# NicheAlert

## Flexible Funding Strategies for ILITs

*As the sunset of the Tax Cuts and Jobs Act approaches, the need for flexibility when funding estate planning strategies is more important than ever.*

In one of life's delicious little ironies, the phrase "the only certainties are death and taxes" is absolutely false when it comes to estate taxes in this environment. For many clients, the changes on the horizon as the Tax Cuts and Jobs Act (TCJA) sunset approaches will make them unsure of how to plan for multiple possible outcomes: A complete sunset, some sort of extension of the current law, or something in between.

Rather than try to predict what will happen come the end of 2025, the savvy advisor is seeking ways to maintain enough flexibility that clients feel in control of their assets and planning regardless of the outcome. This typically involves the three cornerstones of estate planning: Trust language, policy ownership and funding strategies.

In terms of funding strategies, the central themes in this environment continue to be maintaining gifting capacity to the degree it still exists for the client, avoiding liquidation of assets and the associated taxes where possible, and maintaining a high degree of control of assets for as long as possible. Accomplishing all of those objectives often moves the client away from simply paying premiums via annual exclusion gifts and into some type of financing strategy.

While many automatically think about commercial premium financing as soon as financing is introduced, the reality is that there are multiple different strategies, each with their own strengths and weaknesses, available to clients:

- Private Financing
- Commercial Premium Finance
- The "Dual Loan" Approach
- Private Split Dollar

Two of these, Private Financing and Private Split Dollar, may represent the strategies with the highest degree of control and least significant concerns.

How Private Financing Works:

- The Grantor creates an ILIT, which will apply for and own the insurance
- The Grantor enters into a loan agreement with the trust, lending the trust the funds needed to pay premiums. This is often a lump sum.
- The trust pays the premiums. Any excess funds are invested and/or used to make interest payments back to the Grantor.
- The Grantor has the ability to forgive the loan, making it a gift.

How Private Split Dollar works:

- ILIT purchases a Survivorship Life Insurance Policy.
- The Grantor advances annual premiums under a collateral assignment split dollar arrangement on a limited pay basis.
- The advances create a receivable owed to the Grantor.
- The Economic Benefit cost is treated as an annual exclusion gift.
- The Grantor has the ability to forgive the receivable, making it a gift.

Figure 1: Private Financing

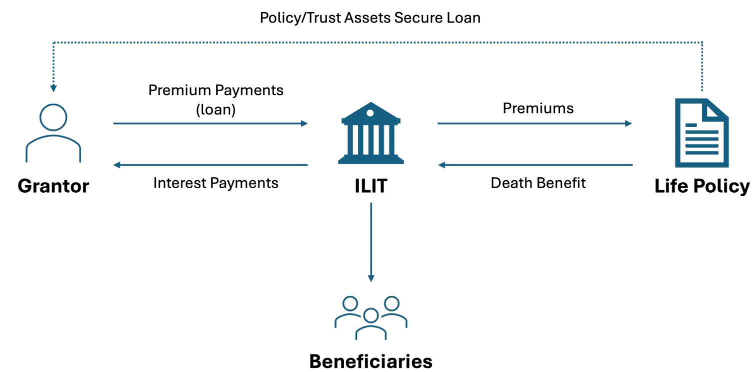
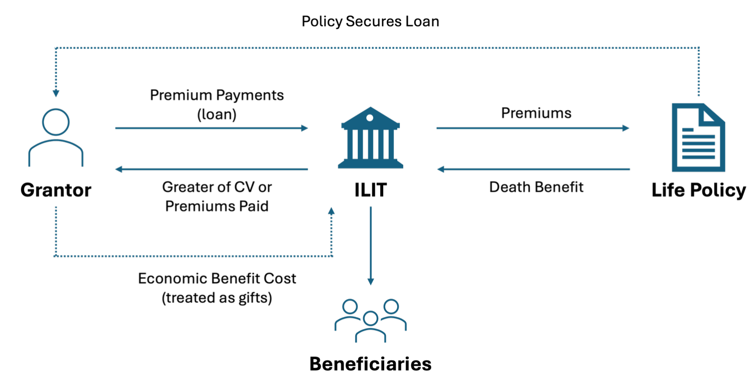



Figure 1: Private Split Dollar



The last element of both of these approaches, the ability to render the loan a gift if conditions warrant, make them incredibly attractive when facing high levels of uncertainty. In today's environment with a shorter timeline before decisions about completing any gifting under current estate tax law, the Private Financing approach may be the most suitable. This assumes, of course, that there is significant liquidity today in order to make the loan. If not, then the Private Split Dollar approach may be necessary.

The bottom line is this: Regardless of the financing approach, trust language, and policy ownership, it's time to have these conversations with clients who may find themselves with increased estate tax exposure as a result of the sunset. For some clients, this may represent the first time they have found themselves with a potential estate tax liability. The educational process required to make them comfortable moving forward with this kind of planning will take significant time, as will the implementation of any planning. That makes the twenty months or so remaining before the sunset seem like a very short amount of time.

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