Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool Post-Election

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A KEY ESTATE PLANNING GUIDE

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Introduction and Overview

Why You Have to Tell Clients to Plan NOW! And SLATs will be a Common Tool for Many

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This is Planning for the CLIENT Not Just Heirs

- **Asset protection** benefits the client, not just the client's heirs. Litigation and bankruptcies increase when the economy falters, hence the uncertainty in the current environment makes asset protection planning quite important.
- **Non-grantor** trust status (e.g., so-called "ING Trusts") may also save the client current income taxes (given the likelihood of rates increasing to pay for bailouts). Lower income taxes is the same as building wealth. We will not, however, address non-grantor trust planning in this presentation due to time limitations.

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Current Planning Environment

- **Election**: The planning environment remains uncertain. The predicted blue wave did not happen and what tax changes the Democrats may be able to effectuate is uncertain. But the 2022 or 2024 election may change this and in all events the exemption drops by ½ in 2026.
- **Values**: Suppressed asset values (at the time of this writing the stock market has declined about 20% from its highs, and businesses are hemorrhaging during stay home orders). Discount rates may be higher because of uncertainty.
- **Interest**: Interest rates are at near historic lows (the Section 7520 rate for June 2020 is 0.6%). For comparison, in 1989, the Section 7520 rate was at a high of nearly 12 percent, and in March of 2009, it was almost 3 percent. Family loans, note sale transactions, and GRATs are a techniques that are enhanced when interest rates are low.
- **Deficits and Taxes**: The massive federal bailout – and more may be coming – will eventually require that taxes on the wealthy (and the not-so-wealthy) be raised. While no one can forecast what tax law changes may occur, it seems logical that estate taxes will increase, perhaps markedly so. Therefore, shifting assets out of an estate using current favorable laws, such as by using note sales to grantor trusts, GRATs, SPATs, etc., may prove very advantageous as these have been proposed to be "outlawed."

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Goals to Address in Planning

- **Access:**
  - Most clients will not shift significant wealth if they cannot later have access to that wealth.
  - The current economic problems (recession?), stock market decline, and uncertainty exacerbate the need for access if clients are to plan now
  - The techniques to use now are more robust and different than what many practitioners did in 2012 (and we all recall some "buyer's remorse" with 2012 planning).
- **Exemption**: Use of exemption and estate reduction before laws become less favorable
  - Plan to reduce client's estates before tax laws are changed to be harsher
  - In 2026 the exemption declines by half.
- **Asset protection**:
  - All planning should protect assets for the client as well. This will help motivate clients to act. It's not just about helping heirs but protecting the client as well.
- **Wealth Tax**: Possibly avoiding a future wealth tax, if one can be enacted, which is uncertain.

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Introduction and Overview

Planning with SLATs

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Introduction

- Spousal lifetime access trusts ("SLATs") may be the most common planning technique for married clients to use in 2020 as the tax environment remains uncertain after the election.
- This webinar will explore how to:
  - Plan for a married client using SLATs (or some unmarried one where SLAT may mean Sibling Lifetime Access Trust)
  - How to structure the SLATs
  - How to draft a SLAT
  - What provisions to consider including in the SLATs
  - Sample clauses for some of those provisions
  - Ancillary planning, documentation and implementation of a SLAT including due diligence before funding, funding, and more
- This all presumes you have reviewed optional planning techniques and settled on a SLAT. We will not discuss the optional planning and how you get to the SLAT as the decided technique.

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SLATs: How They Work

- Each spouse creates a trust for the other spouse, avoiding the state law creditor and tax Reciprocal Trust Doctrines.
- This occurs by making the trusts sufficiently different so the doctrines will not apply.
- The trusts can be created at different times, with different assets and trustees, and with very different terms.

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SLATs: How to Make Them Work

- Create each SLAT in a different state. This is simpler and more efficient with document generation software.
- In one trust, the beneficiary spouse can be entitled to distributions each year, have a lifetime broad special power of appointment, can change trustees (within Rev. Rul. 95-58 safe harbor), withdraw under HEMS.
- In the other trust, the beneficiary spouse would have no entitlement to distributions (perhaps is not even a current beneficiary), no power to change trustees, and no power of appointment, but could become eligible to receive a distributions only upon exercise by a trusted child of a power to add beneficiaries.
- You can readily select different options for each trust using document generation software or use preselected forms that incorporate differences.
- A detailed checklist follows at the end of this section of the PowerPoint.

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How I Use Document Generation Software to Draft a SLAT

- Document generation software lets you mold the planning and documents to the client, rather than molding the client into the forms you happen to have in your form library.
- We will explain the benefits of using document generation software to create each of the strategies/documents that should be considered.
- Document generation software can help you create robust, flexible, documents tailored to each client's individual circumstances.
- Many attorneys have administrative staff draft documents based on notes. Many an attorney, however, often will collaborate with an experienced attorney to draft documents. Drafting using software is quick and having two attorneys draft at the same time permits careful consideration of the myriad of options document generation software can offer, results in a better end document, and dramatically reduces revisions after the document is created.
- Some lawyers use a web meeting to collaborate and draft while out of the office.
- Some draft both SLATs at the same time to build in differences between the trusts but others do them at separate times to ensure a difference.

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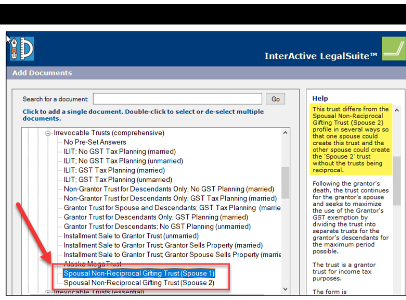
Drafting Example: Avoiding the Reciprocal Trust Doctrine



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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

SLATs are Not Only For Spouses

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SLAT for non-Spouses

- You can create a SLAT-like trust for a non-spouse relative too – such as a trust created for the grantor's sibling and the sibling's family
- RElative Lifetime Access Trust ("RELAT")?
- 'Cause you needed a new acronym.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Robust SLATS Serve Clients Well in Uncertain Times

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Traditional Trust Types Possibly Incorporated into a SLAT

- Life insurance trust (ILIT)
- Dynasty trust
- Grandchildren's trust
- Children's trust
- Asset protection trust
- Inter-vivos credit shelter trust
- Hybrid DAPT
- SPAT

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Tax Laws - Continued Uncertainty

- The tax laws remain uncertain. Will the estate tax be made harsher to pay for federal deficits?
- Might the estate tax be replaced with a capital gains tax on death? Perhaps, a capital gains tax on gift and death as Canada has had since the 1970s and which Donald Trump proposed before being elected? Might we have both?
- Might nothing change?
- Will basis step-up in basis on death remain?
- How might income tax rules change now?
- Both transfer and income taxes have fluctuated significantly and may change radically under a future administration.
- SLATs can be adapted to address each of these scenarios. Clients will have more options with assets held in flexible SLATs then in individual name. Not planning is unlikely to be the optimal approach.

