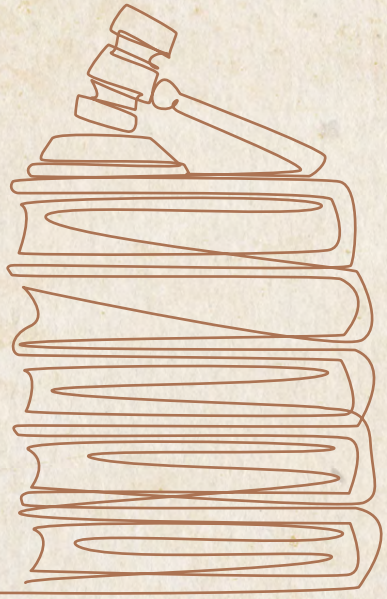
Where There's a Will, There's a Better Way:

Louisiana Adopts New Legislation on Will Making



by Ronald J. Scalise, Jr.[1]

In the classic French novella by Antoine de Saint-Exupéry, *Le Petit Prince*, the narrator crashes his plane in the Sahara desert and encounters the title character who had been on his exploration of the universe. Having seen only the dessert and thus a dusty wasteland, the prince explains to the aviator that the earth is uninhabited and covered only in sand.[2]

If Saint-Exupéry had sent the prince to Louisiana, the prince might justifiably have thought that the Pelican State was characterized with little other than defective wills and disappointed intestate decedents. As a result of Act 30 of the 2025 Regular Legislative Session, however, the fictional prince will now find in Louisiana a multitude of valid testaments and happy testators.[3] In addition to clarifying the standards for making wills in Louisiana, Act 30 simplifies the previously overwrought process for will-making and provides relief for testators who may have unintentionally muddled the prior process.

A Very, Very Brief History of Will Making in Louisiana

The history of will-making in Louisiana proceeds in four acts: Act I, 1808–1952; Act II, 1952–1999; Act III, 1999–2025, and now Act IV, 2025–.[4] Like all good plays, the acts are connected and lead logically from one to another. Act I was a time in which Louisiana had pure civil law wills and nothing else. The land was filled with olographic wills, mystic wills, and nuncupative wills by both public and private acts.[5] This was a simpler time before sophisticated trust law and complex estate planning.

Act II continued the civilian tradition but recognized that mystic and nuncupative wills had become problematic. Thus, the statutory will, so-called because it was located not in the Louisiana Civil Code but the Revised Statutes, was added to Louisiana law.[6] The statutory will, unlike its other testamentary brethren in Louisiana, was a common-law product.[7] Its adoption was a deliberate attempt to use the experience of other states to simplify will making in Louisiana. The common law, which had long allowed for attested wills that were valid only if in writing, signed, and "attested to" by two witnesses, was the foundation for the statutory will.[8] Louisiana, however, innovated, and added additional requirements to the common-law form, such as notarization, a lengthy attestation clause, a declaration by the testator, and the signature of the testator on every page.

Act III built upon Act II, which in later years heavily relied upon the two main forms of will: olographic and statutory. As a result, in 1999, the then-obsolete forms of mystic and nuncupative wills were abolished, and the olographic and the statutory wills were preserved.[9] The *statutory* will, however, was renamed the *notarial* will, and moved to the Civil Code to become new bedfellows with its elder sibling, the olographic will.[10] Although many lawyers today assume that the notarial will is a civilian product and part of Louisiana's civilian heritage, such is not the case. The civil law will that still exists in Louisiana today is the olographic will; indeed, it has existed since Roman times and is generally not recognized in the common law.[11]

Our current act, Act IV, retains both the names and locations of the notarial and olographic wills, but returns the olographic will to its civilian roots and simplifies the notarial will based upon several decades of experience.[12] In a sense, then, Act IV, continues (or, perhaps, completes) the changes made to the Louisiana law of wills both in 1999 and in 1952.

