

2025 Regular Session

SENATE BILL NO. 49

BY SENATOR MILLER (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WILLS/TESTAMENTS. Provides for validity of testaments. (8/1/25)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact Civil Code Art. 1575, 1576, and 1581 and Code of Civil Procedure Art. 2891, to enact Code of Civil Procedure Art. 2887, and to repeal Civil Code Art. 1577 through 1580.1, relative to testaments; to provide for the requirements of form for olographic testaments; to provide for the requirements of form for notarial testaments; to eliminate special requirements for notarial testaments for persons who are unable to sign or read; to eliminate special law for the execution of a testament in braille; to eliminate special requirements for notarial testaments for persons who are deaf or deaf and blind; to provide for the competency of witnesses to testaments; to provide for proof of testaments for probate; to provide for retroactive application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Arts. 1575, 1576, and 1581 are hereby amended and reenacted to read as follows:

Art. 1575. Olographic testament; **requirements of form**

A. An olographic testament is one entirely written, dated, and signed in the handwriting of the testator. ~~Although the date may appear anywhere in the testament,~~

1 ~~the testator must sign the testament at the end of the testament. If anything is written~~
 2 ~~by the testator after his signature, the testament shall not be invalid and such writing~~
 3 ~~may be considered by the court, in its discretion, as part of the testament. The~~
 4 ~~olographic testament is subject to no other requirement as to form. The date is~~
 5 ~~sufficiently indicated if the day, month, and year are reasonably ascertainable from~~
 6 ~~information in the testament, as clarified by extrinsic evidence, if necessary.~~

7 **B. The signature may appear anywhere in the testament and is sufficient**
 8 **if it identifies the testator and evidences an intent by the testator to adopt the**
 9 **document as the testator's testament.**

10 **C. The date may appear anywhere in the testament, may be clarified by**
 11 **extrinsic evidence, and is sufficient if it resolves those controversies for which**
 12 **the date is relevant.**

13 **D. Additions and deletions on the testament made after the execution of the**
 14 **testament may be given effect only if made by the hand of the testator and need not**
 15 **comply with the formalities for the execution of a will or the revocation of a**
 16 **legacy.**

17 Revision Comments – 2025

18 (a) This revision changes the law to simplify the execution of olographic
 19 wills in Louisiana and return Louisiana law to the approach traditionally used for
 20 nearly two hundred years. See Article 1588 (1870); Article 1581 (1825); La. Digest
 21 Article 103 (1808). The simplified approach of this revision is consistent with the
 22 more streamlined approach employed by other civil law jurisdictions and other
 23 American states. See, e.g., Fr. Civ. Code Art. 970; BGB §2247; Quebec Civ. Code
 24 Art. 726; Unif. Prob. Code §2-502(b) (2008). For discussion of the application of
 25 will formalities under Louisiana law, see generally Ronald J. Scalise, Jr., Will
 26 Formalities in Louisiana: Yesterday, Today, and Tomorrow, 80 La. L. Rev. 1333
 27 (2020).

28 (b) Under long-standing Louisiana law, an olographic will must be "entirely"
 29 written, dated, and signed in the testator's handwriting. Question has arisen as to the
 30 exact meaning of the word "entirely." Louisiana courts have adopted the
 31 "surplusage" approach to this problem, which, stated briefly, provides that the
 32 portions of the document in the testator's handwriting are given effect as an
 33 olographic will if they make sense as a will standing alone. *Andrew's Heirs v.*
 34 *Andrew's Executors*, 12 Mart. (o.s.) 713 (La. 1823). In some instances, the
 35 handwritten material may be insufficient, standing alone, to constitute an olographic
 36 will and thus cannot be given effect. See, e.g., *Succession of Plummer*, 847 So. 2d
 37 185 (La. App. 2 Cir. 2003). This revision maintains the traditional "surplusage"
 38 approach and does not adopt the more permissive approaches to olographic wills
 39 advocated by various versions of the Uniform Probate Code. See Unif. Prob. Code
 40 §2-503 (1990) (requiring only "material provisions" to be in the testator's
 41 handwriting); Unif. Prob. Code §2-502(b) and (c) (requiring only "material portions"

1 to be in the testator's handwriting and allowing preprinted material to serve as
2 extrinsic evidence of a testator's intent); Restatement (Third) of Property: Wills and
3 Other Donative Transfers §3.2, cmt b.

