

DUTIES OF THE CURATOR OF THE PROPERTY

**Presenter: Betty A. Raglin, Attorney and Counselor at Law,
Legacy Estate & Elder Law of Louisiana**

Before jumping into the official legal talk, let's first talk about a job opening the farmer has in the barnyard. The farmer needs a qualified guard to watch over his large flock of chickens. Would the farmer bother interviewing a fox or a coyote for the job? Foxes and coyotes have excellent noses and could smell a threat coming from a mile away. Both have great eyesight and hearing, lots of teeth and can run like the wind. Sounds like a great protector to have around.

HOWEVER --- it is not in the nature of the fox or coyote to guard chickens. Much more likely is the fox and coyote attack the flock and cause a lot of chicken deaths and related egg breakages.

Foxes and coyotes are not meant to guard chickens, and putting them in a position to do so creates an immediate and obvious **conflict of interest** between the chickens, and the fox and coyote.

Similarly, when the court is looking for someone to trust with managing the property of an incapacitated person, the judge would never knowingly appoint the human equivalent of a fox or a coyote -- for example, an adult child with gambling issues, a spouse with a drug addiction, or a cousin who has been in and out of jail for theft.

Because people are much harder to decipher than a fox or coyote, Louisiana's law provides for qualification to serve, together with checks and controls over the powers of the curator.

One such check/control is the person serving in the position of undercurator – generally someone who is familiar with the incapacitated person and who will look out for that person's best interests. The undercurator has the responsibility of reviewing the actions taken or proposed by the curator, and giving the court a second opinion on the matter.

The law provides a specific list of disqualifications that prevent someone from serving as curator, including being under 18 years of age or being an interdicted person; there are also several things that the court could determine make a particular person unqualified to serve as Curator, including being a convicted felon, or owing money to the incapacitated person. The court must look for the person "best able to fulfill the duties of the office" of Curator.

The duties of the office include:

- Providing payment from the revenues or else principal assets owned by the incapacitated person for that person's ongoing living expenses and, with court approval, provide for the payment of living expenses incurred by their dependent family members
- Suing on behalf of the incapacitated person to enforce his or her rights and remedies at law
- Selling home, land, vehicles, other property owned by the incapacitated person, with court approval
- Establish a trust to hold assets of the incapacitated person
- Report annually to the court about the assets owned by the incapacitated person, revenues received by the curator, expenses incurred on behalf of the incapacitated person, and payments made by the curator from the assets of the incapacitated person.

Of course, the curator has many more duties, laid out in great detail in the Louisiana Code of Civil Procedure. One duty that is not mentioned by name in the Code of Civil Procedure is the curator's FIDUCIARY DUTY to the incapacitated person. The Louisiana Civil Code, article 392, specifies that, "In discharging his duties, a curator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict." This hits the high points of fiduciary duty, particularly the directive to "act in the best interest of the interdict."

Louisiana's Supreme Court, in the case of *Noe v. Roussel*, 310 So. 2d 806, 818-19 (La. 1975) said that a fiduciary

. . . must handle the matter as though it were his own affair. It also means the . . . fiduciary may not take even the slightest advantage, but must zealously, diligently and honestly guard and champion the rights of his principal against all other persons whomsoever, and is bound not to act in antagonism, opposition or conflict with the interest of the principal to even the slightest extent.

This duty to guard the property and champion the rights of the incapacitated person is the very essence of acting as a fiduciary. And why neither a fox nor a coyote is a good choice to guard the henhouse!

Some frequently asked questions about serving as Curator of the Property –

1. Is the job volunteer work? Can the curator be compensated? The curator is entitled to be paid for his services, but only with court approval and only from certain assets of the incapacitated person.
2. What if the incapacitated person is in debt – does the curator become responsible for the debt? Well, that depends on what "responsible" means – the curator has a responsibility to pay the debts as required, from the incapacitated person's funds, or to make alternate arrangements in a way that best benefits the incapacitated person. The curator does not have to dip into his personal savings accounts to satisfy this debt.
3. What if the incapacitated person injures someone else – is the curator personally responsible for those injuries? Generally, the answer is no. There is even a special provision of the law, Louisiana Civil Code article 2319, that says "Neither a curator nor an undercurator is personally responsible to a third person for a delictual obligation of the interdict in his charge solely by reason of his office."
4. Can the curator sell things owned by the incapacitated person? What about selling the incapacitated person's home or automobile? The curator can, with court approval, sell property owned by the incapacitated person, including his home, vehicle, and shares of stock.
5. What can the curator do if the incapacitated person is named on a bank account along with several other people? The curator will need to confer with the other owners of the account and reach an agreement with them about the amount on deposit owned by the incapacitated person. If the parties cannot agree among themselves, the curator should ask the court for guidance.

