Spousal Lifetime Access Trust Texas: The $30M OBBBA Opportunity

How Texas couples with $5–15 million in assets should think about spousal lifetime access trusts now that the estate tax exemption is permanently elevated — and why the planning window remains open.

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When the One Big Beautiful Bill Act (OBBBA) was signed on July 4, 2025, many Texas couples with $5–15 million in assets concluded that wealth transfer planning had become less urgent. The federal estate tax exemption was now permanent at $15 million per individual — $30 million for a married couple. The 2026 sunset was gone.

That assumption deserves scrutiny. The OBBBA changed the reason to act. It did not eliminate the reason to plan. For couples whose most valuable asset is growing, the question is not whether your estate will be taxed today. It is whether it will be taxed in fifteen years.

Why the OBBBA Didn't Close the Window for Texas Estate Planning

The Appreciation Problem the Exemption Doesn't Solve

The OBBBA permanently set the federal estate and gift tax exemption at $15 million per individual, effective January 1, 2026, with inflation indexing beginning in 2027 (ACTEC Capital Letter; Harter Secrest & Emery). The top estate tax rate remains 40 percent.

The exemption is a snapshot, not a ceiling on future value. Estate planning specialists at Venable LLP illustrated this: $15 million growing at 10 percent annually reaches approximately $40 million in ten years. This is a hypothetical illustration, not a projection or performance guarantee. The exemption stays fixed. Appreciating assets do not.

> "The OBBBA changed the reason to act. It did not eliminate the reason to plan"

The Political Case for Acting Before the Next Legislative Cycle

"Permanent" means the exemption will not automatically sunset — not that Congress cannot reduce it. ACTEC and Pierce Atwood have both warned that high-net-worth individuals should not assume unlimited planning time. The American Housing and Economic Mobility Act of 2024, introduced by Senator Elizabeth Warren and Representative Emanuel Cleaver, proposed reducing the exemption to $3.5 million with rates reaching 65 percent on the largest estates (Warren.senate.gov; Kiplinger). That bill did not pass. The policy direction it represents has not disappeared.

Where the $5–15M Texas Couple Actually Stands Today

According to the Urban-Brookings Tax Policy Center, fewer than 4,000 estates were subject to federal estate tax in 2023. The Tax Foundation's analysis of 2021 IRS data found that more than half of all taxable returns fell in the $10–20 million range. Texas imposes no state estate or inheritance tax. For most couples in our client range, current federal estate tax exposure is minimal. The planning case for a spousal lifetime access trust in Texas is about freezing tomorrow's growth — not today's estate value.

As we explore in our article on Modern Wealth Transfer: Bridging the Gap Between Legacy and Innovation, families best positioned for multi-generational outcomes begin structural planning well before urgency becomes obvious.

How a Spousal Lifetime Access Trust Works in Texas

A spousal lifetime access trust (SLAT — an irrevocable trust in which one spouse transfers assets and names the other spouse as a discretionary beneficiary) removes transferred assets from the grantor's taxable estate. The grantor applies his or her lifetime exemption on Form 709. Once funded, the transfer is permanent.

> "The planning case for a spousal lifetime access trust in Texas is about freezing tomorrow's growth — not today's estate value"

The Grantor Trust Mechanics — Who Pays the Tax, and Why That's a Feature

Under IRC §672(e), the donor spouse is treated as owning any interest held by his or her spouse in a trust. Because the beneficiary spouse holds a discretionary interest, the SLAT qualifies as a

grantor trust under IRC §677 — meaning the donor pays income tax on all trust earnings annually, from personal funds outside the trust. That is a planning feature: each year the grantor pays the trust's income tax, the trust grows without reduction for taxes. IRS Revenue Ruling 2004-64 confirmed this treatment is not a taxable gift, because it discharges the grantor's own legal obligation.

One constraint is critical. A mandatory reimbursement clause requiring the trustee to repay the grantor for taxes paid may trigger IRC §2036(a)(1) inclusion, pulling assets back into the taxable estate. Per ACTEC's guidance, a discretionary reimbursement provision exercisable only by an independent trustee generally avoids this outcome.

