



How a SLAT Could Benefit You and Your Spouse

Key Takeaways:

- Assets gifted to a SLAT are removed from both spouses' estates for federal estate tax purposes.
- The beneficiary spouse has access to SLAT assets—and the donor spouse can indirectly benefit from those assets.
- SLATs can provide protection against claims from creditors.

Estate planning can be a crucial step in protecting your assets and transferring them according to your wishes so you can take care of loved ones—and doing so in tax-advantaged ways whenever possible, of course.

For some married couples, one of the more intriguing estate planning tools to consider is the spousal lifetime access trust—or SLAT. This type of trust can remove assets from your taxable estate while potentially bene-

fitting your spouse, your kids and even you.

That said, a SLAT isn't ideal for every married couple. It pays to understand both how SLATs work and whether they might make sense for you.

SLAT BASICS

A SLAT involves a gift of assets from one spouse—the donor—into an irrevocable trust set up to benefit the other spouse (and the couple's children, in most cases). When that gift is made, the assets are removed from both spouses' estates—not just the donor spouse's—for federal estate tax purposes.

Unlike with some other types of trusts, assets go into a SLAT while both spouses are living—not upon the death of one spouse. Any appreciation in value on those assets in the trust is also excluded from the couple's respective estates—and the assets are



available to the beneficiary spouse right away, rather than many years in the future after one spouse has passed.

Ultimately, then, a SLAT seeks to shield the assets placed in it (and the future growth of those assets) from estate taxes—while also making those assets immediately available to a beneficiary spouse.

Typically, SLATs are created as grantor trusts—which means that any taxable income the trust generates is paid by the donor spouse personally rather than by the trust itself. This structure can potentially enable the assets in the trust to grow faster than they would if the trust paid the income tax bills.

WHAT MAKES SLATS SPECIAL

SLATs have some interesting characteristics that help them stand out from some of their trust cousins.

Example: While the donor spouse’s transfer of assets to the SLAT is irrevocable—it can’t be taken back, and the donor gives up rights to the gifted assets—the donor may still be able to indirectly benefit from that gift. Say the beneficiary spouse requests distributions from the SLAT. The money could then be spent in ways that benefit both spouses—current expenses, vacations and the like. However, taking such distributions may not be the best move (more on that later).

Furthermore, a SLAT doesn’t qualify for the federal gift tax marital deduction. That means the beneficiary spouse is not *required* to take any income distributions from the trust, as is the case with other marital trusts (such as qualified terminable interest property trusts). This can allow the donor spouse to name multiple beneficiaries—such as the couple’s children—and use the SLAT as a way to keep assets within the family if the beneficiary spouse doesn’t tap into the trust or doesn’t draw it down completely.

REASONS A SLAT MAY MAKE SENSE

Given all that, an obvious question is whether you should consider adding a SLAT to your estate planning toolkit. To help you decide whether this type of trust might fit with your goals and plans for your wealth, consider these key benefits that SLATs can potentially deliver.

1. Reduced value of taxable estate

As noted, a SLAT can enable you to permanently remove the assets placed in it, as well as future appreciation on the assets, from both your *and* your spouse’s taxable estate. That could mean a big reduction in your taxable estate and your eventual estate tax bill. Currently, the amount of an irrevocable gift a person can make to a SLAT is \$12.06 million. However, that amount is scheduled to “sunset” in 2026 to around \$6 million—and some estate planners think that cap could be reduced even more if certain tax proposals being considered by Congress become law.

That concern has some wealth planners encouraging clients to fund a SLAT as soon as possible. And it’s noteworthy that the IRS has stated that people who take advantage of the increased amount that’s currently in effect until December 31, 2025, won’t be penalized when that amount sunsets. In other words, there will be no “clawback” of previously gifted amounts on an individual’s estate tax return.

2. Multigenerational planning

As donor, you can name your children, grandchildren or even other family members as beneficiaries of the SLAT, with the intention of transferring wealth to younger generations in a tax-advantaged way. Here again, policies and laws can change over time—so it’s best to consult with professionals about tax code changes and potential changes, and how they may impact certain strategies.



