

Changing First Name and Surname Extrajudicially: an Analysis of Law 6,015/73 Amended by Law 14,382/22₁

Change of First Name and Surname in Extrajudicial Via: an Analysis of Law 6.015/73 Amended by Law 14.382/221

Raiane França Dias_{two}

Denis Marcio Jesus Oliveira₃

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SUMMARY

The present work aims to address the importance of changing first name and surname through extrajudicial means, regulated by Law No. 6,015/73 on Public Records, which was recently amended by Law No. 14,382/2022. As provided in article 16 of the Civil Code, every person has the right to a name, which includes both the first name and the last name. As it is a recent topic, the use of periodicals and specialized doctrine was essential for the development of the work. Therefore, it is important to highlight that the possibility of changing the first name and surname through extrajudicial means has brought more speed and efficiency to the processes, relieving the Judiciary and enabling interested parties to make the change without the need to resort to legal action. With the entry into force of Law No. 14,382/2022, the rules for changing the name were updated, allowing more people to make the change without the need to prove the existence of losses or justify the need for the change. The research carried out seeks to allow a better understanding of changes in legislation and highlight the importance of keeping up to date with changes and innovations in Civil Law.

Key words: Personality rights. Civil name. Changing the name of the natural person.

ABSTRACT

This article aims to address the importance of changing one's first and last name through an extrajudicial process, regulated by Law No. 6.015/73 on Public Records, which was recently amended by Law No. 14.382/2022. As provided in Article 16 of the Civil Code, every person has the right to a name, which encompasses both the first and last names. Because this is a recent topic, the use of periodicals and specialized doctrine was essential for the development of the work. Therefore, it is important to note that the possibility of changing one's first and last name through an extrajudicial process has brought more speed and efficiency to the processes, relieving the Judiciary and allowing interested parties to make the change without the need to resort to a court action. With the entry into force of Law No. 14,382/2022, the rules for name changes have been updated, enabling more people to make the change without having to prove the existence of damages or justify the need for the change. The research conducted seeks to allow a better understanding of the changes in the legislation and to highlight the importance of staying updated about changes and innovations in Civil Law.

Keywords: Personality rights. Civil name. Changing the name of the natural person.

1. INTRODUCTION

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The civil name as one of the main personality rights for safeguarding the dignity of the human person, is preserved in life and death, perpetuating itself from generations to generations and individualizing the

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^{two}Raiane França Dias, Student of the Law course at the educational institution Faculdade Santo Agostinho, Vitória da Conquista – BA.

³Denis Marcio Jesus Oliveira, Master in Law, professor at Faculdade Santo Agostinho de Vitória da Conquista - Bahia, e-mail: denis.oliveira@vic.fasa.edu.br



human being in society. According to the doctrine, the civil name is the set of essential and/or non-essential elements, such as the first name, surname, agnome, pseudonym, nickname, among others (SILVA, 2019).

In all periods of humanity, man has felt the need to individualize each other before society. To do so, he used, as a reference, his family, the place where he lived, the titles he received through his performance in war or activities carried out in society. FRANCE (1964, p 23)

The Civil Registry Office of Natural Persons is where the data relating to the civil name and other information that will appear on the birth certificate will be registered. It is essential that civil registration reflects reality, as it must be in line with the truth that is presented and used in the outside world.

However, if it is necessary to adapt reality, there is the legal possibility of rectifying the civil registry, which consists of correcting data that was incorrectly recorded. It is important to highlight the difference between rectifying and altering in this context: rectifying is adequately correcting the record to reflect the truth, while altering and modifying without there necessarily being an error to be corrected.

So that people can be identified in their rights and duties in the civil order, it is essential that they are individualized. This individualization occurs through several elements, among which we highlight the state, which indicates the position in the family and society in general; the domicile, which is the person's legal headquarters; and the name, which is the designation that differentiates it from other private and public coexistence, the object of study in this article.

The name is an identifying element that makes up the personality of the natural person, generally consisting of the first name and surname. It plays an important role in the individualization and identification of the person, both within the family and social spheres and before the State. As highlighted by Reinaldo Velloso dos Santos, this is a fundamental social characteristic for the distinction between individuals.

