



# 2025 Legislative Legal Seminar: Updates on Successions, Donations, and Trusts


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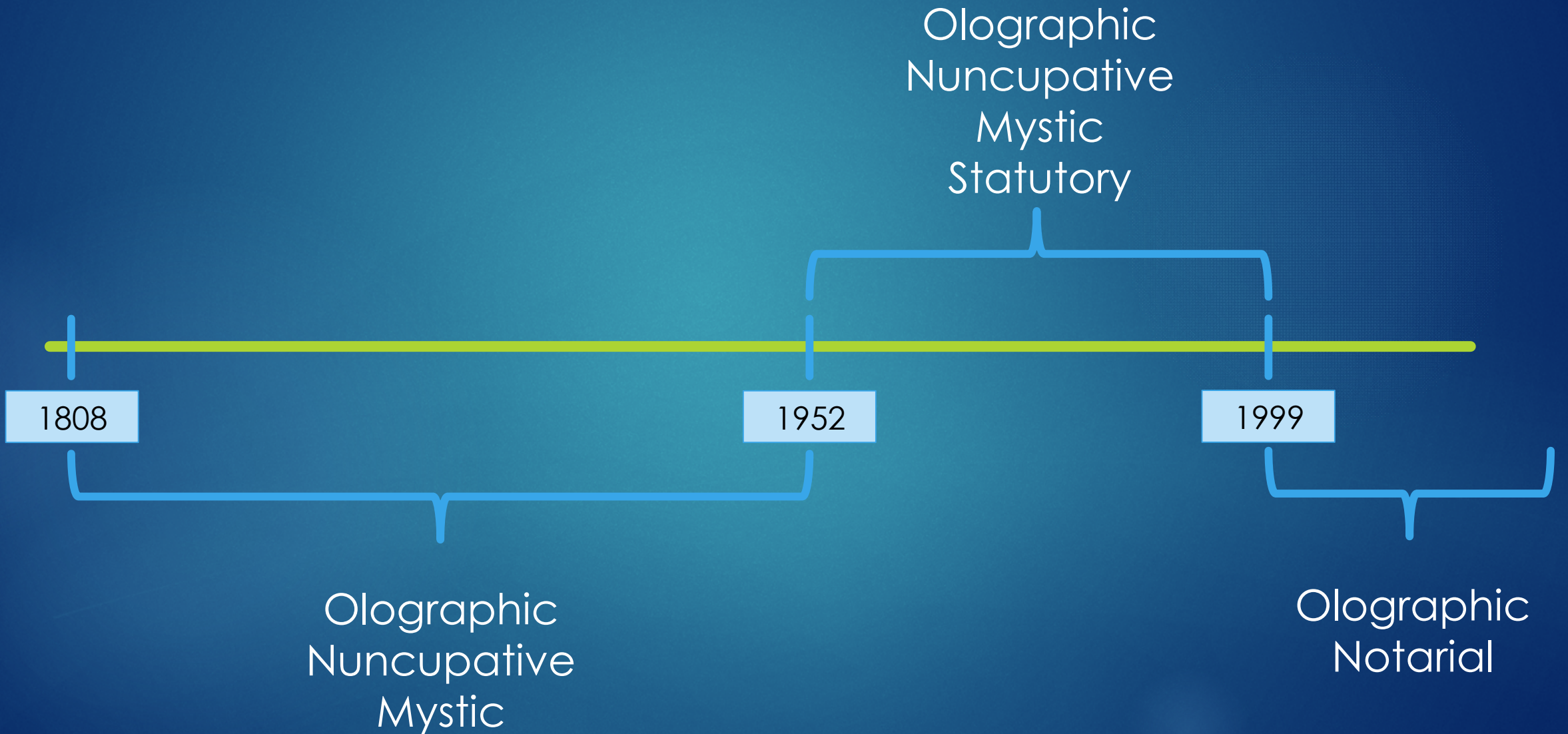


# Legislative Updates



# **Will Formalities: Act 30**

# History of Louisiana Wills



# Summary of Act 30

## Olographic

“[E]ntirely written, dated, and signed in the handwriting of the testator.”

