

ESTATE PLANNING IN 2020

PRESERVING ASSETS FOR AFFLUENT FAMILIES

1. On December 31, 2025 Federal Gift, Estate and GST Exemptions automatically revert to \$5M
2. Bernie's Senate Bill:
S.309 – “For the 99.8% Act”
 - Estate and GST Exemption \$3.5M
 - Gift Tax Exemption \$1M
 - Rates rise from 40% to 45% - 77%
 - Kills Dynasty Trusts – 50 year maximum term
 - Kills IDGTs, etc.
3. ALL BEFORE COVID-19!

STRATEGIES TO BE DISCUSSED

Outright Gifts and Loans

Intentionally Defective Grantor Trust – IDGT

Grantor Retained Annuity Trust - GRAT

Spousal Lifetime Access Trust - SLAT

Hybrid Domestic Asset Protection Trust - Hybrid DAPT

Beneficiary Controlled Trust

Multigenerational Trust

GIFT \$1M

- Freezes Values
- Uses estate tax and GST exemptions
- No discounts unless fractionalize

LOAN \$1M

- June AFR for note of 3-9 years is 0.043%

Planning For Discounts

Applicable Discounts:

1. Lack of Marketability
2. Lack of Control or Minority Interest

Applying the Discount

The discounts are not added together.

Example:

30% marketability discount, plus
30% minority interest discount (lack of
control)

= **51% Total Discount**

CLIENT DESIRES TO TRANSFER \$3M TO CHILDREN

CHILDREN OUTRIGHT OR TRUST FOR CHILDREN

	<u>CLIENT</u>	<u>LLC</u>	
<u>Day 1:</u>	\$3,000,000		
<u>Day 2:</u>			
99% Nonvoting Membership Interest in LLC Gifted	(1%)	\$3,000,000	99%
<u>In 3 Years:</u>			
1% Voting Interest Gifted	\$0	\$3,000,000	100%
<u>Next Day:</u>			
LLC Dissolved	\$0	\$0	\$3,000,000*

(Gift Exemption Used $\$3,000,000 \times 75\% = \$2,225,000$)

*Value of taxable gift before applicable discounts

*Plus appreciation

United States Gift (and Generation-Skipping Transfer) Tax Return
2017 Tax Return (Form 709)

Ph: [REDACTED]
SSN: [REDACTED]

Calculation of Gift Value of [REDACTED] LLC

Market Value of Securities in [REDACTED] LLC US Trust Company Account [REDACTED]	1,375,729
Market Value of Securities in [REDACTED] LLC US Trust Company Account [REDACTED]	664,124
Market Value of Securities held by [REDACTED] LLC	<u>2,039,853</u>
Cash held in [REDACTED] LLC US Trust Company Account [REDACTED]	14,153
Cash held in [REDACTED] LLC US Trust Company Account [REDACTED]	2,019
Total Cash held by [REDACTED] LLC ,	<u>16,172</u>
Value of Entity before Discount	<u>2,056,025</u>
Less: 25% Discount for Lack of Marketability & Control - note, no discount of cash	(509,963)
Value of [REDACTED] LLC after Discount	<u>1,546,062</u>
Value of 1% interest after discount	<u>15,461</u>
Value of 33% interest gifted to each trust	<u>510,200</u>

* see US Trust Account Holdings Statements with security detail and cash balance attached.

Disclosure Pursuant to Regulation 301.6501(c)-1(f)(2)(iv):

- a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property.

The following discounts were used in calculating the value of the transferred interests in [REDACTED] LLC:

- (a) Discount for lack of marketability and*
- (b) Discount for minority interest (lack of control)*

A combined discount of 25% was used. See preceding statement regarding restrictions on transferred property.

