

Irrevocable Trusts: Louisiana

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A Q&A guide to the laws governing irrevocable trusts in Louisiana. This Q&A addresses state laws and customs that impact irrevocable trusts, including the key statutes and rules related to irrevocable trusts, the requirements for creating a valid irrevocable trust, common irrevocable trust provisions, information concerning trustees, and information on making changes to irrevocable trust instruments after execution. Answers to questions can be compared across a number of jurisdictions (see Irrevocable Trusts: State Q&A Tool). For similar information relating to revocable trusts in Louisiana, see [State Q&A, Revocable Trusts: Louisiana](#).

Key Statutes and Rules

1. What are the key statutes and rules that govern irrevocable trusts in your state?

The Louisiana Trust Code (La. R.S. 9:1721 to 9:2252) governs all Louisiana trusts, including private trusts with gifts to charity among other gifts. However:

- Special rules apply to strictly charitable trusts (La. R.S. 9:2271 to 9:2337).
- The Louisiana Trust Code applies to strictly charitable trusts only to the extent La. R.S. 9:2271 to 9:2337 are silent (La. R.S. 9:2274).

Federal law, including federal estate, gift, generation-skipping transfer (GST), and income tax rules frequently apply to irrevocable trusts, depending on the purpose and characteristics of the trust (26 U.S.C. §§ 1 to 2801; 26 C.F.R. §§ 1.0-1 to 26.7701-2). For specific information related to federal estate, gift, and GST taxes, see Practice Notes:

- [Federal Estate Tax](#).
- [Federal Gift Tax](#).
- [Federal Generation-Skipping Transfer Tax](#).

For examples of specific rules and provisions applicable to specific types of irrevocable trusts, see Practice Notes:

- [Understanding Charitable Trusts](#).
- [Understanding Irrevocable Life Insurance Trusts](#).

- [Understanding Qualified Personal Residence Trusts](#).
- [Understanding Grantor Retained Annuity Trusts](#).
- [Understanding Special Needs Planning](#).
- [Understanding Grantor Trusts](#).

While this Q&A generally focuses on irrevocable trusts other than strictly charitable trusts, it includes notable exceptions that apply to strictly charitable trusts.

Applicability of Rules to Revocable Trusts

Many individuals (settlers) create revocable trusts as will substitutes to dispose of their assets at death. These revocable trusts generally become irrevocable on the settlor's incapacity or death. Once a revocable trust becomes irrevocable, it is generally subject to the same rules as a trust that was irrevocable when created. For more information on revocable trusts, see [State Q&A, Revocable Trusts: Louisiana](#).

Applicability of Rules to Testamentary Trusts

A testamentary trust is a trust created under a testator's will that generally comes into existence and becomes irrevocable when the testator dies. Testamentary trusts are generally subject to the same rules as all irrevocable trusts once the court administering the testator's estate recognizes and funds the trust at the settlor's death. For information on wills that may include testamentary trusts, see [State Q&A, Wills: Louisiana](#).

Trust Requirements

2. What are the requirements for a valid trust in your state?

Writing Requirement

All Louisiana *inter vivos* trusts must be in a writing signed by the settlor either:

- Before two witnesses and a notary (an authentic act).
- Before two witnesses followed by either the settlor or one of the witnesses signing an affidavit before two witnesses and a notary acknowledging that the settlor signed the trust instrument (an act under private signature, duly acknowledged).

(La. R.S. 9:1752; La. Civ. Code Ann. arts. 1833 and 1836.)

Settlor Requirements

In Louisiana, to create a trust the settlor must either:

- Be an emancipated minor.
- Have reached the age of majority, which in Louisiana is 18 years of age (La. Civ. Code Ann. art. 29).

(La. R.S. 9:1763; La. Civ. Code Ann. art. 1918.)