*Retain olographic wills but clean up and simplify.*

## Notarial

- (1) Testament must be **in writing**
- (2) Testament must be **dated**
- (3) Signed by **two witnesses**
- (4) **Notarized**

*Retain notarial wills but clean up and simplify. But still more requirements than any other state in the country!*

# Law Prior to August 1, 2025

## Olographic

“[E]ntirely written, dated, and signed in the handwriting of the testator.”

## Notarial

- (1) Testament must be **in writing**
- (2) Testament must be **dated**
- (3) Testator must **declare** or signify the instrument is his will
- (4) Testator must **sign his name** at the **end** of the testament and on **each page**
- (5) **Notary and two witnesses** must sign in the presence of the testator and each other
- (6) Notary and two witnesses must sign an appropriately worded **attestation clause**

# Why Rock the Boat?



**Because our Boat Was Sinking!**



# Some Statistics



Population: 4.6 million

Succession of Toney, 226 So. 3d 397 (La. 2017)  
Succession of Hanna, 283 So. 3d 493 (La. 2019)  
Succession of Liner, 2021 WL 266394 (La. 2021)  
Succession of Liner, 320 So. 3d 1133 (La. 2021)  
Succession of Bruce, 315 So. 3d 193 (La. 2021)  
Succession of Frabbiele, 397 So.3d 391 (La. 2024)

Succession of Harlan, 250 So. 3d 220 (La. 2018)  
Succession of Allen, 324 So. 3d 79 (La. 2021)  
Succession of McKlinski, 332 So. 3d 642 (La. 2022)  
Succession of Morgan, 370 So. 3d 399 (La. 2023)  
Succession of Maloney, 392 So. 3d 302 (La. 2024)



# Some Statistics



Population: 38.97 million

Supreme Court Cases:

0



Population: 30.5 million

Supreme Court Cases:

0



Population: 22.61 million

Supreme Court Cases:

0



Population: 19.57 million

Supreme Court Cases:

0

# Some Statistics



Population: 68.17  
million

Cour de Cassation  
Cases:

3

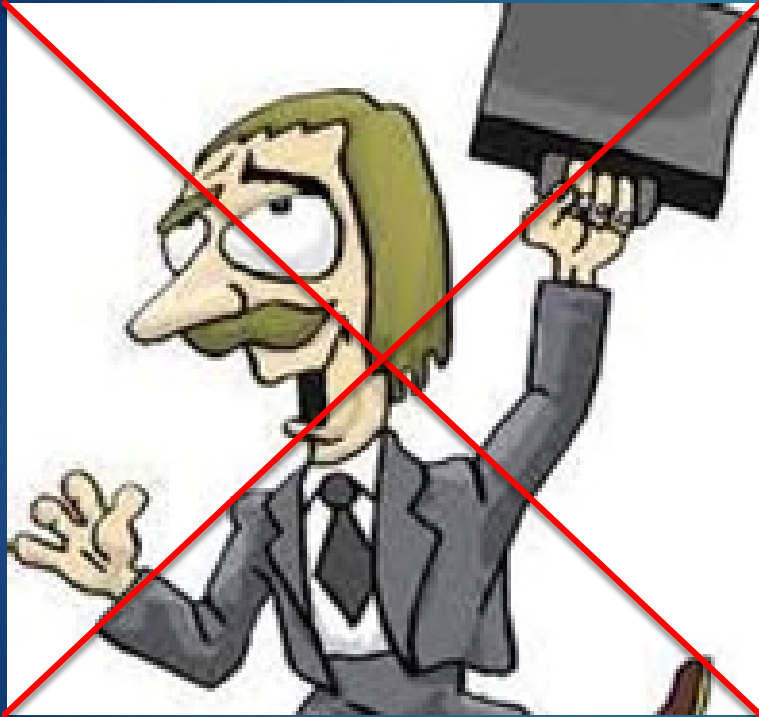


Population: 84.48 million

BGH Cases:

