



Louisiana
APPLESEED

FREE GUIDE

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ENTRUST FUTURE SUCCESS

Trusts in Louisiana

Planning for flexibility in distributing
assets for future success

Acknowledgments

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Want a deeper understanding of some of the terms in this guide? Check out Louisiana Appleseed's glossary of legal terms:

LOUISIANAAPPLESEED.ORG/GLOSSARY



QUICK GUIDE TO TRUSTS IN LOUISIANA



Planning for what will happen to your property is an important, honorable, but often stressful, part of ensuring your family's future success.

Several options are available to ensure that your property and assets are distributed the way you want. To help you better understand these options, we have created a list of considerations that should weigh into your decision of how to plan for your estate.

You may have heard of a Will, also called a 'last will and testament'. A Will is a formal legal document and the plan you arrange in life that controls how your property and assets will be disbursed upon death.

Like a Will, a Trust allows you to choose what will happen with your possessions. A Trust, however, allows for more flexibility, which may better serve your situation.

One key difference is that a Will is a legal document that transfers property outright at death and allows the beneficiary to take over continued management. A Trust puts a trustee in charge of overseeing the management and distribution of the property for a designated time, while a beneficiary receives the asset under the terms of the Trust.

There are also tax implications when property is placed in a trust. Discussing the tax implications of placing property or any assets in a Trust is essential, as new costs often emerge when creating a Trust.



QUICK GUIDE TO TRUSTS IN LOUISIANA

Here are a few key terms that are helpful to understanding the legal documents you may review with your lawyer:

The many different types of Trusts available under Louisiana law can be sorted into two categories:

1. REVOCABLE TRUSTS

Can be changed after they are signed

2. IRREVOCABLE TRUSTS

Cannot be changed.



SETTLOR | The settlor might also be called the grantor or the trustor.



TRUSTEE | The person or entity who administers the Trust property as a fiduciary.



BENEFICIARY | The person who will benefit from the Trust.



TRUST INSTRUMENT | The legal document creating the Trust.

EXAMPLE ▼

Mom creates a Trust with a lawyer's help. She is the **SETTLOR**

Settlor makes a legal document called a **TRUST** naming an entity as the Trustee; this is the **TRUST INSTRUMENT**



PROPERTY HELD IN A TRUST COULD BE

- Cash
- Marketable Securities (Stocks/Bonds/Mutual Funds)
- Real Estate
- Timber, Oil and Gas, Mineral Rights

When Mom dies, Trust Company receives the property title and administers the Trust as a fiduciary. It is the **TRUSTEE**



A TRUSTEE COULD BE

- Grantor/Settlor
- Individual Family/Friend
- Corporate Trustee
- Trust Company

Daughter inherits assets from the trust. She is the **BENEFICIARY**



BENEFICIARIES COULD BE

- An Individual
- Class of individuals
- Charitable Organizations



QUICK GUIDE TO TRUSTS IN LOUISIANA

If you mark any of the boxes below, you may be interested in creating a Trust.

☐

I want to distribute my property and/or money during my lifetime if I become incapacitated.

A person can donate or distribute property during their lifetime without creating a Trust. Certain items, like a home, land, or vehicle, often require that the donation be recorded in the property records. Some people may be concerned with future serious health concerns, such as dementia or Alzheimer's disease. Sometimes, this issue can be resolved with a "Power of Attorney" and does not require the creation of a Trust. Talk with a lawyer about what options may be right for you.

☐

I want to choose when my property and/or money is distributed over time.

Trusts allow you to distribute property over time. This is useful to ensure that your estate provides long-term support rather than a one-time disbursement.



I want to choose how the money I distribute is spent.

Louisiana law allows you to set up your Trust to control how the money allocated to individuals or organizations can be spent. *For example, a beneficiary of your Trust can be restricted to using the funds toward college tuition, purchasing a home, starting a business, or some other lawful action.*



I want to keep my estate planning private and/or I want to avoid my plan from ending up in court.

Upon the death of a person who only has a Will, their decisions are brought to a court to oversee the Will's execution. This means the contents of the Will are made public for all to see. Under a Trust, however, the assets are transferred to the Trust. While it's not a fool-proof method of staying out of court, it is much less likely that the contents will be exposed.



I want to make sure that a beneficiary will not be disqualified from receiving benefits.

A significant cash windfall can negatively impact a beneficiary's eligibility for federal benefits such as Medicaid and Supplemental Security Income (SSI). A Special Needs Trust can be used to avoid this situation. Under this plan, a Trustee will manage the assets the beneficiary receives, make disbursements as necessary, and work to ensure the beneficiary's eligibility for assistance is not affected. This may also be called a Supplemental Needs Trust.





