

# Estate Planning 101

Stange Law Firm, PC  
The Basics of Estate Planning



STANGE LAW FIRM

# Overview of Estate Planning



STANGE LAW FIRM

## Presentation Objectives

- What typical estate plan documents are
- What typical estate plan documents are intended to accomplish

## Approach of Presentation: Life-cycle Approach

- Overall Objective of Estate Planning
- To ensure your clients are provided for during their lifetime
- To ensure your loved ones are provided for when you are unable to provide for them, due to either death or incapacity

# Overview of Estate Planning



STANGE LAW FIRM

## **What will be discussed in this presentation**

- Advance Medical Directives / Health Care Power of Attorney
- Durable Financial Powers of Attorney
- Wills & Pour-over Wills
- Revocable Trusts
- HIPAA Authorization for Release of Medical Information
- Beneficiary Deed
- Various other trusts and estate planning mechanisms, including certain Irrevocable Trusts

# Advance Medical Directives (AMD)



STANGE LAW FIRM

## **Other names:**

- Health care proxy
- Power of Attorney Health Care
- Living Will

## **What does AMD do?**

- Names someone (i.e., your agent) to make decisions for your client if they are unable to make those decisions themselves.
- Sets forth any wishes an individual may have about their medical care, to guide their agent

## What happens if an individual doesn't have an AMD?

- Someone else, possibly a stranger, will make medical decisions for them.
- Most likely a guardian will be appointed for an individual to make decisions in a judicial proceeding.

# Advance Medical Directives (AMD)



STANGE LAW FIRM

## **Who should have an AMD?**

- Everyone over the age of majority. (MO, IL, KS, OK–18, NE-19)

## **\*\*Caution/Planning pointer\*\***

- As soon as children reach the age of majority, their parents lose the right to make medical decisions for them or access their medical information, even in the case of emergency (e.g., car accident.)
- Therefore, it's important to have in place medical directives for children as soon as they reach the age of majority.

## **How often should AMDs be reviewed/updated?**

- Roughly every three (3) years AMDs should be updated/reviewed.
- More frequently when facts change (e.g., named agents become unavailable, etc.)

# Durable Financial Power of Attorney (DFPOA)



STANGE LAW FIRM

## What does DFPOA do?

- A DFPOA names an agent/attorney in fact.
- Gives legal authority to your agent to act on your behalf for financial matters.
  - Typically includes authority to file tax returns and deal with tax issues

## Why would you do this? What happens if you do not have a DFPOA?

- Generally, court steps in and appoints a conservator.
- Disadvantage of conservator:
  - Very Expensive.
  - Time consuming.
  - Oversight from the probate court.
  - Complete stranger may be appointed conservator, taking control over your financial affairs.

# Missouri DFPOA



STANGE LAW FIRM

## **Laws:**

- Title XXVI
  - Section 404.700
  - Section 404.735

## **How to write and execute :**

- (1) Obtain the correct Missouri Delegation paperwork from the courts website.
- (2) Identify the individuals involved with this appointment in the introduction.
- (3) Indicate the date of when the Attorney-in-fact's (AIF) authority becomes active.
- (4) Define the areas that will be included in the Attorney-in-fact's principal powers.
  - The Principal will initial next to the areas they wish to include in the AIF's principal powers.
- (5) Indicate any limits or extensions on the AIF's principal powers, if none indicate "None" on the lines provided.
- (6) The Principal must fill out and sign in the presence of a Notary Public, and the Notary Public must fill out and sign the notary page in order for the document to be executed.
- (7) The AIF must then fill out and sign in the presence of a Notary Public, and the Notary Public must fill out and sign the notary page in order for the appointment to be deemed accepted.

# Missouri DFPOA Sample Form

## MISSOURI DURABLE FINANCIAL POWER OF ATTORNEY

I, \_\_\_\_\_, the principal, of \_\_\_\_\_, State of \_\_\_\_\_, hereby designate \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_, my attorney-in-fact (hereinafter my "attorney-in-fact"), to act as initiated below, in my name, in my stead and for my benefit, hereby revoking any and all financial powers of attorney I may have executed in the past.