0

# One of Three Things Must be True



**Bad  
Law !**

# Will Formalities: Notarial Wills

## Act 30 (2025)

### Art. 1576. Notarial testament; requirements of form


- A. The notarial testament shall be prepared in writing, dated, executed before a notary public in the presence of two witnesses, and signed by the testator, each witness, and the notary. If a testator is unable to sign, the testator may affix his mark in place of signing or direct another person to sign on behalf of the testator and in the presence of the testator.
- B. The signature may appear anywhere in the testament and is sufficient if it identifies the testator and evidences an intent by the testator to adopt the document as the testator's testament.
- C. The date may appear anywhere in the testament, may be clarified by extrinsic evidence, and is sufficient if it resolves those controversies for which the date is relevant.

# Will Formalities: Notarial Wills


*Succession of Frabbiele, 2024 WL 5103260 (La. 12/13/24)*

In 2008, John Wallace Frabbiele executed a three-page document purporting to be his last will and testament. In the testament, John bequeathed the disposable portion of his estate to his third wife, Barbara Ann Nash Frabbiele, and the forced portion to his son Anthony subject to Barbara's usufruct. The instrument was executed before two witnesses and a notary public. The attestation clause at the end of the will employed the language supplied by Article 1577(2).

The opposition alleged the will was defective because “[t]he first and second pages only bear what appears to be the initials of Decedent.”



JOHN WALLACE FRABBIELE



# Will Formalities: Notarial Wills

*Succession of Frabbiele, 2024 WL 5103260 (La. 12/13/24)*

The Civil Code requires that a testator “shall sign his name” on every page and at the end of a notarial will. Although the Court in *Succession of Toney, 226 So. 3d 397* (La. 2017), the Court invalidated a will that contained a defective attestation clause and printed initials on each page. Although the Court overruled *Toney* in *Succession of Liner, 320 So. 3d 1133* (La. 2021), *Liner* involved only a defective attestation clause, not a problem with the signature requirement. It is true that some lower courts, after *Liner*, have upheld wills that were initialed on every page rather than signed, those courts have given *Liner* an overexpansive reading. “*Liner* is limited to deviations in an attestation clause and has no bearing on the signature requirements of Article 1577(1).”

# La. CCP art. 2887

## Probating a Notarial Will

(1) Self Proving, if

- **Signed on Every Page and Includes Attestation Clause or Subsequent Affidavit with Attestation Clause**

(2) Otherwise,

- **Testimony of notary and witness required**

# Other Specialized Will Forms Repealed

- (1) Will for Someone Who Can't Sign;
- (2) Will for Someone Who Can't Read;
- (3) Will for Someone Who is Deaf;
- (4) Will for Someone Who is Deaf and Blind.

# Frequently Asked Questions

## *What the Bill Doesn't Do*

- ▶ The bill doesn't diminish or destroy the civil law in Louisiana.
- ▶ The bill doesn't open the door for fraud in Louisiana law.
- ▶ The bill doesn't reduce Louisiana civil-law notaries to common-law notaries.
- ▶ The bill doesn't open Louisiana up to the use of internet wills.
- ▶ The bill doesn't require lawyers or notaries to change their forms.

# Frequently Asked Questions

## What the Bill Does Do

- ▶ The bill would save many people who try to make a will from dying intestate due to minor mistakes by lawyers or notaries.
- ▶ The bill would help alleviate malpractice suits against lawyers and notaries.
- ▶ The bill will likely reduce litigation and disputes over the validity of wills.



