

#Comment: This is a sample of a cover letter and memorandum that could be sent along with drafts of spousal lifetime access trusts to clients. While there are several concepts discussed in the memorandum, any memorandum sent should be customized to the circumstances of your client, and any paragraphs that do not apply to that client deleted.#

*DATE

Via Email

*CLIENTNAME

*CLIENT ADDRESS

Re: Draft Spousal Lifetime Access Trust#s.

Dear *CLIENTNICKNAMES:

Enclosed are drafts of the spousal lifetime access trusts (“SLATs”) for each of you, along with a memorandum of thoughts for you to consider regarding the draft documents. A document summary is also enclosed but be certain to defer to the actual provisions of the trust.

If you have any questions, please call.

Sincerely,

FIRM NAME

By: _____
PRACTITIONER NAME

Encl. – Two SLATs, memorandum, article on reciprocal trust doctrine

***CLIENTNAME**
Draft Spousal Lifetime Access Trusts
Memorandum

We have highlighted certain provisions of the memorandum and certain documents. While these provisions deserve your careful attention, they should not be interpreted as implying that other aspects of these documents do not require attention. The entirety of all documents and communications should be read and understood.

Because the documents are lengthy, and in some instances complicated, we recommend that you let us “talk” you through these drafts before you begin your review as that will make it much easier for you. This can be done as a conference call, web meeting, or in person meeting, whichever is most convenient for you. Let us know how we can help.

If you have any questions or comments on the drafts as you review them, call or email us. Let us know when you would like to schedule a meeting to review the documents and your comments. Once we have all your comments, we will revise the documents and we can schedule a signing meeting. If you would like to review the revised drafts let us know and we can send you those (in hard copy or as PDFs via email) before the signing. Please let us know what will work best for you.

Thoughts to consider while reviewing the drafts include:

- Some provisions in the trusts have been highlighted. However, the entirety of both trusts should be reviewed. Please contact my office to arrange a time for a web or in person review at your convenience.
- Forecasts should be used to support and determine the values given to each trust. Assets should not be transferred to the trusts that will likely be needed to support your lifestyle.
- We discussed one or both SLATs owning interest in a vacation home. An LLC should be formed in the state where the SLAT is being established to own that property, and then authorized to do business in the state in which the home is located. While it may be simpler to have one SLAT own the entirety of the vacation home LLC, better asset protection may be achieved by having each SLAT own 50%. The IRS may argue that you have retained an interest in such a property that supports estate inclusion.
- The power of appointment given to each child is limited to your descendants. Would you want to make this broader?
- We could add a provision to each trust giving an independent non-fiduciary the power to add the descendants of your grandparents (which would include you) as a beneficiary. This structure is sometimes called a “hybrid asset protection trust.” The purpose would be that if the estate tax is repealed that person at a future date could add you as a beneficiary. That could eliminate the mortality risk associated with the technique.
- The trusts have a provision prohibiting the trust protector from #NAME as trustee. It could be advantageous to have #NAME removed, e.g., if there is a lawsuit.

- We could give a person also acting in a non-fiduciary capacity the right to grant the settlor of each trust a power to control enjoyment of trust assets so that the exercise of the power could force any or all assets back into your estate under Code Section 2038 should estate inclusion become advisable under whatever new tax regime the Trump administration might enact.
- The reciprocal trust doctrine should be addressed with funding and administering these trusts. This is one of the reasons for having the trusts in different jurisdictions with different trustees and for some of the legal differences in each trust instrument. Ideally different assets should be transferred to each trust as well. The trusts should each be administered in accordance with their respective terms.

Some of the ancillary documentation and steps for the SLAT plan may include:

- A spousal waiver for both of you regarding the SLATs. This might support the avoidance of the rights either of you may have over assets given to the other's trust. Although this provision may have valuable estate tax benefits, it may have significant matrimonial implications. I am not a matrimonial attorney and cannot advise you as to the matrimonial implications to either of you of signing this document. If you have any questions, as these rights might be important, you should each consult with your own matrimonial counsel before signing.
- Counsel in each state in which each trust will be formed will have to provide an opinion of counsel that the trust is valid in that jurisdiction. It is imperative that counsel in the state where each trust will be formed be retained. An opinion of local counsel as to the validity of the trust is a necessary prerequisite to implementation.
- Each institutional trust company will have to review the trust for any changes necessary to their assuming the position of trustee.
- A range of ancillary documents for each trust company will be necessary to complete and provide to them, e.g. account opening documents, know your customer documentation, etc.
- You each will have to authorize us to complete lien and judgment searches. The performance of this due diligence will help identify any issues that may suggest transfers to the trust should not be made. If none are identified these steps might help deflect a later challenge by a claimant or the IRS based on a fraudulent conveyance, retained interest, and other theories. There is obviously no assurance that these steps will reflect any challenge.
- Other documentation may include:
 - Crummey notices. These should be completed properly, signed and sent to the appropriate donees.
 - Solvency affidavit which you should review, correct and then sign.
 - Declaration of Gift for gifts made to the trust.
 - Insurance for assets transferred in whole or part to the trusts may have to be revise to reflect the trusts as owners.
 - Income tax returns, from 1041 (grantor or non-grantor depending on how each trust was structured) may have to be filed.
 - A gift tax return reporting gifts to the trusts may have to be filed with the IRS.

- If entities are transferred to the trust appropriate entity documentation will have to be prepared.

Estate planning is inherently complex, subject to varying interpretations, and the laws change frequently. Ongoing review and maintenance of every plan and document is essential. There is no assurance that any particular result will be realized. There are risks and negative consequences to every planning step and technique, all of which have not been enumerated in this letter or other communications. By proceeding with this planning, you accept these risks.