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The New Dynamic of Estate Tax Planning

- Historically, tax minimization has been a cornerstone of planning and it should remain important, even in light of substantial uncertainty, or even in the event of estate tax repeal (and states likely will not repeal theirs). SLATs can be crafted with considerable flexibility to address many aspects of this uncertainty.
- State income tax systems vary significantly from no tax states to states that tax at very high rates, like NY and CA, among others. During the client's lifetime. non-grantor SLATs may be used to save state income taxes.
- After death of the spouses. SLATs can provide flexibility to allocate income among a class of beneficiaries to those in lower or no tax states.
- Federal income tax rates have historically been progressive, although the difference between the highest and lowest rates has fluctuated widely over time and may continue to do so. SLATs provide a mechanism to allocate income among a class of beneficiaries to those in lower federal (and state) brackets.

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Dynamic of Estate Tax Planning

- Basis maximization can provide valuable income tax planning opportunities, and SLATs can be tailored to facilitate this through:
  - Distribution of assets to beneficiaries, e.g. a spouse/beneficiary of advanced age.
  - Use of powers of appointment, e.g. give an elderly parent a general power of appointment to cause SLAT assets to be included in their estate and to achieve a basis step up during the grantor's lifetime or to trigger the Delaware Tax Trap per Section 2041(a)(3).
- Swap powers can provide more flexibility to maximize income tax basis or accomplish several other important planning goals. The traditional application of a swap power is for an elderly or infirm grantor to swap cash into the SLAT in exchange for highly appreciated SLAT assets.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Other SLAT Benefits

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SLAT Benefits – Professional Trust and Other Services

- SLATs, like most trusts can provide a vehicle through which to retain professional asset management or, better yet, a full complement of professional wealth management and trust services.
- SLATs can be designed to initially, or at some future time, include an institutional trustee. This can provide professional investment and trust management services. Many clients don't have family members who are both trustworthy and financially savvy enough to serve as fiduciaries, so the flexibility to name a financial institution can be quite valuable. Of course, different people can serve in different trustee positions.
- SLATs can (and often should) incorporate a trust protector who can remove and replace the institutional trustee if such trustee fails to perform as desired.

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SLAT Benefits – Possible Avoidance of Capital Gains Tax on Death

- SLATs reduce/avoid capital gains on the grantor's death.
- Under current law, if the trust holds appreciated assets, the settlor (or the spouse under Section 1041) could swap (or buy) those assets out of the trust and into his name before death by transferring assets to the trust (that is, cash) having an equivalent value. This is an estate tax neutral transaction as the same value remains in both the trust and settlor's estate. However, the appreciated assets in the hands of the settlor (or spouse) will qualify for an income tax basis step-up at death, thus eliminating the unrealized appreciation.
- If the estate tax is repealed, it could be replaced by a capital gains tax at death. There might also be a capital gains tax when gifts are made of appreciated assets. Assets transferred to a SLAT before such a change may avoid any capital gains tax by gift. On death, the same swap or substitution power used above can be applied in the opposite manner as a reverse swap. If the settlor has appreciated assets in her name prior to death, she may be able to swap them into the SLAT prior to death and avoid a capital gains tax on death. Under either scenario, it is possible that the SLAT may provide an income tax planning advantage.

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SLAT Benefits – Probate, State Tax, Grantor Trusts

- Assets in a SLAT will avoid probate. This should reduce probate costs and time delays. Assets in the trust are immediately available for post-death distribution. They also avoid estate tax because no use was made of the marital deduction, just the gift tax exemption.
- About 20 states still have an estate tax. The future of state estate taxes is quite uncertain. For example, New Jersey repealed its estate tax effective in 2018, but most New Jersey estate planners anticipate the tax being reinstated because of state fiscal issues. Whether or not the federal estate tax is repealed, few people are confident that there will ever be permanence or certainty to the federal estate tax system. So, having wealthy clients shift assets out of their taxable estates while retaining alternate avenues to access such property just seems prudent.
- SLATs, because they by definition benefit the grantor's spouse, are income taxed under Sections 676 and 677 as grantor trusts to the grantor spouse. Thus, the grantor bears the income tax burden on trust earnings. This assumption of the tax burden permits the trusts to effectively grow tax-free, thereby enhancing the estate tax and asset protection benefits.

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SLAT Benefits – Life Insurance/ILIT

- SLATs can serve as a traditional irrevocable life insurance trusts (ILITs). Most if not all SLATs should be drafted to facilitate the future ownership of life insurance even if that is not part of the current plan. There is no harm and negligible cost in adding this flexibility.
- Life insurance remains at the heart of many estate and financial plans. Regardless of the status of the estate tax, SLATs can function as ILITs and be used to protect and manage life insurance proceeds. Because SLATs tend to be more robust that traditional life insurance trusts, they'll often hold more assets than a traditional "naked" insurance trust, that is, assets other than an insurance policy and a nominal checking account.
- The income earned on these other assets can be used to pay annual policy premiums and avoid the need for annual cash gifts and associated Crummey powers. SLATs may also be drafted or administered with more flexibility than a traditional ILIT. SLATs might have beneficiaries acknowledge the right to receive annual withdrawal notices and waive the requirement of future withdrawal notices, thereby dispensing with the annual Crummey power ritual many clients find burdensome and annoying.

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SLAT Benefits – Life Insurance/ILIT

- For clients unlikely to face an estate tax, the simplification of a multi-purpose SLAT/ILIT may be a welcome option. Permanent life insurance policies used to fund the SLATs will represent an alternative asset class (in most to be invested in a conservative manner), and the accumulated cash values can be accessed, tax-free, for retirement or other purposes, via trust distributions to the spouse-beneficiary or other family members who also are trust beneficiaries. In the event of a spouse beneficiary's premature death, the surviving spouse is protected because the trust in which the survivor is a beneficiary will collect a death benefit that the surviving spouse and descendants can access.
- In most SLAT planning, consideration should be given to having forecasts done to confirm whether some life insurance is prudent to address the risk of either spouse dying prematurely.
- Life insurance cash values will grow tax-free, and the eventual death benefit won't be subject to either income tax or transfer taxes.