Grantor Trust Provisions

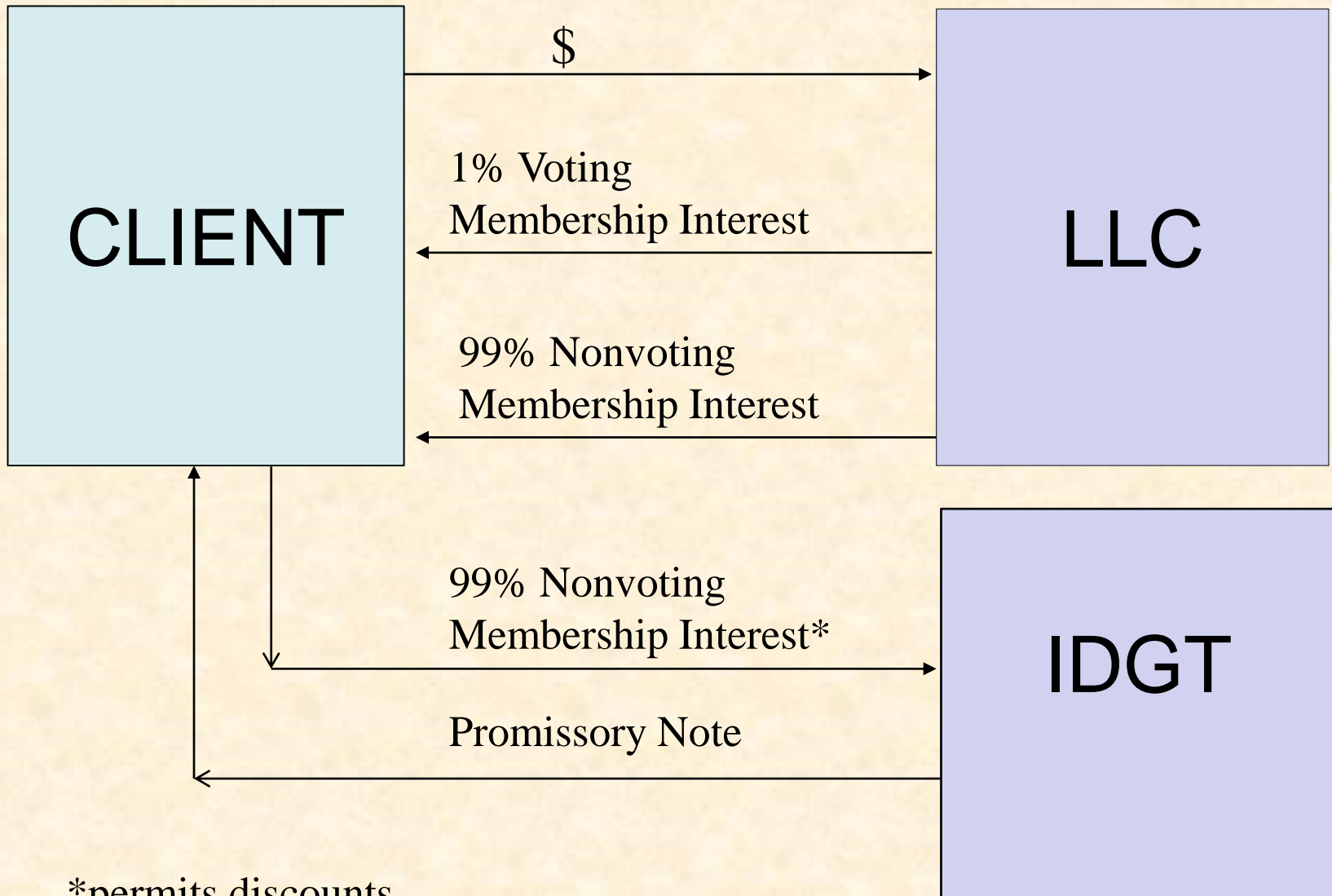
Code Sections 671 – 679

s. 671: If Grantor or another person is treated as the owner of any portion of a trust under s. 672 – 679, Grantor is taxed on the income of the trust.

