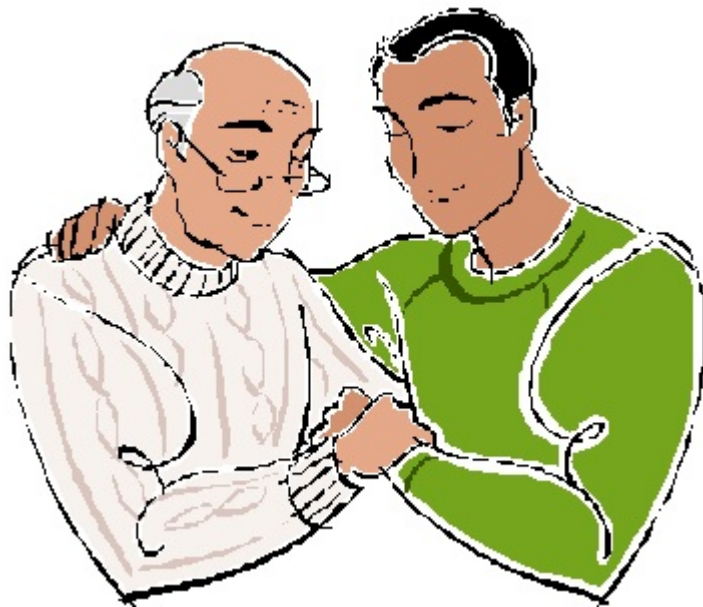


What is Interdiction?



A guide to understanding the legal process of interdiction in Louisiana.

WHAT IS INTERDICTION?

Q. What is an interdiction?

A. An interdiction is a legal process where a court is asked to determine, from testimony and other evidence presented, whether a person is unable, due to an infirmity, to consistently make decisions regarding his person and/or his property, or to communicate those decisions. If such a finding is made, the court appoints someone to make these decisions for him.

Q. What is a full interdiction?

A. A full interdiction occurs when a court determines that the individual is incapable of consistently making decisions about his person and his property.

Q. What is a limited interdiction?

A. A limited interdiction occurs when a court determines that the individual is incapable of consistently making decisions about his person or his property, or some part of either. For example, a person may be making sound decisions about his medical care or where he will live, but due to some infirmity, such as dementia, can not handle his money.

Q. What is the legal effect of interdiction?

A. A full interdict lacks capacity to make a juridical act. A juridical act is a lawful act or expression of will intended to have legal consequences. For example, a full interdict does not have the capacity to enter into or sign a contract. A limited interdict lacks capacity to make a juridical act pertaining to the property or aspects of personal care that the judgment of limited interdiction places under the authority of his curator. A judgment of interdiction may preserve some rights for the interdict.

Q. What is a curator?

A. A curator is the person appointed by the court to care for the interdicted person or his affairs, make decisions for the interdicted person, or to act in the place of the interdicted person.

Q. What are the duties and responsibilities of a curator?

A. The curator is given authority to make either some (limited) or all (full) decisions for the interdicted person. In making these decisions the curator must exercise reasonable care, diligence and prudence, and must act in the best interest of the interdicted person. In addition, a curator must file an annual report with the court. An annual report in regard to finances lists the assets of the interdicted person and all expenditures made by the curator on behalf of the interdicted person as well as any property that has been sold or purchased. An annual report in regard to the person provides information on how the interdicted person is doing physically and mentally, the course of any medical treatment, and any changes in the interdict's residence.

Q. What kind of decisions does the curator make?

A. These decisions could include medical decisions, such as giving access to medical records and consenting to treatment; placement decisions, such as where the person will live; legal decisions, such as filing a lawsuit on behalf of the interdicted person; and financial decisions, such as signing checks, investing funds and paying bills. Some decisions may require court approval.

Q. What is the curator's liability?

A. A curator is not personally responsible to a third person for any acts or obligations of the interdicted person just because he/she is curator. A curator may be responsible for damages resulting from his/her own acts, omissions or negligence regarding the interdicted person.