3. Indirect benefits

As noted, you (as the donor spouse) can benefit indirectly from the assets placed in the SLAT if, say, your spouse takes distributions from the SLAT for expenses that help maintain your shared standard of living and lifestyle. But even if there are no plans to tap into the assets in a SLAT, it may be reassuring to know that your spouse can potentially have at least some level of access to the assets if your family truly needs them—for example, if you experience a sudden loss of wealth outside the trust.

Important: Although your beneficiary spouse *can* request distributions from a SLAT—and you may indirectly benefit from that—it’s considered a best practice to gift only assets that you and your spouse are highly confident you won’t need to access in the future. One big reason: Distributions made to the beneficiary spouse get placed back into the couple’s estate for tax purposes (until the money is spent, of course) and could eventually lead to a higher estate tax bill down the road. Additionally, money depleted from the SLAT won’t be there for kids or other named beneficiaries.

The upshot: Your estate planning goals likely include mitigating taxes and passing on wealth to heirs. Taking distributions from a SLAT for current expenses could hamper both of those efforts. Your best bet is to forecast your wealth and spending requirements so you can gift to a SLAT only assets you likely won’t need to touch.

4. Asset and creditor protections

When you legitimately gift assets into an irrevocable trust to benefit someone else and relinquish control of those assets, they’re no longer considered yours in the event that you are sued or you file for bankruptcy. It can also be possible to safeguard the assets from your spouse’s creditors. For that to be true, however, you must avoid transfers that may be deemed fraudulent—which can happen if,

for example, there are existing claims against you before you set up a SLAT.

FUNDING A SLAT

A SLAT, like many trusts, can accept a wide variety of assets. One common funding approach is to select assets that are likely to appreciate significantly in value, given that the future growth of assets put into a SLAT will avoid federal estate taxes. Another option is to gift assets that may generate relatively little annual taxable income for the donor spouse, who will be responsible for the income tax bills if the trust is set up as a grantor trust. Life insurance could also be a good option to consider, as the death benefit from life insurance is free from estate and income taxes.

Just as important as the type of assets you gift is the *ownership structure* of those assets. If you’re the donor spouse, you’ll need to transfer assets owned only by you. If you gift assets owned jointly by you and your spouse (aka the named beneficiary of the SLAT), the IRS may cry foul and include the SLAT’s assets your spouse’s estate—thereby eradicating one of the SLAT’s biggest benefits.

RISKS TO CONSIDER

There are risks and disadvantages that may make a SLAT a less-than-ideal option for some couples. Some possible negatives to consider include:

1. Loss of indirect access

A SLAT may not be the right tool if the beneficiary spouse is in poor health. The reason: If the beneficiary spouse dies before the donor spouse, the SLAT must either terminate (and be distributed to the other named beneficiaries) or continue on for the other beneficiaries’ benefit. In either case, the donor spouse would lose his or her indirect access to the SLAT assets.

Similarly, if you and your spouse divorce, the named beneficiary spouse (i.e., your now-ex-



husband or ex-wife) will continue to have access to the trust’s assets—but you, as the donor, will lose your indirect access to those assets. Therefore, consider the strength of your marriage before setting up a SLAT.

Keep in mind that steps can be taken to mitigate this risk—such as drafting the SLAT so that “spouse” is defined as whomever the donor is married to at any given time, or using life insurance that pays out to the donor spouse upon the beneficiary spouse’s death. Still, a SLAT is likely to work best if it doesn’t have to take such outcomes into account.

2. Significant income tax bills

Remember that a SLAT will be structured as a grantor trust, with the donor spouse paying

would generate an uncomfortably large tax bill for the donor. This risk can be mitigated by ensuring that you retain enough assets outside the SLAT.

3. No step up in basis

While a SLAT will remove assets from your taxable estate, those assets won’t get a step-up in cost basis when you die.

CONCLUSION

A SLAT can potentially be an effective planning tool for married couples looking to mitigate estate taxes, safeguard assets from being taken unjustly, and provide for their children. And with possible tax law changes on the horizon, now may be an especially good time to look into whether a SLAT makes sense for your family.



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