4 (c) Under prior law, the signature in an olographic will was required to
5 appear "at the end of the testament," but "anything . . . written by the testator after
6 his signature . . . [did not invalidate] the testament . . . [but could] be considered by
7 the court, in its discretion." Article 1575 (2001). This revision changes the law but
8 declines to impose a location requirement for a signature in an olographic will.
9 Rather, it defines what is required to constitute a signature, irrespective of its
10 location. This approach is consistent with historical Louisiana law and with the law
11 of other jurisdictions. See, e.g., Fr. Civ. Code Art. 970; BGB §2247; Quebec Civ.
12 Code Art. 726; Unif. Prob. Code §2-502 (2008); Unif. Prob. Code §2-503 (1990).
13 The 1870 Civil Code merely provided that "[t]he olographic testament is that which
14 is written by the testator himself. In order to be valid, it must be entirely written,
15 dated and signed by the hand of the testator. It is subject to no other form, and may
16 be made anywhere, even out of the State." Article 1588 (1870). In 1999, when the
17 revision to the law on donations went into effect, Article 1575 read as follows:

18 "An olographic testament is one entirely written, dated, and signed in the
19 handwriting of the testator. It is subject to no other requirement as to form. Additions
20 and deletions on the testament may be given effect only if made by the hand of the
21 testator."

22 The language regarding signatures at the end was added in 2001 to overrule
23 an ill-starred case, *Succession of King*, 595 So. 2d 805, 809 (La. App. 2 Cir. 1992),
24 which invalidated an olographic will that had not been signed at the end. Although
25 overruling *Succession of King* was a laudable goal, the 2001 revision unfortunately
26 precluded courts from even considering wills in which the signature was not at the
27 end and rather was contained in the exordium to the will, such as in *Succession of*
28 *Ally*, 354 So. 3d 1248 (La. App. 5 Cir. 2022). See also Thomas E. Atkinson,
29 *Handbook of the Law of Wills* 255 (1937).

30 This revision also makes clear that no rigid rule exists as to how one must
31 sign one's name. To the extent that *Succession of Frabbiele*, 397 So.3d 391 (La.
32 2024), may have been applicable by analogy, the holding of that case is legislatively
33 rejected by the adoption of a broader definition of "signing" or "signature." Prior to
34 *Frabbiele*, Louisiana jurisprudence was replete with varying manifestations of a
35 testator's signature. Although one's full legal name may be signed in some cases, a
36 full legal name is not a requirement. See, e.g., *In re Succession of Caillouet*, 935 So.
37 2d 713 (La. App. 4 Cir. 2006) (finding "Auntie" to be a sufficient signature);
38 *Succession of Cordaro*, 126 So. 2d 809 (La. App. 2 Cir. 1961) (finding an olographic
39 will valid that was signed only with the testator's first name, Lorene); *Balot y Ripoll*
40 *v. Morina*, 12 Rob. 552, 558 (La. 1846) (holding a false name was a signature);
41 *Succession of Squires*, 640 So. 2d 813 (La. App. 3 Cir. 1994) (holding that initialing
42 constitutes a signature); *Succession of Armstrong*, 636 So. 2d 1109 (La. App. 4 Cir.
43 1994) (holding that initialing constitutes a signature); *Succession of McKlinski*, 331
44 So. 3d 414 (La. App. 4 Cir. 2021) (holding that initialing constitutes a signature);
45 *Succession of Pedescleaux*, 341 So. 3d 1224 (La. App. 5 Cir. 2022) (holding that
46 initialing constitutes a signature); *Succession of Spain*, 344 So. 3d 115 (La. App. 4
47 Cir. 2022) (holding that initialing constitutes a signature). Under this revision, a full
48 legal name, a nickname, a pseudonym, or even initials may constitute a signature. A
49 broad definition of "signing" or "signature" is consistent with both civil and common
50 law practices. For instance, French law is untroubled by first names or initials as
51 signatures. Philippe Malaurie & Claude Brenner, *Droit des Successions et des*
52 *Libéralités* 297 (8th ed. 2018). Italian law provides that "[A] signature is valid even
53 without the forename and surname so long as it designates with certainty the person
54 of the testator. . . . Accordingly, . . . it is possible to sign the will by using, for
55 instance, only the surname or the first name (whether with or without the initial of
56 the surname) or a nickname if that is habitually used to identify the testator or even
57 the initials of the first name and surname." Alexandra Braun, *Testamentary*
58 *Formalities in Italy*, in *Testamentary Formalities* 51, 64 (Kenneth G.C. Reid, Marius