### EFFECTIVE DATE

(Choose the applicable paragraph by placing your initials in the preceding space)

\_\_\_\_\_. A. I grant my attorney-in-fact the powers set forth herein immediately upon the execution of this document. These powers shall not be affected by any subsequent disability or incapacity I may experience in the future.

or

\_\_\_\_\_. B. I grant my attorney-in-fact the powers set forth herein only when it has been determined in writing, by my attending physician, that I am unable to properly handle my financial affairs.

### POWERS OF ATTORNEY-IN-FACT

My attorney-in-fact shall exercise powers in my best interests and for my welfare, as a fiduciary. My attorney-in-fact shall have the following powers:

(Choose the applicable power(s) by placing your initials in the preceding space)

\_\_\_\_\_. **BANKING** - To receive and deposit funds in any financial institution, and to withdraw funds by check or otherwise to pay for goods, services, and any other personal and business expenses for my benefit. If necessary to effect my attorney-in-fact's powers, my attorney-in-fact is authorized to execute any document required to be signed by such banking institution.

\_\_\_\_\_. **SAFE DEPOSIT BOX** - To have access at any time or times to any safe-deposit box rented by me or to which I may have access, wheresoever located, including drilling, if necessary, and to remove all or any part of the contents thereof, and to surrender or relinquish said safe-deposit box; and any institution in which any such safe-deposit box may be located shall not incur any liability to me or my estate as a result of permitting my attorney-in-fact to exercise this power.

\_\_\_\_\_. **LENDING OR BORROWING** - To make loans in my name; to borrow money in my name, individually or jointly with others; to give promissory notes or other obligations therefor; and to deposit or mortgage as collateral or for security for the payment thereof any or all of my securities, real estate, personal property, or other

property of whatever nature and wherever situated, held by me personally or in trust for my benefit.

\_\_\_\_\_. **GOVERNMENT BENEFITS** - To apply for and receive any government benefits for which I may be eligible or become eligible, including but not limited to, Social Security, Medicare and Medicaid.

\_\_\_\_\_. **RETIREMENT PLAN** - To contribute to, select payment option of, roll-over, and receive benefits of any retirement plan or IRA I may own, except my attorney-in-fact shall not have power to change the beneficiary of any of my retirement plans or IRAs.

\_\_\_\_\_. **TAXES** - To complete and sign any local, state and federal tax returns on my behalf, pay any taxes and assessments due and receive credits and refunds owed to me and to sign any tax agency documents necessary to effectuate these powers.

\_\_\_\_\_. **INSURANCE** - To purchase, pay premiums and make claims on life, health, automobile and homeowners' insurance on my behalf, except my attorney-in-fact shall not have the power to cash in or change the beneficiary of any life insurance policy.

\_\_\_\_\_. **REAL ESTATE** - To acquire, purchase, exchange, lease, grant options to sell, and sell and convey real property, or any interests therein, on such terms and conditions, including credit arrangements, as my attorney-in-fact shall deem proper; to execute, acknowledge and deliver, under seal or otherwise, any and all assignments, transfers, deeds, papers, documents or instruments which my attorney-in-fact shall deem necessary in connection therewith.

\_\_\_\_\_. **PERSONAL PROPERTY** - To acquire, purchase, exchange, lease, grant options to sell, and sell and convey personal property, or any interests therein, on such terms and conditions, including credit arrangements, as my attorney-in-fact shall deem proper; to execute, acknowledge and deliver, under seal or otherwise, any and all assignments, transfers, titles, papers, documents or instruments which my attorney-in-fact shall deem necessary in connection therewith; to purchase, sell or otherwise dispose of, assign, transfer and convey shares of stock, bonds, securities and other personal property now or hereafter belonging to me, whether standing in my name or otherwise, and wherever situated.

\_\_\_\_\_. **POWER TO MANAGE PROPERTY** - To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interests therein, that I now own or may hereafter acquire, in my name and for my benefit, upon such terms and conditions as my attorney-in-fact shall deem proper.