# What About Olographic Wills?

# Will Formalities: Olographic Wills

## Act 30 (2025)

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

- A. 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.
- B. The signature may appear anywhere in the testament and is sufficient if it identifies the testator and evidences an intent by the testator to adopt the document as the testator's testament.
- C. The date may appear anywhere in the testament, may be clarified by extrinsic evidence, and is sufficient if it resolves those controversies for which the date is relevant.
- D. Additions and deletions on the testament made after the execution of the testament may be given effect only if made by the hand of the testator and need not comply with the formalities for the execution of a will or the revocation of a legacy.

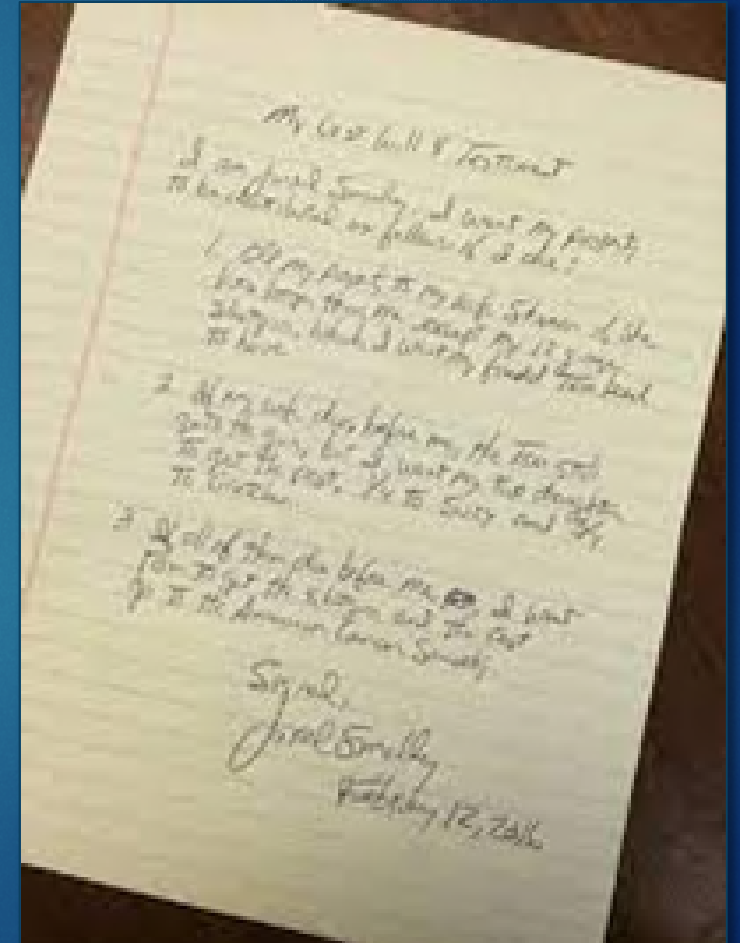
# Will Formalities: Olographic Wills

## OLD LAW

### La. Civ. Code art. 1575

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

B. Additions and deletions on the testament may be given effect only if made by the hand of the testator.





# Jurisprudential Updates

# Will Formalities: Olographic Wills

*Succession of Serio, 398 So.3d 732 (La. App. 1 Cir. 2024)*

*“Note: Make Sal  
my Beneficiary to  
get my stuff. 11-  
9-22 - Tony  
Serio”.*

A paper is not established as a person's will merely by proving that he intended to make a disposition of his property similar to or even identically the same as that contained in the paper; **it must satisfactorily appear that he intended the very paper to be his will....** We agree with the trial court that there is not clear intent by the testator that he intended this “note” to be his will, and we find the trial court's ruling denying the petition to probate the purported olographic testament to be correct.

