"Your Estate Matters" Legal-ease

By Ronda M. Gabb, NP, JD, RFC

THE DEVIL IS IN THE DETAILS

If you were told you could win the lottery just by writing down your request exactly as the Lottery Commission required, VERBATIM, would you choose to deviate from the language provided? Would you risk the big payout knowing that a deviation may make it necessary to have your submission reviewed by their legal department in order to decide whether your language was "substantially similar" to the words required for you to win? Of course, you wouldn't! So why do lawyers risk this for their own clients…all day, every day? Good question, huh?

The last few years have been ripe with case law (Successions of Brandt, Hanna, Liner, Booth, Bruce, Carter) whereby disgruntled heirs or legatees have tried to have these Wills (or Codicils) invalidated by making a claim that the attestation clause used by the attorney/notary was NOT "substantially similar" to the verbatim language provided by our Louisiana Civil Code. It is no different than my analogy above, the Civil Code gives us the "gift" of that language, VERBATIM, and says if we use it, we are home free. Who would ever want to risk what a Court would consider to be "substantially similar?"

My articles, written for laypeople, never recite the actual language from the Civil Code, except this time. Here is Louisiana Civil Code Article 1577, "Requirements of Form", Section (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 _____, _____."**

The vast majority of the Wills I draft have the verbatim Article 1577 attestation clause shown in bold above. However, if someone cannot read or write, or sign their name, there are variations of the attestation clause, also given to us VERBATIM by the Civil Code. Believe me, we use those verbatim too!

As an added tidbit, when you read the attestation clause, what else does it tell you? Realize that there must be a minimum of four (4) people in that room, at the same time, while those Wills are being signed. Many of our clients admit that "the last lawyer didn't do it this way." Our office does the execution of Wills the exact same way, EVERY TIME.

There are enough landmines and pitfalls in drafting Wills to begin with, so why take an unnecessary risk? We all know that death and money can surely bring out the worst in families. In my opinion, risking the integrity of a Last Will and Testament by putting your "own spin" on the attestation clause, or deviating from its statutory requirements, is just "playing with fire." Remember, the Devil is in the Details!

Like us on Facebook **See other articles and issues of interest!**

Ronda M. Gabb & Associates, LLC
A Louisiana Estate Planning & Elder Law Practice

Ronda M. Gabb is a Board Certified Estate Planning and Administration Specialist certified by the Louisiana Board of Legal Specialization. She is a member of the American Academy of Estate Planning Attorneys, National Academy of Elder Law Attorneys and the Governor's Elder Law Task Force. Ronda grew up in New Orleans East and first moved to Slidell in 1988, and now resides in Clipper Estates.

40 Louis Prima Drive (off Hwy 190, behind Copeland's) • Covington, Louisiana • (985) 892-0942 • RondaMGabb.com