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GET SMART

Spousal Lifetime Access Trust ("SLAT")

Key Takeaways

- A Spousal Lifetime Access Trust (SLAT) is one of many types of irrevocable trusts utilized for transferring wealth outside of an estate.
- SLATs provide an opportunity to take advantage of the current (and historically high) federal exclusion.
- A properly structured SLAT provides the donor spouse limited, indirect access to the trust assets.

The Spousal Lifetime Access Trust (SLAT)

As the name suggests, a SLAT is an irrevocable trust where one spouse makes a gift into a trust to benefit the other spouse (and potentially other family members) while removing the assets from their combined estates.

One spouse may choose to fund a SLAT for the benefit of the other spouse or each spouse may choose to fund SLATs. For married couples, this may offer a way to take advantage of the federal lifetime gift and estate tax exclusion, which is currently \$15 million per person in 2026, or \$30 million per married couple,¹ while retaining limited access to the assets, in the event such access is ever needed. Because a SLAT is funded with a gift made during the spouse's lifetime, any post-gift appreciation will take place in the trust and be excluded from the estate of both spouses for federal estate taxation purposes.

How a SLAT Works

Married couples may be interested in making large, permanent gifts to reduce the size of their estate. However, concerns can arise because many gifting strategies involve the loss of control of the assets during their lifetime and they may be unsure whether the assets will be needed in the future.

A SLAT is an estate planning strategy that can perhaps address these conflicting objectives. This type of trust is created by one spouse (the "donor" spouse) who gifts property to an irrevocable trust for the benefit of the other spouse ("non-donor" spouse). They may also elect to include other family members (typically children and grandchildren) as beneficiaries. The donor spouse uses their federal exclusion when transferring assets to the SLAT.

¹ The federal exclusion amount generally rises each year for inflation.



Although the trust is irrevocable, the donor spouse may indirectly benefit from the property gifted to the trust, as long as the non-donor spouse is living and remains married to the donor.

This indirect benefit is achieved because the non-donor spouse is the primary beneficiary of the trust and can request distributions from the trustee of the trust, if needed, during their lifetime. The trustee may approve this request and distribute income or principal to the non-donor spouse, typically to maintain their accustomed standard of living.

While the donor spouse may indirectly benefit if the non-donor spouse receives a distribution from the trust, most advisors and attorneys recommend that the non-donor spouse not request distributions from the SLAT unless it is absolutely necessary to maintain the non-donor spouse's accustomed standard of living after exhausting other available resources.

Distributions to the non-donor spouse will be reintroduced into their taxable estate until further expended. The appropriate amount to gift to a SLAT should be determined through appropriate budgeting and planning, with the ultimate goal of the SLAT to be to let the trust assets grow outside the estate for future generations. Upon the death of the non-donor spouse, the trust assets are transferred to the remaining trust beneficiaries (e.g., children or grandchildren), either outright or in further trust.

Potential benefits of a SLAT

The donor's transfer of assets to the SLAT is considered a taxable gift. If structured properly, the gift permanently removes the assets, as well as future appreciation on the assets, from the donor's taxable estate. Even though the non-donor spouse is a beneficiary of the SLAT, the trust is excluded from the non-donor's taxable estate as well.

SLATs are typically structured as grantor trusts for income tax purposes. This means the donor pays the income tax liability personally on the earnings generated in the trust, rather than the trust itself bearing the burden of income taxes.² The grantor trust structure may also further reduce the taxable estate of the donor and allow the assets inside the trust to appreciate outside of the estate of the donor without being encumbered by income taxes.

The current estate tax environment also provides a benefit for those considering SLATs. The exclusion is currently \$15 million (in 2026) per person, so funding a SLAT enables a donor to effectively utilize the current historically high exclusion amount.

Like other irrevocable trusts, a SLAT can be an effective tool for multi-generational planning. A SLAT may be designed to benefit the next generation by passing wealth to that

² With grantor trusts, the individual who created the trust (also known as the grantor) generally remains the taxpayer with respect to the trust and is responsible for reporting all income and deductions on their individual tax return (Form 1040).



generation without incurring transfer taxes, such as estate and gift taxes or generation skipping transfer tax.

