What is a spousal lifetime access trust (SLAT) and how can it help you?

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With the scheduled reduction of the federal estate and gift tax exemption in 2026, you might be looking for opportunities to use some or all of your exemption to reduce the size of your taxable estate without immediately passing assets to the next generation. Using a spousal lifetime access trust (commonly referred to as a SLAT) allows you to make a gift to your spouse that may mitigate future estate taxes.

What is a SLAT and how does it work?

A SLAT is an irrevocable trust created by you (the grantor) for the benefit of your spouse during their lifetime. As the grantor of the trust, you intentionally use some or all of your gift tax exemption when making a gift to the trust. If properly structured and administered, the SLAT's assets could be excluded from your taxable estate.

The SLAT's assets can then be used by your spouse or other named beneficiaries of the trust according to its terms. As the grantor, you cannot directly benefit from the trust, or the assets could be counted as part of your estate when you pass away.

Why are SLATs a popular topic right now?

Historical, current and scheduled federal estate and gift tax exemption amounts*

Year	Exemption amount	Maximum tax rate
2003	$1,000,000	49%
2008	$2,000,000	45%
2013	$5,250,000	40%
2018	$11,180,000	40%
2024	**$13,610,000**	**40%**
2026**	Approx. $6,500,000	40%

SLATs are currently popular because of future scheduled changes to the federal estate and gift tax exemption. Unless new legislation is passed, the federal estate and gift tax exemption will be reduced by half at the beginning of 2026.** Creating and funding a SLAT allows you to take advantage of the existing exemption, which could result in transferring a larger amount of assets outside your taxable estate than if you waited until after the exemption decreases. The IRS has indicated that gifts you make today that are less than the current exemption will not create additional estate tax liability upon your passing, even if they are greater than the exemption in the year you die.

Who might benefit from a SLAT?

- Married couples whose primary estate goals include passing assets to individual beneficiaries in a tax-efficient manner and are willing to relinquish control and benefit of gifted assets
- Couples who have a net worth or anticipated net worth greater than their combined federal estate and gift tax exemption

* This report generally covers only federal estate tax law. Many states have their own estate or inheritance taxes. Work with your estate-planning attorney to determine whether you need to address state tax liabilities.

** The expansion of the federal estate and gift tax exemption under the Tax Cuts and Jobs Act of 2017 is scheduled to sunset after 2025, thereafter reverting to $5 million as adjusted for inflation from 2012. It is possible that legislative changes could occur ahead of the scheduled sunset that would alter the exemption amounts and/or tax rates.

Key considerations when using a SLAT

Cash flow and spending needs — Because gifting assets to a SLAT is an irrevocable action, it is essential to evaluate whether you will have enough assets to meet your needs without accessing gifted funds. Some individuals choose to have each spouse create a trust to ensure both spouses have adequate funds. A key consideration is whether each of you will have adequate resources for your current and future needs without relying on the assets you gift to your trust.

Reciprocal trust doctrine — If you and your spouse both create SLATs that have substantially identical terms, you might violate the reciprocal trust doctrine. This violation could cause the SLAT's assets to be includible in your taxable estate. An experienced estate-planning attorney can help avoid violation of the doctrine by creating trusts that differ in some of the following ways: types of assets, distribution terms, trustees, powers of appointment, beneficiaries and/or execution dates.

Potential tax implications — By removing assets from your taxable estate, SLATs also remove the appreciation of those assets from your taxable estate. And because SLATs are generally treated as grantor trusts for tax purposes, you could continue to pay any income tax liability associated with the gifted assets at your applicable tax rates. Paying taxes on the gifted assets could further decrease your taxable estate without making additional taxable gifts. Your estate-planning attorney can more fully explain how grantor trusts work, your responsibilities as the grantor and the powers retained by the grantor to create the tax status.

Death of a spouse — Upon the death of your spouse, the assets of the SLAT will pass to the next group of beneficiaries, meaning expenses that your spouse may have been paying will now be your sole responsibility. If the death occurs earlier than anticipated, it will impact your savings, cash flow and spending plans.

Divorce — The possibility of a future divorce between you and your spouse is a complex issue best addressed with an estate-planning attorney. Assets gifted to a SLAT are transferred to an irrevocable trust and are unlikely to be considered as a marital asset. Your spouse might still be able to benefit from their use even after a divorce.

No step up in cost basis — Assets that are gifted during your lifetime keep your cost basis, so the assets you gift to a SLAT will not receive a step up in cost basis upon your death or your spouse's death. Although there may be potential estate tax savings from using a SLAT, it is important to consider that upon the sale of the SLAT's assets, there could be capital gain that would be calculated using your cost basis. You may want to discuss with your estate-planning attorney whether your SLAT could contain certain substitution powers that might provide flexibility for the cost basis of the trust's assets.