\_\_\_\_\_. **GIFTS** - To make gifts, grants, or other transfers (including the forgiveness of indebtedness and the completion of any charitable pledges I may have made) without consideration, either outright or in trust to such person(s) (excluding my attorney-in-fact hereunder) or organizations as my attorney-in-fact shall select, including, without limitation, the following actions: (a) transfer by gift in advancement of a bequest or devise to beneficiaries under my will or in the absence of a will to my spouse and

descendants in whatever degree; and (b) release of any life interest, or waiver, renunciation, disclaimer, or declination of any gift to me by will, deed, or trust

\_\_\_\_\_. **LEGAL ADVICE AND PROCEEDINGS** - To obtain and pay for legal advice, to initiate or defend legal and administrative proceedings on my behalf, including actions against third parties who refuse, without cause, to honor this instrument.

\_\_\_\_\_. **SPECIAL INSTRUCTIONS**: On the following lines are any special instructions limiting or extending the powers I give to my attorney-in-fact (Write "None" if no additional instructions are given):

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_. **AUTHORITY OF ATTORNEY-IN-FACT**: Any party dealing with my attorney-in-fact hereunder may rely absolutely on the authority granted herein and need not look to the application of any proceeds nor the authority of my attorney-in-fact as to any action taken hereunder. In this regard, no person who may in good faith act in reliance upon the representations of my attorney-in-fact or the authority granted hereunder shall incur any liability to me or my estate as a result of such act. I hereby ratify and confirm whatever my attorney-in-fact shall lawfully do under this instrument. My attorney-in-fact is authorized as he or she deems necessary to bring an action in court so that this instrument shall be given the full power and effect that I intend on by executing it.

\_\_\_\_\_. **LIABILITY OF ATTORNEY-IN-FACT**: My attorney-in-fact shall not incur any liability to me under this power except for a breach of fiduciary duty.

\_\_\_\_\_. **REIMBURSEMENT OF ATTORNEY-IN-FACT**: My attorney-in-fact is entitled to reimbursement for reasonable expenses incurred in exercising powers hereunder, and to reasonable compensation for services provided as attorney-in-fact.

\_\_\_\_\_. **AMENDMENT AND REVOCATION**: I can amend or revoke this power of attorney through a writing delivered to my attorney-in-fact. Any amendment or revocation is ineffective as to a third party until such third party has notice of such revocation or amendment.

\_\_\_\_\_. **STATE LAW**: This Power of Attorney is governed by the laws of the State of Missouri.

This is a durable power of attorney and the authority of my attorney shall not terminate if I become disabled or incapacitated or in the event of later uncertainty as to whether I am dead or alive.

\_\_\_\_\_. **PHOTOCOPIES**: Photocopies of this document can be relied upon as though they were originals.

IN WITNESS WHEREOF, I have on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

executed this Financial Power of Attorney.

\_\_\_\_\_  
Principal's Signature

STATE OF \_\_\_\_\_

\_\_\_\_\_, County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, as Principal of this Power of Attorney who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that (s)he executed the same as his/her free act and deed.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

### SPECIMEN SIGNATURE AND ACCEPTANCE OF APPOINTMENT

I, \_\_\_\_\_, the attorney-in-fact named above, hereby accept appointment as attorney-in-fact in accordance with the foregoing instrument.

\_\_\_\_\_  
Attorney-in-Fact's Signature

STATE OF \_\_\_\_\_

\_\_\_\_\_, County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, as Attorney-in-Fact of this Power of Attorney who proved to me through government issued photo identification to be the above-named person, in my presence executed the foregoing acceptance of appointment and acknowledged that (s)he executed the same as his/her free act and deed.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

# Illinois DFPOA



STANGE LAW FIRM

## **Laws:**

- Chapter 755, Act 45 (Power of Attorney Act)

## **How to write and execute :**

Includes all the same requirements as MO but requires the following as well:

- Principal must read through the introduction page and initial at the bottom to indicate an understanding of the material.
- Requires the AIF's mailing address.)
- Discuss the Principals delegation powers, if not applicable the principal must strike through the paragraph.
- Discuss AIF's compensation for services if applicable, if not strike through compensation paragraph.
- Indicate termination date if applicable.
- The Principal may appoint up to two (2) Successor Agents in case, for some reason, the original AIF is unable to act.
- Fill in the name the preparer, their mailing address, and phone number on the top of the Notice to Agent page.
- The Principal, the AIF and, Successor Agents (if applicable) must fill out and sign in the presence of at least one (1) Witness & a Notary Public, and Notary Public must fill out and sign the notary page in order for the document to be executed.
- Must be reported the day of the signing by the principal

# Oklahoma DFPOA



STANGE LAW FIRM

## **Laws:**

- Title 58, Chapter 29 (Uniform Power of Attorney Act)

## **How to write and execute :**

Same requirements as IL except:

- (1) Need the Agent and Successor Agents phone number along with their mailing address.
- (2) Has the same Notary and Witness requirements as MO.
- (3) Must initial next to the powers that the principal wishes to designate to the AIF.
- (4) Powers separated into two types, general and specific authority.
- (5) Do not need Preparer's information.

# Kansas DFPOA



STANGE LAW FIRM

## **Laws:**

- Title 58, Article 6, (Power of Attorney Act)

## **How to write and execute :**

Same requirements as MO except:

- (1) Need preparer's name and signature at the bottom of the page.
- (2) Includes sections for right to compensation and power of delegation that should be initialed if the principal wants these powers included in the DFPOA.

# Nebraska DFPOA



STANGE LAW FIRM

## **Laws:**

- Chapter 30, Sections 4001 to 4045 (Uniform Power of Attorney Act)

## **How to write and execute:**

Same requirements as MO.

## **Other:**

Includes options to include:

- (1) Up to 2 successor agent if principal is unable or unwilling to act
- (2) Guardian or conservator nomination
- (3) Specific authority
- (4) Special Instructions

# Attorney in Fact's Authority (DFPOA)



STANGE LAW FIRM

## General authority/General power subjects

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and other financial institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Taxes

\*\*Can also select all preceding subjects if all subjects are wanted.\*\*

## Specific authority/ Specific power subjects (Not always included and typically optional)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of the Nebraska Uniform Power of Attorney Act and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Delegate to another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Renounce or disclaim an interest in property, including a power of appointment

# Durable Financial Power of Attorney (DFPOA)



STANGE LAW FIRM

## Design features of DFPOA

- Springing vs. Non-springing.
  - Springing - Takes effect when the individual becomes incapacitated.
  - Non-springing - Takes effect immediately.
- Ability to make gifts.
- Ability to change beneficiary designation on retirement accounts.
- Ability to create/fund revocable trusts.
- Ability to amend existing revocable trusts.

## What about children?

- When children have financial assets in their own name and have reached age of majority, a DFPOA should be considered.

# Durable Financial Power of Attorney (DFPOA)



STANGE LAW FIRM

## How often should DFPOAs be reviewed/updated?

- Roughly every three (3) years DFPOAs should be updated.
- Frequently, financial institutions will refuse to accept POA that is more than a few years old. To avoid this issue, it is often recommend that DFPOAs be re-executed every three years, even where no changes are made to the DFPOA.
- More frequently when facts change (e.g., named agents become unavailable, etc.)

## What does a Will do?

- Disposes of assets at death (i.e., your Will names those individuals who receive your property at death (i.e., estate beneficiaries.)
- Names guardian for your minor children.
- Names personal representative (i.e., executor)
- Can establish testamentary trusts (i.e., trusts set up at death in will)
- Name trustees if trusts are created in Will.
- It is very important in a Will to have the necessary neutral witnesses sign the will. You also need a notary's verification. It is vital to know your state's requirements and abide by them meticulously with any estate planning documents, including Wills.

## What happens if you die without a Will?

- Assets
  - Pass by intestacy
  - Can have unintended consequences. (e.g. Missouri, if the deceased has no children then the surviving spouse receives the entire intestate estate)
- Children
  - Have no input into who will be named guardian of your children and have not arranged for assets to give your children a start in life.
- Personal Representative
  - State law sets forth who has priority to serve as your estate personal representative.
- Trust
  - Will not exist unless pursuant to a court order, which would be expensive.
- Pour-Over Wills
  - Note that Pour-Over Wills are different from a Simple Will. With a Pour-over will, the decedent's assets pour-over into a trust at death to avoid the probate court and, in some instances, for asset protection and to reduce an estate tax obligation.