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SLAT Benefits – Asset Protection

- SLATs can provide meaningful asset protection from potential claims of creditors and other predators (that is, a beneficiary's spouse in the event of divorce and from the spouse of the spouse beneficiary who remarries). This protection applies to assets transferred to the trust if not characterized as a fraudulent conveyance. When a SLAT serves as an ILIT, policy cash values during the insured's life, as well as death benefit proceeds, should be protected.
- Because SLATs are not self-settled trusts, they should not be subject to the risks that some commentators believe inherent in self-settled trusts created in certain domestic asset protection trust (DAPT) jurisdictions permitting such trusts, by settlors residing in jurisdictions that do not permit them.
- Watch the risks of the step-transaction doctrine.
- It is critical that only the grantor spouse contribute property to his or her DAPT and that jointly owned property not be used to fund either spouse's DAPT.
- Consider organizing the SLATs in DAPT jurisdictions (that is, those that permit asset protected self-settled trusts) to protect against such a slip-up.

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SLAT Benefits – Asset Protection

- Create SLATs and transfer assets to them to use up current estate tax exemption. For larger estates, note sales and other techniques can be used to shift value into protective trust structures.
- If there is a known issue your client may not be able to transfer assets without it being viewed as hindering, delaying or defrauding the claimant (a fraudulent conveyance). The time to plan is when the client does not yet need to plan. So regardless of the status of the gift, estate or GST taxes, planning now is better than waiting to later.
- For some physicians, or others concerned about and facing ongoing liabilities, “creeping” SLATs might be a useful approach. Create the SLAT now and make ongoing gifts to the SLAT each year so that no one gift transfer is significant. But if the other spouse is doing the same as to a SLAT he or she has created, the reciprocal trust doctrine might become more problematic.

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SLAT Benefits – Aging Clients

- SLATs can incorporate several safeguards to provide robust later life planning. They use distinct tax identification numbers so that they may insulate the settlor from identity theft risks. Naming an institutional trustee as noted above may be a vital safeguard for aging clients to protect them from predators.
- Naming a trust protector to act can provide an independent person to monitor trustee performance and take appropriate action if that performance isn't satisfactory. There are approximately 20 states that have statutes governing protectors. The positions of those statutes are not uniform as to whether the protector must act in a fiduciary capacity. There are also differences among commentators. Although it would seem that if a protector can change the trustee, the protector must act in a fiduciary capacity to do so. Consider have the protector act solely in a non-fiduciary capacity. Cf. Iannotti, 725 NYS 2d 866 (2001).

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Structuring Considerations

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Should Both or Only One Spouse Fund a SLAT? - 1

- **Example - 1**: Husband and wife have a combined estate of $16 million and are willing to make $8 million in total gift transfers in 2020 to safeguard a portion of their temporary exemptions. If each of husband and wife transfer $4 million to a non-reciprocal spousal lifetime access trust ("SLAT") they will have safeguarded $8 million of exemption (and any future growth on those assets) in case the law changes. In 2026 when the exemption declines by half, to $5 million each (ignoring inflation adjustments) each spouse will be left with $1 million of exemption. So if you add the $4 million each spouse used in the 2020 planning and the $1 million each has left in 2026, the couple will have preserved $10 million of exemption. Good, but they can do better. If in 2020 with a Dem sweep and the estate tax exemption is reduced to $3.5 million, the couple will have no further exemption left, but they'll be hugging their estate planning for having helped them safeguard $8 million before those changes.
- But then the total exemption safeguarded is only $8 million. Is that optimal? Maybe. But perhaps not. Consider having one spouse, not both, use current exemption thereby preserving more exemption for future planning.

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Should Both or Only One Spouse Fund a SLAT? - 2

- **Example - 2**: Assume the same facts as in the above example. Husband and wife have a combined estate of $16 million and are willing to make $8 million in transfers to irrevocable trusts to secure a portion of their temporary exemptions. But instead of setting up two non-reciprocal SLATs as in the above example, the wife gifts $8 million to a DAPT. Her husband and all descendants are beneficiaries of the trust. So with husband as a beneficiary, so long as he is alive and they remain married she has indirect access to the $8 million through husband. You could incorporate a mechanism into the trust to add wife in as a beneficiary in the future (see hybrid DAPT below) just in case her husband dies prematurely or divorces. If the exemption drops to $5 million in 2026 as the law currently provides. Wife used $8 million of her exemption so she'll have none left. But, since husband did not use any of his exemption in the plan, he will still have $5 million of exemption left in 2026. So his $5 million of exemption and the $8 million of exemption the wife used in 2020 means the couple has preserved $13 million of exemption, $3 million more than had they used the non-reciprocal SLAT approach in the prior example.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Drafting Considerations

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Beneficiaries

- Encourage clients to consider including a broad class of beneficiaries in SLATs, not just the spouse.
- Many attorneys still draft trusts including only the spouse or only the spouse and children as current beneficiaries instead of including the spouse and all descendants.
- If the NIIT is not repealed each child's AGI is viewed separately from the parent's AGI for purposes of testing whether the Medicare tax on passive income applies. IRC Sec. 1411. If the child's AGI is under $200,000 the child will not be subject to the Medicare tax.
- Unless there is an overarching reason to limit the class of beneficiaries, don't.
- More beneficiaries means more flexibility for future income tax planning and a more robust SLAT.
- Should "floating spouse" clauses be used for flexibility?
- Can/should a new spouse waive rights as a floating spouse under existing trusts in a new prenuptial agreement?

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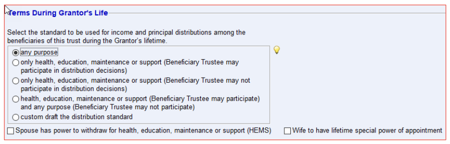
Sample Distribution Provision

- **<u>Distributions to Spouse and Descendants During Grantor's Lifetime:</u>**



<u>Distributions During the Grantor's Lifetime.</u> The Trustee may, but shall not be required to, distribute as much of the net income and/or principal of the Lifetime Trust as the Trustee (excluding, however, any Interested Trustee) may at any time and from time to time determine to the Grantor's Wife and the Grantor's descendants in such amounts or proportions as the Trustee (excluding, however, any Interested Trustee) may from time to time select, for any purpose. Any net income not so distributed shall be accumulated and annually added to principal.

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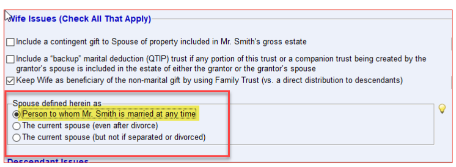
Sample Floating Spouse Provision



<u>Definition of "My Wife</u>." For purposes of this Agreement, any reference to my Wife shall mean Marian Kelp Cunningham or, if she dies before I die, or she and I become divorced, or our marriage is annulled, the person to whom I am married at any given time.

