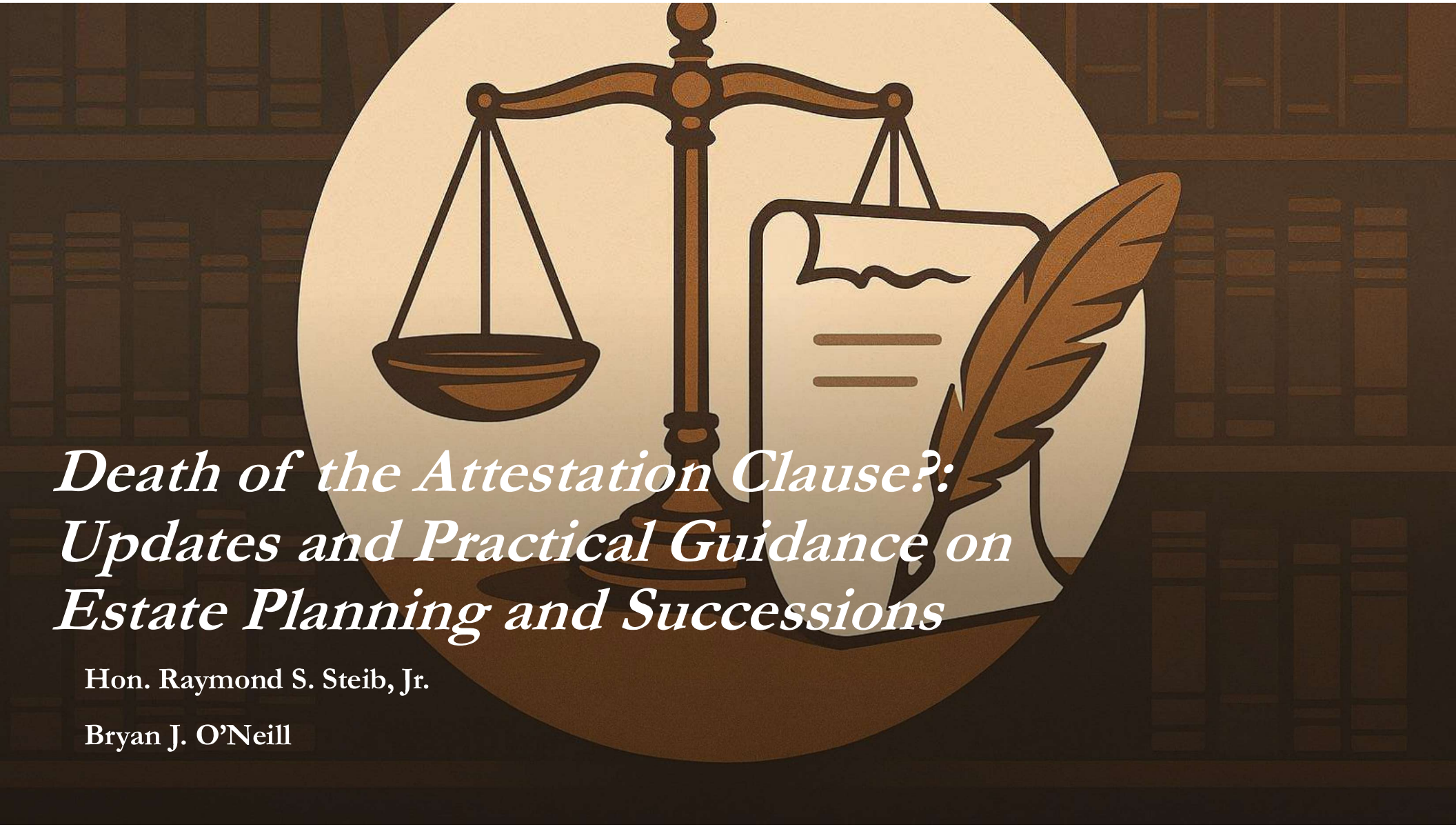


Death of the Attestation Clause?: Updates and Practical Guidance on Estate Planning and Successions

Hon. Raymond S. Steib, Jr.

