

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [HB 417](#)

TITLE: Curators of Estates

SPONSOR(S): Maggard

COMPANION BILL: [SB 520](#) (Burgess)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Civil Justice & Claims](#)

17 Y, 0 N



[Judiciary](#)

SUMMARY

Effect of the Bill:

HB 417 amends s. 733.501, F.S., a Florida Probate Code provision relating to curators of estates, who are appointed for a limited time to protect the interests of an estate when a personal representative has not yet been appointed, or must be replaced. Specifically, the bill:

- Modifies when a court may, or must, appoint a curator.
- Expressly codifies a curator's authority and duties.
- Modifies curator bond requirements.
- Requires a curator to provide periodic reports to the court detailing the curator's actions taken in estate management, which reports must then be reviewed by the court.
- Clarifies the use of the term "curator" as it appears in Part V of Chapter 733, F.S.

Fiscal or Economic Impact:

None

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ANALYSIS

EFFECT OF THE BILL:

Generally speaking, the bill amends [s. 733.501, F.S.](#), a [Florida Probate Code](#) provision relating to [curators of estates](#).

Definition

The bill provides that, for clarity, and to avoid confusion, the term "curator" is used consistently throughout [Part V of ch. 733, F.S.](#), to refer to the appointed entity responsible for managing the estate. However, the bill does not modify the applicable definition of "curator" provided in [s. 731.201, F.S.](#), which remains "a person appointed by the court to take charge of the estate of a decedent until letters [of administration] are issued [that is, until the appointment of a [personal representative](#)]." (Section [1](#))

Curator Appointment

The bill modifies when a court may appoint a curator. Specifically, the bill provides that the court may appoint a curator at any time with notice to interested persons as the court deems appropriate (rather than when it is necessary, after formal notice to the person apparently entitled to [letters of administration](#), as provided in current law). The bill also provides specific scenarios in which the court may, or must, appoint a curator to represent an estate, as follows:

- If [probate](#) is not initiated within two years of the decedent's death, the court must appoint a curator.
- In any other proper case, the court may appoint a curator when deemed necessary to protect the estate's interests.

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- The court may appoint a curator in “unique circumstances” not outlined in law to ensure that the estate’s interests, and those of the **beneficiaries**, are adequately protected.

Further, the bill modifies the provision authorizing a court to appoint a curator without giving notice when there is a danger that any of the decedent’s property is likely to be wasted, destroyed, or removed beyond the court’s jurisdiction and giving notice would delay the curator’s appointment. Specifically, under current law, such a danger must be a “great danger,” implying size, or scale; however, the bill would instead require that such a danger be a “significant danger,” implying importance. (Section [1](#))

Curator Authority and Duties

The bill amends [s. 733.501, F.S.](#), to expressly codify a curator’s authority and duties. Specifically, the bill provides that a curator has the same authority and powers as set forth in [Part V of ch. 733, F.S.](#), and shall act as a trustee upon appointment. Further, the bill provides that a curator must take into its custody the estate of a decedent “or a person” in any of the following circumstances:

- When a decedent dies intestate in the county without heirs.
- When a decedent dies leaving a will, and the personal representative named is absent or fails to qualify.
- When an unknown decedent dies or is found dead in the county.
- When money, property, papers, or other portions of the estate are left exposed to injury, waste, theft, loss, or mismanagement and no other person administers such property in the estate.
- When a decedent dies intestate and his or her estate is located in the county, or is left in the county, and such estate is exposed to injury, waste, theft, loss, or mismanagement and the decedent does not leave a known spouse or heir in this state.
- When the estate is that of a minor whose parents:
 - Are dead; or
 - If living:
 - Refuse or neglect to qualify as a conservator;
 - Have been removed from a conservatorship after qualifying as a conservator; or
 - Have been found incompetent to serve as a conservator; and
 - Have no person appointed by law to take care of and manage the estate.
- When the estate is that of a disabled or incapacitated person in the county who has no legal guardian or conservator and no person competent to take charge of such estate, or to act as such guardian or conservator, can be found who qualifies for such a position.
- For any other cause in which the court finds it is necessary to protect the estate from injury, waste, theft, loss, or mismanagement. (Section [1](#))