# Intestacy Chart (MO)



STANGE LAW FIRM

Survivor	Share of Intestate Estate
Spouse Only	100% of the estate
Spouse and issue who are all also issue of the surviving spouse	<ul style="list-style-type: none"><li>- Spouse receives \$20,000 and <math>\frac{1}{2}</math> the estate balance</li><li>- Issue receives remaining balance</li></ul>
Spouse and issue, one or more of whom are not issue of the surviving spouse	<ul style="list-style-type: none"><li>- Spouse receives <math>\frac{1}{2}</math> of the estate</li><li>- Issue receives remaining balance</li></ul>
Children & descendants only	Children and descendants inherit in equal parts
Parents and Siblings only	Parent and Sibling or their descendants inherit in equal parts
Grandparents, aunts, uncles, and their descendants	Grandparents, aunts, uncles, or their descendants inherit in equal parts
Great-grandparent or their descendant only	Great-grandparents or their descendant inherit in equal parts, and so on.

# Intestacy Chart (IL)



STANGE LAW FIRM

Survivor	Share of Intestate Estate
Children only	Children inherit 100% of the estate
Spouse Only	Spouse inherits 100% of the estate
Spouse and Descendants	<ul style="list-style-type: none"><li>- Spouse receives <math>\frac{1}{2}</math> of the estate</li><li>- Descendant receives <math>\frac{1}{2}</math> of the estate</li></ul>
Parents only	Parents inherits 100% of the estate
Siblings only	Siblings inherit 100% of the estate
Parents and siblings	Parents and Siblings inherit in equal shares, unless only survived by one parent then that parent gets a double share.

# Intestacy Chart (KS)



STANGE LAW FIRM

Survivor	Share of Intestate Estate
Children only	Children inherit 100% of the estate
Spouse Only	Spouse inherits 100% of the estate
Spouse and Descendants	<ul style="list-style-type: none"><li>- Spouse receives <math>\frac{1}{2}</math> of the estate</li><li>- Descendant receives <math>\frac{1}{2}</math> of the estate</li></ul>
Parents only	Parents inherits 100% of the estate
Siblings only	Siblings inherit 100% of the estate

# Intestacy Chart (OK)



STANGE LAW FIRM

Survivor	Share of Intestate Estate
Children only	Children inherit 100% of the estate
Spouse Only	Spouse inherits 100% of the estate
Spouse and Descendants (from the decedent and surviving spouse)	<ul style="list-style-type: none"><li>- Spouse receives <math>\frac{1}{2}</math> of the estate</li><li>- Descendant inherits the remainder</li></ul>
spouse and at least one descendant from you and someone other than that spouse	<ul style="list-style-type: none"><li>- Spouse inherits <math>\frac{1}{2}</math> of all property acquired by joint effort during your marriage and splits the remaining intestate property equally with your descendants</li><li>- Descendants inherit everything else</li></ul>
Spouse and Parents	<ul style="list-style-type: none"><li>- Spouse inherits all the property acquired by joint effort during marriage, plus <math>\frac{1}{3}</math> of the remaining intestate property</li><li>- Parents inherit everything else</li></ul>
Spouse and siblings	<ul style="list-style-type: none"><li>- Spouse inherits all the property acquired by joint effort during your marriage, plus <math>\frac{1}{3}</math> of the remaining intestate property</li><li>- Siblings inherit everything else</li></ul>
Parents only	Parents inherits 100% of the estate
Siblings only	Siblings inherit 100% of the estate