The Need for the New Law

Although the olographic will has a venerable lineage and a practical use, anecdotal evidence strongly suggests that the dominant form of will in Louisiana is the notarial testament. Despite its popularity, the notarial testament under the prior law contained many requirements and plenty of opportunities for mistakes. Under prior article 1577 of the Louisiana Civil Code, a notarial will needed to be "prepared in writing and dated" and "executed" in "the presence of a notary and two competent witnesses" after the testator "declare[d] or signif[ied] to them

that the instrument is his testament" and after having "signed it at the end and on each other separate page."[13] Finally, "in the presence of testator and each other," the witnesses and the notary had to sign an appropriate — if almost talismanic — clause attesting that the testator had done everything appropriately.[14]

Considered in a vacuum and out of context, nothing is wrong with the above requirements. In an abstract sense, prior Civil Code article 1577 satisfied all the purposes of form requirements: evidentiary, cautionary, ritualistic, and protective.[15] The multitude of technical requirements in the prior law made the testator think long and hard about drafting a will and arguably guarded against hasty decisions by testators as well as ill-tempered and malignly motivated malcontents determined to defraud an unsuspecting testator. Of course, so too would requiring the will be executed in Latin and before six bishops. As has aptly been observed by others, the relevant consideration is not whether form requirements serve the above purposes but whether they do so at an acceptable cost.[16]

Indeed, experience has shown that the cost involved with the prior form requirements for notarial wills was simply too high. Voluminous court cases in the past decade invalidated wills for seemingly minor and arguably silly mistakes in technical compliance.[17] In one instance, the attestation clause of a will recited only that the testator signed the end of the will but not every page of the will, even though the testator had, in fact, signed every page of the will.[18] In another instance, the testator initialed the first two pages of the will and signed the last page, rather than signing all three pages with his full name.[19] In both instances, Louisiana courts declared the wills invalid.

What's worse is that in few, if any, of the cases were there any allegations — much less credible allegations — of fraud, duress, undue influence, or that the testator was in any way being protected or served by the invalidation of the will. Rather, the will was invalid due to very minor noncompliance with the form requirements and nothing more. Of course, mistakes have consequences, but the effects of errors in will-making are not generally mistakes of testators themselves. Rather, the notarial will, being a professionally produced product, is the work of lawyers and notaries, whose mistakes are primarily borne by their clients rather than themselves.

So, if the felt cost of will formalities is too high and the noncompliance rate is too common, should something be done? For starters, no other transaction in Louisiana law requires as many formalities as the notarial will. Sales, mortgages, loans, donations, and myriad other legal transactions occur daily with far fewer formalities. Undeniably, however, wills are different insofar as the signatory to the document is dead at the time when the document matters most. But the very same could be said for life insurance, trusts, and beneficiary designations on annuities and retirement plans, none of which requires anywhere near the level of formal complexity as the execution of a will. Moreover, the experience from other states and other civil law jurisdictions also suggests that prior Louisiana law was out of step with how wills are regularly made.

An Explanation of the New Law

Act 30 attempts to address the above problem by preserving many of the core formal requirements for wills but eliminating some of the minor peripheral and problematic requirements as conditions of validity of a will.

The Notarial Will

Under Act 30, a valid notarial testament will requires only that the will be in writing, dated, and executed in the presence of a notary and two witnesses.[20] These requirements are, not coincidentally, very similar to the form requirements necessary to execute a self-proving authentic act — traditionally, the highest level of formality for non-testamentary documents.[21] Moreover, as other states require only that the will be attested to by two witnesses, Louisiana law after Act 30 still imposes more form requirements for the execution of a will than any other state in the country.