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Bryan O'Neill began his legal career in 2016 with the Derbes Law Firm, LLC in Metairie, LA, where he has been a partner since 2023. Bryan assists clients in a variety of end-of-life matters, such as estate planning, succession administration, and litigation. Bryan also regularly advises clients on the division of retirement plans through Qualified Domestic Relations Orders and rounds out his practice handling a variety of business law matters, including commercial transactions, entity startup and governance, and commercial litigation.



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Easier Small-Succession Processing (Act 55)

- Authorizes state registrar to issue death certificates to notaries handling affidavits of small succession
- Enacts La. R.S. 40:41(C)(6):

> (6) The state registrar shall issue a certified copy of a death certificate to a notary if the notary submits his credentials and declares in writing that he is assisting an heir of the deceased in the preparation of a small succession in accordance with Code of Civil Procedure Article 3431 et seq.

Probate Procedure Tweaks (Act 34)

Art. 2881. Ex parte probate if no objection

The court shall proceed to probate the testament ex parte ~~as provided in Article 2882~~, unless an objection ~~thereto~~ is made ~~at the hearing~~.

~~An objection to the ex parte probate of a testament may be presented in an opposition, or made orally at the hearing. The opposition must comply with the provisions of Article 2902, and must be filed prior to the hearing. The oral objection must specify the grounds of invalidity of the testament asserted, and must be urged immediately after the objector has had an opportunity to examine the purported testament.~~

Art. 2882. ~~Proceedings at probate hearing~~ **Ex parte probate if objection**

~~At the probate hearing the court shall open the testament, if it is enclosed in a sealed envelope, receive proof of the making of the testament as provided in Articles 2883 through 2889, may read the testament to those present, and shall paraph the top and bottom of each page of the testament by inscribing it "ne varietur" over the judicial signature.~~ **An objection to the ex parte probate of a testament may be presented in an opposition. The opposition shall comply with the provisions of Article 2902 and shall be filed.**

Penalty & No-contest Clause (Act 39) – New Civil Code article 1519.1

- Enacts new La. Civ. Code art. 1519.1
- Limits the enforceability of no-contest clauses in a will, trust, or donation