A person who has the legal capacity to contract may create an irrevocable trust in Louisiana (La. R.S. 9:1763). Every individual has the capacity to contract except:

- Unemancipated minors.
- Interdicts. Interdicts are natural persons whose interests cannot be protected by less restrictive means and who a court determines either:
 - due to an infirmity, cannot make reasoned decisions regarding the care of their person and their property; or
 - are unable to communicate decisions regarding the care of their person and their property.
- Persons deprived of reason at the time of contracting.

(La. Civ. Code Ann. arts. 389 and 1918.)

In this context, the term person includes individuals (natural persons) as well as partnerships, corporations, limited liability companies, associations, joint stock companies, business trusts, or joint ventures (La. R.S. 9:1725(3)).

Trustee Requirements

In Louisiana, a trust generally requires a trustee. However, a trust does not fail if:

- The trust instrument does not:
 - designate a trustee; or
 - provide a method for choosing a trustee.
- The trustee is disqualified or removed.

(La. R.S. 9:1781 and 9:1785.)

In these cases, the court appoints a trustee (La. R.S. 9:1785).

Beneficiary Requirements

A trust is generally not valid without a designated beneficiary (La. R.S. 9:1802 and 9:1803).

A beneficiary of a Louisiana trust may be a natural person, corporation, partnership, or other legal entity with the capacity to receive property (La. R.S. 9:1801). The income beneficiaries and the principal beneficiaries may be different (La. R.S. 9:1805). A beneficiary must be in being and ascertainable on the date the trust is created (La. R.S. 9:1803).

Class trusts allow for the automatic addition of after-born members of a class (for example, all grandchildren of the settlor), so long as one member of the class was living and ascertainable on the date the trust is created (La. R.S. 9:1891).

Trust Property Requirements

An *inter vivos* trust is created on execution of the trust instrument (La. R.S. 9:1822). However, there must be a transfer of title to property to a trustee for a trust to be operative (La. R.S. 9:1731 and 9:1781). Any interest in property that can be privately owned may be transferred in trust in Louisiana (La. R.S. 9:1771).

Trust Purposes

A trust may be created subject to any condition that is not:

- Forbidden in the Louisiana Trust Code.
- Against public order.
- Against good morals.

(La. R.S. 9:1736.)

3. What provisions, if any, must be included for a trust to be irrevocable?

A trust in Louisiana is irrevocable unless the settlor expressly reserves either:

- The right to revoke the trust. Reservation of the right to revoke includes the right to amend the trust.
- The unrestricted right to modify the trust.

(La. R.S. 9:2022, 9:2023, and 9:2041.)

Despite this default rule, counsel should always expressly indicate in the trust terms that a trust is irrevocable if that is the settlor's intention.

Trust Formalities and Execution Requirements

4. Must an irrevocable trust instrument be in writing to be valid?

All Louisiana *inter vivos* trusts must be in writing (La. R.S. 9:1752).

5. What are the execution requirements for a valid written irrevocable trust instrument? In particular, please specify requirements for:

- The settlor's signature.
- The trustee's signature.
- Witnesses.
- Notarization.

Signature Requirements

To create a valid *inter vivos* trust in Louisiana, the settlor of the trust must sign the trust instrument before either:

- Two witnesses and a notary (an authentic act).
- Two witnesses followed by either the settlor or one of the witnesses signing an affidavit before two witnesses and a notary acknowledging that the settlor signed the trust instrument (an act under private signature, duly acknowledged).

(La. R.S. 9:1752; La. Civ. Code Ann. arts. 1833 and 1836.)

The trustee may accept the trust by signing the trust instrument or by signing a separate instrument (La. R.S. 9:1755).

Witness Requirements

A valid *inter vivos* trust in Louisiana requires two witnesses (La. R.S. 9:1752).

Notary Requirements

A valid *inter vivos* trust in Louisiana requires notarization either at the time of signing (authentic act) or after the agreement is signed at some later time (an act under private signature duly acknowledged) (La. R.S. 9:1752; La. Civ. Code Ann. arts. 1833 and 1836).