Grantor Trust Attributes

- A grantor trust is an irrevocable trust ignored for income tax purposes
- The donor continues to pay the tax on the income of the trust even though it benefits children without a gift
- Transactions between the grantor and the trust are ignored including gains on a sale transaction, interest payments on the note and payment of note in kind
- Eligible to hold S corporation stock
- May be GST exempt

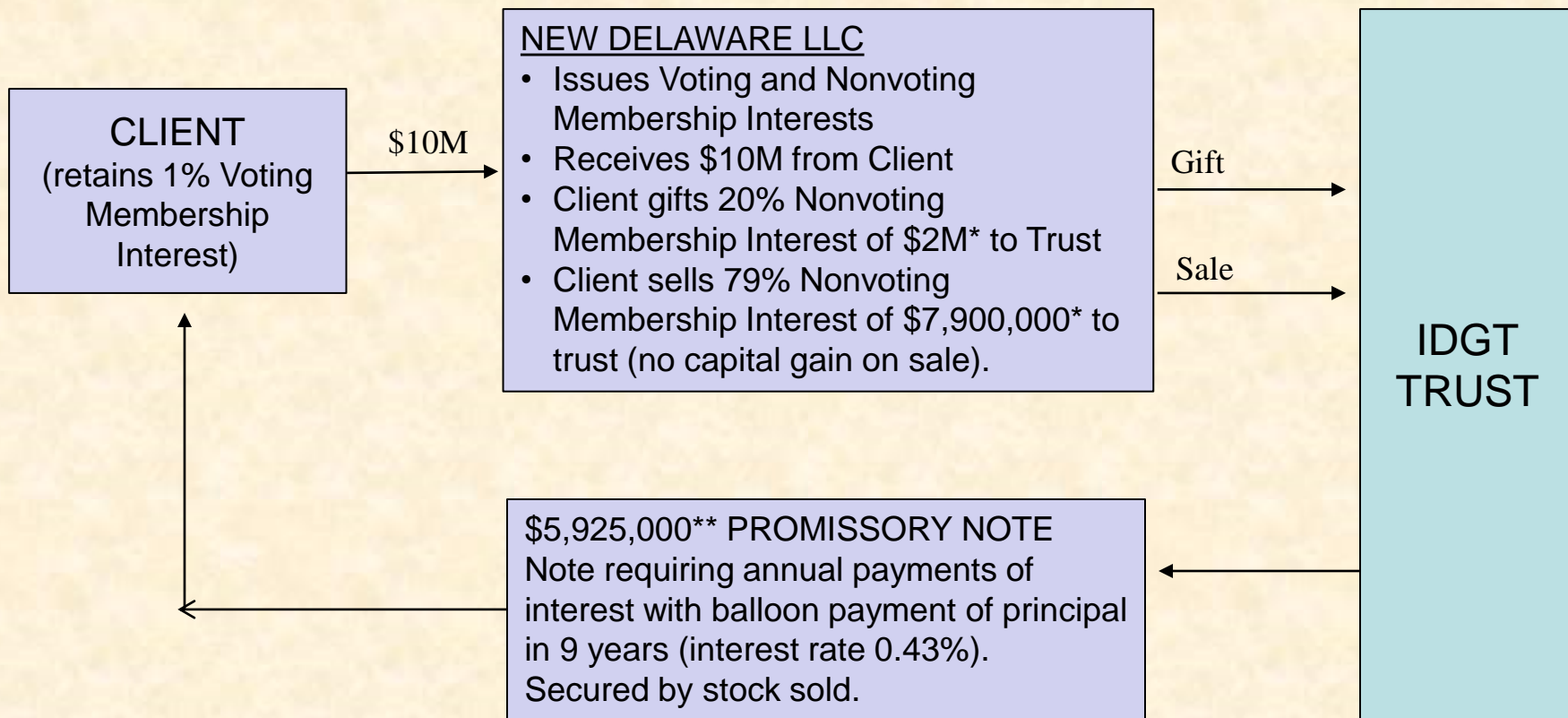
IDGT



*permits discounts

Why should a client grantor sell assets to an IDGT by means of an installment sale?

