

Year-End Gifting

Have your clients completed their 2022 gifts yet?

As the end of the year approaches, it is important to make sure last minute gifts count for the intended calendar year. A gift is complete for Federal tax purposes when the donor relinquishes “dominion and control” of the asset.

What does that mean for common types of property transfers?

- **Cash:** Must be physically received by the recipient.
- **Paper Checks:** Must be physically received by the donee by December 31 of the current year, and should also be deposited by then to substantiate the donee’s receipt.
- **EFT, ACH, Wire Transfer:** Transaction needs to be initiated by the depository institution so that it is no longer cancelable by the donor, though the funds may not yet be available to the recipient.
- **Securities:** Stock certificate must be endorsed and delivered to the recipient, or transferred on the books of the transfer agent.
- **Real Property:** Depends on the state—it may be the date the deed of transfer is executed, but some states require that the transfer be recorded before the gift is complete. As always, consult local counsel.
- **Qualified Charitable Distribution:** For a charitable gift up to \$100,000 to be counted as a required minimum distribution (RMD) from an Individual Retirement Account (IRA), funds must be sent *from the trustee* of the IRA (never deposited in a personal bank account) *and received by the charity* in the calendar year for which the RMD is required.

Specifically addressing gifting related to life insurance, keep in mind these additional considerations:

- The gift of an **existing policy** to another individual is completed when the change of ownership is registered with the carrier. The carrier will generate a Form 712 to substantiate the fair market value (FMV) on the date of transfer. Since life insurance valuations can be unpredictable, particularly for level term policies and universal life products with secondary guarantees, it is suggested that one may want to obtain an informal opinion of the value before making the transfer. Please work with a carrier to obtain that information prior to the creation of the Form 712.
- If the gift consists of **premiums paid for a policy owned by another individual**, then the date and amount of the gift would match the premium payment.
- **Trust-owned policies** require careful attention. Paying the premium on a policy owned by an irrevocable trust is generally not a gift of a present interest, and therefore does not qualify for the annual exclusion, unless the trust gives the beneficiaries “Crummey” withdrawal powers and the Crummey requirements of the trust are properly observed. As a matter of best practice, funds may be transferred to the trust at least 30 days before the premiums are due, proper Crummey notices should be furnished promptly to the beneficiaries, and then premiums may be paid from the trust’s bank account. (Specific dates, other than 30 days, may be provided in the trusts, so please check with local counsel and the trust.) In this case, the effective date of the gift is the date the funds are transferred to the trust; the date on which the premiums are paid becomes irrelevant.



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