Common Irrevocable Trust Provisions

6. Discuss specific provisions commonly found in an irrevocable trust instrument and the rules that apply to these provisions in your state. In particular, please discuss the following provisions and their effect:

- No contest clause.
- Incorporation by reference of trustee powers.
- Virtual representation.
- Rule against perpetuities.
- Sample rule against perpetuities clause.
- Governing law.

Provisions included in irrevocable trust instruments in Louisiana are generally substantially the same as and subject to the same rules as those included in revocable trust instruments regarding:

- No contest clauses, which are not widely used in Louisiana trust instruments. For additional information about no contest clauses, see [50-State No Contest Clause Laws Chart](#) and [Standard Clause, No Contest Clause](#).
- Incorporation by reference of trustee powers, which is not necessary in Louisiana.
- Virtual representation, which does not exist in Louisiana.

- Governing law (though a provision regarding changing the governing law of a trust created under a revocable trust instrument may only be operative on the death of the settlor, whereas a similar provision in an irrevocable trust instrument is generally immediately operative when the trust is created).

For more information on each of these types of provisions and the applicable rules, see [State Q&A, Revocable Trusts: Louisiana: Question 12](#).

Louisiana does not recognize the common law concept of a rule against perpetuities. However, trusts that do not terminate earlier under their terms or by court order terminate automatically on:

- If at least one settlor and one income beneficiary are natural persons, the later of:
 - the death of the last surviving income beneficiary; or
 - twenty years after the death of the settlor last to die.
- If none of the settlors is a natural person but at least one income beneficiary is a natural person, the later of:
 - the death of the last surviving income beneficiary; or
 - twenty years after the creation of the trust.
- If at least one settlor is a natural person, but none of the income beneficiaries is a natural person, twenty years after the death of the settlor last to die.
- If none of the settlors or income beneficiaries are a natural person, fifty years after the creation of the trust.

A trust that states a longer term than allowed under the Louisiana Trust Code is valid (even if it does not include a savings clause), but automatically terminates as provided above despite any language to the contrary in the trust instrument (La. R.S. 9:1831). Charitable trusts may be perpetual (La. R.S. 9:2290).

Rule Against Perpetuities Sample Clause for Irrevocable Trust Instrument

Louisiana does not recognize the common law concept of a rule against perpetuities. However, the length of a trust term is limited by statute in most circumstances. (La. R.S. 9:1831.) Because these limits are prescribed by statute, trusts generally do not include this limiting language.

Trustee Appointment

7. What are the rules regarding appointment of trustees and acceptance and declination of trusteeship in your state? In particular, please discuss:

- Who is eligible to act as trustee.
- Priority rules for filling vacancies in a trusteeship if the named trustees fail to qualify or stop acting.
- How a nominated trustee accepts or declines the nomination.

Eligibility to Act as Trustee

Except for trusts that are exclusively charitable, the rules regarding eligibility to act as trustee in Louisiana for an irrevocable trust are identical to the rules regarding eligibility to act as trustee for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Louisiana: Eligibility to Act as Trustee](#).

For trusts that are exclusively charitable, only the following may serve as trustee:

- A natural person with full capacity to contract who is a US citizen or resident alien.
- A federally insured depository institution organized under the Louisiana, state, or US law, or a financial institution or trust company authorized to exercise trust or fiduciary powers under Louisiana or US law.

(La. R.S. 9:2273.)

Filling Vacancies in a Trusteeship

The settlor may name a successor trustee in the trust instrument. The settlor generally can also:

- Retain the right to name the successor trustee in a separate writing.
- Grant the authority to appoint a successor trustee to another individual.
- Direct another method of choosing a successor trustee.

(La. R.S. 9:1785 and 9:2025.)