1 J de Waal, & Reinhard Zimmermann eds., 2011); Italian Civil Code Art. 602 ("La
2 sottoscrizione deve essere posta alla fine delle disposizioni. Se anche non è fatta
3 indicando nome e cognome, è tuttavia valida quando designa con certezza la persona
4 del testatore."). Under Brazilian law, a signature by "a pseudonym may also be
5 sufficient if it is a name which the testator generally uses." Jan Peter Schmidt,
6 Testamentary Formalities in Latin America with Particular Reference to Brazil, in
7 Testamentary Formalities 51, 64 (Kenneth G.C. Reid, Marius J de Waal, & Reinhard
8 Zimmermann eds., 2011). German law is also flexible on the signature requirement.
9 BGB §2247(3) ("The signature should contain the first name and the last name of the
10 testator. If the testator signs in another manner and this signature suffices to establish
11 the identity of the testator and the seriousness of his declaration, such a signature
12 does not invalidate the will."). Common law sources are also in accord. *See, e.g.*, 2
13 Page on the Law of Wills §§19.41, at 89 (2003) ("The testator may sign his name by
14 writing it out in full or by abbreviating it, or by writing his initials, . . . or by using
15 an assumed name where not done with intent to deceive."); Restatement (Third) of
16 Property: Wills and Other Donative Transfers §3.1, cmt j ("Ideally, the testator 'signs'
17 the will by writing out his or her name in full. Signature by mark or cross is
18 sufficient, however. So also is signature by term of relationship (such as 'Dad,'
19 'Mom,' or 'Auntie'), abbreviation, nickname, a pet name, a first name, a last name,
20 initials, or pseudonym, or even by fingerprint or seal. The name need not be spelled
21 correctly. It need not be legible. It may be made with the assistance of another, who
22 guides the testator's hand. The crucial requirement is that it must be done with intent
23 of adopting the document as the testator's will.").

24 (d) Under prior law, the date was sufficient only if the "day, month, and year
25 are reasonably ascertainable from information in the testament, as clarified by
26 extrinsic evidence, if necessary." Article 1575 (2001). Question, however, may exist
27 as to the exact date when slash or numeric dates are used and both the first and
28 second numbers are below twelve. In fact, early Louisiana courts invalidated wills
29 with slash dates, such as "10/3/50," "12.10.1934," and "9/8/18," because in all such
30 cases the date was uncertain. Succession of Mayer, 144 So. 2d 896 (La. App. 4 Cir.
31 1962); Succession of Lasseigne, 181 So. 879 (La. App. 1 Cir. 1938). Prior law
32 altered the above results by allowing extrinsic evidence to be admitted to clarify an
33 ambiguous date. Article 1575; see also Succession of Beird, 82 So. 881 (La. 1919).
34 Extrinsic evidence, however, was still needed to render the day, month, and year
35 "reasonably ascertainable." In Succession of Raiford, 404 So. 2d 251 (La. 1981), the
36 Louisiana Supreme Court considered an olographic will dated "Monday.8 1968."
37 Even after the admission of extrinsic evidence, the Supreme Court concluded that
38 "[t]he only certain thing about the date here is the year 1968. The figure 8 could
39 reflect either the day or the month." Thus, "the will [was] invalid." Other decisions
40 from the Louisiana Supreme Court have been equally clear that "the month, without
41 the day, is no date" at all. Heffner v. Heffner, 20 So. 281 (La. 1896). See also
42 Succession of Robertson, 21 So. 586 (La. 1897) (holding a will invalid when the first
43 three digits of the date (i.e., 189) were in print, and the testator merely supplied the
44 last numeral).

45 This revision takes a more expansive approach as to what constitutes a
46 sufficient date, declining to establish a rigid definition of what constitutes a date and
47 rather adopting a more flexible approach of allowing courts to examine what might
48 be "sufficient if it resolves those controversies for which the date is relevant." In
49 other words, if a testator dies with two wills dated "March 2024," a sufficient date
50 will require determining temporal priority of the wills in order to probate either. On
51 the other hand, if the testator has only one will and there are no issues regarding
52 capacity or free consent, knowing only that the will was executed in March of 2024
53 could be entirely sufficient. Along these lines, Justice Lemmon in dissent in the
54 Raiford case observed similarly in concluding that a will dated only by the year
55 ought to be valid when the purposes for which the date are required (i.e., competency
56 of the testator and order of multiple wills) are not thwarted. Succession of Raiford,
57 404 So. 2d 251 (La. 1981) (Lemmon, J., dissenting). Commentators have likewise
58 criticized a strict rule requiring a date and argued that "[o]ne need only say that the

1 'date' must be sufficient to resolve those controversies present in the case and for
 2 which the requirement of a date was intended." H. Alston Johnson, Successions and
 3 Donations, 43 La. L. Rev. 585, 601 (1982); Ronald J. Scalise, Jr., Will Formalities
 4 in Louisiana: Yesterday, Today, and Tomorrow, 80 La. L. Rev. 1331 (2020);
 5 Succession of Boyd, 306 So. 2d 687 (La. 1975). See also Succession of Raiford, 404
 6 So. 2d 251, 254 (1981) (Lemmon, J., dissenting) (arguing that a will dated "1968"
 7 should be valid because it establishes "the point in time of its making sufficiently to
 8 show that this will was made later than the 1963 will in which decedent left the
 9 property to her brother."). Other civil law jurisdictions have also shown flexibility
 10 regarding the date requirement for an olographic will. See, e.g., Cass. Civ. 1re, 22
 11 nov. 2023, No. 21-17.524 (upholding an olographic will without a handwritten date,
 12 despite an explicit requirement in the French Civil Code to the contrary); BGB
 13 §2247 (providing that an olographic will may be made by a writing signed by the
 14 testator and may still be valid without a date); Quebec Civ. Code Art. 726 ("Le
 15 testament olographe doit être entièrement écrit par le testateur et signé par lui,
 16 autrement par un moyen technique."). See also Unif. Prob. Code §2-502 (allowing
 17 for holographic wills provided they are signed and "material portions of the
 18 document are in the testator's handwriting").