However, the bill retains a provision stating that the curator may be authorized to perform any duty or function of a personal representative. (Section [1](#))

Curator Bonds

The bill amends [s. 733.501, F.S.](#), to modify requirements pertaining to bonds posted by curators. Specifically, instead of requiring that a curator post a bond “as the court deems necessary,” as provided in current law, the bill would require a curator to post a reasonable bond in an amount determined by the court. However, the bill retains a provision stating that bonds are not required of banks and trust companies acting as curators. (Section [1](#))

Periodic Court Review

The bill amends [s. 733.501, F.S.](#), to expressly require a curator to file periodic reports with the court, which reports must detail the actions taken by the curator in managing the estate. Further, the bill requires the court to review such reports at regular intervals to ensure that the curator is effectively managing the estate and fulfilling its duties, and authorizes the court to require more frequent reporting or additional documentation as it deems necessary to protect the estate’s interests. (Section [1](#))

Miscellaneous Provisions

The bill:

- Reenacts [s. 90.5021, F.S.](#), for the purposes of incorporating the amendments to [s. 733.501, F.S.](#), made by the bill. (Section [2](#))
- Provides an effective date of July 1, 2025. (Section [3](#))

RELEVANT INFORMATION

SUBJECT OVERVIEW:

The [Florida Probate Code](#)¹ (“Probate Code”) outlines Florida’s [probate](#) process, also known as “[estate](#)² administration” – that is, the court-supervised process³ for identifying and gathering a decedent’s assets, paying the decedent’s debts, and distributing the decedent’s remaining assets to his or her [beneficiaries](#).⁴ Where the decedent dies leaving a valid will,⁵ estate administration generally proceeds in accordance with the will’s terms, with estate assets distributed to the named beneficiaries;⁶ however, where a decedent dies intestate – that is, where the decedent leaves no valid will – asset distribution generally occurs by operation of Florida’s intestate succession laws.⁷

[Personal Representatives](#)

Regardless of whether a decedent had a will or died intestate, when an estate is probated, the court appoints a personal representative⁸ to oversee the estate’s administration and grants to such person [letters of administration](#).⁹ The personal representative’s primary purpose is to ensure that the administration of the decedent’s estate proceeds in accordance with the decedent’s wishes (as outlined in a will) or, if there is no will, in accordance with state law; however, Florida law imposes numerous other, specific duties and obligations on a personal representative.

Qualifications

In determining who may serve as a personal representative for a particular estate, Florida law establishes an order of preference that generally must be observed, as follows:

- In a testate estate (that is, where there is a will):
 - The personal representative named in the will.
 - The person selected by a majority in interest of the persons entitled to the estate.
 - A devisee under the will (or the most qualified of such devisees, as chosen by the court, if there is more than one).¹⁰
- In an intestate estate (that is, where there is no will):
 - The surviving spouse.
 - The person selected by a majority in interest of the heirs.

¹ The Probate Code is codified in the following chapters of Florida law: [ch. 731, F.S.](#); [ch. 732, F.S.](#); [ch. 733, F.S.](#); [ch. 734, F.S.](#); and [ch. 735, F.S.](#)

² “Estate” means the property of a decedent that is the subject of administration. S. [731.201\(14\), F.S.](#)

³ In Florida, the circuit courts have jurisdiction over probate proceedings. Office of the State Courts Administrator, Trial Courts-Circuit, <https://www.flcourts.gov/Florida-Courts/Trial-Courts-Circuit> (last visited Mar. 5, 2025).

⁴ “Beneficiary” means an heir at law in an intestate estate and a devisee in a testate estate. Note that probate is not initiated in every circumstance in which a person dies leaving assets; in some instances, other asset distribution mechanisms (such as a trust or a pay-on-death clause) transfer asset ownership without court intervention. In other circumstances, a decedent’s assets may be held jointly with a surviving person, requiring no asset ownership transfer and, thus, no court intervention. S. [731.201, F.S.](#)

⁵ A “will” means a testamentary instrument executed by a person in the manner provided in the Florida Probate Code, which disposes of a person’s property on or after his or her death. Until admitted to probate, a will is ineffective to prove title to, or the right to possession of, the testator’s property. Ss. [731.201\(4\)](#) and [733.103, F.S.](#)

⁶ See Parts V, VI, and IX of [ch. 732, F.S.](#), governing wills, rules of will construction, and will production, respectively.