# Will Formalities: Olographic Wills

*Succession of Ally, 354 So. 3d 1248 (La. App. 5 Cir. 2022)*

*September 1, 2007*

*I Ruth Ally a resident of Metairie La being of sound and disposing mind and memory and over the age of 18 years and not being actuated by any duress menace fraud mistake or undue influence do make public and declare this to be my last Will, hereby expressly revoking all Wills previously made by me.*

*I appoint Susan Ally as Executor of this my last Will and I will give and bequeath unto the persons named below if he or she survives me the property described below –*

*My Son David Ally 1000. 00*

*My Son Gary Ally 1000. 00*

*My Daughter Susan Ally-All my other assets*

*While the writ application and information before us suggests that this olographic will does contain the testator's intent, the lack of her signature at the end of the olographic will cannot be overlooked.*

# Will Formalities: Olographic Wills

Succession of Brocato, 2025 WL 616568 (La. App. 4 Cir. 2025)

January 21, 2021

I, Laurie Marie Brocato  
.... kdjl dfjdl dlf jdljd  
lkjldk jfld kjldjltf dljtd  
ljldj fldkj flkdjl fkjdlf  
dljfldj fldjfl djlfjd lfjtd  
jfdljfdl ljldj fldkj flkdj  
fkjdlf dljfldj fldjfl djlfjd  
lfjtd jfdljfdl

Laurie Marie Brocato

February 1, 2021

Dljdl djfld jlkdjf lkdlj  
kdjl dfjdl dlf jdljd  
lkjldk jfld kjldjltf dljtd  
ljldj fldkj flkdjl fkjdlf

February 2, 2021

LMB Dljdl djfld jlkdjf lkdlj  
kdjl dfjdl dlf jdljd

February 2, 2021

LMB

Dljdl djfld jlkdjf lkdlj  
kdjl dfjdl dlf jdljd  
lkjldk jfld kjldjltf dljtd  
ljldj fldkj flkdjl fkjdlf  
dljfldj fldjfl djlfjd lfjtd  
jfdljfdl

February 2, 2021

Dljdl djfld jlkdjf lkdlj  
kdjl dfjdl dlf jdljd  
lkjldk jfld kjldjltf dljtd  
ljldj fldkj flkdjl fkjdlf  
dljfldj fldjfl djlfjd lfjtd  
jfdljfdl

# Will Formalities: Olographic Wills

*Succession of Brocato, 2025 WL 616568 (La. App. 4 Cir. 2025)*

The language of the code article itself combined with the intent provided in the revision comment leads us to conclude that the signature being located at the end of the testament is not of paramount importance in meeting the form requirements for a valid olographic testament. In *choosing to consider the language of the testament which followed the signature, the district court exercised the great discretion* given to it by the Civil Code. Another factor that we find supports the district court's decision to *find this testament valid is the inclusion of Decedent's initials* in two subsequent locations of the testament.... Decedent's continued initialing of the testament after her signature convinces us that she was intending to write this testament as one document, although drafted over several days. *We find no error* in the district court's decision to give Decedent's intent paramount importance based upon the presented testament in this matter.

# Will Formalities: Olographic Wills

*Succession of Brocato, 2025 WL 616568 (La. App. 4 Cir. 2025)*

Died October 2021

## Supreme Court of Louisiana

OFFICIAL DOCKET

MONDAY, JANUARY 05, 2026

02:00 P.M. SESSION

2025-C-00367

SUCCESSION OF LAURIE MARIA BROCATO

*Argument Limited to 30 Minutes Each Side*

On Writ of Certiorari to the Court of Appeal, Fourth  
Circuit, Parish of Orleans Civil

Pierre Whelton Mouldoux  
Robert Thomas Garrity, Jr.  
For Applicant - Other;

Edward John Lilly  
For Respondent - Other.

# Will Formalities: Olographic Wills


*Succession of Brocato, 2025 WL 616568 (La. App. 4 Cir. 2025)*

## **Act 30**

Section 4. The provisions of this Act 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.