19 (e) Paragraph D of this Article continues the approach of prior law but
 20 clarifies that handwritten additions or deletions made on olographic wills may be
 21 given effect by a court, even if the amendments are not in the form of a will or the
 22 revocation of a legacy. This has long been the law in Louisiana and in other
 23 jurisdictions. See, e.g., Article 1589 (1870) ("Erasures not approved by the testator
 24 are considered as not made, and words added by the hand of another as not
 25 written."); Succession of Melancon, 330 So. 2d 679 (La. App. 3 Cir. 1976) ("We
 26 recognize that Article 1589 of the Revised Civil Code and the jurisprudence
 27 interpreting the provisions thereof recognize that the writer of an olographic will
 28 may later or completely change testamentary dispositions in his handwritten
 29 testament without affecting its validity so long as the alterations or additions are
 30 made by the hand of the testator."); Succession of Butterworth, 196 So. 39 (La.
 31 1940); Restatement (Third) Property: Wills and Other Donative Transfers §3.2, cmt
 32 f ("After the testator signs a holographic will, the testator may validly make a
 33 handwritten alteration of the will without re-signing the document.").

34 (f) An olographic will, like a notarial will, must be in "writing." Prior to the
 35 1997 revision, Louisiana law allowed for certain extraordinary oral wills. Those wills
 36 have been suppressed. See, e.g., Articles 1597-1604 (1870). Today, all wills must be
 37 in writing. Traditionally, the writing is on paper, but neither Louisiana law, nor the
 38 law of other jurisdictions, has ever required that a will be on paper. See, e.g.,
 39 Restatement (Third) Property: Wills and Other Donative Transfers §3.1, cmt i ("The
 40 requirement of a writing does not require that the will be written on sheets of paper,
 41 but it does require a medium that allows the markings to be detected. A will, for
 42 example, scratched in the paint on the fender of a car would be in writing, but one
 43 "written" by waving a finger in the air would not be."). In the modern day, it is even
 44 possible that an olographic will could be written on an electronic tablet. See, e.g., In
 45 re Estate of Javier Castro, No. 2013ES11140 (Lorain Cnty. Ohio Ct. Com. Pl. June
 46 19, 2013). There is also no requirement that a will be written in English. See, e.g.,
 47 Article 1577, cmt (d) (1997). Louisiana law contains examples of wills written in
 48 French, among other languages. See, e.g., Lagrave v. Merle, 5 La. Ann. 278 (La.
 49 1850).

50 Art. 1576. Notarial testament; **requirements of form**

51 ~~A notarial testament is one that is executed in accordance with the formalities~~
 52 ~~of Articles 1577 through 1580.1.~~

53 ~~Art. 1577. Requirements of form~~

1 A. The notarial testament shall be prepared in writing, and dated, **executed**
 2 **before a notary public in the presence of two witnesses, and signed by the**
 3 **testator, each witness, and the notary. If a testator is unable to sign, the testator**
 4 **may affix his mark in place of signing or direct another person to sign on behalf**
 5 **of the testator and in the presence of the testator.** and shall be ~~executed in the~~
 6 following manner. If the testator knows how to sign his name and to read, and is
 7 physically able to do both, then:

8 (1) ~~In the presence of a notary and two competent witnesses, the testator shall~~
 9 ~~declare or signify to them that the instrument is his testament and shall sign his name~~
 10 ~~at the end of the testament and on each other separate page.~~

11 (2) ~~In the presence of the testator and each other, the notary and the witnesses~~
 12 ~~shall sign the following declaration, or one substantially similar: "In our presence the~~
 13 ~~testator has declared or signified that this instrument is his testament and has signed~~
 14 ~~it at the end and on each other separate page, and in the presence of the testator and~~
 15 ~~each other we have hereunto subscribed our names this ____ day of _____,~~
 16 ~~____."~~

17 **B. The signature may appear anywhere in the testament and is sufficient**
 18 **if it identifies the testator and evidences an intent by the testator to adopt the**
 19 **document as the testator's testament.**

20 **C. The date may appear anywhere in the testament, may be clarified by**
 21 **extrinsic evidence, and is sufficient if it resolves those controversies for which**
 22 **the date is relevant.**

23 Revision Comments – 2025

24 (a) This revision changes the law to simplify the execution of notarial wills
 25 in Louisiana. This approach is consistent with the law of other states. See, e.g., Unif.
 26 Prob. Code §2-502 (2008). For discussion of the application of will formalities under
 27 Louisiana law, see Ronald J. Scalise, Jr., Will Formalities in Louisiana: Yesterday,
 28 Today, and Tomorrow, 80 La. L. Rev. 1333 (2020). Although this revision alters the
 29 requirements necessary for the validity of a notarial will, a notarial will properly
 30 executed under the prior law would still be valid and self-proving under this revision.