RELEVANT LOUISIANA LAWS

LOUISIANA CIVIL CODE:

Louisiana Civil Code Art. 392. Curators – general duties

The court shall appoint a curator to represent the interdict in juridical acts and to care for the person or affairs of the interdict, or any aspect of either. The duties and powers of a curator commence upon his qualification. In discharging his duties, a curator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict.

The court shall confer upon a curator of a limited interdict only those powers required to protect the interests of the interdict.

Acts 2000, 1st Ex. Sess., No. 25, §1, eff. July 1, 2001.

Louisiana Civil Code Art. 2319. Acts of interdicts

Neither a curator nor an undercurator is personally responsible to a third person for a delictual obligation of the interdict in his charge solely by reason of his office.

Acts 2000, 1st Ex. Sess., No. 25, §2, eff. July 1, 2001.

LOUISIANA CODE OF CIVIL PROCEDURE:

Louisiana Code of Civil Procedure article 684. Mental incompetent; interdict

A. A mental incompetent does not have the procedural capacity to sue.

B. Except as otherwise provided in Articles 4431, 4554, and 4566, the curator is the proper plaintiff to sue to enforce a right of an interdict.

Louisiana Code of Civil Procedure article 4566. Management of affairs of the interdict

A. Except as otherwise provided by law, the relationship between interdict and curator is the same as that between minor and tutor. The rules provided by Articles 4261 through 4269, 4270 through 4274, 4301 through 4342, and 4371 apply to curatorship of interdicts. Nevertheless, provisions establishing special rules for natural tutors and parents shall not apply in the context of interdiction.

B. A curator who owns an interest in property with the interdict or who holds a security interest or lien that encumbers the property of the interdict may acquire the property, or any interest therein, from the interdict upon compliance with Article 4271, with prior court authorization, and when it would be in the best interest of the interdict. Except for good cause shown, the court shall appoint an independent appraiser to value the interest to be acquired by the curator.

C. A curator may accept donations made to the interdict. A curator shall not make donations of the property of the interdict except as provided by law.

D.(1) A curator may place the property of the interdict in trust in accordance with the provisions of Article 4269.1. The trust shall be subject to termination at the option of the interdict upon termination of the interdiction, or if the interdict dies during the interdiction, at the option of his heirs or legatees.

(2) For the purpose of retaining government benefits and upon a showing by clear and convincing evidence that the interdict is permanently disabled and will not recover capacity, the trust shall be irrevocable during the life of the interdict and shall terminate upon the death of the interdict.

E. A curator shall inform the undercurator reasonably in advance of any material changes in the living arrangements of the interdict and any transactions materially affecting his person or affairs.

F. A curator shall not establish or move the place of dwelling of the interdict outside this state without prior court authorization.

G. A curator may not consent to an abortion or sterilization of the interdict without prior court authorization.

H. Neither a curator nor a court shall admit or commit an interdict to a mental health treatment facility except in accordance with the provisions of R.S. 28:50 through 64.

I. A curator appointed in an order of temporary interdiction shall have no authority to admit the defendant to a residential or long-term care facility in the absence of good cause shown at a contradictory hearing.

J. A curator shall allow communication, visitation, and interaction between an interdict who is over the age of eighteen years and a relative of the interdict by blood, adoption, or affinity within the third degree, or another individual who has a relationship with the interdict based on or productive of strong affection if it would serve the best interest of the interdict.

K. Notwithstanding the requirements of Article 4270 or any other provision of law to the contrary, a curator shall have authority to access deposit accounts held in the name of the interdict and authority to establish and maintain deposit accounts in the name of the "curator on behalf of the interdict", unless the letters of curatorship expressly limit such authority.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001; Acts 2016, No. 110, §2, eff. May 19, 2016; Acts 2021, No. 163, §1; Acts 2022, No. 22, §1.

Louisiana Code of Civil Procedure article 4569. Post-judgment monitoring and reporting

A. A curator with responsibility for affairs of the interdict shall file an account annually, upon the termination of his office, and at any other time ordered by the court. A curator with responsibility for the person of an interdict shall file a personal report describing the location and condition of the interdict annually, upon the termination of his responsibilities, and at any other time ordered by the court. At the time of filing, the curator shall send copies of any required account or personal report by first class United States mail postage prepaid to the undercurator and any successor curator. The provisions of Articles 4393 and 4398 shall apply to accounts by curators.