Likewise, it has legal protection, both in life and after death. It begins with registration, which must be carried out in the place where the birth took place or in the place of residence of the parents, in accordance with Law 6,015/1973, known as the Public Records Law, with the name being a right of each individual, prescribed by the Civil Code in articles of the chapter that deals with personality rights.

2. MATERIALS AND METHODS

The methodology used was a bibliographic review, verifying the benefits of different discussions and comments on the law, as well as its structural and social characteristics. Consultations will be limited to scientific production from the last seven years, published in Portuguese or English, available in full.

2.1 Type of Search

This study is exploratory research based on Carlos Gil (2010, p. 45) which, according to the author, aims to provide greater familiarity with the problem, improvement of ideas or the discovery of intuitions with a view to making it more explicit or construct hypotheses. In most cases, this research involves bibliographical research, interviews with people who have had practical experience with the problem being researched and analysis of examples that stimulate understanding.

2.2 Research Scenario

It is worth highlighting that although several studies already present different actions on the topic being researched, this is something highlighted in the official documents available.

two 2.3 Research Participants

The instruments of this study were bibliographic and documentary research.

2.4 Data collection procedures

Data collection instruments constitute a process of searching and grouping data and information for research, through the use of specific techniques. Data collection contributes to a

direction that defines the development of the investigation. Therefore, the researcher's attention is necessary in the search for solid and concrete information to carry out the research.

2.5 Procedures for data analysis

The data and information collected will be used in the planning, study, development and experiments during the research.

3. THE CIVIL NAME: CONCEPT AND LEGAL NATURE

The civil name is the set of terms used to identify a person in the legal context, which is generally composed of the first name, or given name, and the surname, or family name, and may also be added by other elements, such as titles, surnames, between others. According to Luiz Guilherme Loureiro, a renowned Brazilian jurist, this identification is essential to guarantee the individualization and identification of the person in society and the State.

The name, together with other attributes, has the mission of ensuring the identification and individuation of people and, therefore, it is as if it were a label placed on each of us. Each individual represents a sum of rights and obligations, a legal, moral, economic and social value and, therefore, it is important that such values appear as the simple statement of the name of their holder, without ambiguity or possible confusion. (LOUREIRO, 2019, p. 213).

The civil name is of fundamental importance for the exercise of a person's rights and duties, being used in various acts of civil life, such as contracts, public records, personal documents, among others.

Thus, Pontes de Miranda (2000. p. 299) instructs that:

[...] the names were creations of life [...]; they are factual elements, of great importance in inter-human relations, even when the law ignores them, eg, before the child's birth is registered, the name, which is given to him and is still changeable, designates and distinguishes him from other children, as designated and distinguishes its number in the maternity home.

In legal terms, the civil name is considered a personality right, which is a set of attributes and characteristics that identify and individualize a person in the social and legal sphere. As such, it is protected by the Federal Constitution and the Civil Code, which guarantee the right to use the name and its protection against possible violations.

The legal nature of the civil name is, therefore, that of a very personal and non-transferable right, which is intrinsically linked to the person's own identity and individuality. Regarding the mandatory name, Brandelli explains that:

There is a legal obligation in the sense that every person has a name, an obligation that derives from a human need arising from life in society, which allows the person to be identified as the unique being that they are, attributing to them the rights they have to the full and full development and fulfillment of their minimum needs, as well as duties. (BRANDELLI, 2012, p. 65).

We realize the relevance of the civil name in the legal sphere, but we cannot let the impact on the social environment go unnoticed, the name reminds us of the physical personality of its bearer, and today we already realize that it is such a strong connection that the legislator Brazilian comes to present us with alternative possibilities for changing the first name and surname extrajudicially.

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4. THEORETICAL FRAMEWORK

4.1 RIGHT TO CHANGE NAME: CHANGING FIRST NAME AND SURNAME

The civil name is an important element of a person's identity, allowing their individualization and identification in society. For this reason, the law establishes that civil registry officers cannot register

first names that could expose their bearers to ridicule. If the parents insist on registering an inappropriate first name, the officer must submit the case to the competent judge.