# Intestacy Chart (NE)



STANGE LAW FIRM

Survivor	Share of Intestate Estate
Children only	Children inherit 100% of the estate
Spouse Only	Spouse inherits 100% of the estate
Spouse and Descendants (from the decedent and surviving spouse)	<ul style="list-style-type: none"><li>- Spouse inherits the first \$100,000 of your intestate property, plus 1/2 of the balance</li><li>- Descendants inherit the remainder</li></ul>
Spouse and at least one descendant from you and someone other than that spouse	<ul style="list-style-type: none"><li>- Spouse inherits 1/2 of the estate</li><li>- Descendants inherit the remainder</li></ul>
Spouse and Parents	<ul style="list-style-type: none"><li>- Spouse inherits the first \$100,000 of your intestate property, plus 1/2 of the balance</li><li>- Descendants inherit the remainder</li></ul>
Parents only	Parents inherit 100% of the estate
Siblings only	Siblings inherit 100% of the estate

# Revocable Trusts



STANGE LAW FIRM

## What is a trust?

A fiduciary arrangement that allows for a third party, or trustee, to hold assets on behalf of a beneficiary/beneficiaries.

## What is a revocable trust?

The same as a trust with the added ability of the grantor to change the trustee, beneficiaries, any provision of the trust, or revoke the trust entirely up until the death of the grantor.

## What are benefits of revocable trust?

- Avoid probate
- Real property in multiple states
- Better for potential disability
- Privacy
- Life insurance for non-taxable estates
- Retirement accounts for children lacking maturity
- Used in conjunction with a pour-over will.

**Note: Must title assets in revocable trust or else the trust is an empty vessel. It is vital for a lawyer to assist in advising the client how to re-title assets.**

# Other Documents



STANGE LAW FIRM

- HIPAA Medical Release Form – Form that allows power of attorney to obtain health care information.
- Beneficiary Deed – Deed that transfers title to real estate to a third party upon their death outside of probate. Beneficiary deeds can often be made outright to a third party or to a trust.
- Retirement Account/Life Insurance Beneficiary Designations – It is vital for individuals to update their beneficiary designations upon their death. They can often be made outright to a third party or to a trust to avoid probate.
- Transfer on Death/Payable on Death – Bank accounts can often be designated TOD or POD to a third party outright or to a trust to avoid probate.

# More Complex Estate Planning



STANGE LAW FIRM

- **The Estate Tax is important to keep in mind with more complex estate planning.**
  - Since 2013, the IRS estate tax exemption indexes for inflation. It took a big jump because of the new tax law signed in 2017.
  - For tax year 2017, the estate tax exemption was \$5.49 million for an individual, or twice that for a couple. However, the new tax plan increased that exemption to \$11.18 million for tax year 2018, rising to \$11.4 million for 2019, \$11.58 million for 2020, \$11.7 million for 2021 and \$12.06 million in 2022. If your client's estate is in the ballpark of the estate tax limits and they want to leave the maximum amount to their heirs, they will want to do some estate tax planning.
  - In the next slide, are the current estate tax rates. However, it is important to keep in mind that with shifting political winds, the estate tax exemption and rates can vary.
  - The current estate and gift tax exemption is **scheduled to end on the last day of 2025**. After that, the exemption amount will drop back down to the prior law's \$5 million cap, which, when adjusted for inflation, is expected to be about \$6.2 million.
  - Know as well that some states have an estate tax, including Illinois.

# More Complex Estate Planning

## Estate Tax Rates:

<b>RATE</b>	<b>TAXABLE AMOUNT (VALUE OF ESTATE EXCEEDING EXEMPTION)</b>
18%	\$0 to \$10,000
20%	\$10,001 to \$20,000
22%	\$20,001 to \$40,000
24%	\$40,001 to \$60,000
26%	\$60,001 to \$80,000
28%	\$80,001 to \$100,000
30%	\$100,001 to \$150,000
32%	\$150,001 to \$250,000
34%	\$250,001 to \$500,000
37%	\$500,001 to \$750,000
39%	\$750,001 to \$1 million
40%	Over \$1 million

