

# SLATs Tailored to Serve Clients Worth \$1-10M

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**A KEY ESTATE  
PLANNING GUIDE**

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# **What is a SLAT?**

**Simple Explanation of  
Typical SLATs**



# What is a SLAT?

- Spousal Lifetime Access Trust = SLATs.
- Concept: Husband creates trust for wife and wife creates trust for husband. Each is a beneficiary of the other's trust.
- It is an irrevocable trust = cannot be changed (kinda).

# How are SLATs Typically Used?

**Illustration of Typical  
SLATs for Wealthy  
Clients**



# What is Typical Use of a SLAT? (not for Less Affluent Clients)

- A vehicle to move assets outside of the taxpayer/grantor's estate using the current high exemption which is scheduled to be cut in half in 2026. The key aspect of SLATs is by each spouse being a beneficiary of the other spouse's trust the couple can theoretically access the entirety of the assets even though those assets are removed from their estates.
- **Example No SLATs**: Couple has an estate worth \$40 million (relax, we'll make teach you how to make SLATs practical for many of your clients).. In 2026 the exemptions are cut in half, assume to \$6 million. Assume both die in 2027. Had the couple did nothing their \$40 million estate would be reduced by each of their \$6 million exemptions leaving \$28 million in taxable assets [ $\$40 \text{ million} - [\$6 \text{ million} \times 2]$ ]. At a 40% estate tax rate that is a tax of \$11.2 million.

# What is Typical Use of a SLAT? (not for the \$1-\$10M Client)

- **Example with SLATs:** The current estate, gift and GST tax exemption is \$12,060,000. Husband creates a trust for wife and descendants and gifts his full exemption to that trust. Wife creates a similar trust (see below on the reciprocal trust doctrine). The couple has moved about \$24 million of their \$40 million of assets outside their estates and have safeguarded their entire exemptions. In 2026 the exemption is reduced by half, but the couple is not affected because they already used and preserved their exemption. In 2027 the couple dies. The assets remaining in their estates are worth \$16 million [\$40 million - \$24 million gifted]. That is subject to a tax of \$6.4 million [\$16 million x 40%]. The SLATs saved the clients \$4.8 [\$11.2 million - \$6.4 million].
- Thus, ignoring growth and other facts the SLATs plan saved the couple nearly \$5 million. Using SLATs to secure exemption before a change in the law which was feared in 2020-2021 (which did not happen) or the reduction by half of the exemptions in 2026 has been a common planning step for those families with a net worth sufficient to justify this type of planning.

# Can This Typical Use of SLATs Be Adapted for Clients Worth \$1-10M?

- A key question is when, how and why this powerful and common planning technique can be marshalled to benefit clients with lower net worth, i.e., the \$1-10M net worth clients that comprise a large portion of the client base of many advisers.
- According to some studies a bit over \$1 million in net worth puts a client in the top 5% of net worth in the country. So, this webinar is tailored to how financial planners can help clients in the top 5% of wealth. The cap of \$10 million has been used as planning in this wealth range is different than for clients with the \$20-\$40 million and greater wealth level.



# Example of Adapting SLATs for Clients Worth \$1-10M?

- **Example**: Jane and John Smith are both physicians and worried about malpractice claims. They are in their early 40s, have a couple of young children and \$2 million of non-retirement savings. They are very concerned about malpractice risks. Their estate will likely grow in coming decades as their professional careers grow and mature. They have inadequate life insurance to protect themselves or their children. The term coverage they have is owned by them personally.
- The couple has no concerns about estate taxes now but acknowledges that their estate might grow so that in decades from now that might be an issue. Because that is so far into the future, they are not keen on spending much money on tax planning for that future risk.
- Jane's mother is in her 90s and not doing well. They help her out financially sending a check every month.