Funding a SLAT in Texas — What to Transfer and What to Keep in the Estate

The highest-leverage funding assets are those expected to appreciate significantly after transfer: closely held business interests, pre-IPO equity, and growth-oriented real estate (Fidelity; Bernstein; Spencer Fane). Assets whose primary value lies in a stepped-up cost basis at death under IRC §1014 — the provision that resets an inherited asset's tax basis to fair market value — are generally better kept in the estate. The swap power under IRC §675(4)(C) provides a partial remedy: it allows the grantor to exchange lower-basis assets out of the SLAT for higher-basis assets of equivalent value without triggering a taxable event.

For business owners approaching a capital event, our article Why Your Practice Exit Won't Qualify for the New QSBS Tax Exclusion — And What to Do Instead addresses how OBBBA reshapes exit planning, including scenarios where sale proceeds become SLAT funding candidates.

The Community Property Partition Requirement — A Texas-Only Trap

Texas is a community property state. Assets acquired during marriage are presumed to belong equally to both spouses. A SLAT must be funded with the grantor's separate property. Funding with community property may cause both spouses to be treated as co-transferors, undermining the single-spouse exemption strategy.

Texas couples typically execute a partition-and-exchange agreement under Texas Family Code §4.102 before funding. Under Tex. Fam. Code §4.105, the agreement must be voluntary, written, and accompanied by fair and reasonable financial disclosure. This step is not optional and requires a Texas-licensed estate planning attorney.

The Reciprocal Trust Doctrine — The Risk That Can Undo Both SLATs

Many couples pursue a mirror-image approach: each spouse creates a SLAT naming the other as beneficiary. When the resulting structure leaves each spouse in effectively the same economic

position as if each had retained a life interest in the transferred assets, the IRS may invoke the reciprocal trust doctrine — pulling both trust assets back into the respective taxable estates.

What United States v. Estate of Grace Actually Requires

The controlling authority is *United States v. Estate of Grace*, 395 U.S. 316 (1969). The Supreme Court's two-part test: the trusts must be interrelated, and the arrangement must leave each settlor in approximately the same economic position as if each had named himself or herself as life beneficiary. The Court held that the transferor's motive is irrelevant. The Eighth Circuit extended this principle to outright transfers in *Estate of Schuler*, 282 F.3d 575 (2002). A successful challenge results in gross-estate inclusion under IRC §2036.

Six Asymmetry Factors That Differentiate Two SLATs — and Why None Is Sufficient Alone

IRS private letter rulings identify factors that have defeated reciprocal treatment. PLR 200426008 (2004) found that different withdrawal rights, powers of appointment, and current beneficiaries were sufficient. PLR 9643013 (1996) and *Estate of Levy*, T.C. Memo. 1983-453, reached comparable results.

Practitioners at the EisnerAmper Heckerling 2025 panel and in NAEPC Journal Issues 44 and 45 identify the most meaningful asymmetry factors: different independent trustees; different current and remainder beneficiaries; different distribution standards; different powers of appointment; different Crummey (beneficiary withdrawal) rights; and funding from different asset classes. No single factor constitutes an IRS safe harbor. Minor cosmetic differences between substantially identical trusts do not satisfy the *Grace* standard.

Timing, Funding Amounts, and the "Caveman SLAT" Defensive Approach

Timing is its own asymmetry factor. John Dadakis of Holland & Knight has noted that creating one SLAT on December 31 and the second on January 1 is unlikely to satisfy the *Grace* interrelation test. Practitioners in the NAEPC and PEPC Newsletters recommend separating trust creation by at least several months; twelve months or more in different tax years is a stronger position. No IRS guidance specifies a required interval.

Robert Keebler's "Caveman SLAT" approach (NAEPC Newsletter, 2024) offers a defensive alternative: each spouse funds a SLAT with a portion of his or her exemption rather than the full amount, limiting the dollars at risk if a reciprocal-trust challenge succeeds.