Six other important SLAT considerations

1. Risk of death or divorce of the non-donor spouse

A disadvantage of a SLAT is that upon the non-donor spouse's death, the donor spouse no longer has indirect access to the trust assets. Instead, the trust may either terminate and be distributed to or continue for the benefit of the donor's children and other family members. In the event of divorce, a disadvantage of a SLAT is that the separated non-donor spouse will continue to benefit from the trust as a beneficiary while the donor spouse loses the indirect access in the same way that they would if the non-donor spouse passed away while they were still married. However, divorce risk could be alleviated by terminating the non-donor spouse's beneficial interest in the trust in the event of divorce so that children or other family members become primary beneficiaries.

2. The reciprocal trust doctrine

In order to fully utilize both exclusions, each spouse may create a SLAT for the benefit of the other. However, careful planning must be done to avoid the "reciprocal trust doctrine" that applies when the IRS interprets the 2 trusts as constructively similar or interrelated. If the trusts run afoul of the reciprocal trust doctrine, then the trusts may be "undone" and included in the donor spouses' respective taxable estates.

The 2 trusts must be different enough in their terms such that the IRS will not undo the trusts for tax purposes, thereby losing the primary objective of a SLAT, which is removal of assets from the estates of the 2 spouses. Some differences may include creating and funding the trusts at different times (on different dates or in different years), including different classes of beneficiaries, providing different terms for distributions to beneficiaries, giving beneficiaries different rights of withdrawal, and granting beneficiaries the power to change beneficiaries under certain restrictions.

3. Ability for non-donor spouse to serve as trustee

The non-donor spouse can serve as trustee under certain circumstances as long as the power to make distributions to them is limited. Spouses might consider whether an independent co-trustee should serve with a non-donor spouse. A beneficiary serving as trustee with the ability to make broad distributions to themselves beyond the ascertainable standard of "health, education, maintenance, or support" could trigger the inclusion of the trust assets in the taxable estate of the non-donor spouse, potentially unwinding the intent of the strategy. In addition, distribution rights that are too broad may erode the creditor protection features that a trust generally provides.

4. Tradeoffs with respect to basis step-up at death

The transfer of assets to the SLAT is irrevocable and permanently removes the assets from the donor's taxable estate; therefore, the assets in the SLAT will not obtain a "step-up" in cost basis upon the donor's death. The trust could provide specific language that allows the donor spouse the power to



substitute or "swap" assets of equal value with the trust. This could allow the donor to remove assets with low basis from the trust and substitute cash or assets with high basis. Swapping assets may provide beneficial income tax treatment when the assets are liquidated or sold by the trust beneficiaries.

5. Types of assets to fund a SLAT

A SLAT can be funded with a variety of assets and may also own life insurance. Care must be taken to only transfer assets owned by the donor spouse (not assets owned jointly by both spouses) so that the gift is not treated as made by both spouses, which would negate the benefits of the SLAT. In community property states such as Texas, this requires additional documentation and transfers, namely to establish that the property going into the trust is the donor spouse's separate property.

6. Tax return filing requirements

Because SLATs are typically structured as grantor trusts, they do not require the filing of a trust tax return each year while the donor spouse is living. However, if the SLAT is not structured as a grantor trust, a separate income tax return will be required. The transfer of property to the SLAT will cause the need to report the transfer on a gift tax return in the year of the gift.

Let's look at a hypothetical couple:

Tricia and Sam have \$30 million in total assets. In 2026, Sam transfers \$15 million to a SLAT for the benefit of Tricia, fully utilizing his exclusion amount. Sam reports the gift on a gift tax return. They believe that their remaining combined assets of \$15 million will be sufficient to sustain their retirement needs and other estate planning goals. Upon Tricia's and Sam's deaths, the SLAT and appreciation on the assets from the date they were gifted to the SLAT will be excluded from their taxable estates.

If Sam predeceases Tricia, Tricia continues to utilize her other remaining assets and any additional assets inherited from Sam to support her lifestyle. She continues to be a beneficiary of the SLAT until her death, though as anticipated she does not need to request distributions from the SLAT and these assets continue to grow outside of her estate. Upon Tricia's death, she will have her own exclusion to offset her remaining taxable estate.

If Tricia predeceases Sam, the SLAT would distribute assets to their children in further trust and Sam would no longer have indirect access to the SLAT. However, they reviewed this scenario with a financial advisor before funding the SLAT and they anticipate that Sam will remain financially secure with his remaining assets and any other assets inherited from Tricia.

