



InterActive Legal[®]
Speaker Series

SLATs: DRAFTING WORKSHOP AND CASE STUDIES

Objectives

- Today's discussion is designed to provide a deeper and broader perspective on DRAFTING spousal lifetime access trusts and other irrevocable trusts – but using technology tools to add efficiency and explain concepts to clients.
- This presentation will use two hypothetical case studies to illustrate how many different variations of SLATs can be created to meet the unique needs of every client. A key is identifying the variants that fit the client situation and then documenting the decisions made, options chosen (OR NOT), and the provisions/approaches used (OR NOT) – using AI to assure the client understands what is done (in addition to the trust document itself) and protect the practitioner.

Agenda

- Case study No. 1 for a moderate wealth couple seeking asset protection
- Case study No. 2 for a wealthy couple with estate tax concerns
- SLAT challenges and solutions to consider:
 - Divorce/separation (and possible remarriage)
 - Death of the spouse-beneficiary (and possible remarriage)
 - Creditor protection issues
 - Changes in tax laws
 - Changes in family circumstances
 - Trust income taxation
- Client Communication
- Summary/Conclusions/Q&A

SLAT-Like Trust Case Study #1

Young couple, asset protection and basis step up concerns, access critical



Hypothetical SLAT-Like Example – Young Couple

- Example: Jane and John Smith are both physicians and worried about malpractice claims. They are in their early 40s, have two young children, and \$2 million of non-retirement savings. Their estates will likely grow in coming decades as their professional careers evolve. They currently have inadequate life insurance to protect themselves or their children – only term coverage that is owned by them personally.
- This couple has no concerns about estate taxes now but acknowledges that their estate might grow so that estate taxes could be an issue, decades from now. They understand the uncertainty of the political system and that in some future election the estate tax may be reinstated and/or made much harsher (e.g., a \$3.5M exemption). 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 80s and not doing well. They help her out financially sending a check every month.

SLAT-Like Example Young Couple Continued

- Under your guidance, Jane and John create two non-reciprocal SLAT-like trusts.
- The trusts are created in their home state to save money as compared to using a better DAPT 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 given 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 Smiths is to have sufficient assets in retirement, many ways to access funds in each trust are created. The trusts include loan provisions, tax reimbursement clauses, the ability to appoint charitable beneficiaries, and other means of access since they may need that access 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.

SLAT-Like Example Young Couple 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 a basis step-up. That will eliminate all capital gains on their entire non-qualified plan investment portfolio.
- The client's financial adviser provides financial forecasts, an 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.
- The financial adviser reviews and helps both Jane and John obtain better disability coverage than the meager policies provided at their practices.
- Jane gifts \$500,000 to her SLAT. John gifts \$650,000 to his SLAT. They will each make additional gifts in future years as their income rises and you help document that they can afford to do so.

SLAT-Like Example Young Couple 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 to pay premiums.
- 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. (Which the financial planner will have illustrated in his projections.)

SLAT-Like Example Young Couple Drafting Considerations

- Given that they are young, assets are modest, they will create home state SLAT-like trusts with different family members as trustees.
- Consider including, other than as required to differentiate each trust, maximum access: loan provisions, tax reimbursement clauses, right to add a charitable beneficiary, etc.
- Hybrid DAPT and SPAT options instead of more plain vanilla SLATs may:
 - Provide maximum access as they may need it in the future, e.g. in retirement.
 - Access to the settlor spouse as well as the beneficiary spouse in the event of a divorce, considering that the marriage is still relatively new.
- Because the hybrid DAPT and SPAT provisions may facilitate a claimant reaching trust assets these mechanisms will only be permissible to trigger after the trusts have been moved to a DAPT jurisdiction. Further, because the access is only a concern if there is a divorce or later during retirement (or an earlier disability) the hybrid DAPT/SPAT provision can only be triggered on the earlier of: 1) divorce, 2) disability of the settlor spouse, or 3) 10 years and 1 day after the formation of the trust.
- Differentiate the trusts further, in addition to the variation in the hybrid DAPT/SPAT, one trust might include a 5/5 power and the other not. One trust might include a lifetime LPOA and the other not. Be certain these differences are explained to the client.

Memo of Planning Considerations and Options for Client



Client Communication

Here's a low cost and efficient suggestion for communicating to the clients the many different decisions and considerations in a SLAT-like plan.

- Draft the desired trust using the flexibility and breadth that document generation software permits and record the drafting session in whatever web-based meeting program you use (be sure it's a paid subscription that provides for confidentiality).
- Have two - not one - lawyers on the drafting session, as each will have different interpretations of the what the client might want, and/or different views on which technique or provision to use when.
- Have the meeting recorded. Have AI create a memorandum from the meeting. And yes, you had best review that AI memorandum. But you will be starting with a memorandum of the entire drafting session that reflects the discussions had about each option considered and the thoughts behind it, and even options that were not used. This should help the clients better understand both the planning and options available.
- Presenting the clients with options is also protective of the practitioner.

Conclusions; Q&A; Contact



Conclusions

- Document generation software is a powerful tool to tailor specific SLAT-like trusts, or other types of trusts/plans, to each client situation.
- Using the full complement of options document generation software offers, rather than relying on pre-set defaults or templates, can give the draftsman more options to meet client goals.
- Recording the drafting session can provide a transcript that AI can quickly use to generate a draft memorandum documenting the many decisions and discussion points considered while the particular SLAT-like trust is drafted. That can provide a cost-effective explanation to the client of these points to enhance client understanding. It also documents the many options that the practitioner/draftsman offered the client and another opportunity to point out risks and concerns to the client before the document is finalized.

Questions?



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