For trusts that are not exclusively charitable, if the office of trustee becomes vacant and the trust instrument does not name a successor or a method for naming the successor, then the proper court appoints the successor trustee or trustees (La. R.S. 9:1785). The Louisiana Trust Code does not set out any standard or order of priority for the court to follow in appointing a successor trustee in this circumstance.

For trusts that are exclusively charitable, if the trust has no trustee or fewer trustees than the instrument requires, and after proper notice, the vacancy is filled in the following order:

- Under the procedures in the trust instrument.
- If no effective procedures exist, by a majority of the remaining trustees.
- If a majority of the remaining trustees cannot agree or the office of trustee is vacant, by agreement of a majority in interest of the institutional beneficiaries.
- If a majority in interest of the institutional beneficiaries cannot agree, or if there are none, by the proper court on the application of any person. The trustee appointed by the proper court must be a federally insured depository institution organized under Louisiana, other state, or US law, or a financial institution or trust company authorized to exercise trust or fiduciary powers under Louisiana or US law.

(La. R.S. 9:2272 and 9:2273(2).)

Accepting a Nomination as Trustee

The rules for accepting a trusteeship for an irrevocable trust in Louisiana are identical to the rules regarding accepting a trusteeship for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Louisiana: Question 14](#).

Declining a Nomination as Trustee

Louisiana does not require the declination of a trustee appointment to be given in any particular form. However, a written letter of declination is the custom.

Trustee Compensation

8. What are the rules, if any, regarding trustee compensation in your state?

The rules regarding trustee compensation in an irrevocable trust in Louisiana are identical to the rules regarding trustee compensation for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Louisiana: Question 16](#).

Multiple Trustees

9. Who has authority to act when there are multiple trustees?

The rules regarding authority to act when there are multiple trustees of an irrevocable trust in Louisiana are identical to the rules regarding authority to act when there are multiple trustees of a revocable trust (see [State Q&A, Revocable Trusts: Louisiana: Question 17](#)).

Removal and Resignation of Trustees

10. Can a trustee be removed from office, and if so, how?

The rules regarding removal of trustees of an irrevocable trust in Louisiana are identical to the rules regarding removal of trustees of revocable trusts (see [State Q&A, Revocable Trusts: Louisiana: Question 18](#)).

A trust instrument should generally include a trustee removal provision specifying who has authority to remove trustees and the method for doing so.

11. What rights does a trustee have to resign from office?

The rules regarding trustee resignation for an irrevocable trust in Louisiana are identical to the rules regarding trustee resignation for a revocable trust (see [State Q&A, Revocable Trusts: Louisiana: Question 19](#)).

Trustee Liability

12. What is the standard of care applicable to the trustee?

Louisiana follows the prudent person rule. The trustee must exercise reasonable care and skill in administering the trust, as a prudent person would. A trustee also has a duty to use a special skill or expertise if the trustee has that skill or expertise or holds themselves out as having a special skill or expertise. (La. R.S. 9:2090.)

13. Under what circumstances is a successor trustee liable for the acts of a prior trustee?

The rules regarding successor trustee liability for an irrevocable trust in Louisiana are identical to the rules regarding successor trustee liability for a revocable trust (see [State Q&A, Revocable Trusts: Louisiana: Question 21](#)).

14. Under what circumstances is a trustee liable for the acts of a co-trustee?

The rules regarding co-trustee liability for an irrevocable trust in Louisiana are identical to the rules regarding co-trustee liability for a revocable trust (see [State Q&A, Revocable Trusts: Louisiana: Question 22](#)).

15. To what extent can the trust instrument waive trustee liability?

The rules regarding waiver of trustee liability in an irrevocable trust instrument in Louisiana are identical to the rules regarding waiver of trustee liability in a revocable trust instrument (see [State Q&A, Revocable Trusts: Louisiana: Question 23](#)).

16. Does your state have a statute authorizing directed trusts?

Louisiana does not currently have a statute authorizing directed trusts.

For information regarding directed trusts, see [50-State Directed Trust Laws Chart](#).

