# WHAT IS A SLAT?

**BY DOUGLAS A. VENTURELLI, ESQ.**

## A Spousal Lifetime Access Trust (SLAT) is a trust established between spouses.

Essentially, one spouse gives the other spouse assets in an amount that uses up the unused Federal Estate Tax Exemption.

The trust of one spouse must be materially different from the trust of the other spouse. The reciprocal trust doctrine allows the IRS to “uncross” the trusts so that each spouse is deemed to have created a trust for such spouse’s own benefit. As a result, the value of each trust will be included in the gross estate of the spouse who created the trust and is subjected to estate tax when that spouse passes away.

The gifts of assets must be from the spouse's separate property. In community property states, such as California, you must first create what is known as a Separate Property Status Agreement. This is a separate legal document that stipulates which assets each spouse owns.

Those assets are then used to fund either one or both trusts. As the name suggests, a SLAT is an irrevocable trust where one spouse makes a gift into a trust to benefit the other spouse (and potentially other family members) while removing the assets and all appreciation on those assets from their combined estates.

Generally, most asset types can be used to fund a SLAT, including, but not limited to:

- Stocks and bonds
- Cash
- Real estate
- Certain interests in closely held businesses
- Private company stock

The Grantor will pay the income taxes on income earned by the trust, thereby making an additional tax-free gift to the trust's remainder beneficiaries.

The SLAT is an irrevocable trust for the benefit of one spouse (as well as their children and grandchildren) during his or her life. It will reduce the taxable estate, yet allow access if needed. However, it can only be accessible by one spouse (not both). Typically, an independent trustee, who is appointed, would approve distributions from the SLAT to the beneficiary spouse, children, and grandchildren.

The spouse who makes the gift to the SLAT, also known as the grantor, would be responsible for paying income taxes during life. In addition, an appraisal would be required for your interest in any asset, which is not publicly traded.

It is possible, with some risk, to create two SLATs (one for each spouse). There are legal risks to creating reciprocal trusts, but you would need to structure materially different trusts which both spouses create for the other spouse.

A key benefit of a SLAT is by naming a spouse as a lifetime beneficiary, which means the donor spouse retains indirect access to the trust assets. A trust can be set up to make distributions based on an ascertainable standard—the beneficiary spouse's health, education, maintenance, or support.

## WHAT ARE THE DISADVANTAGES OF A SLAT?

The main disadvantage of SLATs comes in the event of death of the non-donor spouse. The original donor spouse loses access to trust assets as the trust would then terminate with assets going to children or contingent beneficiaries of the trust.

Some authors suggest layering Insurance trusts to cover that possibility.

**Note: Any changes to your estate plan must be drafted by your attorney.**

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