosen:

1. person designated by the defendant in a signed writing.
2. the spouse, adult child, parent, or person with whom the defendant resided for more than 6 months prior to filing of the petition.
3. any other person.

_____ Curator *cannot* be a minor, interdict, or nonresident of the state without a resident agent for service of process.

_____ Curatorship should *not* go to the following except for good cause:

1. a felon.
2. a person indebted to the interdict.

3. an adverse party in a pending lawsuit.
4. the owner, operator, or employee of a long term care institution where interdict gets care, unless they are related. [see CCP Art.4561](#)

_____ Separate curators for the person and for the affairs are permitted.

_____ Appoint an undercurator, unless Louisiana Guardianship Services is appointed curator. [see La.R.S.9:1031\(F\)](#)

_____ Enumerate powers and authority granted to the limited curator in a limited interdiction and state that the limited interdict retains capacity except as expressly limited in the judgment. [see CCP Art.4551\(B\)](#)

_____ Powers of curator commence only upon qualification of curator. To qualify, curator must post a bond and file a notarized oath of office. [see CCP Art. 4562\(A\)](#)

_____ Court may issue protective orders to protect the interdict prior to qualification of the curator. [see CCP Art. 4562\(C\)](#)

_____ Costs and attorney fees may be awarded against any party, except that no attorney fees shall be awarded to a petitioner when judgment is granted against the petitioner or the petition is dismissed. [see CCP Art. 4550](#)

_____ *Therefore, can ask the court to order costs of interdiction be paid from the defendant's estate.*

_____ The judgment should order the Clerk of Court to record the judgment of interdiction in the mortgage and conveyance records of the parish where judgment was rendered. [see CCP Art. 4551 and 4552](#)

_____ The judgment is to be recorded if it grants, modifies, or terminates an interdiction.

_____ *It is advisable to file the judgment of interdiction in the mortgage and conveyance*

records in all parishes where the interdict owns immovable property.

_____ Include the name, domicile, age, and current address of the defendant.

see **CCP Art. 4551(5)**

Caveat: *Court cannot admit or commit the interdict to a mental health facility except under mental health law at La. R.S. 28:50 - 28:64.*

see **CCP Art. 4566(H)**

UNDERCURATOR'S DUTIES:

see **CCP Art. 4565**

_____ File a notarized oath to faithfully discharge duties of office (no bond required).

_____ Notify the court if the curator fails to qualify within 10 days.

_____ Review all reports filed by the curator. The undercurator is to have access to the interdict and all records related to the interdict.

_____ Notify court when curator fails to perform duties, including filing an annual accounting and maintaining bond.

_____ Move to appoint successor curator if or when needed.

see **CCP Art. 4565(B)**

_____ Approve or disapprove transactions that require undercurator's concurrence, such as sale of major asset, etc.

see **CCP Art. 4565(B)(5) and CC Art. 4202 & 4271**

_____ The undercurator has a duty to exercise reasonable care, diligence, and prudence and in best interest of the interdict.

see **CC Art. 393**

Caveat: *The curator must notify the undercurator reasonably in advance of material changes in the interdict's living arrangement and any transactions materially affecting the interdict's person or*

affairs.

PROTECTIVE ORDERS:

see CCP

Art. 4562(C)

_____ The court may issue protective orders to protect the interdict in the interim before appointment of curator.

QUALIFICATION OF CURATOR:

see CCP Art. 4562

_____ The curator must furnish security.

see CCP

Art.4131- 4133 and 4136

_____ The curator must file a notarized oath.

_____ The court may revoke the appointment if the curator fails to qualify within 10 days of appointment, and may appoint someone else or extend the time for qualifying. The period for qualifying may be

extended by the court for good cause.

LETTERS OF CURATORSHIP:

see CCP Art. 4564

_____ Clerk of court issues letters after security and oath are filed. *Some clerks require that the judgment specifically address bond and order them to issue letters after the oath is filed and the bond is provided.*

_____ Letters must be dated and set forth any expiration date and enumerate the powers of a limited curator.

INVENTORY OR DETAILED DESCRIPTIVE LIST:

see CCP Art.

4101, 4102, and 4563

where _____ The court shall order an inventory and appraisal, to begin within 10 days, by a notary in the parish property is located.

_____ A detailed descriptive list, sworn to and subscribed, setting forth the fair market value of the interdict's property is permitted in lieu of an inventory, unless otherwise ordered by the court.

POST - INTERDICTION

MANAGEMENT OF INTERDICT'S AFFAIRS:

see CCP Art. 4566

392 _____ The curator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict. see CC Art.

_____ Relationship between curator and interdict is the same as between a minor and tutor, except as otherwise provided.

_____ Curator who owns interest in property with the interdict may acquire the property in certain circumstances.

_____ Curator may accept donations made to the interdict.

_____ Curator may place interdict's property in trust.

_____ Curator must notify undercurator reasonably in advance of material changes in interdict's living arrangement and transactions materially affecting the interdict's person or affairs.