⁷ See [Part I of ch. 732, F.S.](#), governing intestate succession.

⁸ “Personal representative” means the fiduciary appointed by the court to administer the estate and refers to what has been known as, among other things, an executor. S. [731.201\(28\), F.S.](#)

⁹ Letters of administration convey the legal authority to manage a decedent’s estate. Legal Information Institute, *Letters of Administration*, https://www.law.cornell.edu/wex/letters_of_administration (last visited Mar. 5, 2025).

¹⁰ S. [733.301\(1\)\(a\), F.S.](#)

- The heir nearest in degree (or the most qualified of such heirs, as chosen by the court, if there is more than one).¹¹

However, to qualify to act as a personal representative, a person must have full legal capacity to act on his or her own behalf and be a Florida resident at the time of the relevant decedent's death or, if not a Florida resident:

- The decedent's legally adopted child or adoptive parent;
- Related by lineal consanguinity to the decedent;
- The decedent's sibling, uncle, aunt, nephew, or niece, or someone related by lineal consanguinity to any such person; or
- The spouse of any such person.¹²

Likewise, Florida law provides that a person is not qualified to act as a personal representative if he or she:

- Is a convicted felon;
- Has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult;
- Is mentally or physically unable to perform the duties of a personal representative; or
- Is a minor.¹³

Duties and Powers

Generally speaking, a personal representative is a fiduciary who must observe the standard of care applicable to trustees of express trusts¹⁴ and who is liable to interested persons for damage or loss resulting from the breach of his or her fiduciary duty.¹⁵ Such duty generally begins upon appointment¹⁶ and includes a duty to:

- Settle and distribute the estate in accordance with the decedent's will (if any) and applicable law.¹⁷
- Expeditiously proceed with the settlement and distribution of the decedent's estate.¹⁸
- Act in the best interests of interested persons, including creditors.¹⁹
- File a verified inventory of estate property, subject to statutory requirements.²⁰
- Take all steps reasonably necessary for the estate's management, protection, and preservation.²¹

To assist in the exercise of such duties, the personal representative also has statutorily-enumerated rights and powers. Specifically, the personal representative may (and in some cases, must), among other things:²²

- Take possession and control of the decedent's property.
- Perform or, when proper, refuse to perform the decedent's contracts.
- Invest the estate's funds.
- Acquire or dispose of assets, including, in certain circumstances, by sale or abandonment.
- Enter into leases.
- Pay taxes, assessments, and other expenses incident to estate administration.
- Continue any unincorporated business or venture in which the decedent was engaged at the time of death.
- Prosecute or defend claims or proceedings for the protection of the estate or the decedent's property.
- Employ persons, including attorneys, accountants, auditors, appraisers, investment advisers, and others to advise or assist the personal representative in estate administration.

Fiduciary Bonds

¹¹ S. [733.301\(1\)\(b\), F.S.](#)

¹² Ss. [733.302](#) and [733.304, F.S.](#)

¹³ S. [733.303, F.S.](#)

¹⁴ An "express trust" is a trust created with the settlor's express intent, usually declared in writing. *Byrne Realty Co. v. South Florida Farms Co.*, 89 So. 318 (Fla. 1921).

¹⁵ S. [733.609, F.S.](#)

¹⁶ S. [733.601, F.S.](#)

¹⁷ S. [733.602, F.S.](#)

¹⁸ S. [733.603, F.S.](#)

¹⁹ S. [733.602, F.S.](#)

²⁰ S. [733.604, F.S.](#)

²¹ S. [733.607, F.S.](#)

²² S. [733.612, F.S.](#)

Unless the bond requirement has been waived by the will or by the court, every personal representative (other than a bank or a trust acting as a personal representative) must execute and file a bond with surety, payable to the Governor and the Governor's successors in office, conditioned on the performance of all personal representative duties.²³ All such bonds must be in an amount that the court deems sufficient after considering the estate's gross value, the relationship of the personal representative to the beneficiaries, exempt property and any family allowance, the type and nature of assets, known creditors, and any liens or other encumbrances on the assets.²⁴