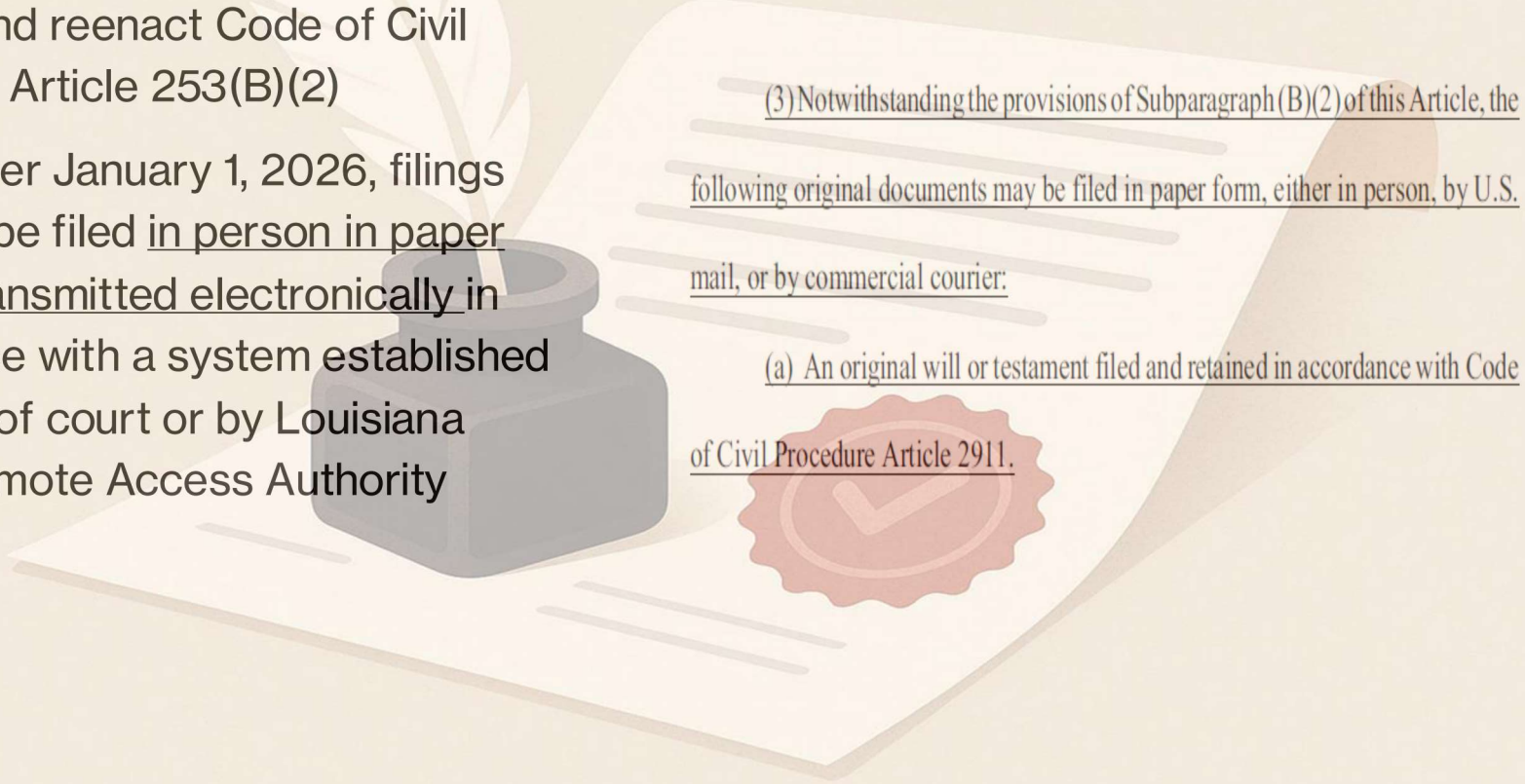
Art. 1519.1. Penalty clauses

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 existed that would lead a reasonable person to conclude that there is a substantial likelihood that the challenge would be successful.

E-Filing & Original Document Requirements (Act 352)

- Amends and reenact Code of Civil Procedure Article 253(B)(2)
- On and after January 1, 2026, filings shall **only** be filed in person in paper form **or** transmitted electronically in accordance with a system established by a clerk of court or by Louisiana Clerks' Remote Access Authority

- La. Code of Civ. Proc. Art. 253(B)(3)