# Example of Adapting SLATs for Clients Worth \$1-10M?

- **Example Continued:**
- Under your guidance Jane and John create two non-reciprocal SLATs.
- The trusts are created in their home state to save money as compared to using a better state for asset protection purposes. But because of their significant worries over malpractice risks in the next few years as their incomes grow Jane's trust will be moved to Nevada and John's to Alaska.
- Their uncle is named trust protector and give the right to move each trust to a new state, change the governing law for each trust and appoint a new trustee.
- Since a primary goal of the Smith's is to have sufficient assets in retirement many ways to access funds in the trust are created. The trusts include loan provisions, tax reimbursement clauses, the ability to appoint charitable beneficiaries and other means of access since the Smith's may need access to trust assets in their retirement. Jane's trust has a hybrid DAPT provision and John's a SPAT provision. Those additional means of access, especially to address the risk of premature death, are greatly appreciated by the Smiths. They understand that these provisions cannot be used until the trusts are moved to better jurisdictions.

# Example of Adapting SLATs for Clients Worth \$1-10M?

- **Example Continued:**
- Jane's mother is given a general power of appointment over each trust. On her passing the investment assets you have helped them grow will be included in her mother's estate and get basis step up. That will eliminate all capital gains on their entire non-qualified plan investment portfolio.
- You provide financial forecasts, and insurance analysis and all the review necessary to support the plan.
- Each SLAT includes a separate insurance trustee (Jane's cousin in her SLAT, and John's nephew in his) and insurance provisions. Each trust buys life insurance to create the plan that you determine protects all of their interests.
- You review and help each of Jane and John obtain more appropriate disability coverage than the meager policies provided at their practices.
- Jane gifts \$500,000 to her SLAT. John gift \$650,000 to his SLAT. They will each make gifts in each future year as their income rises and you help document that they can afford to do so.

# Example of Adapting SLATs for Clients Worth \$1-10M?

- **Example Continued:**
- Jane and John now have a valuable asset protection plan that will grow as their wealth grows. Even though their estate tax concerns were at best lukewarm they appreciate that the wealth growing in their SLATs will be protected from estate taxation if they can grow their estates to that point (and recognizing the risks of unknown future tax law changes).
- Jane and John needed insurance trusts and a more robust life insurance plan and now they have that. But unlike their family and colleagues that complain about the complexity and hassle of annual gifts and those “Crummey” powers, Jane and John will never have to worry about annual hassles to fund their insurance trust as there is plenty of money in their SLATs.
- Jane and John had discussed setting up trusts for their children after they completed funding 529 plans. Now they don’t have to do that.
- The income tax savings on Jane’s mother’s passing will be significant and pay for the plan many times over.

# **Why SLATs are and will Remain An Estate Planning Tool of Choice for Wealthy Clients**

## **Typical Application of SLATs**



# Why SLATs are and will be the Hot Ticket

- Many wealthy clients sought to secure estate tax exemption in 2020-2021 (and even into 2022) because of the numerous harsh Democrat estate tax proposals.
- While it seems doubtful any of those will be enacted, but President Biden's Greenbook is a strategic restatement of many of those provisions. Further, Janet Yellin announced that Treasury will use its Regulatory authority to impose restrictions on grantor trusts. Some clients might pursue planning because of these risks (but perhaps not many).
- In 2026 the gift, estate and GST exemption will be cut in half under current law (no change required in Washington). As a result, wealthy clients who have not used up as much exemption as they can, will try to use exemption to secure it before it is cut.
- For married couples, the most common planning technique used in 2020-2021 was SLATs. As the 2026 elimination of the bonus exemption approaches, SLATs will again be a tool of choice for what may be another planning tidal wave.