- Future appreciation of the assets sold will be outside of the grantor's estate for estate tax purposes;
- Appreciated assets can be 'sold' for a note without recognition of gain;
- Income tax payments made by the Grantor on behalf of the IDGT will be tax free gifts to the beneficiaries and reduce the taxable estate of the Grantor;
- The trust can be structured as a dynasty trust, without the use of significant GST exemption.



*Value before discount for minority and lack of marketability

**Value after estimated discount of 25%

Could use spousal guaranty to reduce gift

If Business is S Corp

- Recapitalize to voting and nonvoting shares
- Sell/Gift discounted nonvoting shares

Merek Rubin

From: stevesletters@leimbergservices.com
Sent: Friday, May 15, 2020 5:59 PM
To: Merek Rubin
Subject: 7520 and Other Key Rates - June 2020 Steve Leimberg's Estate Planning Newsletter

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2795

Date: 15-May-20
From: Steve Leimberg's Estate Planning Newsletter
Subject: 7520 and Other Key Rates - June 2020

The 7520 Rate rate is 0.6%

The AFRs are as follows	Annual	Semi-annual	Quarterly	Monthly
Short-term	0.18%	0.18%	0.18%	0.18%
Mid-term	0.43%	0.43%	0.43%	0.43%
Long-term	1.01%	1.01%	1.01%	1.01%

For a complete history of AFRs and 7520 Rates and for information on NumberCruncher Estate and Financial Planning Software, go to <http://www.leimberg.com>

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Should you file a Gift Tax Return on Form 709 when you make the sale to the IDGT?

Yes.

Is it possible to use a self canceling installment note (SCIN) in place of the installment note?

Yes.

Who pays the income tax on income earned by the assets sold to the defective grantor trust?

- Revenue Ruling 2004-64
- “Ruling of the decade”

GRAT vs. IDGT

- GRAT is statutory but can't maximize GST planning
 - Statutory certainty with GRAT
 - Lose if client dies
- IDGT can be GST exempt from inception but may have a gift tax risk
 - Can use Section 1274 Rate rather than Section 7520 Rate
 - Gift value can be minimal
 - GST planning options
- Which is best will depend on individual client circumstances

Spousal Lifetime Access Trust

- A SLAT is an irrevocable trust set up by one spouse for the benefit of the other spouse
 - Creditor protection
 - Estate tax savings
- If Grantor loses assets, his or her spouse can take care of them
- A third-party irrevocable trust works to protect its assets from creditors of the beneficiaries
- Concept of “*floating*” spouse

Discretionary Trust

- For maximum protection, use a discretionary trust with no standard for invasion
 - No mandatory distributions
- Grantor can retain power to remove and replace trustee
- Grantor's spouse can have power to remove and replace trustee
- Can establish Non-Reciprocal SLATs

Domestic Asset Protection Trust

- A DAPT is a U.S. asset protection trust in which the trust grantor is a permissible beneficiary
- Seventeen states allow DAPTs
 - 2-yr. statute of limitations – Nevada and seven other states
 - 4-yr. statute of limitations – Delaware, New Hampshire, Rhode Island and other states
- Most states have statutory exception creditors
 - Such as divorcing spouses, alimony, child support

Does a DAPT Work?

- A DAPT definitely works for a resident of the DAPT state
- Does it work for resident of a non-DAPT state who sets it up under the laws of a DAPT state?
 - After 22 years, still no definitive case law
 - Does this mean that potential creditors are so frustrated that they either settle or go away?

