

Revocable Trusts: Louisiana

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A Q&A guide to the laws governing revocable trusts in Louisiana. This Q&A addresses state laws and customs that impact revocable trusts, including the key statutes and rules related to revocable trusts, the requirements for creating a valid revocable trust instrument, common revocable trust provisions, information concerning trustees, information on making changes to revocable trust instruments after execution, and Louisiana's treatment of certain special circumstances for gifts made under a revocable trust instrument and gift recipients. Answers to questions can be compared across a number of jurisdictions (see Revocable Trusts: State Q&A Tool).

Key Statutes and Rules

1. What are the key statutes and rules that govern revocable trusts in your state and are revocable trusts commonly used as will substitutes in your state?

Key Statutes and Rules for Revocable Trusts

The Louisiana Trust Code (La. R.S. 9:1721 to 9:2252) governs all Louisiana trusts. In particular, the Trust Code provides that a settlor may retain the right to revoke a Louisiana trust if the settlor reserved either:

- The right to revoke the trust.
- An unrestricted right to modify the trust.

(La. R.S. 9:2041.)

Revocable Trusts as Will Substitutes

Revocable trusts are generally not recommended for use, or used, in any circumstances in Louisiana.

Probate avoidance is generally not a reason to use a revocable trust in Louisiana because probate is:

- A relatively simple process.
- No more expensive than setting up and administering a trust (and may be less expensive).

The Louisiana Probate Code specifically authorizes the Descriptive List of Assets (inventory of a decedent's estate) to be filed under seal, which adequately protects the privacy concerns of most clients (La. Code Civ. Proc. art. 3396.18(B)). However, revocable trusts may be preferable to a testamentary trust if the settlor wants to remain private the identity of the beneficiaries or circumstances under which the trust makes distributions. For more information on the descriptive list and the privacy of trusts in general, see Question 27.

Because of forced heirship in Louisiana (the prohibition against disinherit children who are under age 24 or permanently disabled), the use of revocable trusts can also create title issues for real estate. Passing Louisiana land through a revocable trust from a decedent to a prospective legatee can create a cloud on the title because there is no evidence in the chain of title that allows a title examiner to determine whether the decedent had any forced heirs who might have a claim to the property (La. Civ. Code Ann. art. 1493). In a succession (probate proceeding), an Affidavit of Death, Domicile, and Heirship that discloses whether the decedent had any forced heirs must be filed, and property is transferred under court order (La. Code Civ. Proc. art. 2821). This eliminates any title issues.

In Louisiana, a limited liability company, rather than a revocable trust, usually better serves an individual wanting either:

- An ownership structure to facilitate property management.
- To avoid multiple ancillary probate proceedings.

Who Can Create a Revocable Trust

2. Is there a minimum age requirement to create a revocable trust?

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

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

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

3. What is the standard of mental capacity required to create a revocable trust?

A person who has the legal capacity to contract may create a revocable 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)).

4. Can any of the following create a revocable trust on behalf of an individual:

- Agent under a power of attorney?
- Guardian or conservator?

Agent Under a Power of Attorney

An agent (mandatary) under a power of attorney (referred to in the Louisiana Civil Code as a mandate) may create

a revocable trust on behalf of the principal in Louisiana if the power of attorney both:

- Expressly gives the agent that power (La. Civ. Code Ann. art. 2997(1)).
- Is executed with the same formalities as a trust instrument (La. Civ. Code Ann. art. 2993; see Question 8).

Guardian or Conservator

In Louisiana, the curator (the court-appointed guardian) may place the property of an interdict (a person legally declared incompetent) in trust (La. Code Civ. Proc. Ann. arts. 4566(D) and 4269.1; see Question 3).

Trust Requirements

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

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 revocable trust becomes irrevocable (La. R.S. 9:1803 and 9:2011).

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 revocable trust becomes irrevocable (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).

6. What provisions, if any, must be included for a trust to be deemed revocable?

For a trust to be revocable in Louisiana, the settlor of the trust must expressly reserve 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.) The settlor may amend a trust's terms after the trust's creation only to the extent the settlor reserves the right to do so (La. R.S. 9:2021).