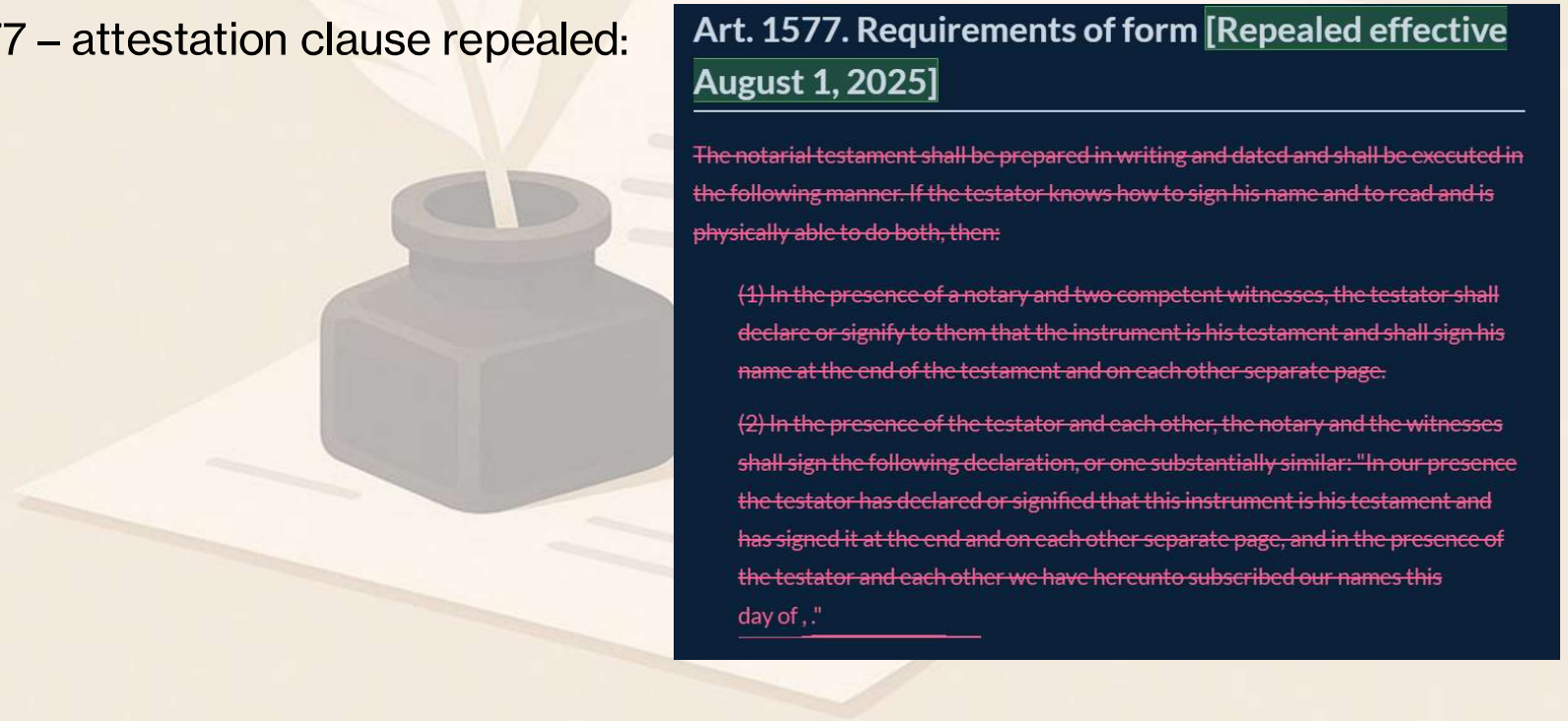


(3) Notwithstanding the provisions of Subparagraph (B)(2) of this Article, the following original documents may be filed in paper form, either in person, by U.S. mail, or by commercial courier:

(a) An original will or testament filed and retained in accordance with Code of Civil Procedure Article 2911.

Act 30 (2025) – New Form Requirements for Testaments

- To amend and reenact Civil Code Art. 1575, 1576, and 1581 and Code of Civil Procedure
- Article 1577 – attestation clause repealed:



Art. 1577. Requirements of form [Repealed effective August 1, 2025]

~~The notarial testament shall be prepared in writing and dated and shall be executed in the following manner. If the testator knows how to sign his name and to read and is physically able to do both, then:~~

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

~~(2) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "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 , ."