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Include Trust Protectors

- Include trust protectors in almost all SLATs.
- This position has become more common in irrevocable trusts. Giving a protector, acting in a fiduciary capacity, the power to change the governing law and situs, and so forth, infuses flexibility to respond to future changes.
- Caution – naming a protector might subject a trust, once no longer a grantor trust, to state tax nexus based on the residence of the protector. One approach suggested to mitigate this risk is to "house" all ancillary functions (trust protector, investment adviser, et.) inside an LLC formed in the trust friendly jurisdiction where the trust is based.

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Trust Protector Powers

- The power to remove Trustees.
- The power to appoint an individual, corporation or other entity with fiduciary powers to replace any removed Trustee, or to add a new additional co-Trustee.
- The power to appoint an individual, corporation or other entity who is not related or subordinate to the Grantor or the Beneficiaries with fiduciary powers to exercise powers granted in this Trust. Rev. Rul. 95-58 safe harbor.
- The power to change situs and governing law of the trust, correct scrivener's errors, modify administrative provisions that have no effect on the beneficial interests in the trust.
- The power to modify or amend the supplemental needs trust provisions herein to conform with any changes in applicable law.
- The power to restrict or eliminate the right of the Trustee to apply the income of this trust to pay life insurance premiums on the life of the Grantor and/or the Grantor's spouse.

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Trust Protector Powers

- The power to change the name of the Trust and governing law.
- The power to demand an accounting and the right in the Trust Protector's sole discretion to submit same to a court or not.
- The power to direct the Trustee as to which beneficiaries, fiduciaries or other persons holding powers hereunder (whether in a fiduciary capacity) (individually or collectively "Notice Persons") shall or shall not be entitled to receive information concerning this Trust, including but not limited to periodic investment statements and other notifications, to the extent not inconsistent with applicable state law. While Grantor is alive and not disabled no such notifications shall be given to any Notice Persons hereunder other than the Grantor and the Trust Protector unless the Trust Protector authorizes same, or applicable state law requires otherwise. No trustee shall be liable for notifications following Grantor's disability until such Trustee has actual knowledge, or receives written notice from
- The power to restrict or eliminate the powers granted herein to the Designator or the Appointer. There terms are explained and illustrated below.

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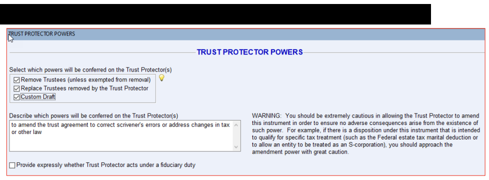
Sample Trust Protectors Powers



Trust Protector Powers. The Trust Protector shall have the following powers:

1. The power to remove Trustees granted and described in the paragraph titled "Removal of Trustees," above.
2. The power to appoint an individual, corporation or other entity with fiduciary powers to replace any removed Trustee.
3. The power to fill Trustee vacancies granted and described in the paragraph titled "Filling Trustee Vacancies," above.
4. The power to amend the trust agreement to correct scrivener's errors or address changes in tax or other law.

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Permit Adding/Including Charitable Beneficiaries

- Before swap powers became de-rigueur trusts sometimes included a right for a person, acting in a non-fiduciary capacity, to add a charitable beneficiary. This right, during the grantor's lifetime, characterizes the trust as a grantor trust.
- With all the uncertainty over income and estate tax law changes, consider adding a broader charitable designator provision.
  - If the estate tax is repealed there may be no downside to making charitable gifts of trust assets.
  - If the income tax rules for charitable contribution deductions become more restrictive perhaps it will be advantageous from an income tax perspective to make the gifts out of a trust instead of by the individual.
- Don't have the power end on the grantor's death, permit it to continue in perpetuity since the purpose is not merely to trigger grantor trust status, but to add flexibility to planning. If the estate plan is successful significant wealth will be shifted out of your client's estate to long term irrevocable trusts. What resources will future generations direct to charity if their inherited wealth is in trust with no charitable beneficiaries?
- Consider IRC Sec. 642(c) – can a trust get a FMV deduction for gifts in kind? IRC Sec. 642(c) is more limited then IRC Sec. 170.

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Provision to Make Loans

- It had been common to include a power to a person acting in a non-fiduciary capacity to make loans to the settlor of the trust. Adequate interest should be charged but adequate security is not necessary. This too should have characterized the trust as a grantor trust.
- While grantor trust status might be achieved with a swap power, perhaps a loan provision should still be included, but now more for providing a means for the settlor to access trust principal than for grantor trust characterization. If the estate tax is repealed your client might be happier with the planning knowing that there is a means to provide the client access to trust funds, even if that is as a loan.
- Should you always use a loan provision to back stop issues some commentators perceive with swap powers not assuredly granting/creating grantor trust status?

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Sample Loan Provision

I appoint Mary Simpson as the Loan Director. During my lifetime, the Loan Director shall have the power, exercisable at any time and from time to time in a non-fiduciary capacity (within the meaning of Code Sec. 675) without the approval or consent of any person in a fiduciary capacity within the meaning of that section, to compel the Trustee to loan some or all of the trust property to me without adequate security within the meaning of Code Sec. 675(2) although with adequate interest within the meaning of that section. I direct that this power is not assignable. In the event that Mary Simpson dies before I die, the successor Loan Director shall be such individual (other than me, any person acting as a Trustee under this instrument or anyone who is an adverse party within the meaning of Code Sec. 672) whom Mary Simpson shall have designated by instrument in writing. Any person other than Mary Simpson acting as a Loan Director hereunder shall also have the power to name a successor Loan Director by an instrument in writing. In the event that no one else is acting as a Loan Director hereunder, the oldest individual acting as a Trustee hereunder (or if none, the corporation or other entity acting as Trustee hereunder) shall be the Loan Director but acting only in a non-fiduciary capacity.

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2038 Power

- The trust could give the trustee, or perhaps a third party acting in a non-fiduciary capacity, a power to grant the settlor the right to control the beneficial enjoyment of trust assets. This would cause estate tax inclusion in the settlor's estate under IRC Sec. 2038. A corporate trustee may be unwilling to exercise such a power so it may be advisable to grant the power to an individual. Consider giving the power to a non-fiduciary. This can provide a mechanism to cause estate inclusion and obtain a basis step up on the settlor's death if that proves advantageous. It might be advantageous to grant the trustee the right to select which assets to grant this power over. If an asset has declined in value, it may be preferable to avoid changing the basis at death. Caution, if the estate tax is repealed, there will presumably be no IRC Sec. 2038, so how the step up in basis would be effected under a repeal regime is uncertain.
- Might you wish to give someone the power to name the settlor a trustee to force estate tax inclusion?