# Why SLATs Are the Technique of Choice for Wealthy Couples

- SLATs are the tool of choice for wealthy married couples (and many single people who do SLATs with Siblings or others) because if each spouse contributes assets to a SLAT naming the other spouse as beneficiary the couple supposedly can:
  - 1. Remove assets from their taxable estate.
  - 2. Secure their temporary or bonus exemption before it drops in 2026.
  - 3. Each spouse is a beneficiary of the other spouse's trust so that the couple has access to all the assets they have transferred.
  - 4. The assets in each trust should be protected from claimants and creditors.
- That is the simplistic SLAT pitch, but that is not the full story, nor fully correct. The reality is that there are a many details involved to structuring the plan, drafting the trust, options to “typical” SLATs, funding the SLATs, administration of the SLATs, and more.
- The real concern for most advisers is how this technique can be adapted and used to help clients in a \$1-\$10M wealth range.

# **Why SLATs Can and Should be a Planning Tool for Clients Worth \$1 - \$10 Million Net Worth Clients**

**Why Advisers Should Consider SLAT Variations for These Clients**





# SLAT Benefits for \$1-\$10M Clients

- #1: Estate tax uncertainty and growth of the estate.
  - Reality is that clients worth \$2M may never have to worry about the estate tax (but that doesn't mean SLATs may not be helpful).
  - But consider a client worth between \$5-10M. What is their projected net worth at age 90 or 95? How might that compare to the estate tax exemption then? (Hint – unless you have a Ouija Board, you'll never know the answer tax laws change frequently).
  - For many of these clients the possible estate tax savings may not alone justify SLAT planning but read on. If several of the six possible benefits are meaningful, the potential estate tax benefits, may just help encourage the client to act.
  - If estate tax planning might be worthwhile, creating one or two SLATs (i.e., one or both spouses) and structuring the trust (mostly in the attorney's purview) and transferring assets in a manner that supports the trust assets being outside their estate, will be necessary. [There are key roles the adviser can fulfil in supporting the intended estate tax benefits.](#)

# SLAT Benefits for \$1-\$10M Clients

- #2: Income tax benefits of a SLANT.
  - Most SLATs are structured to be “grantor” trusts. These are trusts that are ignored for income tax purposes (but respected for estate tax purposes). This means that the income of the typical SLAT is all taxed on the client/settlor/grantor’s income tax return. But it doesn’t have to be so.
  - A SLAT can be structured as a **Non-Grantor trust**. This is also referred to as a “**complex trust**.” Why might that be a good thing?
  - A Key (but not only) point of a grantor trust is that the client’s paying the income tax on trust income further reduces the client's estate for estate tax purposes (this is called “tax burn”). That could be a huge benefit for very wealthy clients **but of no benefit, and in fact a financial nuisance, for the \$1-\$10M client**. But the income tax savings of a non-grantor trust might be valuable. A non-grantor trust that is discretionary (e.g., an independent trustee can pay income to any beneficiary it chooses) can provide state and federal income tax savings. The trustee can distribute funds and hence income to a beneficiary in a no-tax state, saving state income tax (or the trust can be formed in a no-tax state and perhaps avoid the client’s high home state income tax).

# SLAT Benefits for \$1-\$10M Clients

- #2: Income tax benefits of a SLANT.
  - The trustee can distribute income to a beneficiary with low income and a lower tax bracket, or who might have tax losses to offset trust income, etc.
  - Note if you are going to suggest a Spousal Lifetime Access Non-Grantor Trust (“SLANT”) be sure that the lawyer knows how to draft such a trust and that the client is comfortable with the requirements. Specifically, in a SLANT a distribution to the spouse beneficiary requires the approval of a “adverse party” (a technical tax term). If the trust beneficiaries are the spouse and all descendants, and adult child may qualify as adverse. While that might be palatable in some instances, in a second, third or later marriage, or if the children are estranged, the mechanism might not be acceptable.
  - Non-Grantor trusts must be specifically drafted and administered in a manner that avoids grantor trust taint. That means no life insurance in the trust on the client/settlor’s life, no power to loan trust assets to the client/settlor, etc. This limits access to the trust and is a tricky endeavor. But it can be worthwhile.

