

Spousal Lifetime Access Trusts

Utilizing Spousal Lifetime Access Trusts (SLATs) Considering the
Sunsetting of the Gift and Estate Tax Exemption Limits

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Introduction and Overview

This presentation will cover how, in light of the sunseting of the current gift and estate tax exemption law in 2026, married couples can utilize a “spousal lifetime access trust” or “SLAT” to protect assets from both estate taxes and creditors while simultaneously preserving access to the assets placed in the SLAT through the beneficiary spouse.

Gift and Estate Tax Exemption

- 2023 (current)
 - Gift and Estate Tax Exemption: **\$12.92M**
 - Generation Skipping Transfer Tax Exemption: **\$12.92M**
- 2024 (Bloomberg estimated)
 - Gift and Estate Tax Exemption: **\$13.61M**
 - Generation Skipping Transfer Tax Exemption: **\$13.61M**
- 2026 (Expiration of the Tax Cuts and Jobs Act of 2017)
 - Gift and Estate Tax Exemption: **\$5M** (indexed for inflation)
 - Generation Skipping Transfer Tax Exemption: **\$5M** (indexed for inflation)

What is a SLAT?

A “spousal lifetime access trust” or “SLAT” is an estate planning tool whereby the donor spouse creates an irrevocable trust for the benefit of the beneficiary spouse (and potentially other family members) and gifts assets into such trust to remove those assets from their combined taxable estate.

Advantages	Disadvantages
Allows the donor spouse to utilize his/her exemption but maintain some level of access to the assets via the beneficiary spouse.	Donor spouse has only direct access to the assets via the beneficiary spouse.
Appreciation on the unused assets will pass estate tax free to next generation.	Risk of death or divorce of the beneficiary spouse.
Can be generation-skipping.	No step-up in basis.
Can provide creditor protection.	

Planning Scenario

- Clients are married (note, can be used for non-married clients)
- Clients have a taxable estate (current or future)
- Clients want to to avoid future estate taxes
- Clients want to shift wealth, but also maintain access to that wealth
- Clients want current and future asset protection

Leveraging the Exemption

	Gift \$5M	Gift \$10M
Current Gifting Capacity (2023)	\$12.92M	\$12.92M
Gifts in 2023	\$5M	\$10M
Remaining Exclusion Amount	\$7.92M	\$2.92M
Exclusion Amount (2026), Estimated	\$7.5M	\$7.5M
Less: Prior Gifts (2023)	\$5M	\$10M
Remaining Exclusion Amount (2026)	\$2.5M	\$0
Total Possible Gifts Without Tax	\$7.5M	\$10M

Asset Considerations

- Assets Expected to Appreciate
 - Gifting assets that are expected to highly appreciate may provide an advantage over less appreciable assets
- Assets Subject to Valuation Discounts
 - Gifting assets that are subject to valuation discounts for lack of marketability or lack of control can help magnify the total value that can be transferred without additional transfer tax
- Family Business Interests
 - Gifting family business interests may be eligible for valuation discounts, allow continued access and control of the family business, and remove future appreciation out of taxable estate

The Reciprocal Trust Doctrine

If both spouses are creating SLATs for each other, the SLATs must be sufficiently different to avoid the Reciprocal Trust Doctrine:

- Timing
- Beneficiaries
- Powers of Appointment
- Distribution Standards
- Withdrawal Rights
- Assets
- Trustees and Other Fiduciaries

Asset Protection

- Asset protection from potential claims of creditors and predators
- Asset appreciation removed from taxable estate
- Avoid fraudulent conveyances
- Make provisions in planning in the event of a divorce:
 - Floating spouse provisions
 - Assets to be considered for purposes of marital division
 - Substitution powers

Drafting Considerations

- Beneficiaries (during lifetime and after death)
- Trustees, Trust Protectors and Other Fiduciaries
- Grantor Trust Status and Power of Substitution
- Powers of Appointment (lifetime and testamentary)
- Loan Provisions
- Decanting Provisions
- Life Insurance Provisions

Hybrid SLATs

A “hybrid SLAT” is like a conventional “domestic asset protection trust” or “DAPT” except that the donor is not an initial beneficiary of the SLAT, but can be added as a beneficiary at a later date (e.g., the Trust Protector may add as a beneficiary to this trust any lineal descendant of the grandparents of the donor).

Jurisdictional Consideration: Subsection (c) of Section 3536 of Title 12 of the Delaware Code, Rights of Creditors and Assignees of Beneficiary of Trust (2021).

Questions

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