Reporting Requirements

Florida law requires a personal representative to file certain reports with the court during various stages of the estate's administration, which the court may then review to ensure that the personal representative is properly managing the administration and meeting his or her fiduciary duties. These reports include:

- An inventory report detailing all of the decedent's assets and their respective market values;
- A report detailing all claims filed against the estate;
- Any interim or supplemental accountings ordered by the court;²⁵ and
- A final accounting with a petition for discharge stating, among other things:
 - That all claims filed against the estate have been paid, settled, or otherwise disposed of;
 - The amount of compensation paid or to be paid to the personal representative, attorneys, and others who aided the personal representative in account administration;
 - A schedule of all prior estate asset distributions;
 - An inventory of the estate assets remaining in the hands of the personal representative; and
 - A plan for the distribution of all remaining estate assets.²⁶

Compensation

A personal representative is entitled to reasonable compensation for ordinary service, payable from the estate's assets, without a court order.²⁷ Such compensation must be based on the estate's compensable value – that is, the inventory value of the estate's assets and the income the estate earns during administration – and Florida law provides that such compensation is presumed to be reasonable if calculated at statutorily-specified rates.²⁸ However, the court may increase or decrease the personal representative's compensation for ordinary services upon petition of any interested parties.²⁹

A personal representative is also entitled to reasonable compensation for any extraordinary services, which the court may award upon petition of any interested person.³⁰ Extraordinary services may include:

- The sale of real or personal property;
- Litigating on behalf of the estate;
- Involvement in proceedings for the adjustment or payment of any taxes;
- The carrying on of the decedent's business;
- Dealing with protected homestead;
- The rendering of legal services in connection with estate administration, where the personal representative is a Florida Bar³¹ member; and
- Any other special services which may be necessary for the personal representative to perform.³²

²³ S. [733.402, F.S.](#)

²⁴ S. [733.403, F.S.](#)

²⁵ The personal representative may also choose to file interim accountings at any time, although such interim accountings are voluntary unless the court directs their filing. [Fla. Prob. R. 5.400.](#)

²⁶ [Id.](#)

²⁷ S. [733.617, F.S.](#)

²⁸ Those rates are: 3 percent for the first \$1 million; 2.5 percent for all above \$1 million and not exceeding \$5 million; 2 percent for all above \$5 million and not exceeding \$10 million; 1.5 percent for all above \$10 million. [Id.](#)

²⁹ [Id.](#)

³⁰ [Id.](#)

³¹ The Florida Supreme Court regulates the practice of law in Florida, through the Florida Bar. The Florida Bar, *About the Bar*, <https://www.floridabar.org/about/> (last visited Mar. 5, 2025); [Art. V, s. 15, Fla. Const.](#)

³² [Id.](#)

Further, if a will provides that a personal representative's compensation shall be based on specific criteria, other than a general reference to compensation allowed by law, the personal representative is entitled to compensation in accordance with that provision; however, the personal representative may renounce the provision and receive compensation as provided in law, unless a contract with the decedent would prohibit such renunciation.³³

Resignation

A personal representative generally has the right to resign, and the court may, after notice to all interested persons, accept the resignation and then revoke the letters of the resigning personal representative if the resignation does not jeopardize the estate's interests.³⁴ Once the court accepts the resignation, the court must then appoint a successor personal representative or, as discussed below, a curator to serve until a successor personal representative is appointed.³⁵ Further, the resigning personal representative must:

- Surrender to the successor fiduciary all estate assets, records, documents, papers, and other property of or concerning the estate in the resigning personal representative's possession or control.³⁶
- File and serve a final accounting of the personal representative's administration.³⁷

Ultimately, a resigning personal representative may be discharged only after:

- Determination of the liability, if any, of such resigning personal representative;
- Compensation of the resigning personal representative and the attorney and other persons employed thereby; and
- Receipt of evidence that undistributed estate assets have been delivered to the successor fiduciary.³⁸