Article 1575 – Olographic Wills

- Still needs to be entirely written, dated, and signed in the handwriting of the testator, but signature and date can appear anywhere on testament

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, 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. **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.**

Article 1576 – Notarial Wills

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

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

~~Art. 1577. Requirements of form~~

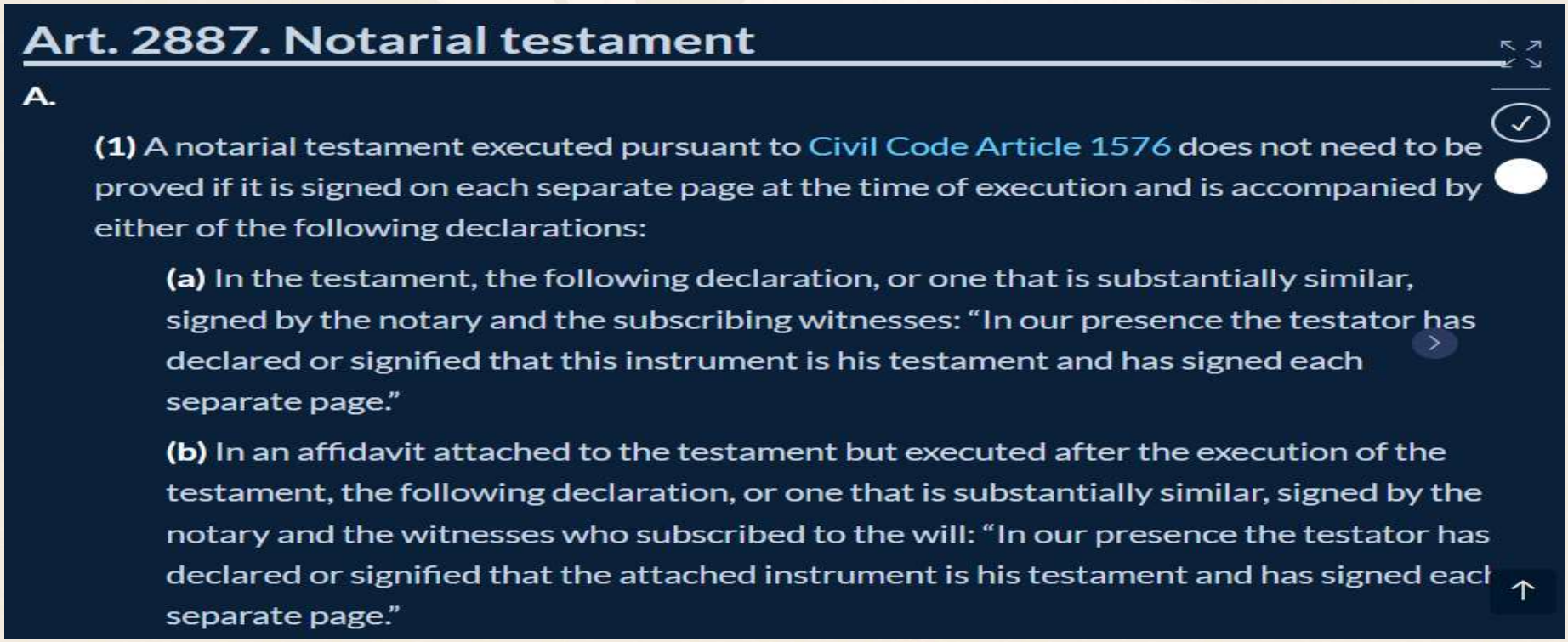
A. The notarial testament shall be prepared in writing, ~~and~~ dated, **executed before a notary public in the presence of two witnesses, and signed by the testator, each witness, and the notary. If a testator is unable to sign, the testator may affix his mark in place of signing or direct another person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

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.

LA CCP Article 2887 – Notarial Wills

- So the attestation clause is gone, what will practitioners do???
- No worries, there is a new form testator declaration:



Art. 2887. Notarial testament

A.