The settlor may delegate the right to revoke a trust or modify the trust's administrative provisions, but not the right to modify other provisions, except as provided by statute (La. R.S. 9:2025).

Trust Formalities and Execution Requirements

7. Must a revocable trust instrument be in writing to be valid?

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

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

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

Settlor's Signature

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

- Sign the trust instrument before two witnesses and a notary (an authentic act).
- Sign the trust instrument 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.)

Trustee's Signature

In Louisiana, the trustee may accept the trust by signing the trust instrument or by signing a separate instrument. There is no requirement that the trustee's signature be witnessed or notarized. (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).

Relationship to Pour-Over Will

9. How is a revocable trust instrument used with a pour-over will in your state? In particular please specify:

- Whether the revocable trust must exist before the pour-over will can be signed.
- Whether the terms of the revocable trust instrument can be incorporated by reference into the pour-over will.

Existence of Revocable Trust Before Execution of Will

Since revocable trusts are generally not used in Louisiana, pour-over wills are also generally not used. There is no legal authority specifically interpreting:

- The requirements for a valid pour-over will in Louisiana.
- How a Louisiana will and revocable trust must be coordinated.

However, if a valid revocable trust exists at the settlor's death, and is adequately identified as a beneficiary of estate property by the settlor's will, it is likely that the court will not annul the bequest to that trust.

Incorporation by Reference

There is no legal authority specifically interpreting how a Louisiana will and revocable trust must be coordinated. However, the provisions of an existing trust instrument may be incorporated by reference into another trust instrument. (La. R.S. 9:1754).

Rights of Surviving Spouse

10. How are the elective share rights affected by funding a revocable trust?

When a spouse dies rich in comparison to the survivor, the surviving spouse is entitled to the marital portion of the deceased spouse's Louisiana estate. The amount of the marital portion is called the quantum. (La. Civ. Code Ann. arts. 2432 and 2434.) While there is no statutory or common law definition for the meaning of when a spouse dies rich, for purposes of awarding the marital portion, a surviving spouse will ordinarily be awarded the marital portion when the comparison of assets owned by the deceased spouse shows a ratio of 5 to 1 or more to the assets owned by the surviving spouse (La. Civ. Code Ann. art. 2432, Rev. Cmts. Paragraph (c)).

- One-fourth of the decedent's estate outright, if the decedent died without children.
- One-fourth of the decedent's estate in usufruct (with a right of use) for life of the surviving spouse, if the decedent is survived by three or fewer children.
- An intestate share in usufruct for the life of the surviving spouse, calculated as if the surviving spouse were an additional child, if the decedent is survived by more than three children.

(La. Civ. Code Ann. arts. 2432 and 2434.) The marital portion, as calculated above, is reduced by any legacies or payments received due to the death of the testator. It is also subject to a cap of one million dollars. (La. Civ. Code Ann. arts. 2434 and 2435.)

A transfer of the deceased spouse's property to a revocable trust does not affect this unwaivable marital share right (La. R.S. 9:2004; La. Civ. Code Ann. art. 2330).

11. Does the transfer of property to a revocable trust change the characterization of ownership between spouses? Specifically, please discuss:

- Community property.
- Property owned as tenants by the entirety.

Community Property

In Louisiana, the transfer of property to a revocable trust does not change the character of that property as community or separate property. (La. Civ. Code Ann. arts. 2337, 2343, and 2343.1).

Community property can only be partitioned on termination of the community in compliance with Louisiana's strict statutory requirements (La. R.S. 9:2801 and 9:2802; La. Civ. Code Ann. art. 2356). For more information on community property and a surviving spouse's entitlements on the death of the other spouse generally, see [State Q&A, Wills: Louisiana: Disinheriting a Testator's Spouse](#).

Tenants by the Entirety

The tenants by the entirety form of ownership does not exist in Louisiana.

Common Revocable Trust Provisions

12. Discuss specific provisions commonly found in a revocable 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.
- Transfer of assets to trust by schedule.

No Contest Clause

No contest clauses are not widely used in Louisiana trusts. There is limited authority for the proposition that a donation can be conditioned on a beneficiary taking (or not taking) certain actions, including an unreasonable attack on the validity of a trust (La. Civ. Code Ann. arts. 1528 and 1563). However, if a client wants to condition a disposition to a beneficiary in trust on a beneficiary not contesting the trust agreement, counsel should advise the client that the language may not be effective because the law is not well established in this area.