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Express Decanting Power

- Give the trustee an express power to decant. Do not rely on state law. Permit the power to merge the trust into a new and improved trust so administrative provisions can be modified to address future circumstances. Decanting can be used to add or remove a swap power, add an insurance trustee provision so insurance can be added to a trust that did not provide for it, and so much more. Even if the desired modifications can be accomplished with a trust protector action, or non-judicial modification by beneficiaries, including broad decanting powers is like chicken soup – it can't hurt.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Swap Powers in SLATs

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Swap/Substitution Powers

- This power can be used to create grantor trust status (income of the trust is taxed to the settlor). Section 675(4)(C).
- But it also is an incredible tool to build in flexibility. Your client can transfer family business interests to an irrevocable trust, locking in valuation discounts available under current law. But if your client later wants to return those assets to your name, the settlor can swap in an equivalent amount of cash and get the business back.
- This could be useful to obtain a basis step up on death. It could enable the client to change his or her dispositive scheme and transfer the business to another heir. See above.
- If a capital gains tax on death is enacted, a reverse swap might prove beneficial. Shift appreciated assets into the trust (the opposite of what most folks try to do under current law) to avoid a capital gains on death.

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Make Swap Powers Practical

- The client/settlor must have property available to effectuate a swap. In many cases cash might be the easiest or preferable asset, but few settlors have addressed this. Practitioners can assist these clients in creating lines of credit to be "at the ready."
- Analyze trusts for highly appreciated assets part of the annual review process.
- Assure that if a swap is done that the terms of the trust are followed so that the transaction is in compliance with its requirements.

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Broader use of Swap Powers

- Some only consider swap powers in the context of swapping into an elderly grantor's estate to obtain a basis step up for low basis trust assets on grantor's death, but there are more planning options.
- Consider an irrevocable trust holding stock in a family business. Grantor/donor/parent wants to change the dispositive scheme. Can that stock be swapped out back into grantor's name for assets of equivalent value and then given or bequeathed to a different family member?
- What about using a swap power to pull out highly appreciated assets from the trust and then donating them to a donor advised fund (DAF)? That would leave the value of the assets in a GST asset protected trust intact (i.e., in contrast to the trust making the donation directly if it were permitted to do so).

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Swap Powers and Divorce

- Another common power that has been used to cause trusts to be characterized as grantor trusts for tax purposes and to provide planning flexibility is the swap or substitution power. This gives the settlor the right to swap assets of equivalent value for assets in the trust.
- **Example**: Wife started a widget manufacturing company and gifted 20% of the stock to an irrevocable trust for the children. Husband was named trustee. The business grew substantially. In the maelstrom of the divorce the status of the trust was overlooked. Post-divorce, wife wanted to reclaim her stock, since a 20% minority interest in the business out of her control would be an impediment to her selling the company. So she attempted to swap a personal note to the trust in exchange for the stock. The now ex-husband, who remained the trustee, refused to honor the transaction. So while a swap power could have been an important tool for flexibility had the issues been addressed during the pendency of the divorce it may prove elusive.

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Swap Powers and Divorce

- A similar fact pattern arose in a recent case. The trustee was the wife and mother of the daughter of the marriage who was the beneficiary of trust. The couple divorced. The ex-husband tried to exercise swap power and now ex-wife trustee refused. He tried to swap in a note and the ex-wife/trustee objected saying it was not of equivalent value as required by the trust instrument. Schinazi v. Eden, 2016 WL 5867215. In the divorce the issue of trustee and trust actions should have been addressed. It may have been preferable for all involved to have had the wife/ex-wife resign as trustee in favor of an independent, and ideally an institutional, trustee.
- If a swap power is included in a trust consider naming an independent trustee. The trustee may have to confirm that the value of the property being swapped into the trust is of equivalent value to the property being swapped out of the trust to the settlor. If a spouse is trustee for a trust with a swap power, as part of the divorce negotiations, consider naming an independent trustee to prevent the ex-spouse/trustee from unreasonably inhibiting the exercise of a swap or other powers.
- Even better, provide that upon a divorce any interest a spouse has should be terminated (i.e. Spouse deemed to be predeceased). Consider the impact on grantor trust status for income tax purposes.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Tailored LPOAs and GPOAs

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Powers of Appointment

- Include powers of appointment (someone can designate how trust property will be distributed and to whom). This can provide flexibility.
- Granting someone the power to transmute limited powers of appointment ("LPOA") into general powers of appointment ("GPOA") that can be used to cause some or all the trust assets to be included in the client's estate to qualify for a basis step up on death should that prove advantageous under a future tax system.
- Caution: A GPOA also means a step down in basis for depreciated assets which is not desirable.
- If the power holder dies without exercising a GPOA the property subject to the power is include in the power holder's estate and will be subject to a step-up in basis. Treas. Reg. Sec. 1.1014-2(b)(2).

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Powers of Appointment

- How far can this go? Can the general power of appointment be granted only over appreciated assets?
- Might it be feasible to structure a tiered formula of sequential contingent general powers of appointment to secure a basis step up on assets exposed to the highest tax brackets first?
- For those living in a decoupled state, the cost of a state death tax must be factored into the analysis. Some practitioners might prefer not having the spouse serve as the trustee if these powers are granted.
- If the client is uncomfortable giving this person a general power of appointment over the trust assets there are options to make this approach safer.
- Will an institutional trustee ever convert a LPOA to a GPOA? Perhaps never.
- Include in a trust that may grant an LPOA a named trust protector who can grant or modify the terms of a limited power of appointment "LPOA" and convert it to a general power of appointment.

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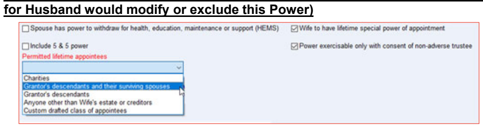
Sample Lifetime Power of Appointment

<u>Wife's Lifetime Power of Appointment During Husband's Lifetime (Wife's SLAT for Husband would modify or exclude this Power)</u>



The Trustee shall distribute such income and/or principal of the trust to such one or more persons out of a class composed of the Grantor's descendants and surviving spouses of the Grantor's descendants on such terms as the Grantor's Wife may appoint by a signed writing that is acknowledged before a notary public specifically referring to this power of appointment and delivered to the Trustee, provided, however, that any such appointment by the Grantor's Wife shall only be effective if a trustee who is non adverse within the meaning of Reg. § 25.2511-2(e) consents to the appointment in an acknowledged written instrument, and provided further, however, that this power of appointment may be exercised on the Grantor's Wife's behalf by a guardian or attorney-in-fact appointed to represent the Grantor's Wife and expressly authorized to do so.

