THE NAUTILUS GROUP®

Spousal Lifetime Access Trust

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Many individuals utilize irrevocable trusts to remove assets from their taxable estate and protect assets from creditors. While irrevocable trusts are a powerful estate planning tool, some individuals are unwilling to create an irrevocable trust because they are hesitant to relinquish access to, and management of, a large portion of their wealth.

A spousal lifetime access trust (SLAT) may provide a solution whereby the trust grantor can achieve desired estate and asset protection planning objectives while maintaining indirect access to trust assets. A SLAT is an irrevocable trust that includes the grantor's spouse as a trust beneficiary. Through the spouse's beneficial interest, he/she can retain indirect access to trust assets.

Creating a SLAT

A SLAT is similar to a traditional irrevocable trust. The grantor (also known as the donor or settlor or trustor) enters into a trust agreement with the trustee. The trust agreement names the beneficiaries, names the trustee(s), specifies trustee powers, stipulates the dispositive provisions of the trust (who gets what and when), and establishes rules for the administration of the trust. Any issue or question not specifically addressed in the trust document is generally governed by state law.

A SLAT differs from a traditional irrevocable trust by its inclusion of the grantor's spouse as a trust beneficiary. Many traditional irrevocable trusts only include the grantor's descendants as beneficiaries. Since a SLAT includes a spousal beneficiary, additional consideration must be given to trust provisions, including trustee and distribution provisions.

- **Trustee.** To avoid inclusion of assets in the grantor's estate, the grantor generally should not serve as trustee.

  The spouse/beneficiary may serve as trustee; however, distributions should be limited to an ascertainable standard (such as health, education, maintenance, and support) to prevent inclusion in the spouse's estate. Internal Revenue Code (IRC) §2041 provides that where a trustee can make discretionary distributions to him/herself, the trustee will be deemed to have a general power of appointment over assets subject to the distribution right. A general power of appointment results in the assets over which the power is exercisable being included in the power holder's estate. However, IRC §2041 provides an exception where the trustee's power to distribute assets to him/herself is limited by an ascertainable standard. Where the trust will own life insurance on the spouse's life, the spouse generally should not serve as trustee to avoid incidents of ownership over the policy.

  Generally, the greatest estate and asset protection is achieved by naming an independent party as trustee. An independent trustee is generally a person (or, in the case of a corporate trustee, a bank or trust company) with no beneficial interest in the trust and who is not related or subordinate to the grantor or a trust beneficiary.

- **Distributions.** Distribution provisions range from fully discretionary trusts (which defer all distribution decisions to the trustee) to trusts limited to an ascertainable standard (as described above). A discretionary distribution standard should be used only where an independent trustee is named.

  If additional access to trust assets is desired, the spouse can be given the right to withdraw assets from the trust in any one year up to the greater of $5,000 or 5% of the aggregate value of the trust assets. Such a power does not create a general power of appointment in the trust that would result in estate inclusion, nor does the failure to exercise such a power create a taxable transfer on behalf of the spouse back to the trust. Of course, the amount subject to withdrawal by the spouse in any year will be included in his/her estate and exposed to his/her creditors.

Funding a SLAT

Typically, the annual gift tax exclusion amount ($19,000 per donee in 2026) is used to make tax-free gifts to a SLAT. Gifts to a trust must be present interest gifts to qualify for the annual gift tax exclusion. Giving a beneficiary the right to withdraw the amount of the gift generally qualifies the gift as a present interest gift. The SLAT can name children as withdrawal beneficiaries, allowing annual funding equal to $19,000 (in 2026) multiplied by the number of children.

In addition to relying on the annual gift tax exclusion to make tax-free gifts to a SLAT, an individual may utilize the basic exclusion amount ($15 million in 2026) to make tax-free gifts to the trust.

A SLAT should be funded solely with the grantor's separate property. If joint assets are transferred to the trust, the spouse/beneficiary could be deemed to be a trust grantor, resulting in estate inclusion. If the grantor lives in a community property state, a property agreement transmuting the transferred property to the grantor's separate property may be necessary.