Incorporation by Reference of Trustee Powers

It is not necessary to incorporate the Louisiana Trust Code statutory trustee powers by reference into a Louisiana trust agreement. The Louisiana Trust Code governs the rights and obligations of the trustee or trustees of a Louisiana trust in absence of a stipulation to the contrary (La. R.S. 9:2061). The rules apply automatically unless the trust agreement provides otherwise.

Virtual Representation

Virtual representation does not exist in Louisiana. Minor beneficiaries are represented by their parents if:

- Both are still living and married to each other.
- Either can sign on behalf of the minor without needing court authority.

(La. Civ. Code Ann. arts. 221 to 231.) Otherwise, the proper court must appoint a tutor to act as the legal representative of the minor (La. Civ. Code Ann. art. 246).

An interdict (an adult beneficiary the court determines lacks legal capacity to contract due to infirmity) is represented by the interdict's court-appointed curator (La. Civ. Code Ann. arts. 389 and 392 and see Question 3).

Rule Against Perpetuities

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, on 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, on 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.

(La. R.S. 9:1831.) Louisiana does enforce a trust that states a longer term through the maximum term stated (La. R.S. 9:1831). Charitable trusts may be perpetual (La. R.S. 9:2290).

Rule Against Perpetuities Sample Clause for Revocable Trust Instrument

Louisiana does not recognize the common law concept of a rule against perpetuities. However, there is statutory language limiting the terms of trusts (see Rule Against Perpetuities). Because these limits are prescribed by statute, trusts generally do not include this limiting language.

Governing Law

A trust is considered a Louisiana trust if it was created under the Louisiana Trust Code and at least one of the following is true:

- The settlor is a Louisiana resident.
- The trustee is a Louisiana resident.
- The principal trust property is located in Louisiana.

(La. R.S. 9:1784 and 9:2235.)

The proper court to hear a trust dispute involving a Louisiana trust is determined in this order:

- As designated in the trust instrument.
- In the district court either:
 - of the parish where the settlor was domiciled when the trust was created;
 - of the parish where a trustee is domiciled, if the trustee is domiciled in Louisiana; or
 - in which the agent for service of process of any nonresident trustee is domiciled, if no trustee is domiciled in Louisiana.
- In the Nineteenth Judicial District Court.

(La. R.S. 9:2235.)

Transfer of Assets to Trust by Schedule

A settlor can only contribute assets to a Louisiana trust in the proper form required for a donation, whether *inter vivos* (during lifetime) or *mortis causa* (as the result of death) (La. Civ. Code Ann. art. 1467). A simple list of trust assets attached to the trust agreement as a schedule is insufficient to transfer those assets to the trust. A settlor can make a transfer in trust or to a trust by an authentic act, which requires that the document evidencing the transfer be executed before two witnesses and a notary. The court will recognize a transfer in trust of assets listed on a schedule if:

- The transfer is made by authentic act.
- The property listed on the schedule is transferred by a separate authentic act.
- The schedule is notarized to show that it is incorporated into the main instrument by attachment (that is, paraphed to the original instrument, with the original instrument referred to as a *ne varietur*), meaning that the schedule is complete and in place at the time the authentic act is executed.

(La. Civ. Code Ann. arts. 1541, 1542, and 3325, Rev. Cmts. Paragraph (a).)

If a settlor transfers immovable (real) property under a schedule attached to a trust instrument, then the entire trust instrument must be recorded in the conveyance records of the parish where the property is located for the transfer to be effective against third parties (La. R.S. 9:2092(A); La. Civ. Code Ann. art. 517). It is usually preferable for a settlor to create a trust by one instrument and to convey assets to the trust by a separate instrument, so that only the conveyance instrument and an extract of trust must be recorded (La. R.S. 9:2092). For more information about extracts of trust, see Question 27.