Notably, Act 30 imposes no rigid requirement as to what constitutes a date or a signature, or where they must be located within the will. Rather, a functional approach is employed, such that a court in probating the document may ask whether the testator's signature sufficiently "identifies the testator" and manifests "an intent by the testator to adopt the document at the testator's testament."[22] Similarly, the date "may appear anywhere" and "is sufficient if it resolves those controversies for which the date is relevant."[23] Thus, a will in which the drafter forgets to fill in the blank of the day and which may read "August __, 2025" could still be valid if the particular day in August on which the will is executed is unimportant, as may be the case when the testator executed only one will in August and no evidence of incapacity or undue influence at the time exists.[24]

If the testator is unable to sign the will on his own, as under prior law, another person may do so at the direction and in the presence of the testator.[25] Otherwise, the special forms of notarial testaments under prior law for those unable to read or for those unable to see or hear have been abolished.[26] All individuals may now use the standard form for a notarial will without the need and complexity of special variants of notarial wills.[27]

The Olographic Will

In addition to reforming the law on notarial wills, Act 30 also streamlines the law on olographic wills and returns the law to its civilian roots. Even prior to the Digest of 1808, French law provided (as it still does today) simply that an olographic will is valid if it is entirely written, dated, and signed in the hand of the testator. Over time (and often to correct erroneous court interpretations), Louisiana law on olographic wills adopted additional appendages that delineated the exact location of the signature, the effect of additional writings, the placement of the date, and the need for the date to express a day, month, and year.[28]

The new law discards the above appendages and returns Louisiana law to a simpler statement: "An olographic testament is one entirely written, dated, and signed in the handwriting of the

testator. The olographic testament is subject to no other requirement as to form."[29] Thus, cases in which olographic testaments were invalidated because the date contained only a month and a year or the signature did not appear at the end are no longer good law.[30]

The Probate Process

Despite the above changes, there is no need for conscientious attorneys or notaries to change their method of practice or to alter their standard form documents. With respect to notarial wills, evidence suggests that part of the problem with the prior law was that old forms still proliferated, despite not meeting the detailed requirements of the then-current law. Thus, care has been taken in the revision not to create a dramatically new regime that would catch practitioners unaware and correspondingly result in more invalid wills despite a simplified process.

To that end, many of the changes made by Act 30 move the peripheral requirements for will-making from matters of validity to matters of probate. In other words, a notarial will that meets all the requirements of the prior law will still be valid and still be self-proving. Under Act 30, although a notarial will need only be in writing, signed, dated, and notarized, to be self-proving, it still must contain or by accompanied by an attestation clause and be signed on every page. If it does not, the will is not invalid, but will require additional steps for probate, namely, the testimony by the notary and at least one witness. If only one witness or only the notary is available, that sole testimony shall be sufficient. If none are available, "the testament may be proved by the testimony of two credible witnesses who recognize the signature of the testator on the testament."[31]

No change in probate practice is contemplated by the new law for olographic wills. Olographic wills must still be proven by the testimony of two witnesses who are familiar with the handwriting of the testator.

Conclusion

The content of the above law was arrived at only after a lengthy and comprehensive study of the laws and practices of other U.S. states and other civil law jurisdictions. To aid in interpretation and application of the new law, Act 30 contains extensive comments explaining the purposes and effect of the change.

Much like the old law that has now disappeared from the world, when the prince in Saint-Exupery's work vanishes at the end of the story, the aviator requests to be contacted by anyone who encounters a boy like the prince. So too this author makes a similar request of the reader for any problems encountered with the new law and with suggestions for improvement. The law, after all, must suit the needs of practice and the people it serves. As the title to this article suggests, it is hoped that the new approach to wills is a move forward to a better way.

Footnotes

1. John Minor Wisdom Professor of Civil Law, Tulane University Law School. The author serves as the Reporter for the Successions and Donations Committee of the Louisiana State Law Institute and was the primary drafter of La. Act 30 (2025). The views expressed herein are solely the views of the author and do not necessarily reflect the views of Tulane, the Louisiana State Law Institute, or any of their committees or members. The author thanks Kendra Wilson Bonin for editorial assistance with an earlier draft.

2. Antoine de Saint-Exupéry, Le Petit Prince (1943).

3. Act 30 became effective on August 1, 2025, and "shall apply both prospectively and retroactively and shall be applied to all claims existing and pending on the effective date of this Act and all claims arising or actions filed on and after the effective date of this Act. The provisions of this Act shall not be applied to revive claims prescribed as of the effective date of this Act or to affect claims adjudicated on the merits by a final and definitive judgment prior to the effective date of this Act." Section 4 of La. Act. 30 (2025).