Texas-Specific Considerations That Change the SLAT Calculus

Texas Is Not a DAPT State — The Asset-Protection Limit Every Couple Must Understand

A DAPT (domestic asset protection trust — a self-settled irrevocable trust in which the creator is also a discretionary beneficiary) is recognized in approximately twenty states. Texas is not among them. Under Texas Property Code §112.035(d), a spendthrift trust provision does not protect the settlor's assets from his or her own creditors. A Texas SLAT is a federal estate tax tool — not a creditor-protection vehicle. Texas creditors and bankruptcy courts are likely to apply Texas law to Texas-resident settlors regardless of trust situs, making out-of-state DAPT structures an unsettled strategy rather than a solved one.

Our article on Why Your Entity Structures May Leave You Dangerously Underinsured addresses analogous gaps between how Texas business owners structure assets and how those structures perform under legal stress.

The Homestead Trap and Other Texas-Specific Funding Cautions

Texas provides among the strongest homestead protections in the country under Article XVI, Sections 50–51 of the Texas Constitution. Transferring a homestead to a SLAT forfeits those protections permanently. Two statutory safety valves exist for other circumstances. Under Tex. Prop. Code §112.054, a court may modify or terminate an irrevocable trust to address unanticipated circumstances. Under Tex. Prop. Code §§112.071–.087, the trustee may decant — transfer assets into a new trust with modified terms — without court involvement.

SLAT Risk Management — What Can Go Wrong and How to Address It

Divorce — The Scenario Most Couples Don't Plan For

Without divorce-contingency language, the former beneficiary spouse typically remains a trust beneficiary after the marriage ends. The donor loses the household benefit of those distributions. Because grantor trust status under IRC §672(e) may survive divorce, the donor may also continue paying income tax on trust income with no corresponding benefit. Greenleaf Trust, First Citizens Bank, and the EisnerAmper Heckerling 2025 panel consistently identify this as the most commonly misunderstood SLAT feature.

The standard mitigation is a floating-spouse clause: a trust provision defining the beneficiary as the person to whom the grantor is currently married at the time of each distribution. In Texas, this requires review alongside a family law attorney.

Death of the Beneficiary Spouse — The Access Problem No One Wants to Name

If the beneficiary spouse predeceases the grantor, the grantor permanently loses access to trust distributions. The trust continues for remainder beneficiaries — typically children — and the grantor's household receives no further benefit. Standard mitigations include term life insurance on the beneficiary spouse, held outside the SLAT. A trust-protector provision allowing an independent party to add the grantor as a discretionary beneficiary post-death is another option, but if the grantor's ability to benefit was effectively reserved from inception, the IRS may characterize it as a retained interest under IRC §2036(a)(1).

For context on where estate plans most commonly fail HNW families, see our article Why Your Estate Plan Might Not Protect Your Legacy (And How to Fix It).

Lost Step-Up in Basis and When That Trade-Off Makes Sense

Funding a SLAT is a completed, irrevocable gift. Assets transferred receive carryover basis — the original purchase price — rather than the stepped-up fair market value that applies to inherited assets under IRC §1014. Capital gains on future trust sales are measured from that original cost. This trade-off is most favorable when the asset will appreciate significantly post-transfer, and least favorable for highly appreciated securities portfolios where most of the gain is already embedded. The swap power under IRC §675(4)(C) offers partial relief: the grantor can exchange low-basis assets for higher-basis assets of equivalent value without a taxable event.

Is a Spousal Lifetime Access Trust Right for Your Texas Estate Plan?

The Texas Couple Profiles That Benefit Most from a SLAT

The highest-benefit profiles share one characteristic: the primary asset is expected to grow materially faster than the inflation-adjusted exemption over the next decade or longer. This includes founders with closely held business equity approaching a capital event, executives with concentrated pre-IPO positions, and families with income-producing commercial real estate in high-growth Texas markets. The Tax Foundation's analysis of 2021 IRS data found that more than half of all taxable estate returns fell in the $10–20 million range — precisely the cohort where long-horizon appreciation can cross the joint exemption threshold.

Our article on The $5–30 Million Gap: Why Sub-Ultra High-Net-Worth Clients Are Underserved explains why integrated planning of this kind matters for families whose wealth has outgrown generalist advisory services.