Although the first name is generally immutable, the law provides for exceptions in special circumstances, allowing its change. In accordance with article 58 of Law nº 6,015/73⁴, replacing the first name with public and notorious nicknames is possible. This possibility of changing the first name aims to protect the right to personality, ensuring the preservation of the individual's identity.

According to Caio Mário da Silva Pereira, the civil name is an element that integrates the personality and indicates the person's family origin. However, in special cases, it is possible to request rectification of the first name in court, guaranteeing the protection of the fundamental right to personal identity. Note the decision of the Superior Court of Justice on the matter:

CIVIL RIGHT. CHANGE OF BIRTH REGISTRATION IN THE CIVIL REGISTRY. LEGAL IMPOSSIBILITY OF THE REQUEST REMOVED. PRODUCTION OF PRO-VA. DEFERMENT. Despite the doctrinal and jurisprudential divergence, the principle of immutability of the family name is not absolute, and exceptionally, as long as the fair motivation and prior intervention of the Public Prosecutor's Office are present, it is possible to change the patronymic, through a court ruling. In the case of the case, if the requirements of article 57 with paragraph 1 of article 109 of Law No. 6,015/73 are met, the production of evidence requested by the author must be authorized, regarding the facts that support her initial request. Resource provided. (REsp 401138/MG, Rel. Minister CASTRO FILHO, THIRD PANEL, judged on 26.06.2003, DJ 12.08.03, p. 219)

The judicial process for rectifying civil registration is provided for in article 109 of Law 6,015/73. This is a voluntary jurisdiction procedure. The request for amendment and/or rectification will be made directly at the Civil Registry of Natural Persons office, and the work of a lawyer to propose the action is essential, in addition to the summons from the Public Prosecutor's Office, and the payment of procedural costs when the interested party is not a beneficiary of free justice.

However, as this judicial process, faced with the overcrowded Judiciary, is often time-consuming and bureaucratic, there was a need for adaptations for a faster and even simpler process, guaranteeing access to Justice.

4.2 LAW 14,382/22: CHARACTERIZATION AND STRUCTURE

Law 14,382/22, originating from Provisional Measure/21, mainly addresses the Electronic System of Public Records (SERP), bringing changes and additions to important laws such as law 4,591/64 - which deals with real estate development -, law 6,015/ 1973 (public records law) and the Civil Code 2002.

One of the changes addresses the right to name, which is enshrined as a personality right, including first name and surname, following the rule of art. 16 of the Civil Code of 2002. The new perspective includes the right to personal identity, covering different traits that represent the person in the social environment. The need to observe the inclusion of surnames of parents or ancestors, in any order, in the formation of the given name is emphasized, and the civil registry officer cannot register given names that could expose their bearers or holders to ridicule. In case of refusal, the officer will submit the case to the competent judge for decision. This new regulation brings advances to Brazilian Family Law.

4.3 POSSIBILITY OF CHANGING THE NAME IN THE FIRST FIFTEEN DAYS AFTER REGISTERING

4 Law 14,382/2022 brought an important innovation with regard to civil birth registration. Now, in the first fifteen days after registration, there is the possibility of changing the child's name by the parents. This change may occur if one of the parents presents a well-founded opposition to the first name and surname indicated by the declarant.

Art. 55, § 4º Law 6015/73. Within 15 (fifteen) days after registration, any of the parents may present, before the civil registry where the birth certificate was drawn up, a reasoned opposition to the first name and surname indicated by the declarant, observing that, if there is a consensual manifestation of the parents, it will be the rectification procedure has been carried out

4 **Art. 58.** The first name will be definitive, although it may be replaced by well-known public surnames.

administrative registration, but, if there is no consensus, the opposition will be forwarded to the competent judge for decision.

If there is an agreement between the parents, it is possible to carry out an administrative rectification of the registration, which will make the name change process easier. However, if there is no agreement, the matter will be taken to the competent judge to make a decision.