# More Complex Estate Planning



STANGE LAW FIRM

- **The Gift Tax is important to keep in mind with more complex estate planning.**
  - Currently, your client can give any number of people up to \$16,000 each in a single year without incurring a taxable gift (\$32,000 for spouses "splitting" gifts)—up from \$15,000 for 2021. The recipient typically owes no taxes and doesn't have to report the gift unless it comes from a foreign source.
  - However, if your client's gift exceeds \$16,000 to any person during the year, you have to report it on a gift tax return (IRS Form 709). Spouses splitting gifts must always file Form 709, even when no taxable gift is incurred. Once your client give more than the annual gift tax exclusion, your client begins to eat into your lifetime gift and estate tax exemption.
  - With the passage of the Tax Cuts and Jobs Act (TCJA), the gift and estate tax exemption has increased significantly. The chart below shows the current tax rate and exemption levels for the gift and estate tax:

**HIGHEST TAX  
RATE(FOR GIFTS  
OR ESTATES OVER  
THE EXEMPTION  
AMOUNT)**

40%

**GIFT AND ESTATE  
EXEMPTION (2017  
AND PRIOR  
YEARS)**

\$5.49 million\*

**GIFT AND ESTATE  
EXEMPTION  
(2022, EXPIRES IN  
2025)**

\$12.06 million\*

# More Complex Estate Planning

- **Other Estate Planning Options:**
  - **A-B Estate Plan** - An AB Trust is a Trust created by married couples to help minimize estate taxes for the surviving spouse after one spouse passes away. This joint Trust allows the estate to be split into two parts (or Trusts) after the death of a spouse, and then be taxed accordingly. The purpose of AB Trusts is to help avoid double taxation and ensure that your assets transfer to the right beneficiary, usually your spouse, after death. Right now, with the estate plan exemption being high, these are seldom used. In most cases, married couples use one marital trust, which is revocable unless they have vast assets.
  - **Irrevocable Life Insurance Trust** - An ILIT (pronounced “eye-lit”) is a type of trust that it is funded during your client’s lifetime with one or more life insurance policies. It is irrevocable, which means that once your client creates an ILIT the trust generally cannot be changed or revoked; the terms of the trust agreement are pretty much set in stone.
    - You should also be aware of certain drawbacks to using an ILIT. One is that establishing this type of trust requires the grantor to completely give up all rights to the property in the trust, including who the trust beneficiaries are and under what circumstances and conditions they receive the assets.
    - With the estate tax exemption currently so high, many question the need for these types of trusts.

# More Complex Estate Planning



STANGE LAW FIRM

- **Other Estate Planning Options:**

- **Medicaid Asset Protection Trust (MAPT)** - Medicaid Asset Protection Trusts (MAPT) can be a valuable planning strategy to meet Medicaid's asset limit when an applicant has excess assets. Simply stated, these trusts protect a Medicaid applicant's assets from being counted for eligibility purposes. MAPTs enable someone who would otherwise be ineligible for Medicaid to become eligible and receive the care they require, be that at home or in a nursing home. Assets in this type of trust are no longer considered owned by the Medicaid applicant. These trusts are irrevocable.
- **Minor's Educational Trust** - A Minor Education Trust allows your client to plan when money will be distributed to their children when they turn 18 or enter college to pay for their education after high school. This sort of trust distributes a certain amount of money each year to the beneficiary to pay for tuition, books, and supplies for college. If the beneficiary no longer decides to attend school your client is also able to create a clause in the trust that stops payment distributions, so that the hard earned money you saved for the child is not being spent on frivolous items that are not related to education. These trusts are irrevocable.

# More Complex Estate Planning

- **Other Estate Planning Options:**
  - **Special Needs Trust for Handicapped Child** - A special needs trust is used to provide benefits to a person with special needs while also maintaining that person's ability to get state or federal benefits they are entitled to. The trust is typically established by a parent or guardian, with their special needs child as the beneficiary. Sometimes, these trusts can be part of a will or it can be a separate trust that is irremovable.
    - Note: An Irrevocable Trust is separate from your client's estate, and your client cannot remove the assets you place in it. These assets will remain in the trust solely for the benefit of the person with disabilities. Even if your clients need these assets due to a personal situation, they cannot draw on them. While this may be considered a drawback, irrevocable trusts do have their benefits. For one, any assets that you place in the trust cannot be touched by creditors for outstanding debts or taxes. In addition, the trust cannot be touched by any creditors of the person with the disability.
  - **Marital Deduction Trust** - A marital trust is a type of irrevocable trust that allows one spouse to transfer assets to a surviving spouse tax free, using the unlimited marital deduction, while providing benefits not available if transferred outright. When drafting Wills for married couples, we usually include a Marital Trust to provide estate tax planning, spousal care, and Medicaid protection. A Marital Trust often works in conjunction with a By-Pass Trust to capture the deceased spouse's estate tax exemption. By passing all assets to the surviving spouse using the unlimited marital deduction – the deceased spouse's federal and state estate tax exemption is basically lost.