# SLAT Benefits for \$1-\$10M Clients

- #3: Asset Protection.
  - Most clients want some asset protection. That is why they use LLCs to own rental real estate or business interests and buy excess liability (umbrella) insurance policies. But a SLAT plan can do more to protect assets.
  - While the first type of client that comes to mind are physician clients who almost universally worry about malpractice claims, the litigious nature of our society makes asset protection important for many clients. Business owners, lawyers, those serving on charitable boards, and anyone with wealth, should undertake asset protection planning.
  - Wealthy clients can afford to give assets away, the \$2-\$10M generally cannot do so. That is why SLATs are so useful. Assets may be given away to the SLATs, remain outside of the client's estate and the reach of creditors, but the clients can, within limits, have access to the assets transferred to the SLATs. That is a win-win making the asset protection benefits of SLATs potentially more important to this wealth strata of clients.

# SLAT Benefits for \$1-\$10M Clients

- #4: Protecting Aging and Infirm Clients.
  - Clients for a variety of reasons might appreciate the security, management and control mechanisms that can be integrated into SLAT planning. As clients age, protection becomes essential.
  - A trust protector can be added to the trust document. This can be an independent person who has a supervisory position over the trustee and other aspects of the trust. This can be a valuable protection for aging/infirm clients as it can provide a check and balance on a trustee, and can change situs and governing law to enhance asset protection, etc.
  - Note that if an institutional trustee is used a purely administrative trust company can be used to obtain those benefits so that your relationship to the client and in as to managing investment assets, does not have to be affected.
  - There is a veritable smorgasbord of mechanisms that can be built into a SLAT to achieve a variety of protective measures (and most of these can be built into a revocable trust as well, like the trust protector).

# SLAT Benefits for \$1-\$10M Clients

- #5: Flexible/Robust SLATs can eliminate the need for other trusts.
  - A flexible and robust SLAT might eliminate the need for the client to have other trusts thereby simplifying the client's estate planning. This is especially important for clients in the \$1-
  - A SLAT can with little modification serve as an insurance trust. In fact, a valuable planning opportunity for many clients is to merge (decant) old insurance trusts into more robust and modern SLATs. If decanting isn't viable the old insurance trust might sell policies to the new SLAT. If a decanting is done consider a late allocation of GST exemption by the client's CPA.
  - A SLAT can serve as an asset protection trust.
  - There may be no need for inter-vivos (while alive) trusts for children or grandchildren as all that can be accomplished with a robust SLAT (this does not mean wills/revocable trusts should not include trusts for heirs).
  - SLATs can be dynasty trusts and eliminate the need for that type of planning.

# **Modify “Typical” SLAT Planning for Clients in the \$1- \$10 Million Wealth Range**

**Some Creative Tailoring Can  
Enable Lower Wealth Clients  
to Benefit from this Valuable  
Technique**

# SLATs for \$1-\$10M Clients Are Different from “Typical” SLATs

- Tailoring robust flexible SLATs for clients in this wealth strata is not that common.
- Cost is an obvious factor. Lawyers using document generation software can create robust and flexible SLATs tailored to the specific moderate wealth client very efficiently.
- Home state versus DAPT jurisdiction (19 states e.g. AK, NV, SD, DE) have legislation permitting self settled trusts. Set up the SLAT in the client’s home state but provide a mechanism to move the trust later if advisable.
- Financial forecasts, insurance reviews, etc. are advisable for all SLATs but perhaps more necessary for lower wealth clients.



# SLATs for \$1-\$10M Clients Are Different from “Typical” SLATs

- Use individual trustees for now but include a mechanism to change to an institutional trustee later.
- Include an insurance trustee and insurance provisions in all SLATs for moderate wealth clients to add flexibility.
- Consider whether creating and funding one or two SLATs is preferable. For clients in a \$15-40M wealth range it might be best to fund one SLAT for estate tax planning purposes but that is not the driver for the \$1-\$10M client so the analysis is different.
- Consider the benefits of a non-grantor SLAT or “SLANT” to gain state or federal income tax advantages.
- Consider a general power of appointment in favor of an elderly or infirm family member with a small estate to get an income tax basis step up.