_____ Curator shall not move the dwelling of interdict out of state without prior court authorization.

_____ Curator cannot consent to abortion or sterilization without prior court approval.

_____ Neither the curator nor the court shall admit or commit an interdict to a mental health treatment facility except by following the mental health law at La. R. S. 28:50 - 28:64

_____ Curator shall allow communication and visitation between an interdict over the age of 18 and a relative or other individual with a relationship of strong affection with the interdict if it serves the interdict's best interest.

Caveat: *A temporary curator has no authority to admit the interdict to a residential or long-term care facility without good cause shown at a contradictory hearing.*

see CCP

Art. 4566(I)

POST - JUDGMENT REPORTING:

see CCP Art. 4569

_____ Curator for interdict's financial affairs must file a report with the court and with the undercurator annually.

_____ Curator for person shall file a report with the court and the undercurator annually, and report on the location and condition of the interdict.

_____ These reports shall also be filed upon the termination of the curator, and at any other time ordered by the court.

_____ The court may appoint an examiner at any time to review or investigate, and may appoint an attorney at any time to represent the interdict.

LIABILITY OF CURATOR:

see La. R.S.

9:2800.21

shall _____ A curator or an undercurator who performs the duties and obligations of his office without compensation not be personally liable for any injury, death, damage, civil penalty, or other loss caused by the interdict in his charge unless the injury, death, damage, civil penalty, or other loss was caused by the gross negligence or

willful and wanton misconduct of the curator or undercurator in executing the duties and obligations of his office; however, this section shall not apply if there is applicable insurance to cover such loss, but any recovery shall be limited to the amount of such insurance.

REMOVAL OF CURATOR:

see **CCP Art. 4568**

____ Anyone can petition for removal of curator for good cause

see **CCP Art. 4561 and**

La.R.S. 9:1025

____ Good cause may include but not be limited to a violation of La. C.C.P. Art. 4566(J).

____ Unless otherwise ordered, the removal is effective upon the qualification of the successor curator.

REMOVAL OF UNDERCURATOR:

see **CCP Art. 4568**

____ Anyone can petition for removal of undercurator for good cause

____ Unless otherwise ordered, the removal is effective upon the qualification of the successor undercurator.

EFFECTS OF INTERDICTION:

____ Interdiction does not affect the validity of a juridical act made by the interdict prior to the effective date of the interdiction.

see **CC Art. 394**

____ A **FULL** interdict lacks the capacity to make a juridical act, *except as otherwise provided by law.*

see **CC Art. 395 and 1482**

_____ A **LIMITED** interdict retains the capacity to make a juridical act, *except as otherwise provided by law or the judgment of interdiction.*

see **CC Art. 395**

_____ A **LIMITED** interdict, with respect to property under the authority of a curator, lacks capacity to make or revoke a donation *inter vivos* and is presumed to lack capacity to make or revoke a disposition *mortis causa*. With respect to his other property, the **LIMITED** interdict is presumed to have capacity to make or revoke a donation *inter vivos* or disposition *mortis causa*. These presumptions may be rebutted by a preponderance of evidence.

see **CC Art. 1482(C)**

_____ A judgment of interdiction does not affect the capacity of the interdict to make or revoke a disposition *mortis causa*, except as otherwise provided by law. see

CC Art. 395 and CC Art. 1482

MODIFICATION OR TERMINATION OF INTERDICTION: **Art. 398**

see **CCP Art. 4554 and CC**

_____ Grounds: the terms of the judgment are currently either excessive or insufficient or the ability of the interdict to care for his own person or property has so changed as to warrant modification or termination.

_____ Standard of proof is a preponderance of the evidence.

_____ An order modifying or terminating a judgment of interdiction is effective on date signed by the court.

EFFECTIVE DATE OF INTERDICTION:

see **CC Art. 396**

_____ The interdiction is retroactive to date on which it is filed.

EFFECT OF INTERDICTION ON ACTS PRIOR TO INTERDICTION:

see **CC Art. 394**

_____ Interdiction does not affect the validity of a juridical act made by the interdict prior to the effective date of interdiction.

_____ Juridical act by interdict is a relative nullity.

see **CC Art 1919 - 1921**

_____ Marriage by interdict without consent may not be valid.

see **CC Art. 93 and CC Art. 2031**

_____ Interdict has capacity to seek modification or termination of interdiction.

see **CCP**

Art. 4554

APPEALS:

see **CCP Art. 4555**

A judgment of interdiction, the appointment or removal of a curator or undercurator, or the modification or termination of an interdiction can be appealed:

_____ Within 30 days from applicable date in CCP 2087.

_____ Appeal does not suspend the judgment or order during the pendency of the appeal.

_____ Acts of the curator and undercurator are not invalidated by the annulment of appointment on appeal.