Trustee Appointment

13. What are the rules regarding appointment of trustees in your state? In particular, please discuss:

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

Eligibility to Act as Trustee

A trustee of a Louisiana trust must be either:

- A US citizen or resident alien that has the full capacity to contract, who can be the settlor, a beneficiary, or both.
- A federally insured depository institution organized under the laws of Louisiana, another state, or of the US.
- A financial institution or trust company organized and authorized to exercise trust or fiduciary powers under Louisiana or US law, or trust company organized under the laws of another state and operating in Louisiana under La. R.S. 6:626.

(La. R.S. 9:1783(A).)

When a trust has a mixed private and charitable purpose, a designated income or principal beneficiary may be the trustee even if they are:

- A nonprofit corporation.
- A trust for an education, charitable, or religious purpose.

(La. R.S. 9:1783(B).)

Filling Vacancies in a Trusteeship

The trust instrument may name a successor trustee. The settlor 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.) While a trust is revocable a settlor generally can appoint a new trustee at any time (La. R.S. 9:2022).

If the office of trustee becomes vacant and no successor is named, 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.

14. Please describe how a nominated trustee accepts the trusteeship.

In Louisiana, a trustee must accept a trust either in the trust instrument or in a separate instrument (La. R.S. 9:1755). The trustee, who is not the settlor, customarily signs a formal letter of acceptance that includes:

- An acknowledgement of receipt of the trust property.
- A copy of the trust instrument.
- An agreement to perform all the duties stated in the trust instrument.

A settlor who is acting as trustee of the settlor's own trust customarily accepts the trust by executing the trust as the trustee (in addition to executing it as the settlor).

15. Please describe how a nominated trustee declines the trusteeship.

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

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

In Louisiana, a trustee is entitled to reasonable compensation from the trust estate unless:

- The trust instrument provides otherwise.
- The trustee waives compensation.

(La. Rev. Stat. Ann. 9:2181.)

In Louisiana, there is no bright line test for what constitutes reasonable compensation. The determination of what compensation is reasonable requires a facts and circumstances inquiry.

Multiple Trustees

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

In Louisiana, unless otherwise provided in the trust instrument:

- If there are two trustees they must act unanimously.
- If there are three or more trustees, they must act by majority consent. Louisiana requires that all trustees

participate in the trust administration, even though the minority can be outvoted.

(La. R.S. 9:2113, 9:2114, and 9:2096.)

Removal and Resignation of Trustees

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

A trustee of a Louisiana trust may be removed:

- As provided in the trust instrument. A settlor may always remove the trustee of a revocable trust during the settlor's life, unless the settlor is incapacitated, because a revocable trust is by its terms fully revocable and amendable by the settlor (La. R.S. 9:2022).

- By the proper court for sufficient cause.

(La. R.S. 9:1789(A).)

Sufficient cause includes:

- Remedying a breach of trust.
- The lack of capacity of the trustee.

(La. R.S. 9:1783(A) and 9:2221(4).)

A court must also remove a corporate trustee on the petition of a settlor or any current beneficiary, if the court determines that:

- Removal is in the best interest of the beneficiaries as a whole.
- Another corporate entity qualified to be a trustee agrees to serve as the trustee.
- The trust instrument does not prohibit this removal.

(La. R.S. 9:1789(B).)

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

In Louisiana, a trustee may resign from office at any time by the method included in the trust instrument. If there is no method in the trust instrument, a trustee may resign by giving written notice to each of the beneficiaries or mailing written notice to each beneficiary at their last known address. (La. R.S. 9:1788.)

On resigning, the trustee should provide a final account of their actions as trustee to each beneficiary. The accounting

starts the running of the prescriptive period (statute of limitations) on any claims the beneficiary might bring against the trustee for acts or omissions that occurred during the accounting period (La. R.S. 9:2234). The trustee should also request the beneficiaries each sign:

- An acknowledgement that they received the final account.
- A signed agreement releasing the trustee from any further liability, if possible (La. R.S. 9:2207).

Trustee Liability

20. 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.)

During the time a trust is revocable, the trustee's duties are owed exclusively to the settlor, because Louisiana considers the named principal beneficiaries in the trust instrument to be provisional until the trust becomes irrevocable (La. R.S. 9:2011 to 9:2014 and 9:2088(A)).

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

In Louisiana, a successor trustee is only liable for a breach committed by a previous trustee if the successor trustee:

- Knows or should know of a breach of trust committed by the previous trustee and allows the breach to continue.
- Fails to take proper steps to compel the previous trustee to deliver the trust property.
- Fails to take proper steps to remedy a breach of trust committed by the previous trustee.

