

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 520

INTRODUCER: Judiciary Committee and Senator Burgess

SUBJECT: Curators of Estates

DATE: March 20, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	<b>Fav/CS</b>
2.			BI	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 520 amends s. 733.501, F.S., regarding curators of estates, to significantly expand the role of curators in probate proceedings. A curator is a person appointed by the court for a limited time to protect the interests of a decedent’s estate when a personal representative has not yet been appointed or must be replaced.

The bill:

- Codifies the circumstances under which a curator must take custody of a decedent or person’s estate.
- Requires curators, except for banks and trust companies serving as curators, to post a reasonable bond.
- Requires a curator to file periodic reports with the court detailing the curator’s actions taken in estate management.
- Clarifies that the term “curator” as it is used in Part V of ch. 733, F.S., refers to the appointed entity responsible for managing an estate.

The bill takes effect July 1, 2025.

## II. Present Situation:

The Florida Probate Code (“Probate Code”)<sup>1</sup> outlines the state’s probate process, which is the court-supervised process<sup>2</sup> 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.<sup>3</sup> The probate process is also known as “estate administration.”<sup>4</sup> Whenever a decedent dies leaving a valid will,<sup>5</sup> estate administration generally proceeds in accordance with the will’s terms, with estate assets being distributed to the named beneficiaries;<sup>6</sup> however, where a decedent dies intestate, which means the decedent died and did not leave a valid will, asset distribution generally occurs by operation of Florida’s intestate succession laws.<sup>7</sup>

### Personal Representatives

Regardless of whether a decedent had a will or died intestate, when an estate is probated, the court appoints a personal representative<sup>8</sup> to oversee the estate’s administration and grants to such person letters of administration.<sup>9</sup> A 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 testate estates (i.e. 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).<sup>10</sup>
- In intestate estates (i.e. where there is no will):
  - The surviving spouse.

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<sup>1</sup> Chapters 731-735, F.S.; *see also* s. 731.005, F.S. (providing the short title).

<sup>2</sup> 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. 14, 2025).

<sup>3</sup> “Beneficiary” means an heir at law in an intestate estate and a devisee in a testate estate. Section 731.201(2), F.S. 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.

<sup>4</sup> “Estate” means the property of a decedent that is the subject of administration. Section 731.201(14), F.S.

<sup>5</sup> 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. Section 731.201(40), F.S. Until admitted to probate, a will is ineffective to prove title to, or the right to possession of, the testator’s property. Section 733.103(1), F.S.

<sup>6</sup> *See generally* Parts V, VI, and IX, ch. 732, F.S. (governing wills, rules of will construction, and will production, respectively).

<sup>7</sup> *See generally* Part I, ch. 732, F.S. (governing intestate succession).

<sup>8</sup> “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. Section 731.201(28), F.S.

<sup>9</sup> Letters of administration convey the legal authority to manage a decedent’s estate. Section 731.201(24), F.S.

<sup>10</sup> Section 733.301(1)(a), F.S.

- The person selected by a majority in interest of the heirs.
- The heir nearest in degree (or the most qualified of such heirs, as chosen by the court, if there is more than one).<sup>11</sup>

To qualify to act as a personal representative, the 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;<sup>12</sup> or if the person is not a Florida resident, the person must be:

- 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.<sup>13</sup>

Florida law also 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.<sup>14</sup>

### ***Duties and Powers***

A personal representative is a fiduciary who must observe the standard of care applicable to trustees of express trusts<sup>15</sup> and who is liable to interested persons for damage or loss resulting from the breach of his or her fiduciary duty.<sup>16</sup> Such duty generally begins upon appointment<sup>17</sup> and includes a duty to:

- Settle and distribute the estate in accordance with the decedent's will (if any) and applicable law.<sup>18</sup>
- Expeditiously proceed with the settlement and distribution of the decedent's estate.<sup>19</sup>
- Act in the best interests of interested persons, including creditors.<sup>20</sup>
- File a verified inventory of estate property, subject to statutory requirements.<sup>21</sup>
- Take all steps reasonably necessary for the estate's management, protection, and preservation.<sup>22</sup>

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<sup>11</sup> Section 733.301(1)(b), F.S.

<sup>12</sup> Section 733.302, F.S.

<sup>13</sup> Section 733.304, F.S.

<sup>14</sup> Section 733.303, F.S.

<sup>15</sup> 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, 326-27 (Fla. 1921).

<sup>16</sup> Section 733.609(1), F.S.