Choice of gifted assets — When choosing which assets to gift to a SLAT, you will want to consider cost basis, applicable tax rates, potential for appreciation, your loss of control and benefit, your spouse's potential need for trust distributions and the liquidity of the assets. While a SLAT's investments can vary greatly, not all assets (for example, your family's business or your vacation home) would be ideal choices for a trust created for your spouse's sole benefit.

Trustee — You are not able to serve as trustee of your SLAT. While your spouse could potentially serve as trustee of the trust created for their benefit, you might want to consider the advantages of having an unrelated individual or corporate trustee (such as Edward Jones Trust Company) serve in that role. The trustee will be responsible for administering the trust, including making investment decisions, filing tax returns and making discretionary distributions to your beneficiaries.

Non-citizen spouses — If you or your spouse is not a citizen of the United States, it's possible that SLATs may not be an option for your estate planning. You should consult with your estate-planning attorney to discuss your situation.

Irrevocability — As previously noted, SLATs are irrevocable trusts. If your situation changes or legislative changes are made to the estate tax exemption or tax rates, you will not be able to terminate the trust or reclaim the gifted assets.

Benefits	Trade-offs
You can use your gift/estate exemption before the scheduled reduction in 2026.	You lose access and control of the gifted assets.
The appreciation of the gifted assets occurs outside your taxable estate.	A divorce or death could severely impact your ability to meet your spending needs.
By paying the income tax liability on the gifted assets, you can further decrease the size of your taxable estate, potentially decreasing federal and/or state estate taxes.	If your trust violates the reciprocal trust doctrine, the assets might be includible in your taxable estate.
Your spouse can continue to benefit from the gifted assets.	The trusts will require setup and ongoing administrative costs, such as legal work and tax preparation.
The assets you gifted may have some protection from your creditors.	Any gifted assets will not receive a step up in cost basis upon the passing of you or your spouse.

Larry and Sarah: A case study in SLATs

Larry and Sarah Smith have been happily married for 30 years and have two kids, Mike and Kimberly. Larry and Sarah recently sold their family business, resulting in a sizable net worth that could result in a taxable estate.

While they want to eventually pass assets to their children, they are also excited about enjoying the fruits of their labor during their retirement years. Their financial advisor suggests they consult with their estate-planning attorney about the benefits of using a SLAT. Larry and Sarah work with their lawyer, and eventually each creates a SLAT.

How a SLAT might work during life

- ***Step 1:*** Larry makes a taxable gift of $12 million to a SLAT he created for Sarah. Because Larry hasn't previously used any of his lifetime estate and gift tax exemption, there are no gift taxes due on the transfer to the trust.
- ***Step 2:*** Sarah is entitled to distributions for the rest of her life. Her right to the distributions will be based on the parameters Larry sets — perhaps in this case, she can receive distributions for her health, support and maintenance. There could be additional beneficiaries who might receive distributions for other purposes, such as educational expenses for grandchildren.
- ***Step 3:*** When Sarah passes away, the remaining assets will be divided into trusts — one for each of their children for their lifetimes.

How a SLAT might work after death

The SLAT's assets are not included in either Sarah's or Larry's taxable estate at the time of their respective deaths. Although Sarah took some distributions over time, the assets were invested in a diversified portfolio, where they continued to grow, and when she passed away, the SLAT was worth nearly $31 million.