Hybrid DAPT

- A “Hybrid DAPT” is a Third-Party Irrevocable Trust that can be turned into a DAPT
- Give Independent Trustee/Trust Protector the power to add the grantor or remove the grantor as a permissible beneficiary
 - “Any one or more of the descendants of Settlor’s grandparents”
- If grantor is sued, Hybrid DAPT avoids the uncertain outcome of a regular DAPT
 - In 22 years, we are not aware of any case where a DAPT has failed and creditors reached the DAPT assets

Hybrid DAPT

GRANTOR'S SUPERTRUST

Trustmaker: Grantor

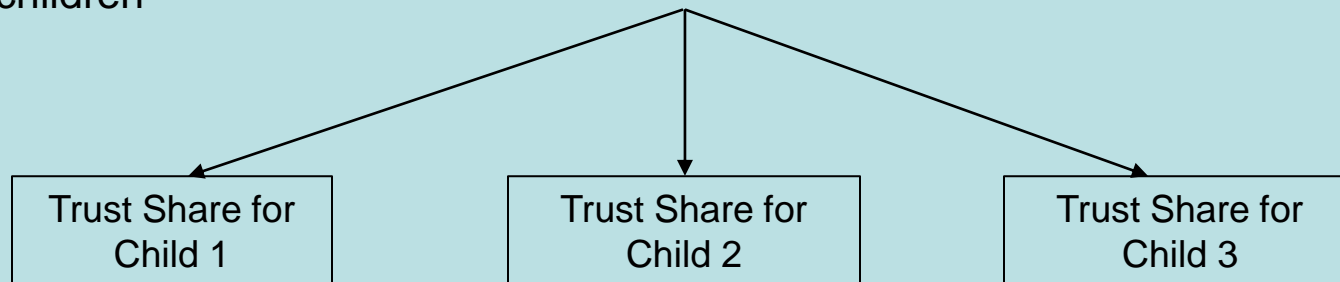
Trustee: Grantor's Spouse & CPA

Trustees have discretion to pay income and principal to Grantor's spouse during the lifetime of grantor's spouse

- If spouse incapacitated, Trustee may pay income and principal for descendants

If Grantor is added as a beneficiary, Trustee may pay income and principal to Grantor and other beneficiaries

After Death of Grantor and Grantor's spouse shares established for children



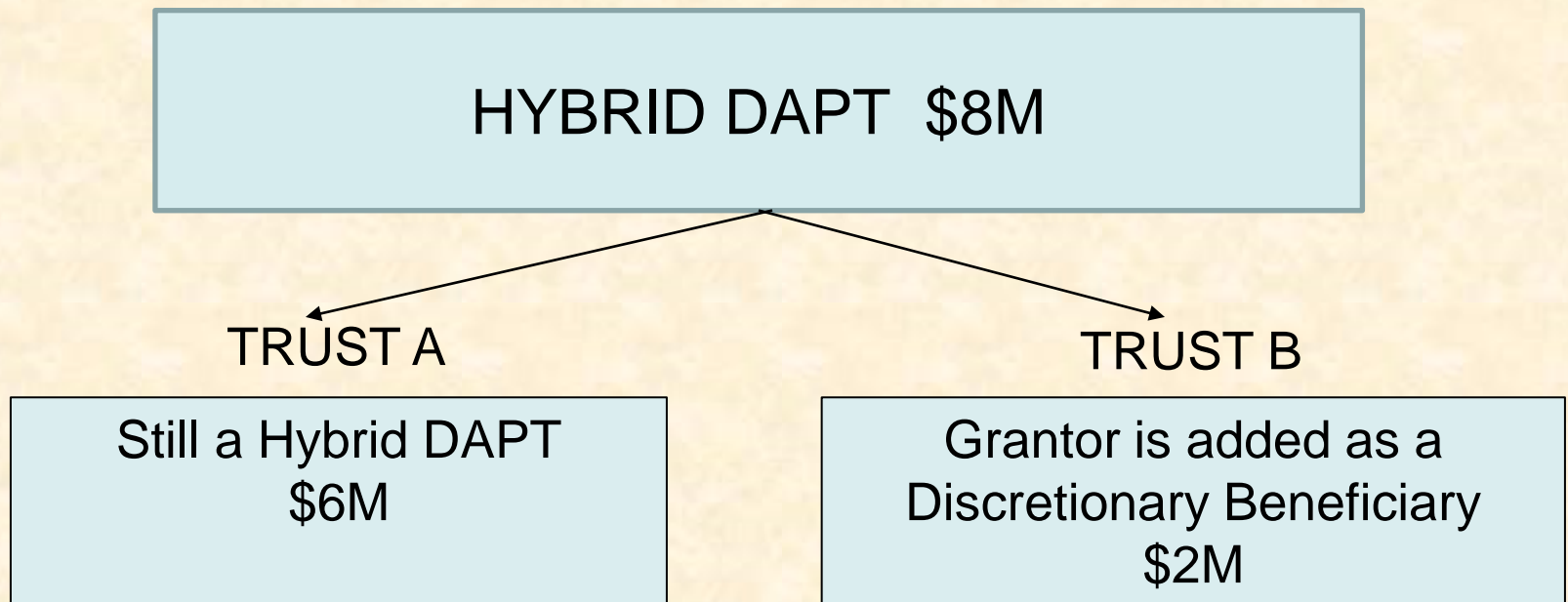
Getting Cash Flow without being a Beneficiary