This new rule brings greater flexibility and autonomy to parents, allowing them to review and modify the name chosen for the child within a short period of time after registration. It is important to remember, however, that changing the name must be done responsibly and cautiously, taking into account the child's well-being and identity.

This rule was inspired by a case of wide national repercussion, which was judged by the STJ. In the case in question, the father had informed the civil registry office of a name different from the one that had been consensually chosen by the parents. The STJ decided that the father's act, which disrespected the prior consensus on the name to be given to the son, constituted an illicit act and abusive exercise of family power.

[...] 2 - The purpose of the appeal is to define whether it is permissible to exclude the child's first name in the event that the father reported, before the civil registry office, a name different from that which had been consensually chosen by the parents. [...] 5 - Naming the child is a typical act of exercising family power, which presupposes bilaterality, except in the absence or impediment of one of the parents, and consensuality, except for the possibility of the judge resolving any disagreement between them, disallowing it, if, in the hypothesis, self-protection. 6

- The act of the father who consciously disregards the prior consensus between the parents on the name to be given to the child, unilaterally adding the first name during civil registration, in addition to violating the duties of loyalty and good faith, constitutes an illicit act and abusive exercise of family power, being enough motivation to authorize the exclusion of the first name unduly attributed to the child who will turn 4 years old on 05/26/2021 and who is the result of a relationship that broke up shortly after his birth (REsp 1905614/SP, Minister NANCY ANDRIGHI, THIRD PANEL, judged on 05/04/2021, DJe 05/06/2021)

According to the STJ's understanding, naming a child is an act of exercising family power that presupposes bilaterality and consensuality, except in the absence or impediment of one of the parents. Failure to comply with this prior consensus constitutes an illicit and abusive act of family power, which can lead to the exclusion of the first name unduly attributed to the child.

It is important to highlight that the rule allows the complete change of the registered name as it authorizes both the change of first name and surname. Thus, this faculty can be understood as a new opportunity to choose a name, with broad freedom for the parents, limited only by the same limits described above, applicable at the time of the initial registration itself. CASSETTARI (2023)

In this way, Law 14,382/2022 comes to guarantee parents the possibility of correcting any mistakes when choosing their child's name, as long as this is done within the first fifteen days after the birth is registered. This seeks to preserve consensuality in the choice of name and ensure that family power is exercised in a responsible and respectful manner.

4.5 REQUIREMENTS FOR NAME CHANGE: IMPORTANCE OF PERSONAL MANIFESTATION BEFORE THE CIVIL REGISTRAR

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Changing your name is a very personal right guaranteed by law. Therefore, the law establishes that the request must be made personally by the applicant, in order to guarantee free will for such a change. This is because the name is a fundamental right of personality and, therefore, must be treated with relevance and care. As Christiano Cassettari points out in his work "Civil Registry of natural persons" (2023), the law is clear in stating that the expression "personally requesting" prevents the request from being made through a private instrument, even if it has a notarized signature.

It is extremely important that the desire to change your name is formally expressed to a civil registrar. This measure is necessary to ensure that the applicant is aware of what they are requesting and that changing their name is a decision that must be made consciously. The law does not create difficulties

and bureaucracy so that the applicant can request a name change, as he can look for the closest or most convenient civil registry to express his wishes.

In this way, the civil registrar will be able to ensure that the applicant's wishes are formally expressed and that the necessary documents are presented. The name change procedure will be forwarded via CRC to the registry office where the applicant was registered, so that the change can be made safely and appropriately. In summary, changing one's name is a fundamental right that must be exercised consciously and responsibly, ensuring that the applicant can have his or her wishes respected and his or her name duly registered.

4.6 Possibility of changing the first name according to Law no. 6015/73

According to article 56 of Law no. 6.015/73, it is possible to change the natural person's first name, without the law bringing any limitations or restrictions to this change. In this sense, CASSETTARI (2023) points out that "it is possible: a) to completely change the first name, excluding the one at birth and including a new one; b) turn a simple first name into a compound first name; c) transform a compound first name into a simple one.