# **General SLAT Planning Applicable to All Clients**

**Reciprocal Trust Doctrine;  
Refuting Implied  
Agreements; Proper  
Administration; and More**

# To Be Respected SLATs Should Be Economically Viable

- To have a SLAT succeed in the goal of removing assets from the client's estate the SLAT plan must be formulated reasonably and **administered properly**. It is not enough just to draft a technically sufficient trust document.
- The **economics** of the SLATs must make sense to deflect a challenge by the IRS that there was an **implied agreement** with the trustee (especially a family trustee, so use an institutional trustee) to make distributions. Similarly, if the economics are not reasonable a creditor may be more apt to (or more successful at) challenging the transaction as constituting a fraudulent conveyance.
- The solution may include **financial forecasts**, appropriate **insurance** coverage (see comments later), etc.
- A critical issue is what **assumptions** to use in the forecasts to support the reasonableness of asset transfers? If you use excessively conservative assumptions (e.g., high inflation on costs, lower investment returns, higher budget numbers) your zeal to be conservative may unreasonably depress the value of assets that some clients may be able to transfer to their SLAT plan.

# To Be Respected SLATs Should Be Economically Viable

- It should not be necessary to use the same assumptions on funding a SLAT that would be used to evaluate whether the client is on target to meet retirement or other goals.
- Here's what we include in client memorandum for SLATs: "Forecasts should be used to support and determine the values given to each trust. You should address this with your CPA and/or wealth adviser. Assets should not be transferred to the trusts that will likely be needed to support your lifestyle. Assets should not be transferred to the trusts that will likely be needed to support your lifestyle. Your wealth adviser should assist with this, we cannot."
- **The advisor's role in backstopping SLAT planning is critical at every wealth level. Your proactive involvement may protect the client realizing their goals.**

# How To Structure and Draft a SLAT Plan to Succeed

- To accomplish the goal of removing assets from the client's estate the SLAT plan must be done properly and the documentation must be sufficient.
- 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 (checklist follows). Consider different assets in each SLAT supported by different investment policy statements for each. Have different insurance coverage held in each SLAT.

# Watch Inter-Spousal Gifts Before SLAT Funding

- If the clients have a joint account which is to be divided do so well in advance of the funding the SLATs.
- Consider a [gift letter](#) between spouses. Example, if a joint account is used have one spouse relinquish interests in the assets given/taken by the other spouse.
- Reporting the transfers between spouses as on a [gift tax return](#).
- Let [time](#) pass after spouse 1 gifts spouse 2 assets before spouse 2 funds a SLAT. The more time the better. Also, if there can be independent economic events while spouse 2 holds the assets (asset allocation changes and new IPS; new operating agreement with different terms and implications for entity interests), etc. Watch the issues that arose in the Smaldino case.
- Address a transmutation if necessary to break community property status for any assets so affected.
- All of this should consider the [step-transaction issues](#) as well as reciprocal trust doctrine issues.

# Make Sure Clients Understand that Differences in Each SLAT are Real

- “What constitutes sufficient differences to deflect a reciprocal trust challenge is not clear. Therefore, there can be no assurance that the differences in the trust instruments and plan will suffice for this purpose. Critical to consider is that the differences lawyers put into each SLAT have real economic consequences.
- Advisers need to understand some of these differences when planning for their clients.
- The efforts made to differentiate irrevocable trusts to reduce the risk of the application of the reciprocal trust doctrine in several instances have **substantive economic and legal implications**. These provisions reduce the access to a particular trust to less than it might otherwise be. These limitations, e.g., the use of a health, education, maintenance and support (“HEMS”) distribution standard in one trust (and a “Comfort and welfare” standard with an independent trustee in the 2<sup>nd</sup> spouse’s trust) have real economic consequences.