When a SLAT Is the Wrong Tool — and What to Consider Instead

A SLAT is generally a poor fit when the asset's primary value lies in the IRC §1014 step-up, when the marriage carries meaningful divorce risk, when the grantor lacks sufficient separate property, or when the grantor cannot afford permanent loss of access. In those circumstances, a grantor retained annuity trust (GRAT — a structure in which the grantor receives an annuity from the trust for a fixed term, with appreciation above the IRS hurdle rate passing to beneficiaries estate-tax-free) may be more appropriate. U.S. Treasury anti-clawback regulations (T.D. 9884, 2019; T.D. 9957, 2022) also protect prior gifts made under elevated exemption levels from estate inclusion if the exemption is later reduced.

> "The exemption is a snapshot, not a ceiling on future value."

For context on how governance and wealth transfer planning interact across generations, see our article on The Governance Gap That Causes 90% of Family Wealth Plans to Fail by the Third Generation.

Frequently Asked Questions

Q: What happens to a spousal lifetime access trust if my spouse and I get divorced?

Divorce does not automatically terminate a SLAT. Without a floating-spouse clause — a provision defining the beneficiary as the person to whom the grantor is currently married — the former spouse typically remains a trust beneficiary after the marriage ends. The donor may also continue paying income tax on trust earnings as a grantor trust under IRC §672(e), with no corresponding household benefit. Greenleaf Trust and the EisnerAmper Heckerling 2025 panel identify this as the most commonly overlooked SLAT risk. A floating-spouse clause is the standard mitigation for any Texas SLAT.

Q: Do I still owe income tax on money inside a spousal lifetime access trust?

Yes. Because the SLAT qualifies as a grantor trust under IRC §677, the donor pays income tax on all trust income annually — even though that income is not distributed to the donor directly. Per IRS Revenue Ruling 2004-64, this payment is not a taxable gift, because it discharges the grantor's own tax obligation. This is a planning feature: the grantor's payment of the trust's income tax allows trust assets to compound without reduction for taxes — effectively an additional, ongoing transfer of wealth to beneficiaries over time.

Q: Does a spousal lifetime access trust protect assets from creditors in Texas?

Not for the grantor's own creditors. Under Texas Property Code §112.035(d), a spendthrift trust provision does not shield the settlor's assets from claims by the settlor's own creditors. Texas does not recognize self-settled asset protection trusts, which means a SLAT created by a Texas resident cannot function as a creditor-protection vehicle. A SLAT's primary value is federal estate tax planning. The beneficiary spouse's interest may carry limited spendthrift protection against the beneficiary's own creditors, but the grantor's transferred assets are not shielded from claims against the grantor.

Q: Can I get the money back from a spousal lifetime access trust if I need it?

No. A SLAT is irrevocable. Once assets are transferred, the grantor cannot compel their return under any circumstance. The only household benefit comes from discretionary distributions to the beneficiary spouse, which are subject to the trustee's judgment and the trust's stated distribution standard. The grantor permanently loses direct control of the transferred assets at the moment of funding. Couples should fund a SLAT only with assets they can genuinely afford to surrender permanently — not with funds needed for ongoing lifestyle or liquidity.

Q: Is there still a reason to use a SLAT now that the estate tax exemption is permanent under OBBBA?

Yes — for couples whose assets are expected to grow past the joint $30 million exemption over time. The OBBBA permanently set the federal estate and gift tax exemption at $15 million per individual, effective January 1, 2026 (ACTEC Capital Letter). As ACTEC and Pierce Atwood have both noted, "permanent" means the exemption will not sunset automatically — not that Congress cannot reduce it in a future legislative session. For couples with growing business equity or pre-IPO positions, locking in today's transfer costs before a decade of compounding may produce a meaningfully different outcome than waiting.

About Palmer Wealth Group™

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The information presented reflects sources believed to be reliable as of May 21, 2026. Regulatory thresholds, contribution limits, and tax rates are subject to change. Verify all figures with current IRS guidance before making planning decisions.

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