Q. What is an undercurator?

A. The undercurator is a person appointed by the court to make sure that the curator is acting in the best interest of the interdicted person and performing the curator's duties.

Q. What are the duties or responsibilities of an undercurator?

A. The undercurator is given full access to the interdicted person and his medical records and must review all accounts and personal reports filed by the curator. The undercurator has the duty to notify the court if he/she has reason to believe the curator has failed to perform any duties imposed upon the curator by law. However, should the curator be unable or unwilling to fulfill his duties, the undercurator does not automatically take over for the curator. The undercurator has the responsibility to inform the court of the problem and may request that the court appoint someone else to serve as curator.

Q. Can a person be placed in a nursing home or residential facility if an interdiction has been filed against him? What about a person already interdicted?

A. The mere filing of a Petition for Interdiction does not grant any power to a person to place another person in a nursing home or residential facility. If, after a hearing, the person is found incapable of caring for his person, a change of placement can be made by the curator as long as it is in the best interest of the interdicted person. However, neither the curator nor the court can admit or commit a person to a mental health treatment facility, without following the procedures required under mental health law, and meeting the criteria of that law.

Q. Can an interdiction be revoked or made less/more restrictive?

A. Yes. If it can be shown that the terms of the original judgment are either excessive or insufficient, or that the ability of the interdicted person to care for himself or his property has changed enough to warrant modification or termination, a motion can be made to the court to review the interdiction, and either make changes or revoke the interdiction.

Q. What are some things that I can do in advance to postpone or avoid being interdicted?

- A.
1. Get a power of attorney (sometimes called a procuration or mandate) or an advance directive which gives someone of your choosing the right to make medical, mental health and/or financial decisions for you should you become incapable of doing so yourself. You should consult an attorney to make sure the power of attorney will do what you intend it to do;
 2. Place your money and/or property in trust pursuant to Louisiana law;
 3. Complete a living will and make your wishes known to your family, friends and physicians about end of life choices;
 4. Choose a person to become your curator should you ever need to be interdicted. Put your choice in writing.

Q. What are some alternatives to interdiction?

- A.
1. Powers of attorney for health and/or finances in which another person is designated in writing to make decisions for you when you are unable to do so yourself;
 2. Depending on the problems that the person is having, a judicial commitment;
 3. Social Security's representative payee program;

4. Utilization of community resources, such as home health services, on-call or day programs; or
5. Services from local or state agencies may accomplish what is necessary to care for the person in the least restrictive manner.

Q. What is judicial commitment?

- A. Any person can file a petition for judicial commitment that state facts that a person is suffering from mental illness which contributes or causes that person to be a danger to himself or others or gravely disabled. If, after a court hearing, the judge concludes by clear and convincing evidence that the person is dangerous to himself, dangerous to others, or is gravely disabled as a result of substance abuse or mental illness, the court may render a judgment of commitment to a treatment facility which is medically suitable and the least restrictive of the person's liberty.

Q. How long does a judicial commitment last?

- A. Generally, all judicial commitments shall be reviewed by the Court issuing the order for commitment every ninety days and generally, all judicial commitments shall be for a period not to exceed 180 days, at which time the commitment expires by law, unless another petition for judicial commitment has been filed against the person. However, a person who is judicially committed may be discharged by the director of the treatment facility sooner than that, if the person's condition improves.

Q. What is the difference between an interdiction and a judicial commitment?

- A. With an interdiction, another person is appointed to make those decisions that the interdicted person is no longer capable of making regarding his person and property. With a judicial commitment, a court is forcing mental health treatment

and placement for a limited time on an individual unwilling to access the care for himself, where that individual is either a danger to himself, a danger to others, or gravely disabled.

Q. How much does an interdiction cost?

A. The cost of an interdiction depends on the circumstances of each case, and can vary greatly depending on the physical and mental condition of the person, the person's family situation, and the amount of property the person has. It is very important that you discuss the total cost of the interdiction with your attorney before you proceed.

This Interdiction brochure 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. **You should consult a qualified attorney regarding your situation.** Reviewed 9/2017