4. For a discussion of the history of Louisiana will formalities, see generally Ronald J. Scalise Jr., *Will Formalities in Louisiana: Yesterday, Today, and Tomorrow*, 80 La. L. Rev. 1331 (2020).

5. La. Civ.C. arts. 90-103 (1808).

6. La. Acts No. 66 (1952) (enacting La. R.S. 9:2442-2444).

7. Scalise, *supra* note 3, at 1340.

8. *Id.* at 1340-41.

9. *Id.* at 1342.

10. *Id.*

11. Reginald Parker, *History of the Holograph Testament in the Civil Law*, 3 The Jurist 1 (1943); Thomas Rüfner, *Testamentary Formalities in Roman Law*, *in* Testamentary Formalities 19 (Kenneth G.C. Reid, Marius J de Waal, & Reinhard Zimmermann eds., 2011).

12. La. Act 30 (2025).

13. La. Civ.C. art. 1577 (2024) (repealed).

14. *Id.*

15. For discussion of the purposes of will formalities, see generally Scalise, *supra* note 3, at 1335-37.

16. James Lindgren, *The Fall of Formalism*, 55 Alb. L. Rev. 1009, 1033 (1992).

17. *See, e.g.,* Succession of Hanna, 2019-01449 (La. 11/25/19), *abrogated by,* Succession of Liner, 2019-02011 (La. 6/30/21), 320 So. 3d 1133; *In re* Succession of Carter, 2019-545 (La. App. 5 Cir. 5/28/20), 298 So. 3d 370; Succession of Thomas, 2023-43 (La. App. 3 Cir. 10/4/23), 371 So.3d 1195; Succession of Dale, 2018-0405 (La. App. 1 Cir. 9/24/18), 259 So. 3d 1032 (La. App. 1 Cir. 2018).

18. Succession of Liner, 2021 WL 266394 (La. 2021), *vacated and superseded on rehearing by*, 2019-02011 (La. 6/30/21), 320 So. 3d 1133.

19. Succession of Frabbiele, 2024-00091, (La. 12/13/24), 397 So. 3d 391.

20. La. Act 30 (2025) (enacting La. Civ.C. art. 1576).

21. La. Civ.C. art. 1835.

22. La. Act 30 (2025) (enacting La. Civ.C. art. 1576 (B)).

23. *Id.* (enacting La. Civ.C. art. 1576 (C)).

24. By contrast, under prior law, establishing an exact day, month, and year was crucial to the validity of the will. *See, e.g.*, Heffner v. Heffner, 20 So. 281 (La. 1896) (invalidating an olographic will in which the day of the month was missing); Succession of Aycock, 02-0701 (La. 5/24/02), 819 So. 2d 290 (invalidating an olographic will in which the notary filled in the date). *See also* Scalise, *supra* note 3, at 1374-1375.

25. *Compare* La. Civ.C. art. 1578 (repealed), *with* La. Act 30 (2025) (enacting La. Civ.C. art. 1576(A)).

26. *See* Section 3 of Act 30 (2025) (providing "Civil Code Arts. 1577 through 1580.1 are hereby repealed in their entirety").

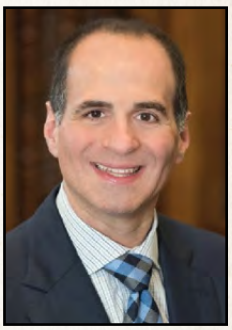
27. La. Act 30 (2025) (enacting La. Civ.C. art. 1576 cmt (h)).

28. *See* Scalise, *supra* note 3, at 1367-79.

29. La. Act 30 (2025) (enacting La. Civ. Code art. 1575(A)).

30. Fr. Civ. Code art. 970. *See, e.g.*, Succession of Ally, 22-16, (La. App. 5 Cir. 12/31/22), 354 So. 3d 1248.

31. La. C.C.P. art. 2887.



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