# Consider Income Tax Planning Too

- A goal of the SLAT plan is to remove assets from the client's estate. But consider other tax planning matters as well.
- Historically, estate tax minimization has been a cornerstone of planning and it should remain important, even considering substantial uncertainty, or even in the event of estate tax repeal (and states likely will not repeal theirs). SLATs can be **drafted 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 both spouses, SLATs can provide flexibility to **allocate income among a class of beneficiaries to those in lower state, 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**.



# Consider Impact of SLAT on Tax Basis (No Step-Up)

- Caution clients about possible loss of basis step up if the SLAT plan succeeds in moving assets outside the client's estate.
- 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. Consider the impact of eliminating capital gains on your client's portfolio in the next few years! This alone might justify the SLAT plan for a moderate wealth client.**
  - 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.

# SLAT – Life Insurance/ILIT

- For clients wishing to remove SLAT assets from their estate the same trust and same assets, with a modicum of planning, can [serve double duty as an ILIT](#). Just watch out for the investment trustee/insurance trustee functions.
- 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. In the event of a spouse beneficiary's premature death, the surviving spouse can be protected by having the other spouse's SLAT(n which the survivor is a beneficiary) hold life insurance. This will be explored further below.
- Life insurance cash values will grow tax-free, and the eventual death benefit won't be subject to either income tax or transfer taxes.
- Consider the benefits of [combining old-style ILITs into a SLAT](#). This can be done by a late allocation of GST exemption to the old ILIT then decanting or selling insurance to the SLAT and then liquidating the ILIT.

# Administer: Swap/Substitution Powers

- Swap or substitution powers are common. So is misapplication of such provisions. That may undermine the estate and asset protection goals of the SLAT.
- In a grantor trust [periodically review the swap power and evaluate options to using it.](#)
- 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. 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. [Financial advisers should monitor appreciation of marketable securities inside a trust and assets outside a SLAT, especially for older or ill clients, and determine if a swap is advisable. Who can monitor appreciation of private equity to facilitate a timely swap?](#)

# Tax Reimbursement Clause

- Consider CCA 202353018 where the IRS held there is a gift by remainder beneficiaries if a trust is modified with beneficiary consent or non-objection to add a tax reimbursement clause. So, it may, considering that CCA, be prudent to err on the side of including a tax reimbursement clause from inception to avoid this issue.

# **Maximizing Access to SLATs Especially for Lower Wealth Clients**

**“Standard” SLATs  
May Not Provide What  
Your Client Needs**

# Access is Key for Most Clients

- Do clients have sufficient access to assets in their irrevocable trusts to be comfortable? Have they considered this factoring in market volatility, recession risks, and other “what ifs”? Estate planning and asset protection attorneys may not have quantified (or even addressed) these issues, but advisers can and should do so ideally before the funding, but if not as soon as possible thereafter.
- This should be done even after the fact, to identify potential financial and/or insurance gaps in the plan that should be addressed proactively before those issues become acute.
- Evaluate SLATs/ILITs to determine if adequate access was provided. If not, consider trust protector action, decanting, non-judicial modification, or other steps to enhance access.

# Review Broad Insurance Plan to Backstop All SLATs

- Many SLAT plans are done in haste and without the comprehensive planning that is essential for clients:
- **Disability coverage** – review coverage for those with meaningful work expectancy left that transferred significant resources to irrevocable trusts.
- **Long term care coverage** – review coverage for those who transferred significant wealth to trusts and might be more comfortable knowing they have a plan in place to address care costs.
- **Life insurance** – to address gaps in SLAT planning (e.g., premature death), and to build a hedge against market volatility.
- Evaluate the financial risks of the plan and how insurance may help will help the client understand the plan and see options to address financial risks.
- This may also protect the advisers who should appreciate these steps to not only protect the client, but which may also help protect the advisers from later claims but the client if they grow dissatisfied with the plan.