# Other Important Legislative Updates



# Penalty Clauses: Act 39

# Act 39 (2025)

## La. Civ. Code art. 1519.1      Penalty Clauses

“A provision in a juridical act that purports to penalize a person for filing an action to challenge an inter vivos or mortis causa donation, an action related to a succession, or an action related to a trust administration is **unenforceable** if, at the time of instituting the action to challenge, a factual basis exists that would **lead a reasonable person to conclude that there is a substantial likelihood that the challenge would be successful.**”

# No Contest Clauses: OLD LAW

**La. Civ. Code art. 1519. Impossible, illegal or immoral conditions.**

In all dispositions inter vivos and mortis causa impossible conditions, those which are contrary to the laws or to morals, are reputed not written.

# No-Contest Clauses

*Succession of Maloney, 353 So. 3d 267 (La. App. 5 Cir. 2022)*

## **No Contest Clause in Robert Maloney's 2018 Codicil**

“I hereby specifically disinherit each and every legal heir of mine ... who either (a) contests the 2012 Will, this Codicil, or any subsequent codicils to the 2012 Will.... An action for declaratory relief or interpretation of the 2012 Will and any codicil thereto, shall constitute a contest of, and an attack on, the 2012 Will, this Codicil, or any subsequent codicils to the 2012 Will if the purpose of such action is to oppose, impair or invalidate any of the provisions thereof.”

# No-Contest Clauses

*Succession of (Bonny Babin) Maloney, 392 So.3d 302 (La. 2024)*

## **No Contest Clause in Bonny Babin Maloney's 2019 Testament**

“I hereby specifically disinherit each and every legal heir of mine, and each and every legatee ... under this Last Will and Testament ... who at any time .... is otherwise engaged in a controversy with or against the Executor of my estate and which concerns my estate; or (d) conspires with or voluntarily assists anyone attempting to do any of the acts described in sections (a) through (c) of this Article 13.1.”

# No Contest Clauses

*Succession of (Bonny Babin) Maloney, 392 So.3d 302(La. 2024)*

“[The executor] counters that the court of appeal correctly concluded Article 13.1(c) of the no-contest clause is clear and unambiguous and must be enforced as written. [The executor] elaborates the court of appeal found both prongs of Article 13.1(c) were satisfied: 1) applicants engaged in a controversy against him in his capacity as executor of Mrs. Maloney's estate; and 2) the controversy concerned Mrs. Maloney's estate. [The executor] asserts *Mrs. Maloney was free to impose any condition in her testament provided it was not contrary to law or good morals – there is no requirement that a no-contest clause be limited to direct challenges of a given succession. We agree.*”

# No Contest Clauses

*Succession of (Bonny Babin) Maloney, 392 So.3d 302(La. 2024)*

“We leave this question for another day noting that – in the interim – our legislature may wish to evaluate whether public policy dictates that specific statutory exceptions precluding the operation of no-contest clauses should exist based on the nature of a legatee's action in contesting a will.”



# Other Important Jurisprudential Updates

# Succession Procedure

*Succession of Aymond, 2025 WL 3301628 (La. 11/25/25)*

The decedent created an irrevocable inter vivos trust with property left in trust via a will. His daughter, who was two years old at the time, was named as the beneficiary and his older daughter, Chantal, was named as trustee. At his death, the naked ownership and a one-half interest in usufruct was left in trust, with the other one-half usufructuary interest left to his daughter Chantal. The will did not grant the usufructuary the power to dispose of nonconsumables, and the trust prohibited the trustee from alienating the immovable property left in trust. Chantal was also named as independent executrix of her father's estate and no restrictions on her authority were imposed. As independent administrator, Chantal sold an 81% in the immovable property left in trust.

# Succession Procedure

*Succession of Aymond, 2025 WL 3301628 (La. 11/25/25)*

The court of appeals concluded that “[o]nce Chantal breached her fiduciary duty to follow her father’s wishes in his will, a hopeless conflict arose in her overlapping roles as Executrix, usufructuary, and Trustee.” As a result of Chantal’s actions as executrix, the court terminated Chantal’s usufruct.