Reciprocal SLATs

Where each spouse will create a SLAT for the benefit of the other, the "reciprocal trust doctrine" must be considered. The reciprocal trust doctrine applies where two individuals (for example, each spouse) create interrelated trusts for the benefit of each other and are left in the same economic position as before the trusts were funded. Trusts will be interrelated where they are created under the same plan, with substantially identical terms, and the trusts have the same trustee, or the trusts are funded with the same assets. Application of the reciprocal trust doctrine results in the trusts being "un-crossed," creating inclusion of trust assets in each grantor's estate. To avoid application of the reciprocal trust doctrine, the trusts should be drafted to ensure that the grantors are not left in the same economic position or that the trusts are not interrelated.

Using a SLAT to own life insurance

Ownership of life insurance through a SLAT enables the grantor to remove policy values from his/her taxable estate yet provide his/her spouse retained access to policy values. Upon the grantor/insured's death, the trustee receives life insurance proceeds income and estate tax-free, and trustee can use policy death benefits to provide for the surviving spouse's ongoing support.

A SLAT may either apply for a new policy on the life of the grantor (or, in some situations, another individual) or an existing policy may be transferred to it. In the case of new coverage, the SLAT purchases the life insurance, and the trust is owner and beneficiary of the policy. If a SLAT will be funded with an existing policy, the policy can be gifted or sold to the SLAT. If the grantor gifts an existing policy on his/her life to the SLAT, the grantor must survive for at least three years after the gift is made, or the policy will be included in the grantor's estate. However, if the policy is sold to the SLAT for its fair market value, the "three-year rule" does not apply but consideration must be given to the transfer-for-value rules.

Tax considerations

Estate tax considerations

Assets owned by a properly administered SLAT can be excluded from the grantor's taxable estate. As a result, utilizing a SLAT to own highly appreciating assets or life insurance can significantly reduce the grantor's exposure to estate tax liability.

Income tax considerations

For income tax purposes, the spouse's beneficial interest in the trust usually results in grantor trust status. If considered a grantor trust, the grantor must include all items of trust income, gain, loss, deductions, and credits in calculating his/her individual income tax liability.

Generation skipping transfer tax considerations

Generation skipping transfer (GST) tax exemption ($15 million in 2026) may be significantly leveraged if applied towards the grantor's lifetime transfers to an irrevocable trust. Typically, this is done by allocating the grantor's GST exemption to gifts made to the trust. If properly structured, the contribution can be transferred gift, estate, and GST tax free. If gifts are used to pay premiums on life insurance, upon the insured's death, the GST exemption would be considerably leveraged, enabling the grantor to pass substantially greater assets in a tax and asset protected trust.

Other considerations

One major drawback of a SLAT is the ability to access the trust comes only through the spouse's interest as a beneficiary. If the spouse should die before the grantor or if there is a divorce, this access may be lost. Life insurance on the spouse/beneficiary can protect the grantor, providing additional liquidity to the grantor upon his/her spouse's death. Additionally, in the case of a divorce, the trust may provide that his/her new spouse will become a trust beneficiary. If the grantor does not remarry, he/she may still have access to the trust assets if the trustee has the power to lend trust property to the grantor (in an "arm's length" transaction). Repayment would become an obligation of the grantor and/or the estate.

Also, it should be stressed that access to the trust is not unlimited. If the spouse exercises a withdrawal right and consistently uses those distributions for the grantor's benefit, this could be considered a retained interest, thus triggering inclusion of the trust principal in the grantor's estate.

As a result of H.R.1 of the 119th Congress (commonly known as the One Big Beautiful Bill Act), the estate, gift, and generation skipping tax exemptions amounts enacted under the Tax Cuts and Jobs Act of 2017 were made permanent. Effective January 1, 2026, the exemption amount will be $15 million per person ($30 million for a married couple), with annual adjustments for inflation. For asset transfers in excess of the applicable exemption amount and otherwise subject to such taxes, the highest applicable federal tax rate remains at 40%. In addition, under different rates, rules, and exemption amounts (if any), there may be state and local estate, inheritance, or gift taxes that apply in your circumstances. This tax-related discussion reflects an understanding of generally applicable rules and was prepared to assist in the promotion or marketing of the transactions or matters addressed. It is not intended (and cannot be used by any taxpayer) for the purpose of avoiding any IRS penalties that may be imposed upon the taxpayer. New York Life Insurance Company, its agents and employees may not provide legal, tax or accounting advice. Individuals should consult their own professional advisors before implementing any planning strategies. These materials are prepared by The Nautilus Group®, a service of New York Life Insurance Company, and are made available to all Nautilus Group member agents, and as a courtesy, to select agents of New York Life Insurance Company.
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