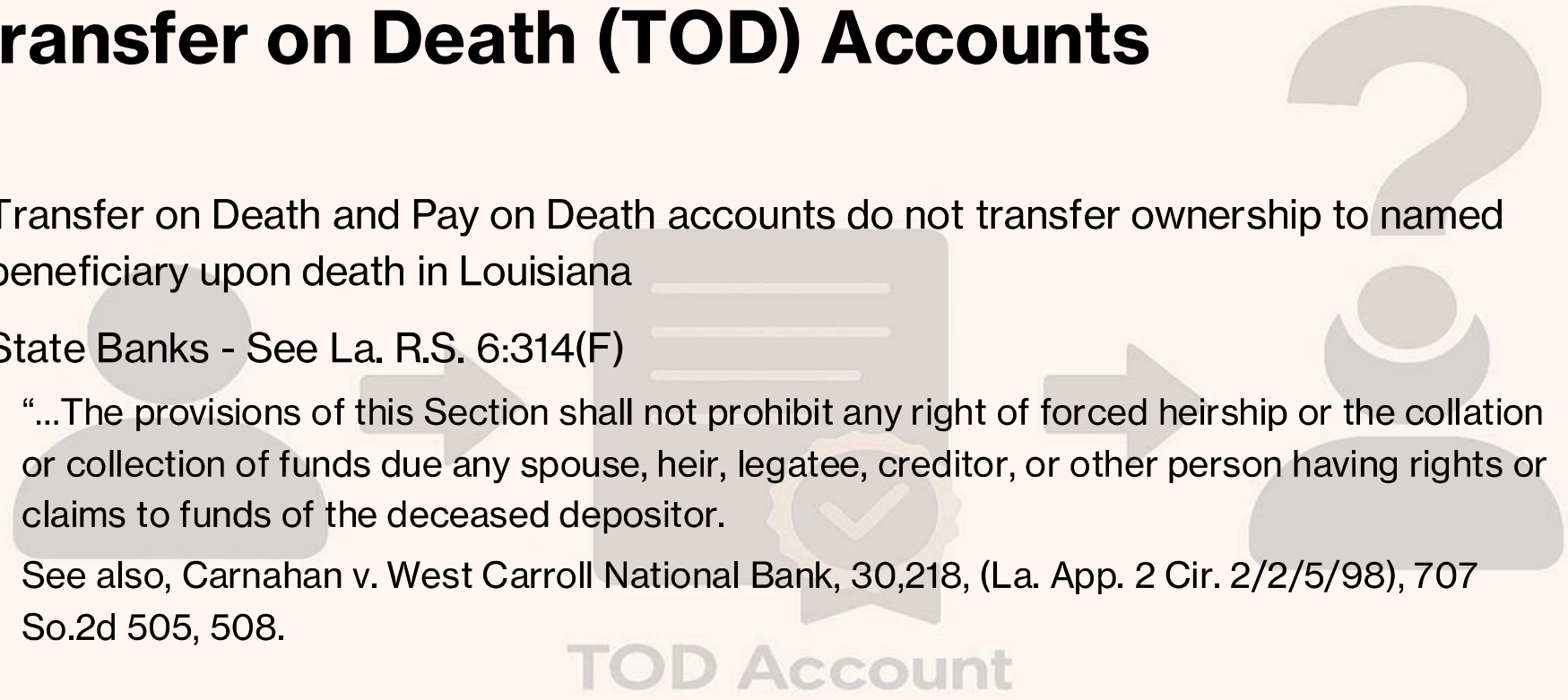
(1) A notarial testament executed pursuant to Civil Code Article 1576 does not need to be proved if it is signed on each separate page at the time of execution and is accompanied by either of the following declarations:

(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."

Transfer on Death (TOD) Accounts

- Transfer on Death and Pay on Death accounts do not transfer ownership to named beneficiary upon death in Louisiana
- State Banks - See La. R.S. 6:314(F)
  - "...The provisions of this Section shall not prohibit any right of forced heirship or the collation or collection of funds due any spouse, heir, legatee, creditor, or other person having rights or claims to funds of the deceased depositor.
  - See also, Carnahan v. West Carroll National Bank, 30,218, (La. App. 2 Cir. 2/2/5/98), 707 So.2d 505, 508.