# Succession Procedure

*Succession of Aymond, 2025 WL 3301628 (La. 11/25/25)*

In summary, the fact that Chantel also served as Trustee of the Trust, which prohibited the Trustee from selling immovable property in that capacity, did not curtail the duties and rights she had as Independent Executrix including the right to sell property as part of her administration of the estate.

The court of appeal also erred in holding that Chantel's sale of the immovable property resulted in the termination of her usufructuary rights. The penalty imposed by the court of appeal under La. C.C. art. 623-624, is only applicable where there is malfeasance by a usufructuary. The court of appeal's error here was bound up with an erroneous conflation of Chantel's various rights and obligations.

# Succession Procedure

*Bryan v. Aymond, 2025 WL 3295437 (La. 11/25/25)*

The crux of this dispute is whether Chantel had the authority to sell the immovable property. Chantel had multiple roles in her father's estate planning, and each of those roles came with distinct rights and obligations. As explained in the related case, when Chantel sold the immovable property, she was not acting in her capacity as Trustee, and her failure to act as Trustee to oppose the sale of the immovable property is not a valid ground for her removal. La. R.S. 9:1789 (“A trustee shall be removed ... by the proper court for sufficient cause.”).

# Succession Procedure

*Bryan v. Aymond, 2025 WL 3295437 (La. 11/25/25)*

The administration of this Trust in this case has not yet commenced. The Trust has not been placed in possession of the property; therefore, it was impossible for Chantel, as Trustee, to sell or otherwise dispose of Trust property that was not yet under the Trust's control. It follows, therefore, that the only grounds for the removal of Chantel as Trustee would be for her failure to object to the sales.

# Conditional Wills

► *Succession of Wade*, 403 So. 3d 539 (La. 2025)

2007 LAST WILL AND TESTAMENT  
With respect to the property in Oakland, California which was owned by Theodore Harris and willed to me but **placed in the name of Alma Rea Wade's name [sic] for accomodating purposes only, I will and bequeath that this property be sold** and after all obligations incidental to the sale of the property have been paid, the remaining portion is to be divided equally among CARL WADE, ALMA REA WADE and CLADIE J. WADE....

**If ALMA REA WADE does not sell the property in California and divide the proceeds from the sale in the manner I have previously suggested, I will and bequeath that all bequests I have made to Alma Rea Wade would be revoked and all of those bequests would go to CARL WADE.** In other words, if she does not sell the property and divide the assets as requested, she is not to receive any bequests from me; Carl is to receive everything.

# Conditional Wills

- ▶ *Succession of Wade, 403 So. 3d 539 (La. 2025)*

## 2009 Codicil

With respect to that property which is in the name of Theodore Harris of which I am the owner, **I will and bequeath that if the property is not sold prior to my death, I want the property to be owned equally by my two children, namely: ALMA REA WADE and CARL J. WADE.**

Further, if the property does not sell quickly or does not sell for what my two children feel is a fair and just amount, I will and bequeath that the **property will continue to be rented and after all expenses are subtracted from the monthly rental, the residue will be divided equally between my two children, ALMA REA WADE and CARL J. WADE.**

# Conditional Wills

- ▶ *Succession of Wade*, 403 So. 3d 539 (La. 2025)

....the conditional provision simply gives Alma a choice to sell the California property in order to receive an inheritance. We find nothing in this conditional legacy to be contrary to law or good morals.

# Conditional Wills

- ▶ *Succession of Wade*, 403 So. 3d 539 (La. 2025)

The *disposition of the California property in the codicil is an impossibility* under Louisiana Civil Code article 1519 as Cladie did not own the property, despite what was written in the will and codicil. Furthermore, *even if she did own the property, the provision in the codicil would not be valid as she is attempting to control the use of property after her death*. *Succession of Feitel*, 176 La. 543, 146 So. 145, 147 (1933) (invalidating a provision against alienation or mortgaging for ten years). Thus, this portion of the codicil is to be treated as not having been written. La. C. C. art. 1519.



**Many thanks!**

**Questions?**

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