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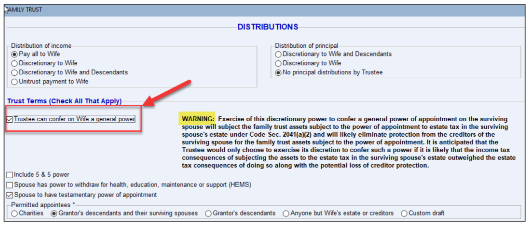
Optional General Power Example

Option to confer a general power on spouse:



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Sample Optional General Power

Option to confer a general power on spouse:

Disinterested Trustee May Confer Power. The Trustee (excluding, however, any Interested Trustee) may at any time, prior to the death of my Wife, by an instrument in writing (1) confer upon my Wife a power exercisable by my Wife's Will or other signed writing that is acknowledged before a notary public, specifically referring to this power of appointment, to appoint all or part of the Family Trust to the creditors of my Wife's estate (other than any taxing authority), and the instrument conferring such power upon my Wife may require the consent of the Trustee (other than any Interested Trustee) to exercise the power, (2) revoke any such instrument previously executed, with or without executing a replacement instrument and/or (3) irrevocably relinquish the powers conferred under (1) and/or (2). Without limiting the Trustee's discretion, the Trustee may use the authority conferred by this paragraph to subject the trust property subject to the power of appointment to estate tax in my Wife's estate to obtain a basis adjustment under Section 1014 of the Code when it appears that it may reduce overall taxes to do so.

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Powers of Appointment to Poor Elderly Family Member

- Include additional beneficiaries, e.g. an elderly family member, who have modest estates.
- “My clients would never do that.” Think again.
- 32% of those who have a parent age 65 and older have provided financial support to that parent.
- This data suggests many clients have an elderly relative (the statistic is only for parents) who they may support and thus who likely has a modest estate (or why else would they need support).
- If the client provides financial assistance to this elderly family member there is likely some level of trust.

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LPOA Converted to GPOA

- Grant the beneficiary a limited testamentary power of appointment over the trust assets (e.g., to the client's children or only to the person's creditors).
- Give the trustee (or another specified person) the authority to divide the trust into separate trusts and to use the power to create a sub-trust to which all highly appreciated assets can be transferred.
- Give the trustee the right to convert the beneficiary's limited power of appointment into a general power of appointment over the appreciated asset sub-trust.
- This will cause inclusion in the beneficiary's estate of those appreciated assets, and obtain the desired basis step up without the need to actually distribute those assets to the beneficiary and potentially years or decades before the surviving spouse dies.
  - Caution – confirm that state law that governs the power will not expose the mere existence of an unexercised GPOA to the power holder's creditors. Will that be the law of the state governing the trust creating the power or the law of the state where the power holder resides?

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Consent Requirement on GPOA

- **Example**: Aunt Nellie is named as an additional beneficiary of an inter-vivos SLAT. She is given a GPOA to appoint trust assets. The client is a bit worried that she might add in other nieces and nephews.
- A possible solution to provide the client comfort is to make Aunt Nellie's exercise of the power subject to the consent of a non-adverse person.
- The person holding the consent power cannot have a substantial interest adverse to the exercise of the power in favor of the decedent, his or her estate, his or her creditors or the creditors of his or her estate. Treas. Reg. Sec. 20.2041-3(c)(2).
- The client's brother who is not a beneficiary of the trust is given the power to consent to Aunt Nellie's exercise of the GPOA before it can be effective.
- A trust with GPOA in state where disclosure are not required (Delaware, Nevada or South Dakota), i.e. where a quiet trust is permitted, may achieve this goal. There is no law confirming that a general power of appointment the holder is not informed of is valid for basis step up purposes.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

What Happens When One Spouse Dies?

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Death of First Spouse

- Must consider risks of death of first spouse:
- Financial modeling
- Life insurance
- Loan provisions
- Hybrid DAPT
- SPAT – special power of appointment trust

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Hybrid DAPT

- If the trust is formed and administered in one of the 16 states that permit self-settled domestic asset protection trusts (DAPTs), the settlor can be a beneficiary of his or her own trust.
- However, if the settlor resides in a state that does not permit these trusts, some advisers view it as risky, or even not viable, to create a DAPT in a state that does.
- There is a hybrid solution that might reduce the risk some experts perceive, yet leave open the possibility of the settlor benefiting from the trust. Don't name the settlor initially as a beneficiary. Instead give someone the right to add as beneficiaries of the trust the descendants of settlor's grandparents. So, if your client/the settlor is not a beneficiary now, the trust should not face that risk. But the client has the possibility of being a beneficiary if your client needs access in the future.

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Hybrid DAPT Provision - 1

- Give the person who might call the "Designator" the right/power to add descendants of Grantor's grandparents, including grantor, as a beneficiary of the trust.
- <u>Sample Provision:</u>

Power to Designate Additional Beneficiaries

- The Grantor appoints NAME as the Designator. During the Grantor's lifetime, the Designator, shall have the power, exercisable at any time and from time to time in a non-fiduciary capacity, and without the approval or consent of any person in a fiduciary capacity, to add as additional beneficiaries hereunder any person who is a descendant of Grantor's grandparents who is not already designated herein as a…

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Hybrid DAPT Provision - 2

Power to Designate Additional Beneficiaries

- …Beneficiary. Further, the Designator may at any time remove any person so added by written notice to the General Trustee, so that from the date of such written notification that added descendant of Grantor's grandparents shall cease being a beneficiary hereunder. The Grantor directs that this power is not assignable. In the event that NAME dies before the Grantor dies, the successor Designator shall be such individual (other than the Grantor, any person acting as a Trustee under this instrument) whom NAME shall have designated by an instrument in writing. Any person other than NAME acting as a Designator hereunder shall also have the power to name such additional beneficiaries as hereinabove provided.

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Hybrid DAPT issues

- What if the person holding the power, the Designator, dies or becomes incapacitated, before exercising the power? Is a successor named?
- Might a court infer an implied agreement between the Designator and the settlor?
- Will a client have a person or persons they are comfortable to name?
- Consider the Ionatti case.