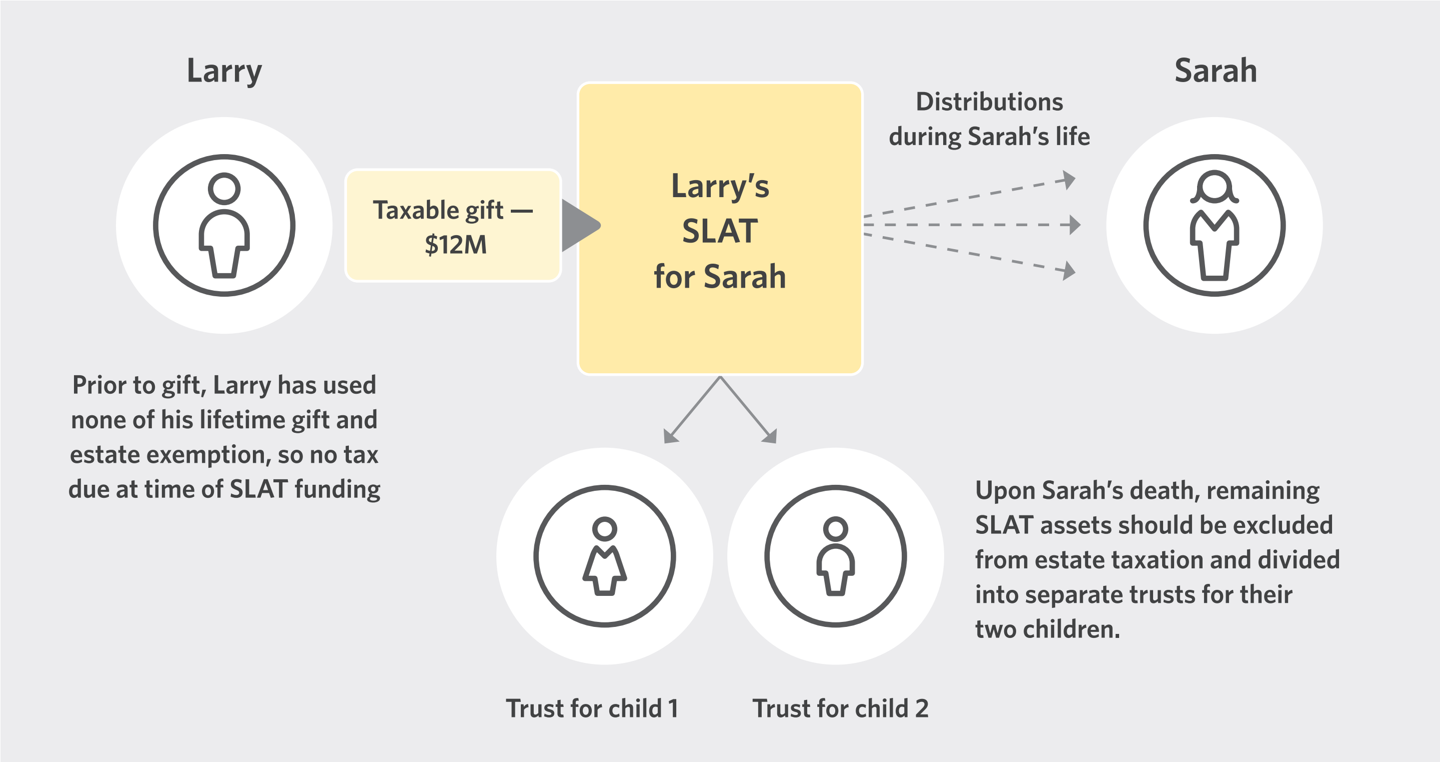
If a trust was created by Sarah for Larry's benefit and was similarly funded, invested and distributed (while avoiding the reciprocal trust doctrine), it could provide another $31 million that would pass outside their combined taxable estate. Although Sarah and Larry used $24 million in gift tax exemptions when they funded their SLATs, nearly $62 million could pass to their children without federal estate taxation.

Maximizing the value of your SLAT

- ***Forgoing lifetime distributions:*** If the Smiths took fewer distributions from the SLATs and instead used the assets that remained in their taxable estate to pay for their lifestyle during their retirement, the balance of assets passing without federal estate tax would be even greater.
- ***Paying trust taxes:*** If the SLATs were designed as grantor trusts, with Larry and Sarah continuing to pay the annual income tax liability on the assets owned by the SLATs, their own taxable estate would be reduced while allowing the SLATs' assets to be unburdened by tax liability.

Conclusion

The SLATs allowed Larry and Sarah access to the assets gifted by each other if needed but also created an opportunity to mitigate their estate tax liability in a manner that might not have been possible were they to continue to own the assets individually.



A look at the numbers

Larry's taxable gift: $12 million

If Larry's SLAT is invested in a diversified brokerage portfolio that grows at roughly 6% per year, and Sarah receives distributions of about 3% per year, it would result in 3% annual growth throughout the rest of Larry's life (estimated at 32 years). The trust balance at Larry's death would be about $31 million.

If Larry doesn't create a SLAT but the growth and use of the $12 million in assets are similar to the proposed scenario, Larry may not have sufficient estate and gift tax exemption to cover those assets at the time of his death. Were Larry to die in a year where the exemption was $13.61 million (2024's exemption amount), he might have estate tax liability of $6,956,000 on just the proposed $12 million in assets. If exemptions decrease to $6,500,000, Larry might have $9,800,000 in estate tax liability on the future value of the proposed gift.

	$6.5M exemption, 40% tax rate	**$13.61M exemption, 40% tax rate**
Future asset value (of proposed $12M gift) at Larry's death	$31,000,000	$31,000,000
Less exemption	– 6,500,000	– 13,610,000
	$24,500,000	$17,390,000
40% tax	**X .40**	**X .40**
Possible estate tax liability	**$9,800,000**	**$6,956,000**

