

ESTATE PLANNING — SPOUSAL LIFETIME ACCESS TRUSTS (SLATS)

A SLAT, or Spousal Lifetime Access Trust, is a special type of irrevocable trust available to married couples. It can be used to minimize a couple's estate tax, provide creditor protection, or both.

A SLAT functions like a bypass trust in some respects. A bypass trust provides access to income and principal to a surviving spouse at the first death, with any remaining assets passing to remainder beneficiaries at the second death. On the other hand, a SLAT is funded with a gift while both spouses are alive and may provide income and principal to the beneficiary spouse during the grantor spouse's lifetime. A SLAT may be appropriate when a couple is inclined to use estate tax exemption but has concerns about losing access to the asset or the income generated by the asset. Also, the beneficiary spouse may act as SLAT's trustee. Similar to a bypass trust, at the death of the beneficiary spouse, any remaining assets and their appreciation are removed from the grantor's estate for estate tax purposes.

The use of any irrevocable trust requires careful planning and coordination with the client's advisors. Specifically, a SLAT requires thoughtful drafting to ensure that the assets gifted to trust are considered outside of the estate for estate tax purposes, yet the beneficiary spouse has access to the assets for potential future cash needs. Other considerations include which assets to fund the SLAT, impact on cash flow if grantor spouse survives beneficiary spouse, and the effect on the distribution plan for the remaining estate.

Spousal Access Lifetime Trust (SLAT)

- Irrevocable trust funded with a gift during a grantor's life.
- Available lifetime exemption can be used to offset the gift tax upon funding.
- Trust terms may provide a spouse beneficiary with a right of withdrawal to principal and income.
- Assets remaining inside trust at the death of the beneficiary spouse will pass to remainder beneficiaries' estate-tax free.
- **Pros:**
 - Trust assets and their appreciation are removed from the grantor's estate.
 - Trusts can be (but do not have to be) set up to pass assets only to family members.
 - Creditor protection may be provided due to the limited access to the trust assets.
 - A trust may be established as a grantor trust, allowing the grantor to continue to pay the income tax on trust assets, further reducing their taxable estate (if the client can afford this...).
- **Cons:**
 - A divorce may complicate this planning; if a grantor couple subsequently divorces after funding the SLAT, the assets may be available to the divorcing beneficiary spouse (however, drafting options may be used to mitigate this).
 - Avoidance of the Reciprocal Trust Doctrine is critical when drafting trusts for both spouses.
 - The unexpected or premature death of one spouse may limit access to sufficient assets to maintain standard of living.
 - Future legislation may limit the intended benefits or functionality of these trusts.

- Situs of trusts requires careful consideration, including asset protection and state income taxation.
- Attorneys should not learn this planning during your client's engagement (prior experience is a must).

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