# The Fine Art of Flexible Estate Planning

*Specialized trusts & private loans can help address some "what ifs."*

Estate planning professionals often contend with ambiguities. A plan may need to be modified in the future when some development in family life occurs – and there are some estate planning tools that may help to provide that kind of flexibility.

**Standby trusts.** These are unfunded revocable living trusts that go into effect when and if families need them. (Sometimes they are referred to as contingent trusts.)[1]

In a common scenario, a family has a history of hereditary illnesses, and mom or dad worry about one day being mentally or physically disabled to the point where they cannot make financial decisions. So a standby trust is declared through a living trust document – or alternately, a will may contain a provision authorizing one when necessary.[2]

A standby trust goes into effect upon a triggering event. It could be the death of the grantor; it could be a diagnosis of a terminal illness or a form of dementia for that individual. At that point, the revocable standby trust can become an irrevocable trust with assets transferred into it via a durable power of attorney.[3]

Should the grantor recover from a prolonged disability or illness, the standby trust can remain revocable and the grantor can regain control over the assets.[4]

From a life insurance standpoint, the mechanics work as follows. One spouse buys either a survivorship life insurance policy or a single life policy insuring the other spouse, naming the standby trust as the contingent owner of the policy. The policy owner has control plus access to the cash value of the policy. If the policy owner dies first, the policy is transferred to the trust and the trustee names the trust as the policy beneficiary. Only the fair market value of the policy is added to the estate of the decedent; the trust pays the policy premiums until the surviving spouse dies, at which point the trust receives the policy death benefit tax-free.[5]

**Spousal lifetime access trusts.** If it seems that one spouse might live decades longer than the other, a spousal lifetime access trust (SLAT) may offer a helpful estate planning option. A SLAT essentially gives a longer-living spouse access to a trust established by a spouse who passed away.[6]

A SLAT is actually a form of irrevocable life insurance trust (ILIT) that one spouse creates for the benefit of the other. One spouse is the grantor, and the spouse expected to live longer may be named the trustee (or another party can be named as such).[5]

Premiums on the life insurance policy are paid by the trust. These payments are funded by gifts of property from the grantor. A SLAT is funded with separate property of the grantor spouse rather than community property.[5]

Basically, this is an irrevocable life insurance trust (ILIT) with one key difference: the spouse is a beneficiary as well as the children/grandchildren. The surviving spouse (trustee) may distribute assets out of the trust for his/her own benefit as well as the benefit of the heirs. As a SLAT is also an ILIT, heirs receive a tax-free life insurance benefit when the longer-living spouse passes away.[5]

What if the spouse dies before the grantor dies? If that happens, the trust assets (including the life insurance policy) are usually inaccessible to the grantor as this is an irrevocable trust.[5]

**Private demand loans.** Similar to a SLAT, these are also arranged with the help of either a survivorship life insurance policy or a single life policy. In this instance, an ILIT is created but the grantor *loans* funds to the ILIT instead of gifting them. The trustee uses these loaned funds to pay premiums on a single life policy on the grantor or a survivorship policy on the grantor and the other spouse. (The annual gift to the ILIT may vary depending on required interest rates stipulated by the IRS.) The loan is payable on demand if the grantor needs the money; the trustee can do so using the cash value of the policy. So the couple retains indirect control over the policy while they live (with access to its cash value) while also establishing an irrevocable trust.[5]

**Could these ideas work for you?** They may be worth exploring. These flexible estate planning techniques all use life insurance creatively, offering couples access to cash value while aiming to keep the death benefit of the policy out of the taxable estate of the spouse.



**Citations.**

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