# Beneficiaries

- Encourage clients to consider including a **broad class of beneficiaries** in SLATs, not just the spouse.
- More beneficiaries means more **flexibility for future income tax planning** and a more robust SLAT. 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.
- 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.
- Should “**floating spouse**” clauses be used for flexibility? While this may be worrisome to the existing spouse (**if we divorce, I lose access but remain taxable on the grantor trust income**) it is an important option to help the donor/settlor spouse have an additional means to access trust assets if the current spouse dies and the donor/settlor spouse loses the indirect access to the SLAT. Consider a floating spouse clause only in event of death but not in the event of divorce of the current spouse.
- Definition of “Spouse.” For purposes of this Agreement, any reference to my Spouse shall mean my current spouse Jane Doe, 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.



# Access: Permit Adding/Including Charitable Beneficiaries

- Being able to benefit charities may provide an indirect benefit to the settlor/donor but do not let the trust pay/discharge any charitable pledges of settlor/donor.
- Suggest that the attorney include 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 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.

# Access: Permit Adding/Including Charitable Beneficiaries

- 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?

# Access: Provision to Make Loans

- Access is vital. If you cannot be a beneficiary of your SLAT **being able to borrow funds from the SLAT without security may provide a valuable means of access if your spouse dies prematurely.**
- 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?

# Sample Loan Provision

I appoint John Smith 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.

# Access: Death of First Spouse

- IN a SLAT indirect access can be obtained for the settlor/donor spouse through the beneficiary spouse, but death (or divorce) cuts off that access.
- A non-grantor SLAT (a spousal lifetime access non-grantor trust or “SLANT”) can permit distributions to a spouse with consent of an adverse party. But it cannot include the powers to benefit the donor spouse after the death of the beneficiary spouse as those powers would taint the trust as grantor.
- Must consider risks of death of first spouse in a SLAT or SLANT. The economics of all of this may have changed from when the trust was funded. Has this been reviewed?
- In a Grantor SLAT consider whether the following have been provided:
  - Loan provisions
  - Hybrid DAPT
  - SPAT – special power of appointment trust

# Access: DAPT

- Many irrevocable trusts plans for couples merely use non-reciprocal SLATs but broader access can be given to trust assets with additional techniques. Also , mixing the techniques can further differentiate the trusts for purposes of the reciprocal trust doctrine. One such option is a **DAPT**, another is a so-called “**hybrid-DAPT**.” A Domestic Asset Protection Trust (“DAPT”) is a trust in which the settlor is also named as a beneficiary. This type of trust must be created in one of the 19 Jurisdictions that permit self-settled trusts.
- With a DAPT access is at the discretion of the independent trustee (consider using an institutional trustee in the DAPT jurisdiction) so that the settlor/donor has access in the event of the death or divorce from the spouse/beneficiary. That would seem to secure the settlor/donor spouse financially. But there is another significant potential benefit. **If one spouse creates a SLAT and the other a DAPT, that would seem to further differentiate the two trusts** in a material manner that is safer than any two SLATs could be.

# Access: DAPT

- Some practitioners are concerned over DAPTs. However, since Alaska enacted the first DAPT statute in 1998 the number of DAPT jurisdictions has expanded to 19 which is quite significant. Further, while a few cases (Mortensen, Klabacka, etc.) have held against DAPTs each of those has been a bad fact case with issues of fraudulent conveyances. For those that remain concerned, the use of a hybrid-DAPT may feel safer. In a hybrid-DAPT the settlor/donor is not listed as a beneficiary but is among the class of persons who a non-fiduciary powerholder can add as a beneficiary.
- Is such a provision included? Is the trust in a DAPT jurisdiction? If not should it be moved? Certainly before adding the settlor back as a beneficiary.
- If the trust is formed and administered in one of the 19 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.

# Access: Hybrid DAPT

- There is an alternate or variation of a 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.



# Access: Hybrid DAPT Provision - 1

- Did the trust grant 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.
- Sample Provision:

## **Power to Designate Additional Beneficiaries**

- The Grantor appoints Jane Doe 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...