Court Supervision

17. Is an irrevocable trust court supervised?

Trusts in Louisiana are not generally subject to court supervision. However, if a cause or right of action accrues

to the settlor, a beneficiary, or a trustee, that person may file a summary proceeding, if necessary (La. R.S. 9:2231 to 9:2235).

In certain circumstances, a court may modify an irrevocable trust or authorize its early termination (see Question 18).

Trust Modification and Early Termination

18. What are the options for modifying or early termination of an irrevocable trust?

Trust Modification

In Louisiana, the proper court may order the termination or modification of a private trust (but not an exclusively charitable trust), in whole or in part, if continuing the trust unchanged defeats or substantially impairs the trust (La. R.S. § 9:2026(A)). The court generally requires the proponent of a modification to show that:

- There was a change in circumstances since the creation of the trust, not anticipated by the settlor.
- The change in circumstances impairs the trust's original purpose.
- The proposed modification is tailored to best effectuate the settlor's intent, unless opposed by law or public policy.

(*In re Merlin A. Abadie Inter Vivos Tr.*, 483 So.2d 1292, 1294 (La. Ct. App.1986).)

The proper court also can modify a private trust if the purpose for which the trust was created becomes either impossible to accomplish or illegal (La. R.S. § 9:2027).

Exclusively charitable trusts can only be modified if the proper court determines that there was a change in circumstances that renders a literal compliance with its terms impractical, impossible, or illegal (called the *cy pres* doctrine) (La. R.S. § 9:2331).

Early Termination of Trusts

Louisiana has a long-standing public policy of trust indestructibility (*Albritton v. Albritton*, 600 So.2d 1328, 1332 (La. 1992)). Except as otherwise provided by law or

the trust instrument, the consent of all settlors, trustees, and beneficiaries is not effective to terminate a trust or any disposition in trust (La. R.S. § 9:2028).

There is a limited exception for termination of small trusts, both charitable and private. Except as otherwise provided in the trust instrument, a trustee may terminate an irrevocable trust if there is less than \$100,000 of property in the trust and, for a private trust, the trustee obtains the consent of all beneficiaries (La. R.S. §§ 9:2026(B) and 9:2291).

In addition, the proper court can terminate a private trust if the court determines that either:

- Continuance of the trust unchanged defeats or substantially impairs the trust purposes (La. R.S. § 9:2026(A)).
- The purpose for which the settlor created the trust becomes either impossible to accomplish or illegal (La. R.S. § 9:2027).

Under these circumstances, the proper court could choose to modify the trust, rather than terminating it (see Trust Modification). Trust instruments frequently include a provision indicating the settlor's intent regarding early termination.

Unless the instrument creating an exclusively charitable trust provides otherwise:

- Exclusively charitable trusts are perpetual (La. R.S. § 9:2290).
- There is no means for a trustee or a court to terminate an exclusively charitable trust early other than the provision for termination of small trusts (La. R.S. § 9:2291).

Information Provided to Trust Beneficiaries

19. What information are the beneficiaries of an irrevocable trust entitled to when the trust is created and throughout its administration?

Once a trust beneficiary's interest in the trust vests, the trustee must furnish to the beneficiary information regarding the nature and amount of the trust property, on request, and provide an annual accounting to that beneficiary (La. R.S. 9:2088(B) and 9:2089). The annual accounting must detail all receipts and disbursements of the trust during the year, plus a list of all trust property (La. R.S. 9:2088(B)).

Trust instruments frequently waive the requirement that the trustee provide an annual accounting. However, accountings still must be provided on the reasonable request of a beneficiary, and the beneficiary's right to bring an action against a trustee for breach of trust does not prescribe (expire) until two years from the date the trustee provided an accounting for the period in question (La. R.S. § 9:2234). In other words, if the trustee fails to provide an accounting, the statute of limitations for the beneficiary's right to sue the trustee never begins to run.

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