31 (b) Most importantly, this revision eliminates the "attestation clause" as a
 32 condition of "validity" for notarial wills, a requirement under prior law that caused
 33 much litigation. See, e.g., Succession of Liner, 320 So. 3d 1133 (La. 2021);
 34 Successions of Toney, 226 So. 3d 397 (La. 2017). Attestation clauses may still be
 35 used in notarial wills to make wills self-proving. See, e.g., Code of Civil Procedure

1 Article 2887. Under this revision, the absence of an attestation clause from a notarial
2 will does not invalidate a will. Rather, the absence of an attestation clause or a
3 subsequently executed affidavit will require proof of proper execution in accordance
4 with Code of Civil Procedure Article 2887(B). The Louisiana Supreme Court long
5 ago observed that the attestation clause is of only "evidentiary" value, rather than
6 substantive value. See, e.g., *Succession of Porche*, 288 So. 2d 27 (La. 1973) ("[T]he
7 purpose of the attestation clause is primarily to evidence, at the time the will was
8 executed, that the statutory formalities . . . had been satisfied").

9 (c) This revision aligns the formalities required for the execution of a notarial
10 will more closely with the formalities required for the execution of an authentic act.
11 See, e.g., Article 1833. Unlike an authentic act, however, a notarial will still requires
12 a date for purposes of validity and a particular standard for competency of witnesses
13 as provided in Article 1581. The date requirement, as with all formalities for wills,
14 should not be interpreted strictly. Rather, a substantial compliance approach should
15 be used by courts in assessing whether the formalities of a particular document
16 sufficiently protect against fraud. Extrinsic evidence may be used to complete or
17 clarify the date of a will. For the meaning of the requirement of date, see the
18 Comments to Article 1575. Although a date has always been required for olographic
19 wills, the date requirement was added for notarial wills only in 1999. Prior to that
20 time, the statutory will, on which the notarial will is based, did not require a date.
21 Lemuel E. Hawsey III, *Louisiana's Statutory Will: The Role of Formal*
22 *Requirements*, 32 La. L. Rev. 452, 459 (1972) ("Although neither the statute nor the
23 jurisprudence make the date a formal requirement for validity of a statutory will, it
24 is still necessary to determine whether some general principle at either common or
25 civil law necessitates inclusion of the date of execution in order for a testament to be
26 valid. The Louisiana Wills Statute had as its origin similar statutes existing in all of
27 the common law states. It is well settled at common law that, in the absence of an
28 express statutory requirement, the date of execution is not essential to the validity of
29 a statutory will."). Attested wills that are common in other states do not generally
30 require a date. See, e.g., *Unif. Prob. Code* §2-502.

31 (d) For the meaning of the signature requirement, see the Comments to
32 Article 1575. The revision expressly avoids using the phrase "sign his name," which
33 the Louisiana Supreme Court has interpreted to exclude signing by initialing. See
34 *Successions of Toney*, 226 So. 3d 397 (La. 2017), overruled in part by *Succession*
35 *of Liner*, 320 So. 3d 1133 (La. 2021) (on rehearing); *Succession of Frabbiele*, 397
36 So. 3d 391 (La. 2024).

37 (e) Both notarial and olographic wills must be in writing. Former Article
38 1580 allowed for a notarial will to be executed in braille. Although that article has
39 been suppressed in this revision, no change in the law is intended, as braille is
40 unquestionably a form of "writing." For the meaning and requirements of a writing,
41 see the Comments to Article 1575.

42 (f) This revision also eliminates the "publication" requirement that existed in
43 prior law as a condition of validity. Publication, simply stated, is "the declaration by
44 the testator that the instrument is his will." No major statutory enactment has ever
45 required that a will be published, and it is hard to understand why this formality
46 persists in the modern day. Specifically, publication was not required by the English
47 Wills Act, the Statute of Frauds, or by any version of the Uniform Probate Code.
48 Although English courts did impose such a requirement at one point, it has long
49 since been abandoned. Today, only a very few states require publication as a
50 condition of validity. See, e.g., *Ark. Code* §28-25-103; *Iowa Code* §633.279; *N.Y.*
51 *Est. Power & Trust Law* §3-2.1; *84 Okla. Stat. Ann.* §55; *Tenn. Code* §32-1-104.
52 Moreover, the significance of the "publication" requirement under prior law has
53 largely eroded. See, e.g., Article 1577 (2001), cmt (c) ("The testator's indication that
54 the instrument contains his last wishes may be given verbally or in any other manner
55 that indicates his assent to its provisions."); *Succession of Guidry*, 160 So. 2d 759
56 (La. App. 3 Cir. 1964) (Nothing in the statute requires a "verbal signification," and
57 thus a testatrix may signify her intention "by shaking her head."); *Succession of*
58 *Saarela*, 151 So. 2d 144 (La. App. 4 Cir. 1963) (Reference in a will to "this is my last

1 will and testament" was a sufficient declaration to constitute publication of the will.);
2 Succession of Porche, 273 So. 2d 665 (La. App. 4 Cir. 1973); Succession of
3 Thibodeaux, 527 So. 2d 559 (La. App. 3 Cir. 1988) (The very signing of the will
4 itself can be a sufficient declaration, even when there is no verbal declaration or
5 other significant action.).