# Access: 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 the above person is unable to serve, the successor Designator shall be such individual (other than the Grantor, any person acting as a Trustee or fiduciary under this instrument) whom the above person shall have designated by an instrument in writing. Any person other than the above person acting as a Designator hereunder shall also have the power to name such additional beneficiaries as hereinabove provided.

# Access: 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 out of NY in which a person holding a hybrid-DAPT power in a fiduciary capacity was deemed to have exercised the power so that the state could reach assets for Medicaid.

# Access: SPATs

- Another variation to the DAPT or hybrid-DAPT that some commentators have suggested is a [Special Power of Appointment Trust or “SPAT.”](#) As with the DAPT comment above, using a SPAT does the double duty of giving more access to the settlor/donor to a trust and also differentiates that trust from a more traditional SLAT. Thus, using a combination of one SLAT, DAPT, SPAT, Hybrid DAPT for one spouse, and a different variant for the other spouse, may be preferable for avoiding the reciprocal trust doctrine than using two “traditional” SLATs.
- SPAT provisions can be integrated into the SLAT format to address risk of the settlor’s spouse’s premature death.
- A SPAT mechanism give someone, in a non-fiduciary capacity, 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)

# Grantor SLATs: Summary of 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.

# SLATs: Summary of 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.

# **Using SLATs To Protect Client's Assets**

**Get the Team Involved:  
Forecasts, Insurance,  
Due Diligence and More**



# Asset Protection With SLATs

- 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, could also 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.
- 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.
- For lower wealth clients you might create the trust in the client's home state and permit a trust protector to change trustees, situs and governing law. That may keep the costs lower today but permit the SLAT to benefit from better protection later.



# Asset Protection With SLATs for Moderate Wealth Clients in the Wealth Accumulation Phase

- For more moderate wealth clients that may have some concern about asset protection, but where that concern will grow in the future, creating the SLAT today and funding as they can in the future may be ideal.
- 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 until a 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.
- For clients who are still in a wealth accumulation phase of planning the above approach may be necessary to carrying out the planning, but it is also a flexible way to make this more advanced planning tailored to such clients. Fund the SLAT today. In each year, with use updated financial modeling to determine and support what might be gifted to the SLAT.

# Bolstering Asset Protection Benefits of a SLAT Plan

- A well-done SLAT plan will incorporate several steps that may help secure the tax objectives, but which will also help secure the asset protection benefits. These might include:
  - Internet searches on the client and any significant businesses the client may be involved in, to document that no significant issues exist.
  - Economic projections (Monte Carlo simulations) of anticipated results to demonstrate that the transferor has adequate resources after the transfer.
  - Lien and judgement searches. Consider hiring a consulting firm (e.g., a CPA firm that does forensic work) that routinely prepares reports evaluating the status of clients.
  - Having the transferor sign an affidavit of solvency regardless of whether one is required by law (which is the case for self-settled trusts in some jurisdictions).
  - Place the trust in a “trust friendly” jurisdiction. Or create a mechanism to move it later when that is affordable.
  - Name an institutional trustee. This can be a pure administrative trustee that does not complete with the financial adviser. Institutional trustees bring professional management and independence which can be a tremendous backstop to client plans to protect assets in trusts.

# **SLATs: Today's Hottest Estate Planning Technique Tailored to Serve Planner Clients Worth \$1-10M**

**Conclusion and  
Additional  
Information**



# Conclusion

- SLATs are a commonly used technique for wealthier clients. With a bit of creativity and tailoring SLATs can be a powerful tool for clients of much more moderate wealth to provide, asset protection, serve the needs of other trust plans (e.g., insurance trust), provide income tax planning benefits, protect aging clients, and more.
- 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.
- Consider enhancements like DAPTs, SPATs, loan provisions, charitable beneficiaries, and more.
- Administer trusts properly.

# Additional information

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