



New Law Creates Estate Planning Opportunity for Florida Spouses

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THE FLORIDA LEGISLATURE RECENTLY PASSED a new trust law that creates an exciting estate planning opportunity for married couples who are residents of Florida. The new law, which went into effect July 1, 2022, allows one spouse (settlor-spouse) to create a Spousal Lifetime Access Trust (SLAT) for the benefit of the other spouse (beneficiary-spouse) and to preserve the ability to become a beneficiary of the SLAT following the beneficiary-spouse's death. This is a notable change for two reasons: first, because under current Florida law, this arrangement would result in the SLAT assets being accessible to the settlor-spouse's creditors; and second, because creditor access would likely cause the SLAT assets to be included in the settlor-spouse's federal taxable estate. The new law is designed to eliminate both the creditor access and estate tax concerns.

To take advantage of this new law, a SLAT will need to meet the following requirements: (1) the trust is created under Florida law between a married couple who are Florida residents; (2) the beneficiary-spouse is a lifetime beneficiary of the SLAT; (3) the beneficiary-spouse has a right to receive distributions from the SLAT; (4) the settlor-spouse is not a beneficiary of the SLAT during the beneficiary-spouse's lifetime; and (5) any assets contributed to the trust must be completed gifts for gift tax purposes.

Florida residents interested in this opportunity should be aware that divorce or financial hardship may impact the effective use of this planning technique. Once the SLAT is created, the beneficiary-spouse must remain a beneficiary of the SLAT for his or her lifetime, regardless of whether the couple later divorces. If the beneficiary-spouse is ever removed as a beneficiary of the trust, then this new law does not apply and the settlor-spouse cannot be added as a remainder beneficiary without risking creditor access and estate tax inclusion. Further, this planning technique would also fail if the settlor-spouse were to become a beneficiary of the trust prior to the beneficiary-spouse's death.

To understand how this might work, here's an example. Alex and Sam are married to each other and reside in Florida. Alex creates a SLAT for the benefit of Sam, which pays out trust income and principal during Sam's life and ultimately distributes to Alex and Sam's descendants. Sam then predeceases Alex. Under current Florida law, Alex could not be added as a remainder beneficiary of the SLAT without exposing the trust assets to Alex's creditors and causing the trust assets to be included in Alex's gross estate for federal estate tax purposes. Under the new law, Alex can be added as a remainder beneficiary of the trust upon Sam's death without triggering such concerns. However, if Alex and Sam divorce

prior to Sam's death, Sam would need to remain as a beneficiary of the trust for Sam's lifetime for Alex to be able to use this planning technique, and Alex would not be able to become a beneficiary of the SLAT until Sam's death.

Although this is a new law in Florida, a number of other states like Arizona, Texas and Wisconsin, have enacted similar laws or otherwise allow for comparable estate planning opportunities. Other recent changes in Florida law, including the Community Property Trust Act (CPTA) and Florida Uniform Directed Trust Act (FUDTA) make this a good time for Florida residents to revisit their estate plans.



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