

Is Your Will Still Valid?

Most people have specific plans for what happens to their property when they die. These plans are set forth in a Last Will and Testament. Louisiana law provides certain requirements for creating a valid will that will be recognized and enforced by the court. When those rules aren't followed, your will is in danger of being invalidated.

Recent decisions by the Louisiana Supreme Court, along with a ruling by a district court in a high-profile dispute, might put your will in jeopardy. The central issue in each of these cases was the validity of attestation clauses in notarial testaments. The takeaway: attestation clauses that don't comply with the Code of Civil Procedure are likely to invalidate the entire will, making it absolutely null and unenforceable. In other words, Louisiana courts are trending toward throwing out the entire will if the attestation clause is faulty. Without a will, your property will be distributed according to the default provisions of state law, rather than according to your wishes. If you haven't looked at your will in a while, it's probably time to dust it off and make sure it complies with the law.

➤ What is an attestation clause?

An attestation clause is a declaration at the end of a testament that sets forth the legal requirements of a valid will, states that those legal requirements have been met, and is signed by the testator, two witnesses, and a notary public.[1]

➤ What are the legal requirements for a valid and enforceable notarial testament in Louisiana?

A notarial testament is a will that is prepared in writing, dated, and signed by the testator in the presence of two competent witnesses and a notary.[2] When signing the testament, the testator (the person making the testament) must declare or signify to the notary and two witnesses that the testament is his or her testament, and he or she shall sign the testament at the end of the testament and on each other separate page.[3]

After the testator signs his or her name, the notary and witnesses must sign the following declaration (also known as an "attestation clause"), or a substantially similar one:

In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _____, 20____.[4]

[1] See, e.g. Keely v. Moore, 196 U.S. 38 (1904).

[2] Louisiana Code of Civil Procedure article 1577.

[3] Louisiana Code of Civil Procedure article 1577.

[4] Louisiana Code of Civil Procedure article 1577.



The code articles on notarial testaments also describe how a notarial testament must be signed by when:

- a) The testator is literate and sighted but physically unable to sign;[5]
- b) The testator is unable to read;[6]
- c) The testament is in braille form;[7] and
- d) The testator is deaf or deaf and blind.[8]

➤ Why are these new cases important?

These new decisions highlight the importance of using the model language provided by Louisiana law. In two of the three cases, the courts decided that the testators' attestation clauses were not substantially similar to the model language, and rendered the wills absolutely null and unenforceable.

Succession of Raymond John Brandt

On January 25, 2021, Judge Lee Faulkner of the 24th Judicial District Court in Jefferson Parish, Louisiana, noted the following defects in the testator's attestation clause:

- a) The purported attestation clause does not indicate that the testator declared that he signed the will in the presence of a notary; and
- b) The purported attestation clause does not indicate that, "in the presence of the testator, the witnesses, and the notary, they signed the attestation clause in the presence of one another." [9]

The court determined that, because the purported attestation clause did not comply with form requirements stated in Louisiana Code of Civil Procedure article 1577, the entire will was invalid and absolutely null.

Succession of James Conway Liner, III and Succession of Peggy Blackwell Bruce

Two days later, on January 27, 2021, the Louisiana Supreme Court published two additional decisions concerning attestation clauses. The decisions fine-tuned the meaning of "substantially similar" language, and explained the purpose of attestation clauses in notarial testaments.

[5] Louisiana Civil Code article 1578.

[6] Louisiana Code of Civil Procedure article 1579.

[7] Louisiana Code of Civil Procedure article 1580.

[8] Louisiana Code of Civil Procedure article 1581.

[9] Succession of Raymond John Brandt, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, Docket No. 801-807, Division P, January 25, 2021 Judgment on Motion to Determine Validity of Wills.

[10] Succession of James Conway Liner, III, 20-02011 (La. 1/27/21); ____ So. 3d ____.



In the Succession of James Conway Liner, III, the will was challenged because the testator, who was unable to read the will, did not declare that he signed his name at the end of the testament and on each other separate page.[10] Instead, the testator stated that “the Will was signed.” The court opined that if the attestation clause does not state that the testament was signed on every other separate page, then the testament “fails to inform the testator and witnesses that the testator has a responsibility to sign every page of a multipage testament.” The court decided that the clause was not substantially similar to the model language, and thus the will was invalid and null.

The court provided a distinguishing opinion in the Succession of Peggy Blackwell Bruce. [11] In that case, the attestation clause failed to state that the testator signed the end of the testament. The will stated only that it was, “[s]igned on each page.” The court reasoned that the attestation clause was substantially similar to the model language and accomplished the intended purpose of ensuring that the notarial statement complied with signature requirements. The will was determined to be valid and enforceable.

➤ What should you do?

An ounce of prevention is worth a pound of cure. If you have a will, now is as good a time as any to check and see if it complies with Louisiana law. If you don’t have a will, there is no better time to put one together so that you, not the state, decides what happens to everything you leave behind. Couhig Partners will provide you a free consultation to see what your needs are and if we can work together.

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[11] 20-00239 (La. 1/27/21); _____ So.3d _____.



Claire E. Pontier
cpontier@couhigpartners.com
504.565.3726