(La. R.S. 9:2204.)

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

In Louisiana, if a trustee commits a breach of trust, a co-trustee is not liable to a beneficiary for that breach unless they:

- Participate in the breach of trust.

- Improperly delegate the administration of the trust to their co-trustee.
- Conceal, approve, or acquiesce in the breach of trust.
- Enable their co-trustee to commit the breach of trust by through failure to exercise reasonable care in the administration of the trust.
- Fail to take proper steps to compel their co-trustee to remedy the breach of trust.

(La. R.S. 9:2205.)

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

In Louisiana, a trust instrument can waive trustee liability except for:

- A breach of the duty of loyalty.
- A breach of trust committed in bad faith.
- A breach where liability is waived due to a trust provision that was inserted as a result of abuse by the trustee of a fiduciary or confidential relationship with the settlor.

(La. R.S. 9:2206.)

Special Circumstances Regarding Gifts or Recipients

24. Please describe what happens if:

- A beneficiary does not survive the settlor.
- A gift is not owned by the settlor or the revocable trust at the settlor's death.
- There are not enough assets passing through the revocable trust agreement, or after payment of taxes and debts, to satisfy all the gifts.
- The gifted property is encumbered.
- The settlor and a beneficiary or fiduciary to whom the settlor was married when the revocable trust was created are no longer married when the settlor dies.
- The settlor and a beneficiary die at the same time.

The Louisiana Trust Code does not anticipate revocable trusts being used as a will substitute and containing the equivalent of specific bequests. The Louisiana Trust Code does not directly address many of these issues.

Beneficiary Does Not Survive (Lapse)

In Louisiana, a person named in a revocable trust instrument to receive a benefit from the trust when the trust becomes irrevocable is not a beneficiary of the trust for the purposes of the Louisiana Trust Code until that person actually becomes a vested beneficiary (La. R.S. 9:2012). A person must be alive on the date the trust becomes irrevocable to be a beneficiary of that trust (La. R.S. 9:2011). A person who dies before the revocable trust becomes irrevocable never obtains any interest in the trust.

Gift Not Owned by Settlor at Death (Ademption)

The Louisiana Trust Code does not anticipate revocable trusts being used as a will substitute and, as a result, does not contemplate revocable trust agreements containing the equivalent of specific bequests. In theory, similar to wills, if a revocable trust directed the distribution of a trust asset to a person, but that asset did not exist on the date the trust became irrevocable, then that trust provision would be invalid.

For wills, a specific bequest is revoked when the testator disposes of the object bequeathed during life and does not reacquire it before death (La. Civ. Code Ann. art. 1608).

Insufficient Assets (Abatement)

Because revocable trusts are not common in Louisiana and because the Louisiana Trust Code does not provide for revocable trust agreements as will substitutes, there is no trust law that addresses the concept of abatement. For abatement to be an issue, a trust instrument, like a will, would have to designate specific cash distributions to multiple different persons. This should not occur in revocable trust agreements in Louisiana and is not anticipated by the Louisiana Trust Code.

Gifted Property Encumbered

The donation of encumbered property to or from a Louisiana trust transfers liability for the underlying debt with the property unless the trust specifically directs the trustee to pay off the debt, have the encumbrance released before transfer, or both (La. Civ. Code Ann. art. 1549).

Effect of Divorce

In Louisiana, on a settlor's divorce, provisions that designate or appoint the settlor's former spouse (for example, as a beneficiary or a fiduciary) are automatically revoked to the extent that the settlor could otherwise revoke or modify that provision. However, this does not apply if either:

- The trust instrument expressly states otherwise.
- There is a judgment or property settlement agreement to the contrary.

(La. R.S. 9:2047(A).)

Simultaneous Death

The beneficiary survival of the settlor by six months or less, can be a condition of becoming a beneficiary of a Louisiana trust after the trust becomes irrevocable (La. Civ. Code Ann. art. 1521; La. R.S. 9:1971). The Louisiana Trust Code requires a beneficiary to be in existence and readily ascertainable on the date the trust becomes irrevocable for the beneficiary's interest to vest (La. R.S. 9:1803). If two persons die simultaneously, the beneficiary would be deemed to have predeceased the settlor, because the beneficiary would be unable to prove that the beneficiary existed when the trust became irrevocable (La. Civ. Code Ann. art. 31).