The same considerations taken into account when an adult chooses their given name, when registering a late birth, are applicable to this case. Therefore, it is not up to the registrar to question the name selected by an absolutely incapable person, unless it has the potential to offend constitutional principles, public order and good customs.

It is important to highlight that choosing a first name is a very personal right, protected by law. Therefore, it is necessary for the interested person to personally make the request for a change of first name, so that the registrar can ensure the free will and relevance of the name as one of the personality rights. The use of a private instrument, even if notarized, is not permitted, and the expression of will must be formally presented to the civil registrar.

4.7 Law No. 14,382/22 and the main changes contained in articles 46 and 47 of the Law

Law No. 14,382/22 promoted significant changes in the name change procedure, covering both first and last names. This change was in line with the principle of human dignity and the right to self-determination, already indicated by jurisprudence. With the new wording of art. 56 of Law No. 6,015, the registered person may, after reaching the age of majority, request in person and without justification to change their first name, without the need for a court decision, and the change will be endorsed and published electronically.

Art. 56. The registered person may, after reaching the age of majority, personally and unreasonably request the change of their first name, regardless of a court decision, and the change will be endorsed and published electronically.

§1 Unreasonable change of first name may be made extrajudicially only 1 (one) time, and its deconstitution will depend on a court ruling.

§2° The registration of change of first name will necessarily contain the previous first name, the identity document numbers, registration numbers in the Individual Taxpayer Registry (CPF) of the Special Secretariat of the Federal Revenue of Brazil, passport and voter registration card of the registered person, data that must be expressly included in all requested certificates.

It is worth noting that an unjustified change of first name can only be made extrajudicially once, and its deconstitution will depend on a court ruling. Furthermore, the endorsement of the change of the first name must contain information from the previous name, document numbers of identity, registration in the Individual Taxpayer Registry (CPF) of the Special Secretariat of the Federal Revenue of Brazil, passport and voter registration card of the registered person, which must be expressly included in all requested certificates. Law No. 14,382/22 brought important changes to changing the name, guaranteeing more autonomy and freedom of choice for the registered person.

Article 57 of Law 6,015/73 provides for several possibilities for changing the surname that can be requested by the interested person. One of them is the inclusion of family surnames that are not included in the registry, as long as there is proof of link or ancestry through documents. Furthermore, it is possible to change or delete the spouse's surname during the marriage, allowing the interested person

Go back to using your maiden name, for example.

It is also possible to exclude the ex-spouse's surname after the dissolution of the marital partnership, whether consensual or litigious. This confirms that the surname is a personality right of the spouse who adheres to it.

Article 57 also provides for the inclusion and exclusion of surnames due to changes in filiation relationships, both for descendants and for the spouse or partner of the person whose status has changed. It is important to highlight that changing the surname must be carried out through a formal procedure, with due proof of the necessary documents. Law 6,015/73 guarantees interested parties the right to change their surname, as long as the conditions set out in the legislation are met.

The hypothesis of extrajudicial inclusion of surnames due to the stable union also deserves praise. According to the new §2 of art. 57, "cohabitants in a stable union duly registered in the civil registry of natural persons may request the inclusion of their partner's surname, at any time, as well as change their surnames in the same cases provided for married people". However, it is important to highlight that, as can be seen from reading, the inclusion of the surname in these cases only covers registered stable unions, and does not apply to de facto unions. MATIAS; MELO (2022, p. 34-35)

5. MATERIALS AND METHODS

To prepare this academic article, bibliographic review and documentary research methods were used. The objective of the exploratory research was to deepen the understanding of different discussions and comments on the law, considering its structural and social characteristics. Scientific productions published in the last seven years were consulted, in Portuguese or English, available in full. Exploratory research seeks to provide greater familiarity with the problem in question, improve ideas or discover intuitions to make it more explicit or build hypotheses. To achieve this objective, it is common to carry out bibliographical surveys, interviews with people who have practical experience on the topic and analysis of examples that encourage understanding.

Although there are several studies carried out on the topic covered in this article, it is important to highlight that the actions discussed in these studies are not always present in the official documents available.