Special Needs Trusts

When planning for the future of your estate, it's essential to consider how your choices may affect your intended beneficiaries. While a Will can help you plan out your goals for what will happen to your property and assets upon death, many find that a Trust allows your heirs more flexibility, control, privacy, and protection. It is common for people with a Trust to have a Will also.

When it comes to providing for a loved one with a disability, keep in mind that eligibility for government assistance such as Medicaid or Supplemental Security Income (SSI) can be negatively impacted by an inheritance. To avoid this, you might consider creating a Special Needs Trust (SNT), which allows you to set forth a plan for disbursements of money without worry that it will disqualify the beneficiary from state or federal assistance.

By creating a Special Needs Trust, the money you leave will supplement the beneficiary's government aid rather than replace it.

Additionally, a person with a disability who receives an inheritance or other kind of financial windfall can set up their own Trust to protect their eligibility for assistance. This can be called a First-Person SNT, Self-Settled SNT, as well as a d(4)(a).

Should I create a Special Needs Trust?

The questions on the following pages are intended to help you and your lawyer determine whether a Trust is a sensible option for the future of your property and assets.



Check the corresponding box for each question.

☐ Y YES☐ N NO☐ IDK I DON'T KNOW

1. Do you have a will, also called a 'last will and testament'?

☐ Y ☐ N ☐ IDK

2. *If you answered YES to Question 1:* Was the Will prepared by a Louisiana lawyer or notary?

☐ Y ☐ N ☐ IDK

3. Do you plan to provide for a loved one with a disability?

Louisiana law uses the same definition of 'disability' as the federal government: inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months.

☐ Y ☐ N ☐ IDK

4. *If you answered YES to Question 3:* Does the person currently receive federal or state benefits? Examples include Medicaid, Medicare, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI).

☐ Y ☐ N ☐ IDK

5. *If you answered YES to Question 3:* Is this person expected to receive a cash settlement, court-ordered award of damages, or other large influx of money (more than \$2,000)?

☐ Y ☐ N ☐ IDK



6. *If you answered YES to Question 3:* Are you concerned that this person is unable to manage their finances independently or is at risk of exploitation?



☐ Y

☐ N

☐ IDK

7. *If you answered NO to Question 4:* Do you believe the person is eligible for federal or state benefits? See definition provided in Question 3.



☐ Y

☐ N

☐ IDK

8. Are you disabled and receive federal or state benefits?



☐ Y

☐ N

☐ IDK

9. *If you answered YES to Question 8:* Do you expect to receive an inheritance, cash settlement or court-ordered award of damages, or other large influx of money?



☐ Y

☐ N

☐ IDK

If you answered YES to any of these questions, creating a Special Needs Trust may be in your best interest. Before making any final decisions, it's important to discuss these options with a lawyer who is licensed in Louisiana.





Land Trusts

Preserving your property for future generations is central to ensuring that your family has a place to call home and to build generational wealth. While a traditional Will is an important tool, creating a Trust can also help you achieve your goals. Many find that a Trust allows for more flexibility, control, privacy, and protection over their property and assets. Note that many people who have a Trust also have a Will.

While “trust” is in the title of “Land Trusts,” it does not function the same way a Trust or Special Needs Trust does. A Land Trust is a way to ensure the property is not sold or developed in the future by donating it to a Land Trust or organization with a long-term agreement.

Some Land Trust agreements help conserve natural resources, preserve species habitats, provide land use for farming, and ensure outdoor recreational access and similar restricted uses. A Land Trust is an irrevocable trust.

A landowner must identify the Land Trust or organization to whom the property would be donated. A Land Trust is not a particular person or individual; typically, it is a nonprofit with a mission to conserve land for a specific purpose. Before donating the property, the individual should work with the Land Trust entity or organization to align each party’s long-term visions. When property ownership is transferred from the landowner to the Land Trust or organization, an agreement will be filed in the parish records determining the long-term use. It will become the organization's duty to preserve the land according to the agreement and decide how to accomplish the goal, including selling the land.



Some landowners may opt for a conservation servitude instead of a Land Trust.

A conservation servitude gives an organization, nonprofit, or government agency authority to enforce a restriction placed on the land. Conservation servitudes and the agreements governing the restriction(s) must be filed in the parish land records. With a conservation servitude, you can often use the land and retain ownership, but only within the restrictions placed by the agreement.