Creditor Protection

25. What, if any, creditor protection does a revocable trust provide in your state. In particular, please specify:

- Any protection provided regarding the settlor's debts during life.
- Any protection provided regarding the settlor's debts after the settlor's death.
- Any protection provided regarding the debts of the trust beneficiaries after the settlor's death.
- Whether revocable trust assets are considered available resources in determining Medicaid eligibility.

Settlor's Debts During Life

A revocable trust does not provide the settlor (who is also a trust beneficiary during the settlor's lifetime) with any creditor protection in Louisiana (La. R.S. 9:2004).

Settlor's Debts After Death

A revocable trust in Louisiana does not provide the settlor with any creditor protection after the settlor's death.

Debts of Trust Beneficiaries After Settlor's Death

Once the revocable trust becomes irrevocable due to the settlor's death, the trust beneficiaries are protected from their own creditors if the trust instrument expressly provides for spendthrift trust protection (La. R.S. 9:2001 to 9:2007). Spendthrift protection does not protect beneficiaries from creditors for claims based on judgments for:

- Alimony or maintenance of those the beneficiary is obligated to support.
- Necessary services and supplies furnished to the beneficiary or those the beneficiary is obligated to support.
- Damages arising from a felony criminal offense for which the beneficiary is convicted or plead guilty.

(La. R.S. 9:2005.)

Medicaid Eligibility

A transfer of assets to a revocable trust has no effect on the settlor's Medicaid eligibility in Louisiana (42 U.S.C. § 1396p(d)(3)(A)). The assets are treated as belonging to the settlor to the same extent as if the assets were held outright by the settlor.

Court Supervision and Privacy

26. Is a revocable trust court supervised on the death of the settlor?

A revocable trust in Louisiana is not court supervised on the settlor's death. However, if a cause or right of action accrues to a beneficiary or trustee, that person may file a summary proceeding, if necessary (La. R.S. 9:2231 to 9:2235).

27. Does an estate plan that includes a revocable trust afford a settlor more privacy than a will-based estate plan?

Trusts are generally more private than wills because trusts are private instruments and must only be recorded in Louisiana to the extent that the trust instrument transfers immovable (real) property. If a trust owns real property, an extract of the trust instrument may be recorded in the applicable parish as evidence of title if the immovable property was transferred to the trust by a separate instrument. (La. R.S. 9:2092.)

An extract of trust is a short summary of the trust instrument which contains:

- The name of the trust, if any.
- A statement about whether the trust is revocable or irrevocable.
- The name of each settlor.
- The name of each trustee and name or other description of the beneficiary or beneficiaries.
- The date of execution of the trust.
- Any limitation or restriction on the power of the trustee to alienate, lease, or encumber immovable property in the trust instrument.

(La. R.S. 9:2092(B).)

By contrast, a will must be filed in a probate proceeding, exposing the identity of a decedent's legatees (beneficiaries). An inventory of the decedent's assets or a descriptive list of assets and liabilities must be filed, potentially exposing the identity and value of the decedent's assets in the public record (La. Code Civ. Proc. arts. 3133 to 3137 and 3396.18). However, the descriptive list may be filed under seal (La. Code Civ. Proc. arts. 2952 and 3396.18).

28. Are the beneficiaries of a revocable trust entitled to notice of its existence, or any other information, during the settlor's life or when the settlor dies?

If a trust is revocable, the trustee is only required to account to the settlor, not the beneficiaries (La. R.S. 9:2088(A)).

A person who is named or identified in a trust instrument, but who will not become the beneficiary of a revocable Louisiana trust until a later date, is treated

as a provisional beneficiary with none of the rights of a beneficiary until they become either an income or principal beneficiary of the trust (La. R.S. 9:2012). Once the trust beneficiary's interest in the trust vests (typically on the settlor's death), 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 show in detail all receipts and disbursements of the trust during the year, plus a list of all trust property (La. R.S. 9:2088(B)).

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