

TRUST AND ESTATE SERVICES

The Spousal Lifetime Access Trust



Trusts can be extremely effective estate planning tools as part of your overall plan. We've managed trusts for families that span multiple generations, providing trusted fiduciary oversight and skilled administration.

Why do I need a spousal lifetime access trust?

There are many types of trusts that can be used for estate planning and gifting purposes depending on your family's unique situation. One solution that can be effective for many families is a spousal lifetime access trust (SLAT), which is an irrevocable trust created by one spouse (the grantor) that names the other spouse as a permitted beneficiary, along with other family members, usually children and/or grandchildren. A SLAT permits a grantor to take advantage of some or all of the lifetime gift exemption from the federal estate tax while still making provisions for a spouse.

How does the SLAT work?

The grantor spouse uses a portion of his or her lifetime gift tax exemption to make an irrevocable gift to the SLAT. The grantor's spouse is named as a current beneficiary. Children and grandchildren may also be named as current beneficiaries, or they may only benefit after the beneficiary spouse passes away. The beneficiary spouse may receive income and principal without causing the trust to be included in either the grantor's or spouse's estates. If the grantor spouse allocated his or her generation-skipping transfer (GST) tax exemption to the trust, a SLAT can last for as long as makes sense for a family—even continue on for multiple generations—free not only from the estate tax, but from the GST tax as well.

In planning a SLAT, spouses need to be aware that when the beneficiary spouse dies, the grantor spouse will no longer have any access to indirect distributions from the trust. But unlike a marital trust for the benefit of a spouse, the SLAT will not be treated as part of the beneficiary spouse's estate on his or her death. Keep in mind that in the event of divorce, the grantor spouse would be cut off from indirect distributions, and potentially continue to support the estranged beneficiary spouse if not drafted correctly.

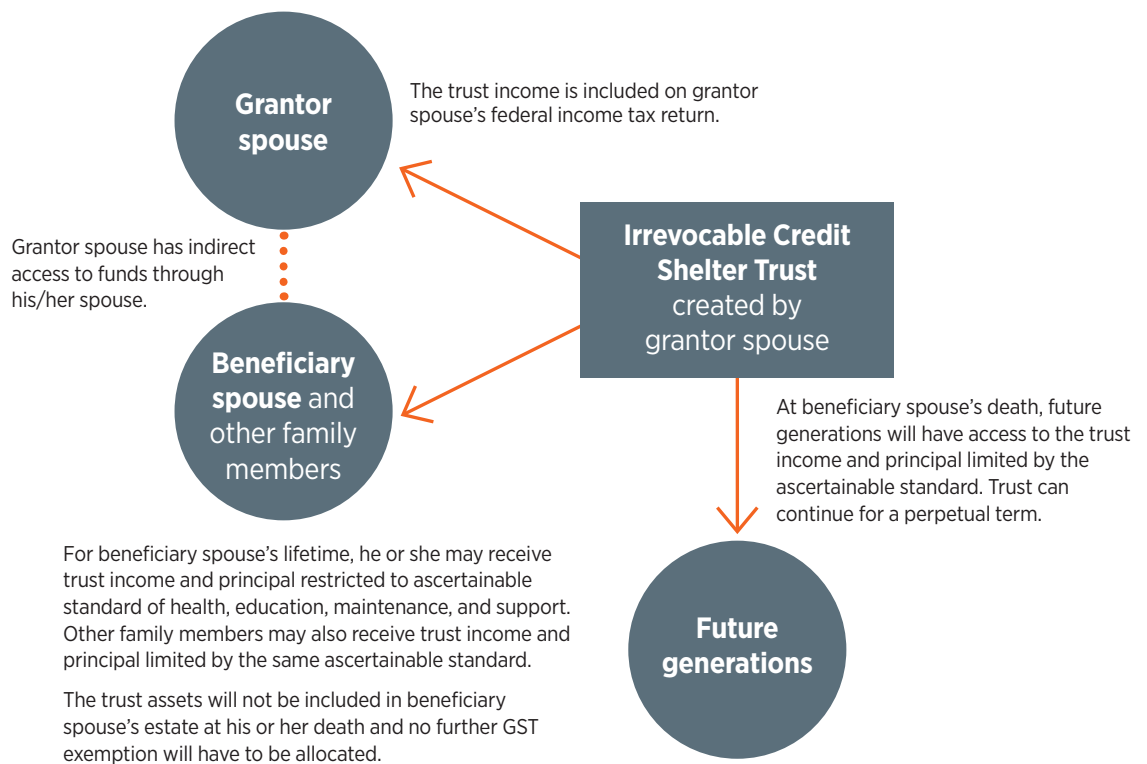
A SLAT can be funded with investment assets, business assets, life insurance, or even real estate, such as rental property or a vacation home. Typically real estate is held in a Limited Liability Company (LLC), with the trust holding some or all of the LLC shares. If closely held business assets will be gifted to a trust, it can often make sense to restructure the business prior to making the gift, so that voting control can remain with the grantor and nonvoting stock can be used to fund the trust.

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Structuring a SLAT

A SLAT may be structured as either a grantor or non-grantor trust for federal income tax purposes. The benefit of structuring it as a grantor trust is that the income and gains generated by the trust will be reported on the grantor spouse's federal income tax return, allowing the trust to grow without being reduced by federal income taxes. The payment of taxes is not considered a gift for gift tax purposes. An added value of making the SLAT a grantor trust is that it will allow the grantor to substitute assets inside the trust, as a way to add in flexibility to manage income tax basis.

The grantor spouse may want to provide the beneficiary spouse with a testamentary limited power of appointment. This power would give the beneficiary spouse the option to allocate remaining trust assets to a limited class of recipients, usually children and grandchildren. This provides additional flexibility to adjust the trust once the needs of future generations are better understood.



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Key terms

Grantor: The person who creates a trust and who determines what property to include and who the beneficiaries will be.

Spousal lifetime access trust: An irrevocable trust created by one spouse (the grantor) that names the other spouse as a permitted beneficiary, along with children and/or grandchildren.

In deciding what to give to a trust, families need to consider:

- How much income is currently derived from the assets?
- Which assets are likely to appreciate most in value for the long-term benefit of the family?
- Which assets would be preferable to keep in the grantor's estate so that his or her heirs will inherit a full fair market value basis at death (by contrast, assets given during life keep the grantor's basis so that the recipient may have income tax from a future sale of the gifted asset)?
- How much income and assets need to be retained to continue the current lifestyle?

Important information to know: Beware reciprocal trusts

In some circumstances, each spouse may wish to create a SLAT benefiting the other spouse. Such trusts need very careful drafting, and must be sufficiently different from each other to avoid treatment as "reciprocal trusts," which result in the assets being taxed to the grantor's estate after all.

The Wilmington Trust difference

As skilled fiduciaries, we have considerable experience administering many types of trusts. We work closely with you, as the grantor of the trust, as well as with your beneficiaries to provide personal and attentive service.

Please contact us if you would like to learn more about the features and benefits of a spousal lifetime access trust.

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