6 (g) Although signing a will on every page is good practice, it is no longer
7 required as a condition of validity. To make a will self-proving, however, a signature
8 on every page of the will is necessary. See Code of Civil Procedure Article 2887.
9 The requirement in prior law that every page of the notarial will be signed appears
10 to be a somewhat unique Louisiana rule copied, most likely, from the same
11 innovation imposed upon statutory wills. In Succession of Hoyt, the court observed
12 that "[t]he purpose of the requirement is to prevent fraud by the substitution of one
13 typewritten page for another after the execution of the will by the testator."
14 Succession of Hoyt, 303 So. 2d 189 (La. App. 1 Cir. 1974). Despite good practice,
15 the requirement that each page be signed has wrought substantial havoc in Louisiana
16 law. For instance, in Succession of Hoyt, a Louisiana court declared invalid a two-
17 page will that was signed only on the last page. Succession of Hoyt, 303 So. 2d 189
18 (La. App. 1 Cir. 1974). The court noted that "[t]he failure of the testator to sign each
19 sheet is fatal to the validity of the will." *Id.* Similarly, in *Land v. Succession of*
20 *Newsom*, the court found that failure to sign each page of a two-page will was "fatal"
21 to the validity of the entire will. *Land v. Succession of Newsom*, 193 So. 2d 411 (La.
22 App. 2 Cir. 1966). More recently, a court held invalid a will that was not signed on
23 every page by noting that it was "undisputed that [the testator] did not sign one of the
24 pages of the . . . testament that contained dispositive provisions in favor of his three
25 sisters." *In re Hendricks*, 28 So. 3d 1057 (La. App. 1 Cir. 2009). But see *Succession of*
26 *Simonson*, 982 So. 2d 143 (La. App. 5 Cir. 2008) (a will was not rendered invalid
27 under prior law if the testator fails to sign a page relating solely to the powers of a
28 trustee and other administrative matters); *Succession of Guezuraga*, 512 So. 2d 366
29 (La. 1987) (same regarding end of attestation clause). Experience has shown that,
30 although good practice would encourage the signing of every page, the absence of
31 a signature on every page should not be an absolute bar to a will's validity, especially
32 when no fraud or similar allegation is made, or when the testator made some
33 identifying mark, such as initialing, to indicate assent to the will's provisions. But see
34 *Succession of Frabbiele*, 397 So. 3d 391 (La. 2024) (invalidating a will under prior
35 law that was initialed on every page). No other document must be signed on every
36 page as a condition of validity. Similarly, experience from other jurisdictions and
37 conventions is likewise illuminating. Many civil and common law jurisdictions do
38 not require the signing of every page of a will. See, e.g., Fr. Civ. Code Arts. 971-974;
39 BGB §2231-2233; Unif. Prob. Code §2-502. Some civil law jurisdictions still require
40 that "secret" wills be signed on every page. See, e.g., Ital. Civ. Code Art. 604; Sp.
41 Civ. Code Art. 706. Although the Uniform Law on International Wills also requires
42 a signature on every page, it does not consider it a core formality, such that its
43 absence does not affect the validity of the will. Unif. Int'l Wills Act Arts. 1 and 6.

44 (h) This revision repeals former Articles 1578 and 1579, which provided
45 special procedures for testators who were unable to sign or unable to read. Although
46 well intentioned, those articles proved unnecessarily cumbersome in the modern day.
47 A testator who is unable to sign can direct another person to sign in his place under
48 this Article. Similarly, a testator who is unable to read can still sign a legal
49 document, including a will. Before doing so, however, it is important that the
50 document be explained to the signatory to ensure that it represents his intent. Former
51 Article 1580.1, which provided special procedures for testators who were deaf or
52 deaf and blind, was again well intentioned but either unnecessary or impractical in
53 its application. For an explanation of the difficulties of utilizing Article 1580.1, see
54 Ronald J. Scalise, Jr., *Will Formalities in Louisiana: Yesterday, Today, and*
55 *Tomorrow*, 80 La. L. Rev. 1333 (2020).