EXAMPLE ▼



If the agreement restricts new development, you may be prohibited from building a new structure on the land even though you own it. **It is essential to review your choices with an attorney before placing a servitude on your land.**



There are tax benefits and disadvantages to a Land Trust and a conservation servitude. There may be tax advantages for people who donate their property to a Land Trust because they will not pay property taxes on a property they no longer own. The federal tax benefits to conservation servitudes usually require the servitude to exist in perpetuity—or forever. **Tax benefits and liabilities should be reviewed with an attorney knowledgeable about this area of law.**

Should I create a Land Trust?

The questions on the following pages are intended to help you and your lawyer determine whether a Trust is a sensible option for the future of your property and assets.



Checking the corresponding boxes for each question.

☐ Y YES

☐ N NO

☐ IDK I DON'T KNOW

1. Do you have a Will, also called a 'last will and testament'?

☐ Y ☐ N ☐ IDK

2. If you answered YES to Question 1: Was the Will prepared by a Louisiana lawyer or notary?

☐ Y ☐ N ☐ IDK

3. Do you expect to inherit land, a home, or farm from a family member?

☐ Y ☐ N ☐ IDK

4. Are you the sole owner of any immovable property? This includes land, farms, and homes.

☐ Y ☐ N ☐ IDK

5. Do you hold title to a servitude, or piece of another's property? For example, a driveway to your land which runs through your neighbor's property.

☐ Y ☐ N ☐ IDK

6. Does anybody else hold title to a servitude over your property? For example, an oil company's pipeline which runs under your property.

☐ Y ☐ N ☐ IDK

7. If you answered YES to Question 4, 5 OR 6: Have the titles to immovable property and/or servitudes been recorded in the conveyance and/or mortgage office of the parish the property is in? For many parishes the Clerk of Court keeps these records.

☐ Y ☐ N ☐ IDK

8. Do you jointly own any immovable property? *Examples include community property between spouses or heirs' property.*

▲ _____ ☐ Y ☐ N ☐ IDK

9. Are you concerned about your or your spouse's ability to maintain your property due to incapacity or disability?

▲ _____ ☐ Y ☐ N ☐ IDK

10. Is your primary goal to (1) pass your land down to future generations, (2) ensure future profits be made from your land, and/or (3) preserve your land as it is?

▲ _____ ☐ Y ☐ N ☐ IDK

11. Are you concerned about potential creditors going after your land, home, or farm?

▲ _____ ☐ Y ☐ N ☐ IDK

12. Are you concerned about unwanted encroachment on your land? This could range from simple trespassing to extended family who have a misplaced belief in ownership over the land or property on it.

▲ _____ ☐ Y ☐ N ☐ IDK

If you answered 'YES' to any of these questions, creating a Trust may be in your best interest. Before making any final decisions, it's important to discuss these options with a lawyer who is licensed in Louisiana.



There are topics
you may want
to discuss with
a lawyer when
setting up a trust.



Finding a lawyer is a lot like finding a private care physician or therapist. You want to find someone you trust and can easily communicate with.

HELPFUL TIPS WHEN WORKING WITH A LAWYER

- ▶ Inquire about the **costs of setting up the trust and for ongoing administration**. You can create a budget for yourself and let the attorney know whether their expenses exceed your budget.

- ▶ Inquire about **flat fees and hourly fees** and how they are assessed. For example, if an attorney charges hourly fees, ask what the hourly fee is and how many hours they see this matter taking.

- ▶ Inquire **whether they offer a sliding scale** if the cost of services exceeds your budget.

- ▶ Inquire whether they have colleagues who also work in this area of law. **You may want to get a few quotes from a few attorneys**. You also want to know the community of attorneys that this lawyer relies on for technical and substantive matters of law.





MORE HELPFUL TIPS WHEN WORKING WITH A LAWYER

Tips from the LSBA website:

www.lsba.org/Public/LawyerReferral.aspx



Ask about cost. If your problem requires more work than the initial half-hour consultation, **remember to ask for the lawyer's fees in writing.**



Remember your rights. **You do not have to hire the lawyer after the initial consultation;** feel free to find a lawyer with whom you are comfortable. You have hired a lawyer when you formally agree to allow them to do more legal work for you.



Be prepared. Be prepared to give the lawyer all background information. You may also want to prepare a list of questions to ask the lawyer.

Bring any papers you think you may need to the first half-hour consultation.



Be efficient. If you do hire an attorney, don't make unnecessary phone calls. Most lawyers charge for the time spent on the phone with a client. Keep a running list of questions; cover them in one phone call or ask them at your next scheduled appointment.



Keep records. File any material you receive from your lawyer in one place. Your file is often the best way to answer your questions about your case.