Removal

The court must remove and revoke the letters of a personal representative if the personal representative was not qualified to act at the time of appointment.³⁹ Further the court may remove and revoke the letters of a personal representative for any of the following causes:⁴⁰

- An adjudication of the personal representative's incapacity.
- Physical or mental incapacity.
- Failure of the personal representative to comply with any court order.
- Failure of the personal representative to account for the sale of property or to produce and exhibit estate assets when so required.
- Wasting or maladministration of the estate.
- Failure of the personal representative to give bond or security.
- The personal representative's felony conviction.
- The insolvency of, or the appointment of a receiver or liquidator for, a corporate personal representative.
- Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.
- Revocation of the probate of the decedent's will that authorized or designated the personal representative's appointment.
- Termination of Florida residence, if such residence was a requirement of initial appointment.
- The personal representative was qualified to act at the time of appointment but would not now qualify.

A removal proceeding may begin upon the petition of an interested person, or the court may begin such a proceeding upon its own initiative.⁴¹ In either case, the court must revoke the letters of a removed personal

³³ [Id.](#)

³⁴ S. [733.502, F.S.](#)

³⁵ S. [733.503, F.S.](#)

³⁶ S. [733.5036, F.S.](#)

³⁷ [Id.](#)

³⁸ [Id.](#)

³⁹ S. [733.504, F.S.](#)

⁴⁰ [Id.](#)

⁴¹ S. [733.506, F.S.](#)

representative and appoint a successor personal representative or, as discussed below, a curator to serve until a successor personal representative is appointed.⁴²

[Curators](#)

Section 733.501, F.S., provides that, when necessary, the court may appoint⁴³ a “curator”⁴⁴ after formal notice to the person apparently entitled to letters of administration (that is, to the personal representative, or the person likely to be so appointed); however, where there is great danger that any of the decedent’s property is likely to be wasted, destroyed, or removed beyond the court’s jurisdiction, and if a curator’s appointment would be delayed by giving notice, the court may appoint a curator without giving notice. In either case, the curator may be authorized to perform any duty or function of a personal representative, may be subject to removal and surcharge, and may be required to post a bond as the court deems necessary; however, no bond may be required of a bank or trust company acting as a curator. Further, the curator is entitled to reasonable compensation for their services, and the court may consider the provisions applicable to personal representative compensation in awarding such compensation.

Though the necessity for which a curator’s appointment might arise is not specified in Florida law, Florida courts have recognized that such necessity may include a delay in a personal representative’s appointment, or in the appointment of a successor personal representative where the original personal representative resigns or otherwise becomes unwilling or unable to oversee the estate’s administration.⁴⁵ However, Florida courts have also found that it is legally improper to simultaneously have a curator and a personal representative acting on behalf of an estate; thus, a court would likely need to remove any appointed personal representative before appointing a curator.⁴⁶ This comports with the general understanding, acknowledged by the courts, that a curator is usually only appointed as a temporary expedient to take possession of and preserve an estate’s assets until a qualified personal representative may be appointed to manage the estate’s administration.⁴⁷

OTHER RESOURCES:

[Florida Bar Consumer Pamphlet: Probate in Florida](#)
[Florida Bar Consumer Pamphlet: Do You Have a Will?](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee Judiciary Committee	17 Y, 0 N	3/5/2025	Jones	Mawn

⁴² *Id.*; s. 733.5061, F.S.

⁴³ Curator appointment may occur upon the filing of a sufficient petition for such appointment, which petition must include, among other things, a statement as to why a curator should be appointed. A court may also appoint a curator on its own initiative. [Fla. Prob. R. 5.122](#).

⁴⁴ “Curator” means a person appointed by the court to take charge of the estate of a decedent until letters of administration are issued. S. [731.201\(8\), F.S.](#)

⁴⁵ *Gordin v. Estate of Maisel*, 179 So. 3d 518 (Fla. 4th DCA 2015); *In re Estate of Miller*, 568 So. 2d 487 (Fla. 1st DCA 1990).

⁴⁶ *Gordin*, 179 So. 3d at 521.

⁴⁷ *In re Sale’s Estate*, 227 So. 2d 199 (Fla. 1969).