* * *

Art. 1581. Persons incompetent to be witnesses

A person cannot be a witness to any testament if ~~he~~ **the person** is insane, blind, under the age of sixteen, or unable to sign his name. ~~A person who is competent but deaf or unable to read cannot be a witness to a notarial testament under Article 1579.~~

Section 2. Code of Civil Procedure Art. 2891 is hereby amended and reenacted and Code of Civil Procedure Art. 2887 is hereby enacted to read as follows:

Art. 2887. Notarial testament

A.(1) A notarial testament executed pursuant to Civil Code Article 1576 does not need to be proved if it is signed on each separate page at the time of execution and is accompanied by either of the following declarations:

(a) In the testament, the following declaration, or one that is substantially similar, signed by the notary and the subscribing witnesses: "In our presence the testator has declared or signified that this instrument is his testament and has signed each separate page."

(b) In an affidavit attached to the testament but executed after the execution of the testament, the following declaration, or one that is substantially similar, signed by the notary and the witnesses who subscribed to the will: "In our presence the testator has declared or signified that the attached instrument is his testament and has signed each separate page."

(2) If the testator is unable to sign and has directed another person to sign on his behalf, the testament shall be signed on each separate page by the person directed to sign by the testator, and the declarations provided in Subparagraph (1) of this Paragraph shall be modified to indicate that a person other than the testator signed at the direction of the testator.

B.(1) A notarial testament that does not comply with Paragraph A of this Article shall be proved to have been signed by the testator or by another person at the testator's direction either by the testimony of the notary and at least one

1 of the subscribing witnesses or by the testimony of the two subscribing
2 witnesses.

3 (2) If only the notary or only one of the subscribing witnesses is living in
4 the state, not incapacitated, or can be located, the testimony of the notary or one
5 of the witnesses that the testament was signed by the testator or by another
6 person at the testator's direction shall be sufficient.

7 (3) If the notary and all of the subscribing witnesses are dead, absent
8 from the state, incapacitated, or cannot be located, the testament may be proved
9 by the testimony of two credible witnesses who recognize the signature of the
10 testator on the testament.

11 (4) A person's testimony for the purpose of this Paragraph may be given
12 in the form of an affidavit executed after the death of the testator, unless the
13 court in its discretion requires the person to appear and testify orally. All
14 affidavits accepted by the court in lieu of oral testimony shall be filed in the
15 probate proceedings. This Subparagraph does not apply to testimony with
16 respect to the genuineness of a will that is judicially attacked.

17 Comments – 2025

18 (a) This Article is new. It changes the law by providing that an attestation
19 clause for testaments executed pursuant to Civil Code Article 1576 is no longer a
20 condition of validity for the execution of a notarial will, nor is signing the will on
21 every page or the publication of the will. This Article provides that notarial wills
22 may be self-proving if the will or a subsequently executed affidavit contains an
23 appropriate attestation clause and the will is signed on every page and declared by
24 the testator to be his will. Notarial wills executed pursuant to Civil Code Article
25 1576 that do not contain attestation clauses, are not signed on every page, or are not
26 declared by the testator to be his will may still be probated in accordance with
27 Paragraph B of this Article if sufficient proof can be adduced that the testament was
28 properly executed.

29 (b) Paragraph A of this Article provides examples of attestation clauses that
30 may be used to make a will under Civil Code Article 1576 self-proving. The exact
31 wording of this Paragraph need not be used. Language substantially similar is
32 sufficient. Also, to be signed on every page, a full legal name of the testator is not
33 required. Nicknames or initials may constitute a signature under this Article. For
34 further discussion of what constitutes a signature, see Comment (d) to Civil Code
35 Article 1576. Similarly, a testator may declare or signify that a document is his will
36 in any number of ways. See, e.g., Comment (f) to Civil Code Article 1576.

37 (c) Subparagraph (B)(1) of this Article provides that if a testament or
38 subsequently executed affidavit does not contain an attestation clause substantially
39 similar to the example in Paragraph A, then the testament is not self-proving and
40 must be proved by the testimony of the notary and one of the subscribing witnesses
41 or by the testimony of both subscribing witnesses. Subparagraph (B)(2) adopts a

1 procedure for probating a notarial will with respect to which only the notary or only
 2 one of the witnesses can testify. It is similar to the prior procedure for probating a
 3 statutory will. See Article 2887 (repealed). Subparagraph (B)(3) adopts a procedure
 4 for probating a notarial will with respect to which neither the notary nor the
 5 witnesses can testify. It is similar to the prior procedure for probating a statutory will
 6 and to the procedure that already exists in the law for similar situations involving
 7 nuncupative wills by private act and mystic wills. See Articles 2886(B) and 2887
 8 (repealed). Notarial wills signed by another person at the testator's direction cannot
 9 be probated pursuant to Subparagraph (B)(3). Subparagraph (B)(4) allows for a
 10 person's testimony to be given by affidavit. See Articles 2883(B), 2884(B), 2885(B),
 11 and 2886(C).