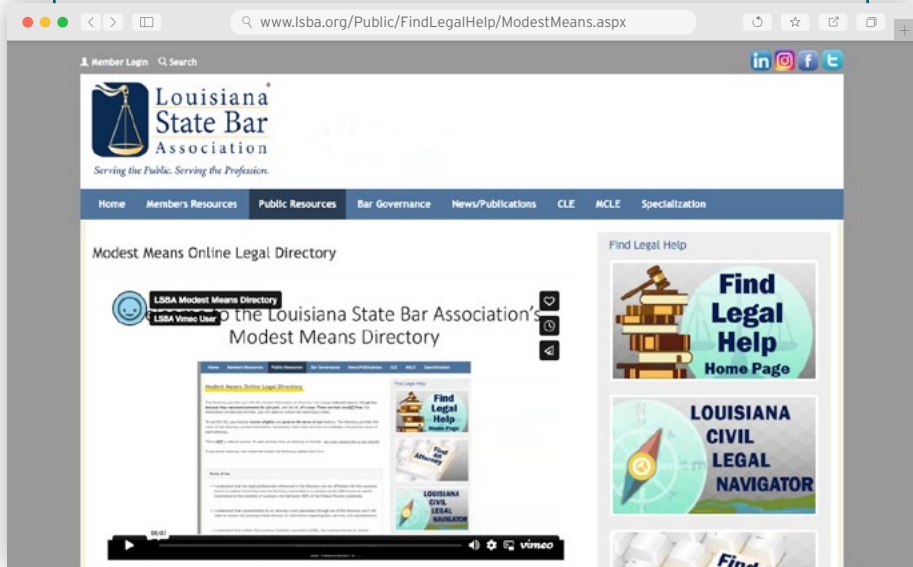


How do I find an attorney within my means?

If you cannot afford an attorney at the market rate, or you are interested in limited scope representation, you may be eligible for reduced-cost legal services.

For a guide on how to find an attorney through the Modest Means Directory hosted by the LA Bar Association, and to see if you qualify, visit:

www.lsba.org/Public/FindLegalHelp/ModestMeans.aspx





How do I find an attorney that specializes in Trusts?

Taken from the website www.lsba.org/Public/Specialization/Specialist.aspx

The Louisiana Board of Legal Specialization was established in 1993 by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law, and since that time has approved board certification of some members of the Louisiana State Bar Association who practice in the following areas: Appellate Practice, Business Bankruptcy Law, Consumer Bankruptcy Law, Employment Law, Estate Planning and Administration, Family Law, Health Law, Labor Law and Tax Law.

HOW

TO ►

1. Go to: www.lsba.org/Specialization
2. Click the button
"Find a Board Certified Specialist."
3. For a trust, select **Estate Planning and Administration**. Then, you will see the list of board-approved specialists in this area of law.





COMPANIES AND ORGANIZATIONS THAT MANAGE SPECIAL NEEDS TRUSTS.

You may have a lawyer set up a special needs trust, but often they will not administer it long-term. Using a nonprofit that specializes in special needs trusts or a bank ensures that the trust will endure long after you are deceased. Ask your lawyer for recommendations and interview them to find one you trust. Banks often have special needs trusts specialists who are ideal for managing a trust long-term.

Thank you

to our Program Partners

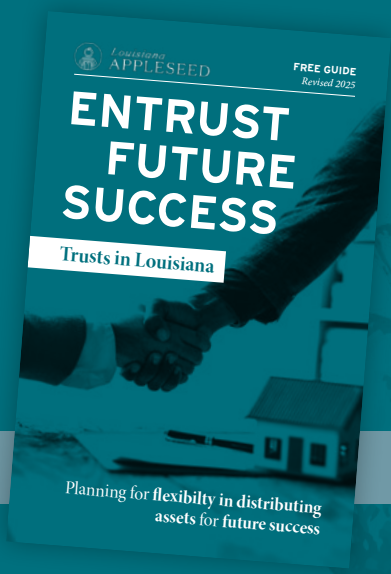


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Loyola University College of Law, New Orleans



*Entrust Future Success—
Trusts in Louisiana*
is part of a series of free
resources created by Louisiana
Appleseed to help residents
of Louisiana plan their estate.
Other resource books are:



- ▶ Securing the Future
- ▶ Last Will and Testament
- ▶ Disasters
- ▶ Titles and Property Deeds
- ▶ Heir Property
- ▶ Power of Attorney
- ▶ Guardianships, Conservatorships,
and Interdiction
- ▶ Advanced Healthcare Directives
- ▶ Safeguarding Your Documents



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