<sup>17</sup> Section 733.601, F.S.

<sup>18</sup> Section 733.602(1), F.S.

<sup>19</sup> Section 733.603, F.S.

<sup>20</sup> Section 733.602(1), F.S.

<sup>21</sup> Section 733.604, F.S.

<sup>22</sup> Section 733.607(1), F.S.

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:

- 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.<sup>23</sup>

### ***Fiduciary Bonds***

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.<sup>24</sup> 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.<sup>25</sup>

### ***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;<sup>26</sup>
- A report detailing all claims filed against the estate;
- Any interim or supplemental accountings ordered by the court;<sup>27</sup> 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;

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<sup>23</sup> See generally s. 733.612, F.S.

<sup>24</sup> Section 733.402(1), F.S.

<sup>25</sup> Section 733.403, F.S.

<sup>26</sup> Section 733.604(1), F.S.

<sup>27</sup> 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. See Fla. Prob. R. 5.345(a) (providing that the fiduciary "may elect to file an interim accounting at any time, or the court may require an interim or supplemental accounting").

- 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.<sup>28</sup>

### ***Compensation***

A personal representative is entitled to reasonable compensation for ordinary service, payable from the estate's assets, without a court order.<sup>29</sup> Such compensation must be based on the estate's compensable value, which 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.<sup>30</sup> However, the court may increase or decrease the personal representative's compensation for ordinary services upon petition of any interested parties.<sup>31</sup>

A personal representative is also entitled to reasonable compensation for any extraordinary services, which the court may award upon petition of any interested person.<sup>32</sup> 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 Bar member;<sup>33</sup> and
- Any other special services that may be necessary for the personal representative to perform.<sup>34</sup>

Further, if a will provides that a personal representative's compensation must 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.<sup>35</sup>

### ***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

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<sup>28</sup> Fla. Prob. R. 5.400.

<sup>29</sup> Section 733.617(1), F.S.

<sup>30</sup> 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. Section 733.617(2), F.S.

<sup>31</sup> Section 733.617(7), F.S.

<sup>32</sup> Section 733.617(3), F.S.

<sup>33</sup> Section 733.617(6), F.S. 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. 14, 2025); FLA. CONST. art. V, s. 15.

<sup>34</sup> Section 733.617(3), F.S.

<sup>35</sup> Section 733.617(4), F.S.

representative if the resignation does not jeopardize the estate's interests.<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup>
- File and serve a final accounting of the personal representative's administration.<sup>39</sup>

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.<sup>40</sup>

### ***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.<sup>41</sup> Further, the court may remove and revoke the letters of a personal representative for any of the following causes:

- 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.<sup>42</sup>

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<sup>36</sup> Section 733.502, F.S.

<sup>37</sup> Section 733.503, F.S.

<sup>38</sup> Section 733.5035, F.S.

<sup>39</sup> Section 733.5036(1), F.S.

<sup>40</sup> Section 733.5036(2), F.S.

<sup>41</sup> Section 733.504, F.S.

<sup>42</sup> *Id.*

A removal proceeding may begin upon the petition of an interested person, or the court may begin such a proceeding upon its own initiative.<sup>43</sup> In either case, the court must revoke the letters of a removed personal representative and appoint a successor personal representative or, as discussed below, a curator to serve until a successor personal representative is appointed.<sup>44</sup>

## Curators

State law provides that, when necessary, the court may appoint<sup>45</sup> a “curator”<sup>46</sup> 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.<sup>47</sup>

In either case, curators 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, curators are entitled to reasonable compensation for their services, and the court may consider the provisions applicable to personal representative compensation in awarding such compensation.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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<sup>43</sup> Section 733.506, F.S.

<sup>44</sup> *Id.*; s. 733.5061, F.S.

<sup>45</sup> 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.

<sup>46</sup> “Curator” means a person appointed by the court to take charge of the estate of a decedent until letters of administration are issued. Section 731.201(8), F.S.

<sup>47</sup> Section 733.501(1), F.S.

<sup>48</sup> Section 733.501, F.S.

<sup>49</sup> *Gordin v. Estate of Maisel*, 179 So. 3d 518, 520-21 (Fla. 4<sup>th</sup> DCA 2015); *In re Estate of Miller*, 568 So. 2d 487, 488-90 (Fla. 1<sup>st</sup> DCA 1990).

<sup>50</sup> *Gordin*, 179 So. 3d at 521.

<sup>51</sup> *In re Sale’s Estate*, 227 So. 2d 199, 202 (Fla. 1969).