B. The court may appoint an examiner at any time to review an account or personal report of the curator, to interview the interdict, curator, or undercurator, or to make any other investigation. At any time, the court may appoint an attorney to represent the interdict.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001.

Louisiana Code of Civil Procedure Art. 4565. Undercurators

A.(1) The court shall appoint as undercurator the qualified person best able to fulfill the duties of his office. The person appointed as undercurator qualifies by taking an oath to discharge faithfully the duties of his office.

(2) At any time prior to qualification, the court may revoke the appointment for good cause and appoint another qualified person.

(3) If a person fails to qualify within ten days from his appointment or within the period specified by the court, the court on its own motion or on motion of any interested person, may revoke the appointment and appoint another qualified person. The delay allowed for qualification may be extended by the court for good cause.

B. The undercurator shall:

(1) Notify the court when the curator has failed to qualify timely for office.

(2) Have free access to the interdict and to all records relating to the interdict relevant to his office.

(3) Review all accounts and personal reports filed by the curator.

(4) Notify the court when he has reason to believe that the curator has failed to perform any duties imposed by law, including the duties to file necessary accounts and personal reports, and to maintain adequate security.

(5) Approve or disapprove any transactions that require his concurrence.

(6) Move to appoint a successor for a curator who becomes disqualified or whose office terminates.

(7) Move to appoint a successor for a curator who violates any of the provisions of Article 4566.

C. The undercurator shall have no duties, either express or implied, other than those set forth in this Article and in Civil Code Article 393.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001; Acts 2016, No. 110, §2, eff. May 19, 2016.

Louisiana Code of Civil Procedure Art. 4561. Appointment of curator

A. The court shall appoint as curator the qualified person who is best able to fulfill the duties of his office.

B.(1) The following persons are not qualified to serve as a curator of an interdict:

(a) A person under eighteen years of age.

(b) An interdicted person.

(c) A nonresident of the state without a resident agent for service of process.

(2) Except for good cause shown, the following persons are not qualified to serve as a curator of an interdict:

(a) A convicted felon.

(b) A person indebted to the interdict at the time of appointment.

(c) An adverse party in a lawsuit pending against the interdict at the time of appointment.

(d) An owner, operator, or employee of long-term care institutions where the interdict is receiving care, unless he is related to the interdict.

C.(1) The court shall consider the qualified persons in the following order of preference:

(a) A person designated by the defendant in a writing signed by him while he had sufficient ability to communicate a reasoned preference.

(b) The spouse of the defendant.

(c) An adult child of the defendant.

(d) A parent of the defendant.

(e) An individual with whom the defendant has resided for more than six months prior to the filing of the petition.

(f) Any other person.

(2) The court may appoint separate curators for the person and affairs of the interdict pursuant to Article 4069.

D. At any time prior to qualification, the court may revoke the appointment for good cause and appoint another qualified person.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001.

Louisiana Code of Civil Procedure article 4564. Letters of curatorship

Upon qualification of the appointed curator, the court or clerk thereof shall issue letters of curatorship in the name and under the seal of the court. The letters shall set forth the date of the qualification of the curator and the date, if any, on which the letters expire. Letters of curatorship issued to a limited curator shall also set forth the powers of the limited curator.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001.

Louisiana Code of Civil Procedure article 4568. Removal of curator or undercurator

On motion of any interested person, or on its own motion, the court may remove a curator or undercurator from office for good cause. Good cause may include but not be limited to a violation of Article 4566(J). Unless otherwise ordered by the court, removal of the curator or undercurator by the court is effective upon qualification of the appointed successor.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001; Acts 2016, No. 110, §2, eff. May 19, 2016.

Louisiana Code of Civil Procedure article 4567. Expenses of interdict and legal dependents

The curator shall expend that portion of the revenue from the property of the interdict as is necessary to care properly for his person or affairs, and with court authorization, to support his legal dependents. If the revenue is insufficient for these purposes, the curator may expend the capital of the interdict, with court authorization in the manner provided by Article 4271.

Acts 2000, 1st Ex. Sess., No. 25, §3, eff. July 1, 2001.

Louisiana Code of Civil Procedure article 4563. Inventory and security

A. The person appointed as the curator shall furnish security conditioned on the faithful discharge of his duties. The rules provided in Articles 4101 through 4102, 4131 through 4133, and 4136 apply to curatorship of interdicts. Provisions establishing special rules for natural tutors and parents shall not apply in the context of interdiction and curatorship.

B. A detailed descriptive list, sworn to and subscribed by the applicant setting forth the fair market value of each item of property of the interdict, shall be permitted in lieu of an inventory in interdiction matters, unless otherwise ordered by the court.