- Assume grantor sets up Hybrid DAPT for benefit of spouse and descendants
- Ways to access cash flow?
 - Distribution to spouse who shares it with grantor
 - Sell assets to Hybrid DAPT for promissory note
 - Borrow from Hybrid DAPT
 - Pay down principal of IDGT promissory note
- Only after consideration of the above options - ask Independent Trustee/Trust Protector to add grantor as a beneficiary

Example:

- Grantor transfers \$3 million worth of assets to a Hybrid DAPT
 - Trust grows to \$8 million
 - Grantor wants some distributions
- Rather than “taint” the entire \$8 million trust:

Splitting the DAPT



We could split again...

Dynasty Trust

- A “Dynasty or Multigenerational Trust” is an irrevocable trust that is not subject to estate taxes for as long as state law allows
- It can also be drafted to increase protection from creditors and divorcing spouses
- Rule against perpetuities limitations
 - Massachusetts grantor may choose between the common law rule or 90 years
 - New Hampshire has no limit on trust duration

Beneficiary Controlled Trust

- Trust for lifetime
- Income and principal distributions made in discretion of trustees
- Child becomes a Cotrustee at specified age, e.g. 30
- Child can remove Cotrustee (for “cause”) and choose successor
- Child’s children may be beneficiaries

Limitations on Discretion of Interested Trustees

- The ascertainable standard of health, education, maintenance and support.

Use of Independent Trustees Who Serve with Interested Cotrustees

- Independent Cotrustee can have unlimited discretion

Use Testamentary Limited Powers of Appointment

- For flexibility

NONVOTING
INTEREST IN S CORP

OR

NONVOTING INTEREST IN
LLC (\$/REAL ESTATE)

GRANTOR'S FAMILY HYBRID DAPT
Trustmaker: Grantor

Trustee: Grantor's Spouse & CPA
Administrative Trustee when appointed: Corporate Fiduciary

SLAT FOR SPOUSE

Trustees have discretion to pay income and principal to Grantor's spouse during the lifetime of Grantor's spouse and secondarily to descendants

If Grantor is added as a beneficiary:

Trustees have discretion to pay income and principal to Grantor and other beneficiaries

On the death of Grantor and Spouse:

Beneficiary controlled multigenerational trusts for descendants, subject to testamentary Limited Power of Appointment (LPOA) of spouse

Child A Exempt Share

In trust for life; income and principal discretionary; child has testamentary LPOA. If LPOA not exercised:

GC

GC

Child B Exempt Share

In trust for life; income and principal discretionary; child has testamentary LPOA. If LPOA not exercised:

GC

GC