Louisiana Uniform Transfer on Death Security Registration Act

- Securities (i.e. Brokerage Accounts) – See La. R.S. 9:1711, *et seq. (effective Jan 1, 2022)*
  - These accounts are allowed in Louisiana, "but this registration in the name of the beneficiary or beneficiaries has no effect on ownership." La. R.S. 9:1711.5
    - *Succession of Schimek*, 19-1069 (La. App. 4 Cir. 6/10/20), 302 So.3d 78.
    - *Succession of Angus*, 54,180 (La. App. 2 Cir. 1/12/22), 333 So.3d 555.
    - *Succession of Catchings*, 22-460 (La. App. 5 Cir. 9/6/23), 370 So.3d 1251, *writ denied*, 23-1342 (La. 12/19/23), 375 So.3d 410.
  - Circuit Split? In my opinion, no.

TOD Account

My new account with a MS financial institution...

2. **INDIVIDUAL ACCOUNTS** - An individual account is an account owned by one member who has qualified for credit union membership. If the account owner dies, the interest passes, subject to applicable law, to the account owner's estate or Payable on Death (POD) beneficiary/payee or trust beneficiary, subject to other provisions of this Agreement governing our protection for honoring transfer and withdrawal requests of an owner or owner's agent prior to notice of an owner's death, any security interest or pledge granted by the account owner, and our statutory lien rights.

3. **JOINT ACCOUNTS** - A joint account is an account owned by two or more persons.

   a. **Rights of Survivorship.** Unless otherwise stated on the Account Card or documented through the Credit Union's online application and authentication process, a joint account includes rights of survivorship. This means that when one owner dies, all sums in the account will pass to the surviving owner(s). For a joint account without rights of survivorship, the deceased owner's interest passes to his or her estate. A surviving owner's interest is subject to the Credit Union's statutory lien for the deceased owner's obligations and to any security interest or pledge granted by a deceased owner, even if a surviving owner did not consent to it.

   b. **Control of Joint Accounts.** Any owner is authorized and deemed to act for any other owner(s) and may instruct us regarding transactions and other account matters. Each owner guarantees the signature or authenticated request of any other owner(s). Any owner may withdraw or transfer funds, pledge to us all or any part of the shares, or stop payment on items without the consent of the other owner(s). We have no duty to notify any owner(s) about any transaction. We reserve the right to require written consent of all owners for any change to or termination of an account. If we receive written notice of a dispute between owners or inconsistent instructions from them, we may suspend or terminate the account and require a court order or written consent from all owners in order to act.

   c. **Joint Account Owner Liability.** If an item deposited in a joint account is returned unpaid, a joint account is overdrawn, or if we do not receive final payment on a transaction, the owners, jointly and severally, are liable to us for any returned item, overdraft, or unpaid amount and for any related fees and charges, regardless of who initiated or benefited from the transaction. If any account owner is indebted to us, we may enforce our rights against any account of the indebted owner, including all funds in the joint account, regardless of who contributed the funds.

4. **POD/TRUST ACCOUNT DESIGNATIONS** - A Payable on Death (POD) account or trust account designation is an instruction to the Credit Union that an individual or joint account so designated is payable to the owner(s) during his, her, or their lifetimes and, when the last account owner dies, is payable to all surviving POD or trust beneficiaries/payees. Unless state law provides for different ownership or as permitted and documented by us, the beneficiaries/payees will own the funds jointly in equal shares without rights of survivorship when there is more than one surviving beneficiary/payee. Any POD or trust beneficiary/payee designation shall not apply to Individual Retirement Accounts (IRAs). We are not obligated to notify any beneficiary/payee of the existence of any account nor the vesting of the beneficiary/payee's interest in any account, except as otherwise provided by law. This paragraph does not apply to an account held on behalf of or in the name of a trust.

Discussion

- Do you need to revise your Will forms?
- How should you advise clients who have Transfer on Death Accounts?