# More Complex Estate Planning



STANGE LAW FIRM

- **Other Estate Planning Options:**

- **Income Only Trust (“IIOT”)** - An irrevocable income-only trust is a type of living trust often used for Medicaid planning. It protects assets from being sold to pay for nursing home and other long-term care expenses so that the assets can be passed on to beneficiaries. (A beneficiary – any person or entity who receives the assets of a trust, will, or life insurance policy – is often a family member although s/he may also be a close friend or even a charitable organization.). Once assets are transferred into the trust, the law places certain restrictions on their use. However, the grantor retains the right to any income that the trust assets generate. The grantor also has the right to use, live in, and sell any real estate held in the trust, as well as buy another property with the proceeds of any sale.
- **Standby Trust** - A standby trust is a type of living trust except that property is not transferred to the trust at the time your client creates it, although some states require that at least a token amount of your property be transferred at this time. The trust stands idle until it is needed. If incapacity strikes, your client’s property may be transferred to the trust (this is called funding the trust) by your client’s attorney-in-fact through the power granted to him or her by a durable power of attorney (DPOA) and used according to the terms of the trust. When the standby trust is funded, the trustee takes immediate control of your property to use it for your care and support, or in whatever way you have directed by the terms of the trust.

# More Complex Estate Planning

- **Other Estate Planning Options:**

- **Domestic Asset Protection Trusts (“DAPTs”)** - A Domestic Asset Protection Trust is an irrevocable trust established under the laws of a jurisdiction that allows the settlor of the trust to be a discretionary beneficiary while still offering protection against claims from the settlor’s creditors. As it turns out, it is also a good tool for individuals to use in divorce.
  - With an appropriately-established DAPT, the settlor retains access to the assets placed into the trust, but the assets are protected against many types of creditor claims. Domestic Asset Protection Trust statutes differ greatly between states, with some offering much more comprehensive protection than others. Nevada and South Dakota are generally recognized as allowing debtors the greatest ability to shield assets from creditors’ claims through the establishment of DAPTs, while Delaware and Alaska offer certain asset protection benefits as well.
  - Which United States jurisdictions allow for the creation of asset protection trusts? Domestic asset protection trusts are permitted under the laws of **Alaska, Delaware, Hawaii, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia and Wyoming.**

# Estate Planning Practice Tips



STANGE LAW FIRM

- Know the laws of your state in terms of the number of witnesses and the need for a notary.
- Your client should be advised to keep an original copy of their estate planning in a safe place, like a safety deposit box, waterproof safe, etc. An original of the Will is likely required for the probate court. Law firm should scan in a copy of everything into the client's file.
- If client's health is in jeopardy, be prepared to move quickly.
- Use firm-approved forms or get approval to use other forms. Some forms may need to be tweaked mildly by state.
- Irrevocable trusts should only be drafted by skilled practitioners.
- Make sure client completes all intake questionnaires.
- Use a blueback (cover) for Wills and Trusts as a nice touch.
- Communicate with your client in writing:
  - Confirmation letter should set out scope of representation.
  - Letter should go to client explaining estate plan and how to fund trusts before signing.
  - Beneficiary deeds need to be filed. All deed requirements, including formatting rules for state/county need to be abided by included margins, font, etc.
  - Closing letter should explain final matters to the client, including need to safe-keep estate planning.

## **Documents/Matters Discussed**

- Advance medical directives
- Durable financial powers of attorney
- Wills & Pour-Over Wills
- Revocable Trusts
- HIPAA Authorization for Release of Medical Information forms.
- Beneficiary Designations
- More Complex Estate Planning
- Practice Tips