The data collection instruments used were bibliographic research and documentary research. Data collection was done using specific techniques that contributed to the direction of the research. To carry out the research, the researcher had to seek solid and concrete information. The data and information collected were used to prepare the planning, study, development and experiments carried out during the research.

6. RESULTS AND DISCUSSIONS

Law 6,015/73, which regulates public records in Brazil, was amended by Law 14,382/22, which brought important changes with regard to changing names and given names extrajudicially. Before the change, changing names and surnames could only be carried out through a judicial process. However, with the new law, this possibility has been expanded and it is now allowed for the change to be made extrajudicially, that is, directly at the civil registry office.

For the change to be carried out extrajudicially, it is necessary to fulfill some requirements, such as the absence of doubts regarding the identity of the applicant and the express agreement of both parents, in the case of minors. Furthermore, the chosen name must not be used for the purpose of fraud or to harm third parties. This change brings several benefits to citizens, such as speed and simplicity.

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simplicity of the process, in addition to saving time and money that were previously necessary to obtain a change of name and surname through the courts.

However, it is important to highlight that this possibility of extrajudicial change is not a rule for all cases, and there are still situations in which it will be necessary to take legal action to change the name and given name. Therefore, Law 6,015/73 amended by Law 14,382/22 brought an important change with regard to changing names and surnames extrajudicially, enabling a simpler and faster solution for this type of demand.

CONCLUSIONS

According to the new law, a registered person can request in person and without the need for justification to change their first name after reaching the age of majority. This change will be endorsed and published electronically, without requiring a one-year statute of limitations from the age of majority. Previously, this period could be removed in specific cases in which there were justifications for changing the name after this period. However, as of the new law, it will no longer be necessary to justify the change. Previously, the one-year period was considered prescriptive and the change could only be made by exception and on a motivated basis, in accordance with article 57 of Law No. 6,015/73, as highlighted in a previous STJ decision in REsp 538,187/RJ, reported by Minister Nancy Andrighi, in the third panel, judged on December 2, 2004 and published in the DJ on February 21, 2005.

The Public Records Law, or Law No. 6,015/73, is an important standard for Brazilian civil law, regulating the civil registration of natural persons. However, over time, the law needed to be updated and adjusted to meet social changes. Law No. 14,382/22 brought important changes to the articles. 56 and 57 of Law No. 6,015/73, especially in relation to name changes, covering first and last names.

The new wording of article 56 allows the registered person to request personally and without motivation to change their first name after reaching civil majority, without the need for a court decision. However, it is important to highlight that this unmotivated change of first name can only be done once extrajudicially, and its deconstitution depends on a court ruling.

Furthermore, Law No. 14,382/22 allowed the inclusion of family surnames, as long as the interested party presents documents that prove the link/ancestry. It is also possible to include or exclude the spouse's surname during the marriage, as well as the exclusion of the ex-spouse's surname after the dissolution of the marital, consensual or litigious partnership. The law also allows the inclusion and exclusion of surnames due to changes in parental relationships, including for descendants, spouse or partner of the person whose status changed.

One of the main innovations brought about by the new law is the possibility of changing one's name extrajudicially, through the Civil Registry Office, without the need for justification. This change is very useful for people who wish to use a name by which they are known socially and reject their registered name, which may have been chosen by their parents. However, it is important to highlight that the unjustified change of first name can only be made once by extrajudicial means and its reversal will depend on a court ruling, as provided for in article 56, §1 of Law No. 6,015/1973, included by Law No. 14,382 /2022. According to a survey carried out by the Association of Natural Persons Registrars of Brazil (Arpen Brasil), at the request of the Senado Agency, approximately one thousand Brazilians requested to change their first name in the last six months through the registry offices, which is equivalent to an average of 30 requests per day. The entity does not have data regarding surname changes.

These changes represent a major advance for Brazilian civil law, allowing people to have greater control over their identity and family history, in addition to reinforcing the protection of fundamental rights, such as human dignity and self-determination. Law No. 14,382/22 expands the autonomy of individual will and strengthens the importance of respect for personality rights.

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