12 * * *

13 Art. 2891. Notarial testament; nuncupative testament by public act, ~~and;~~ statutory
 14 testament executed without probate

15 A notarial testament **that complies with the provisions of Article 2887(A)**,
 16 a nuncupative testament by public act, and a statutory testament do not need to be
 17 proved. Upon production of the testament, the court shall order it filed and executed
 18 and this order shall have the effect of probate.

19 Comments – 2025

20 This revision changes the law to recognize that notarial wills are not always
 21 self-proving, but only when they comply with the requirements of Article 2887(A).

22 Section 3. Civil Code Arts. 1577 through 1580.1 are hereby repealed in their entirety.

23 Section 4. The provisions of this Act shall apply both prospectively and retroactively
 24 and shall be applied to all claims existing and pending on the effective date of this Act and
 25 all claims arising or actions filed on and after the effective date of this Act. The provisions
 26 of this Act shall not be applied to revive claims prescribed as of the effective date of this Act
 27 or to affect claims adjudicated on the merits by a final and definitive judgment prior to the
 28 effective date of this Act.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Senate Legislative Services. The keyword, summary, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

DIGEST

SB 49 Original 2025 Regular Session Miller

Present law (C.C. Art. 1575) provides the requirements of form for validity for olographic testaments, including that the testament be written, dated, and signed by the testator.

Proposed law maintains for validity that an olographic testament must be written, dated, and signed by the testator but eliminates the requirements that the signature appear at the end of

the testament and that the date is sufficient if indicated by the day, month, and year.

Proposed law further provides that the signature of the testator may appear anywhere in the testament and is sufficient if it identifies the testator.

Proposed law further provides that the date may appear anywhere in the testament and may be clarified by extrinsic evidence.

Present law (C.C. Art. 1576) defines notarial testaments as those executed in accordance with certain formalities.

Proposed law provides that for validity the notarial testament shall be prepared in writing, dated, executed before a notary and two witnesses, and signed by the testator, each witness, and the notary.

Proposed law eliminates the requirement that the testator declare that the instrument is his testament and that the testament include an attestation clause.

Proposed law further provides that the signature of the testator may appear anywhere in the testament and is sufficient if it identifies the testator.

Proposed law provides that the date may appear anywhere in the testament and may be clarified by extrinsic evidence.

Present law (C.C. Art. 1577) provides the requirements of form for validity for notarial testaments, including a declaration that the instrument is the testator's testament, signatures on every page and at the end, and a declaration by the notary and the witnesses.

Proposed law repeals present law.

Present law (C.C. Art. 1578) provides the requirements of form for notarial testaments when the testator is literate and sighted but physically unable to sign.

Proposed law repeals present law.

Present law (C.C. Art. 1579) provides the requirements for form for notarial testaments when the testator is unable to read.

Proposed law repeals present law.

Present law (C.C. Art. 1580) provides for the execution of a notarial testament in braille.

Proposed law repeals present law.

Present law (C.C. Art. 1580.1) provides the requirements of form for notarial testaments when the testator is deaf or deaf and blind.

Proposed law repeals present law.

Present law (C.C. Art. 1581) provides that certain persons are incompetent to be witnesses to testaments.

Proposed law eliminates the prohibition against persons who are competent but deaf or unable to read from witnessing a notarial testament for a testator who is unable to read.

Proposed law (C.C.P. Art. 2887) provides the standard of proof for notarial testaments.

Proposed law provides that a notarial testament executed in accordance with C.C. Art. 1576

is self-proving if it is signed on every page and contains an attestation clause signed by the notary and the subscribing witnesses.

Proposed law further provides that a notarial testament executed in accordance with C.C. Art. 1576 is self-proving if it is signed on every page and the notary and the subscribing witnesses attach an affidavit executed after the date of the testament stating that the testator declared the instrument to be his testament and that the testator signed every page.

Proposed law provides that a notarial testament that is not self-proving may be proved to have been signed by the testator by the testimony of the notary and at least one subscribing witness or by the testimony of the two subscribing witnesses.

Proposed law further provides that if only the notary or only one subscribing witness is alive or can be located, the notarial testament that is not self-proving may be proved by the testimony of either.

Proposed law also provides that if the notary and none of the witnesses are available, the notarial testament may be proved by the testimony of two credible witnesses who recognize the signature of the testator.

Proposed law authorizes the testimony of the notary and the witnesses to be by affidavit or orally at a hearing.

Proposed law (C.C.P. Art. 2891) provides that notarial testaments do not have to be proved to be probated.

Proposed law provides that if the notarial testament complies with the provisions of proposed law that make it self-proving, it does not have to be proved to be probated.

Proposed law provides that the provisions of proposed law apply prospectively and retroactively and shall be applied to existing and pending claims but shall not revive prescribed claims or final and definitive judgments.

Effective August 1, 2025.

(Amends C.C. Arts. 1575, 1576, and 1581 and C.C.P. Art. 2891; adds C.C.P. Art. 2887; repeals C.C. Arts. 1577 - 1580.1)