### **III. Effect of Proposed Changes:**

The bill amends s. 733.501, F.S., regarding curators of estates, to significantly expand the role of curators in state probate proceedings.

#### **Appointment of a Curator**

The bill changes when a court may or must appoint a curator. Current law provides that the court may appoint a curator when it is necessary after formal notice to the person apparently entitled to letters of administration. The bill revises the statute to allow the court to appoint a curator at any time with notice to interested persons as the court deems appropriate. The bill also provides that in any other proper case, the court may appoint a curator when deemed necessary to protect the interests of the estate.

#### **Authorities and Duties of the Curator**

Current law authorizes curators to perform any duty or function of a personal representative, but is otherwise silent as to their authority and duties. The bill specifies curators' authority and duties.

First, the bill requires curators to take into their 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 named personal representative is absent or fails to qualify.
- When an unknown decedent dies or is found dead in the county.
- For any other cause in which the court finds it necessary to protect the estate from injury, waste, theft, loss, or mismanagement.

Second, the bill requires curators to act as trustee when appointed by the court.

#### **Bond Requirements**

Current law provides that a bond "shall be required of the curator as the court deems necessary." However, the bill requires curators to post a reasonable bond, to be determined by the court.

#### **Periodic Court Review**

The bill requires curators to file periodic reports with the court. The reports must detail the actions taken by the curator in managing the estate. The court must review the reports at regular intervals to ensure that the curator is effectively managing the estate and fulfilling its duties. The court may require more frequent reporting or additional documentation as it deems necessary to protect the interests of the estate.



### **Consistent Terminology**

To provide clarity and avoid confusion, the bill states that the term “curator” as used in Part V of ch. 733, F.S., refers to the appointed entity responsible for managing the estate.

### **Reenactment of s. 90.5021(1), F.S.**

The bill reenacts s. 90.5021(1), F.S., to incorporate the amendments to s. 733.501, F.S., made by the bill.

### **Effective Date**

The bill takes effect July 1, 2025.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

Florida law currently requires the court to appoint a curator only “after formal notice to the person apparently entitled to letters of administration.”<sup>52</sup> The bill eliminates this requirement and allows the court to appoint a curator at any time with notice to “interested persons as the court deems appropriate.” This change in the bill raises due process concerns to the extent it makes notice to the person entitled to letters of administration no longer mandatory but discretionary with the court. The bill could also be construed as conflicting with case law recognizing that testators have a constitutional right to select the appropriate person to administer the decedent’s estate.<sup>53</sup>

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<sup>52</sup> Section 733.501(1), F.S.

<sup>53</sup> See *Pontrello v. Estate of Kelper*, 528 So. 2d 441, 443 (Fla. 2d DCA 1988) (providing that “[a] judge treads on sacred ground, not only when he overrides the testator’s directions regarding the custody of his children, but also when he overrides directions regarding the appointment of the person in whom the decedent placed his trust to administer his estate according to the powers given in the will”); see also *Shriner’s Hospitals for Crippled Children v. Zrillic*, 563 So. 2d 64, 67 (Fla. 1990) (concluding that testators have a constitutional right to be free from unreasonable legislative restraint upon their right to devise property).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Under current law, curators are not required to post a bond in all cases. However, the bill generally requires curators to post a reasonable bond (excluding only banks and trust companies that serve as curators). This requirement in the bill will impose bond procurement costs on decedent estates which may not have required a bond under current law.

The bill also requires curators to file periodic reports with the court. These reports must detail the actions taken by the curator in managing the estate. This requirement may impose additional costs on the decedent's estate, which will now have to compensate curators for preparing and filing these reports with the court.

**C. Government Sector Impact:**

The bill requires courts to review the periodic reports submitted by curators at regular intervals to ensure that the curator is effectively managing the estate and fulfilling his or her duties. Moreover, the court may require more frequent reporting or additional documentation as it deems necessary to protect the interests of the estate, which it would also have to review. Accordingly, the bill may impose additional costs on courts associated with reviewing curator's periodic reports.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 733.501 of the Florida Statutes.

This bill reenacts section 90.5021 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 19, 2025:**

The committee substitute eliminates:

- The requirement that a court appoint a curator to represent an estate for which probate has not been initiated within 2 years after the decedent's death.
- A catch-all provision allowing courts to appoint a curator in unique circumstances not outlined in the bill.
- Four circumstances in the bill under which the curator is required to take custody of a decedent or person's estate.

B. Amendments:

None.