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SPATs

- SPAT provisions can be integrated into the SLAT format to address risk of spouse's premature death.
- Give someone a collateral power of appointment, allowing distribution of trust property to anyone in a class that includes the grantor (such as descendants of the grantor's grandparents)

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SLATs: Additional Ways to Provide Grantor Access - 1

- **Loans**: Consider granting to someone the power, in a non-fiduciary capacity, to loan the grantor trust assets. Some might refer to this as a "loan director," but other titles might be used as well. A loan director can determine to loan funds to grantor of the SLAT without adequate security for the loan (but the loan director could be required to charge adequate interest to avoid tax issues). This mechanism provides the grantor another means to access trust assets should the grantor require them.
- **Charity**: You might also infuse another means of the grantor indirectly "accessing" funds in a SLAT. Give someone, in a non-fiduciary capacity, the power to add charitable beneficiaries. This person might be called a "charitable director," but other titles might be used as well. A charitable director can determine to add charitable beneficiaries to a SLAT. This provides the grantor an indirect means of "access" to the SLAT by making a charitable donation the charitable director can add the charity to the SLAT and the donation can be made out of SLAT funds not the grantor's funds. However, the SLAT cannot pay a charitable pledge of the grantor.

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SLATs: Additional Ways to Provide Grantor Access - 2

- **Vacation Home**: A SLAT could own an interest in a vacation home. And if the grantor's spouse/beneficiary uses the vacation home, the grantor presumably can as part of the spouse's family. Bear in mind if that is to be done a limited liability company ("LLC") should be formed in the state where the SLAT is governed and administered. That LLC should be authorized to do business in the state where the vacation home is located. That LLC would own the vacation home property and in turn the trust could own some or all of the interests in the LLC.
- **Income Tax Reimbursement**: If the SLAT is structured to be a grantor trust (i.e., the grantor pays the income tax on trust income) consider including a discretionary income tax reimbursement clause. This permits the trustee of your SLAT, in the trustee's discretion (it cannot be mandatory) to reimburse the grantor for income tax paid on trust income. A tax reimbursement provision can add valuable flexibility and access to the grantor.

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Checklist of Differences to Integrate into SLATs - 1

- The following checklist is from Steiner and Shenkman, "Beware of the Reciprocal Trust Doctrine," Trusts & Estates magazine:
- Draft the trusts pursuant to different plans. A separate memorandum or portions of a memorandum dealing with each trust separately may support this.
- Don't put a husband and wife in the same economic position following the establishment of the two trusts. For example, the husband could create a trust for the benefit of his wife and issue, and the wife could create a trust for the benefit of her issue, in which her husband isn't a beneficiary. Or one spouse could be a beneficiary of the trust he creates, if the trust is formed in an asset protection jurisdiction such as Alaska, Delaware, Nevada or South Dakota, and the other spouse could create a trust in which he isn't a beneficiary (that is, a trust that's not a domestic asset protection trust).
- Use different distribution standards in each trust. For example, one trust could limit distributions to an ascertainable standard, while the other trust could be fully discretionary. However, limiting distributions to an ascertainable standard reduces flexibility may prevent decanting and may expose the trust assets to a beneficiary's creditors.

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Checklist of Differences to Integrate into SLATs - 2

- Use different trustees or co-trustees. If each spouse is a trustee of the trust the other spouse creates, add another trustee to one or both trusts. If adding another trustee to each trust, consider adding a different trustee for each trust and using different institutional trustees.
- Give one spouse a noncumulative “5 and 5” power, but not the other. This power permits the holder to withdraw up to the greater of $5,000 or 5 percent of the trust principal each year. The amount the powerholder could have withdrawn at the time of death is includible in his estate. However, the lapse of the power, not in excess of the greater of $5,000 or 5 percent of the trust assets each year, isn’t considered a release of the power includible in the powerholder’s estate[24] or a taxable gift. However, this power may expose assets of the trust to the powerholder’s creditors.
- As in *Levy* and PLR 9643013, give one spouse a special power of appointment, but not the other. However, the absence of a power of appointment reduces the flexibility of the trust. This might be viewed as particularly significant in light of the continued estate tax uncertainty.

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Checklist of Differences to Integrate into SLATs - 3

- Give one spouse the broadest possible special power of appointment[26] and the other spouse a special power of appointment exercisable only in favor of a narrower class of permissible appointees, such as issue, or issue and their spouses.
- Give one spouse a power of appointment exercisable both during lifetime and by will and the other spouse a power of appointment exercisable only by will.
- In the case of insurance trusts, include a marital deduction savings clause in one trust, but not the other. A marital deduction savings clause provides that if any property is included in the grantor’s estate because the grantor dies within three years after transferring a policy on his life to the trust, some or all of the proceeds of the policy is held in a qualified terminable interest property trust[28] or is payable to the surviving spouse outright. Alternatively, if each trust has a marital deduction savings clause, the provisions of the two could be different.

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Checklist of Differences to Integrate into SLATs - 4

- Create different vesting provisions for each trust. For example, the two trusts could mandate distributions at different ages, or in a state that has repealed or allows a transferor to elect out of the rule against perpetuities, one trust could be a perpetual dynasty trust. However, mandating distributions severely reduces the flexibility of the trust, throws the trust assets into the beneficiary’s estate for estate tax purposes and exposes the assets to the beneficiary’s creditors and spouses.
- Instead of mandating distributions, give the beneficiaries control or a different degree of control, at different ages. For example, the ages at which each child can become a trustee, have the right to remove and replace his co-trustee, and have a special power of appointment could be different in each trust.
- Vary the beneficiaries. For example, one spouse could create a trust for the spouse and issue, and the other spouse could create a trust just for the issue. Note that if, for example, the husband creates a trust for his wife and their first child, and the wife creates a trust for her husband and their second child, the gifts could still be viewed as reciprocal.

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Checklist of Differences to Integrate into SLATs - 5

- Create the trusts at different times. In *Lueders' Estate v. Commissioner*, a husband and wife each created a trust and gave the other the power to withdraw any or all of the trust assets. Inasmuch as the trusts were created 15 months' apart, the Third Circuit, in applying *Lehman*, held that there was no consideration or *quid pro quo* for the transfers. However, it should be noted that *Lueders* preceded *Grace*, in which, while the trusts were created two weeks apart, the Supreme Court held that the motive for creating the trusts wasn't relevant. If the difference in time is a factor post-*Grace*, a short time might be sufficient in light of *Holman v. Comm'r*, in which a gift of partnership interests six days after the formation of the partnership wasn't a step transaction. The closer we get to the end of 2012 and the possible end of the $5.12 million gift tax exempt amount, the more difficult it will be to interpose any meaningful time difference between the formation of the two trusts. Practitioners should also bear in mind that if the same transaction includes funding an LLC, then making gifts to the trusts that are to qualify for fractional interest or other discounts, they will be dealing with the challenge of two dating issues: the difference between the trusts, and the maturation period of assets in the LLC prior to gift or sale.

