

# SLATS AND TN TRUST LAW: A POWERFUL COMBINATION



**Spousal Lifetime Access Trusts (SLATs) provide several advantages for married couples, including the ability to transfer wealth to heirs and future generations and the opportunity to reduce the taxable estate of the grantor spouse. Establishing a SLAT in Tennessee delivers additional advantages because of Tennessee’s favorable trust laws.**

In order to understand the benefits of a SLAT, we must first understand its components. SLATs are irrevocable trusts that allow one spouse to gift assets for the benefit of the other spouse. The “grantor spouse” transfers assets into the trust, and the assets are then managed by a trustee. The trustee administers the trust for the benefit of the “beneficiary” spouse.

Generally, a SLAT will last for the lifetime of the beneficiary spouse.

## **Key Considerations For SLATs:**

**1. Estate Tax Advantage.** Since assets transferred to properly structured SLATs are excluded from the taxable estate, this may help reduce or eliminate federal estate taxes at the grantor’s death. While the grantor is still alive, SLATs are taxed as grantor trusts for income tax purposes the grantor is responsible for paying the taxes on any income or capital gains generated by the trust’s assets. This essentially allows the trust’s assets to continue to grow “tax-free” to the trust, and thus the grantor is essentially being permitted to make tax-free gifts to the trust each year.

**2. Asset Protection.** Another important aspect of SLATs is that if they are structured properly, they will be protected from creditors. The basic idea is that because the grantor has relinquished control over the assets and has no retained interest, the assets should be shielded from the claims of their creditors. In order for the assets to also avoid the spouse's creditors, it must be structured so that the beneficiary spouse has only a discretionary interest in the SLAT. This means that an independent trustee has complete discretion over making distributions from the trust for the spouse's benefit.

**3. Reciprocal Trust Doctrine.** Although each spouse can establish a SLAT to benefit the other, the drafting attorney(s) must be careful to avoid the reciprocal trust doctrine. This doctrine essentially posits that if a husband and wife each create a SLAT to benefit the other, and these documents are too similar, the IRS will effectively ignore the SLATs for federal estate tax purposes. SLATs are considered "reciprocal" if they are substantially similar to each other, which is based on a variety of factors derived from various IRS rulings and caselaw. Drafting attorneys will often try to avoid this doctrine by making certain aspects of the two trusts different from each other, such as having different administrative provisions, having different beneficiaries, or by creating the trusts at different times.

**4. Irrevocability and Divorce.** In deciding whether a SLAT is right for you it is important to understand that it is irrevocable, even in the case of a major life event like divorce. This means that if there is a divorce, the SLAT continues to benefit the divorced spouse, and the grantor remains liable for the taxes. SLATs are generally only recommended for happily married couples.

As a regulated trust company in Tennessee, Pendleton Square Trust Company, Inc. is authorized under Tennessee law to serve as the "qualified trustee" of a Spousal Lifetime Access Trust. With its model of independence, Pendleton Square will work with the grantor's chosen investment advisor to prudently administer the trust assets. Tennessee's advantageous trust laws, and Pendleton Square's directed trust model add options for couples for considering SLATs as part of their legacy planning.



#### ABOUT THE AUTHOR

Jake Poulakis is a Trust Associate at Pendleton Square Trust Company, Inc. He graduated from Belmont Law School and is a member of the Tennessee Bar Association.