

Helping Clients Share the Love

How Spousal Lifetime Access Trusts Can Secure Your Clients' Futures

February is a time of transition. It falls between the height of winter and the start of spring and smack-dab in the middle of tax season.

During this time, clients may be thinking about tax scenarios but are not quite ready to implement solutions. They may also be planning for Valentine's Day, a welcome respite from the long winter doldrums, and want to do something special for their spouse.

This February, you can help your married clients show their love with a unique type of trust called a *spousal lifetime access trust* (SLAT) that can "lock in" a high federal estate tax exemption, adapt to future needs, and preserve wealth for younger beneficiaries.

Federal Estate Tax Exemption Could Fall Dramatically in 2026

For 2025, the federal annual gift tax exclusion is \$19,000 per individual, and the federal lifetime gift and estate tax exemption is \$13.99 million per individual.

These exemption amounts are the highest they have ever been, marking an upward trend since the 2017 tax reforms under the first Trump administration. However, these limits are scheduled to sunset at the end of 2025 without congressional action. If they do revert to pre-2018 levels, the result could be the biggest estate tax increase since the 1940s.

Such changes would subject far more estates to taxation and dramatically heighten the need for proactive estate planning. Against this backdrop, estate planning tools such as SLATs can help clients maximize historically high exemptions and lock in tax advantages before any changes take effect.

How SLATs Work and Key Benefits

A SLAT is an irrevocable trust set up by one spouse (the *donor spouse*) primarily for the benefit of the other spouse (the *beneficiary spouse*), with other beneficiaries such as children or grandchildren being the remainder beneficiaries when the beneficiary spouse passes away.

SLATs gained popularity amid the uncertainty of the 2012 fiscal cliff, and the current uncertainty around tax legislation remains a major SLAT selling point. Notable features and benefits of SLATs to highlight for clients include the following:

- The beneficiary spouse can receive direct distributions from the trust, and the donor spouse maintains indirect access to the assets through the beneficiary spouse.
- When the donor spouse funds the SLAT, the value of the transferred assets is treated as a taxable gift to the trust beneficiaries, even the beneficiary spouse. The gift is typically sheltered from federal gift taxes by the donor spouse's federal lifetime gift and estate tax exemption, which is \$13.99 million per individual in 2025.
- After the assets have been transferred to the trust, they are removed from the donor spouse's taxable estate and are generally not included in the surviving spouse's taxable estate.
- Any future appreciation of SLAT assets after their transfer to the trust is also not subject to estate taxes.

- Depending on how the trust is structured, the donor spouse is usually responsible for paying income taxes on the trust's assets, including dividends, interest, and capital gains.
- When the trust terminates (i.e., when the beneficiary spouse passes away), the remaining trust assets pass to the remainder beneficiaries, such as children, whom the donor spouse has named in the trust document. The assets can be distributed directly to the remainder beneficiaries or held in further trusts tailored to each beneficiary.
- A properly drafted SLAT generally protects the beneficiary spouse's assets from creditors.
- Married couples can set up separate SLATs to benefit each other. However, it is important to ensure that the trusts have different terms to avoid running afoul of the *reciprocal trust doctrine*, which could cause both trusts to be undone, resulting in the assets being included in the spouses' taxable estates.

Potential SLAT Downsides

SLATs offer tax efficiency, wealth preservation, and financial flexibility, but they are irrevocable and require proper planning to avoid losing access to assets and Internal Revenue Service scrutiny.

- If the beneficiary spouse suddenly passes away, the donor spouse loses their (indirect) access to the SLAT's payouts. (The same can happen in the event of a divorce; without the right provisions, the donor spouse may still be on the hook for paying income taxes on trust assets that are solely benefiting their (now) ex-spouse.)
- If trust law is not carefully followed, unwanted tax consequences can occur. One such outcome is that if the donor spouse retains certain powers over the SLAT, such as the unrestricted ability to replace the trustee, the trust's assets might still be included in the donor spouse's estate.
- It is not ideal for the beneficiary spouse to receive distributions from the SLAT unless they are truly needed because the distributions bring assets back into their estate and reduce the trust assets that can grow tax-free.
- When assets are placed in a SLAT, they retain the donor spouse's original tax basis, so beneficiaries could end up owing capital gains tax, especially on low-basis assets, when they are eventually sold or liquidated.
- If the beneficiary spouse serves as a trustee of the SLAT, distributions should be limited to the health, education, maintenance, and support (HEMS) standard. However, the level of access that the beneficiary spouse has will impact the level of asset protection. If more asset protection is needed, an independent trustee should be appointed, and the distributions should be permitted only at the trustee's discretion.

Uncertainty Presents Opportunity

February is considered a "shoulder season" for estate planning attorneys and other advisors. The tourism industry uses this term to refer to the time of year between the peak season and off-season, when travel is light and conditions may not be ideal. But within the lull, opportunities abound.

As clients face the prospect of a reduced federal estate tax exemption at the end of 2025, advisors can suggest SLATs as a timely and powerful (and, dare we say, romantic?) tool to

transfer substantial wealth and lock in current tax advantages while maintaining financial security and flexibility.

Reach out and schedule a meeting to discuss specific SLAT-based estate planning strategies.