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Checklist of Differences to Integrate into SLATs - 6

- Contribute different assets to each trust, either as to the nature or the value of the assets. However, if the purpose is to contribute $5.12 million to each trust, it may not be feasible to contribute assets of different value, and in any event varying the value of the trust only serves to reduce the amount to which the reciprocal trust doctrine may apply. Contributing different assets may not negate the application of the reciprocal trust doctrine, since the assets in a trust may be susceptible to change over time. However, if one trust is funded with non-liquid assets, or assets subject to contractual restrictions on sale (e.g., operating agreement restrictions on transfer of interests in an LLC) that may be viewed as a more meaningful difference in assets that may not be susceptible to ready modification.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Improving Old/Existing Irrevocable Trusts

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Improving Old/Existing Irrevocable Trusts Generally

- State laws have evolved in recent years such that if a trust could be moved to a state with more advantageous laws, that alone might significantly improve the trust, SLAT or otherwise.
- Changing trustees to an institution (in a state with advantageous laws) may be the initial step in the process.
- A trust protector may have the power to change a number of characteristics of the trust, or to exert a variety of powers over the trust. These might include the right to terminate and replace the trustee and change governing law and situs.

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Improving Old/Existing Irrevocable Trusts - Example

- **Example**: An old irrevocable life insurance trust ("ILIT") terminates after the death of the second spouse and when the beneficiaries reach age 35. This provides very limited divorce or asset protection. The trusts are subject to income taxation in the settlor's home state. The Trust Protector terminates the home state trustee, names an institutional trustee in a state that may no longer be subject the trust to income tax in the home state (although this result is not assured), and which has laws that are more protective, including a liberal statute permitting decanting to modify the trust terms to continue the trust perpetually. The old ILIT is decanted into a modern SLAT.
- Caution: There are some commentators who raise a concern whether decanting, or even the power to do so express in the instrument, for a QSST holding S corporation stock might taint the ability to qualify since the new donee trust is not a permissible beneficiary. Is this a risk? What can be done? Will a non-judicial modification avoid that issue?

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Decant Old Trust into New Improved Trust

- An existing irrevocable trust can be merged into a new trust thereby changing many of the administrative aspects of the trust. This can be used to improve and enhance the benefits of an old ILIT, SLAT or other irrevocable trust.
- In a recent case the trustees of an irrevocable trust were permitted to merge an existing trust into a new trust. At the time the old trust was decanted the beneficiary had the current right to withdraw 75% of the trust principal and was in the midst of a divorce. These actions by the trustee might have facilitated the protection of those trust assets. Ferri v. Powell-Ferri, 476 Mass. 651 (2017).
- New York courts have also given a rather expansive view of a trustee's right to decant. Where the trustee had broad discretionary principal distribution authority the trustee was permitted to eliminate a beneficiary. Matter of Hoppenstein, NYLJ 1202783016744, Sur Ct, NY County 2017.

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Non-Judicial Modification to Improve Old Irrevocable Trust

- Delaware law enacted in 2016 permits seemingly unlimited modification to an irrevocable trust if the administration of the trust is governed by Delaware law. So for a trust administered elsewhere the trust protector may be able to move the trust to Delaware and have Delaware law govern the administration of the trust to take advantage of this power:
- "Notwithstanding any provision of law or a trust's governing instrument limiting or prohibiting amendment of the trust, an irrevocable trust may be modified to include any provision that could have been included in the governing instrument of a trust created upon the date of the modification upon written consent or written nonobjection of the trustor, all then serving fiduciaries and all beneficiaries even if the modification violates a material purpose of the trust." Del. C. Sec. 3342(a).
- If the grantor is alive and competent there is almost no limit to how an "irrevocable" trust can be changed.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Ancillary Planning to Enhance SLAT Benefits

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Combine SLATs with Entities

- Use family limited partnerships ("FLPs") and/or limited liability companies ("LLCs") to hold assets, e.g. any real estate property or business venture generally should be held in a separate LLC.
- Use separate entities for each operating business and real estate property. Segregate marketable securities in its own FLP or LLC.
- Entities may be manager managed to provide flexibility in management, even if held by a directed SLAT. Further, compensation for services of those serving may provide another mechanism for economic benefit to be distributed out of the SLAT structure.
- Entities are essential for a SLAT in a trust friendly jurisdiction to own real estate in a different state.

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FLP and LLC Basis Adjustment

- If the planning incorporates the use of a general power of appointment (GPOA) to garner an increase in tax basis, if trust assets include partnership or LLCs taxed as partnerships, practitioners should also consider the impact of the entity on achieving that planning goal.
- Review the provisions in partnership and operating agreements governing 754 basis adjustments. It might be advantageous to negotiate that the election must be made.
- The tax basis and fair market value of all FLP/LLC assets needs to be determined as of the date of the decedent's death to determine whether the 754 basis adjustment should be elected.
- For the FLP/LLC to adjust a member's basis on death, or any other event permitted under applicable tax law, there must be a basis for authorization of the election under Code Section §754 and §743 (b) to be made under the LLC operating agreement. If not, then state law must be analyzed for a basis to permit the adjustment to be made.

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SLATs at Backend of GRATs with Hybrid DAPT Provision

- For new GRATs create an irrevocable, non-GST, grantor trust to receive the backend of the GRAT. That receptacle irrevocable trust should own that remainder interest absolutely. Then, a GST exempt trust may buy back that remainder interest, effectively making the GRAT GST exempt.
- Consider using a SLAT/Hybrid DAPT to maximize access, both indirect (e.g. through the spouse) and direct (the hybrid DAPT provision is triggered).

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Power of Attorney Gift Provision

- Powell Case – be sure POA permits gifts to fund irrevocable trusts as appropriate.
- "Principal authorizes Agent to make gifts of up to Principal's remaining federal gift tax exemption amount so long as such gifts are made to the irrevocable trust specified below." Principal understands that any of the above amounts may be changed by legislation following the execution of this Gift Rider to Power of Attorney, and such changed or indexed amounts shall apply.
- Comment: use for clients with an existing SLAT or other irrevocable trust.

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Spousal Lifetime Access Trusts ("SLATs"): A Key Planning Tool

Conclusion and Additional Information

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Conclusion

- The tax law and planning environment are and likely always will be in a state of flux.
- SLATs provide a useful planning tool for many married couples to achieve a wide range of both tax and non-tax goals.
- Plan SLATs with flexibility.

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