

Estate Planning Is a Great Way to Help You Celebrate the Holidays

It Is Time to Make Your Estate Planning List and Check It Twice

“He’s making a list. He’s checking it twice. He’s going to find out who’s naughty and nice”¹

The estate planning process can sometimes be similar to Santa’s process. You decide who should receive your money and property (the nice people on your list) and who should not (the naughty ones).

Gathering with friends and family this holiday season can serve as an important reminder for you to ensure that the right people are included in your estate plan.

Reflecting on the Past, Acknowledging the Future

There is a great deal on your plate this time of year. Between making lists, shopping, decorating, cooking, hosting, and managing year-end work, there is often not enough time left to enjoy the spirit of the season.

However, the moment will come when everyone gathers together. With the holiday rush over, you can welcome the warmth of your loved ones and take a moment to reflect on family, friends, and your legacy. These small moments can get you thinking about the bigger picture as you close the book on 2024 and turn the page to 2025.

Do not let old acquaintances—or family members—be forgotten. Raise a glass to them with your estate plan.

Double-Checking Your Estate Planning List

Whether you have an existing estate plan or need to make one, a few basic plan features—the who, what, and when of estate planning—should help guide your decision-making.

Whom do you want as beneficiaries?

Santa is responsible for giving gifts to everyone in the world. Your task is not nearly as complex. However, choosing estate plan beneficiaries is not always easy.

Family members are often the most obvious beneficiaries, especially when you are married and have kids. In fact, depending on where you live, you may be unable to disinherit your spouse or minor children even if you want to, except in certain circumstances. However, outside of these exceptions, you are generally free to choose whomever you want as beneficiaries. They do not have to be *descendants* as defined in state inheritance laws (i.e., family members to whom the court defaults when somebody does not have an estate plan in place when they pass away).

Your beneficiaries need not be family, friends, or even people. Beneficiaries can be a charity, your alma mater, a local business, or some other organization. Your plan can also include a trust that benefits a person, an entity, or your beloved pet. Many estate plans are a mix of these beneficiary types.

¹ Wikipedia, “Santa Claus Is Comin’ to Town,” last modified November 25, 2024 (UTC), https://en.wikipedia.org/wiki/Santa_Claus_Is_Comin%27_to_Town.

Once you make your beneficiary list and check it twice—and that includes naming *contingent* or backup beneficiaries—we can advise you on tools such as a will, a trust, or lifetime gifts that you can use to ensure that your chosen beneficiaries receive their inheritance in the way you want.

What should your beneficiaries receive?

When deciding the types and amounts of your money and property each beneficiary should get, primary considerations often relate to what you own and each beneficiary's specific needs. However, the “what” of estate planning can be just as difficult as the “who.” It is not always about who has been naughty and nice.

If you painstakingly even out how much everyone gets for Christmas down to the exact dollar amount, you might opt for an *equal* distribution of your money and property. Or you may recognize that your son who makes six figures has different needs from your struggling artist son, which suggests an *equitable* distribution.

Start by creating an inventory of everything you own. Some things, such as your car, house, and retirement account, are obvious big-ticket items. Other things, including heirlooms, sentimental items, and digital assets, can more easily be overlooked but are often just as important to your loved ones.

Identify potential family conflicts and how gifts might exacerbate them. Certain accounts or properties (e.g., financial accounts, a family vacation home, and life insurance) can be split among loved ones. Tangible personal property (dishes, photo albums, art, etc.) may not be divisible. However, some of these items can be sold and the money divided.

Keep in mind that, in some cases, splitting accounts or property to equalize inheritances could create more problems than it solves due to shared ownership issues. For example, leaving the family cottage to multiple children may result in fights over occupancy rights, maintenance and upkeep, and decisions about when to sell.

When should your beneficiaries receive their inheritance?

Gifts can be made during your lifetime or after you pass away. The timing of those gifts depends partly on the method they are made.

More people today are embracing a “giving while living” strategy. Making gifts while you are alive lets you see your loved ones enjoy their inheritance. In addition, this strategy can take advantage of available gift tax exclusions. However, in some cases, transferring the same accounts or property through an estate plan after death may offer a better tax strategy.

There are two main tools in estate planning for leaving assets to loved ones at death: a will and a living trust. To accomplish a speedier distribution, using a trust is usually ideal. Accounts and property owned by a trust are not subject to probate court oversight, while accounts and property gifted via a will must first go through the court-supervised probate process, which can delay distributions. Using beneficiary designation forms for accounts and policies that have them available (e.g., retirement accounts, life insurance, and bank accounts) can also avoid the probate process, so the funds are distributed in a timely fashion. However, these probate avoidance tools result in a lump-sum payout to your loved one, which may not align with your goals and wishes.

Trusts allow for more nuance in how accounts and property are distributed. For example, gifts can be staggered over time as a child matures and becomes more capable of handling an inheritance or when life milestones such as graduation or employment are met. A trustee can also be given full discretion over when to make gifts or distributions to the beneficiary.

An attorney can help you strike the right balance between living for the moment and delaying gifts until after death for tax and planning purposes, ultimately leaving more behind for your loved ones.

Give the Gift of an Estate Plan

An estate plan is a valuable gift you can give to both yourself and your loved ones.

Without a detailed up-to-date plan that identifies what you own, who your beneficiaries are, and how you want your accounts and property to be distributed at your death, your estate could end up as chaotic as a white elephant gift exchange, with loved ones arguing over who should get what and state law—not your final wishes—having the last word.

The holidays are fleeting. Your legacy should not be. When the holidays slow down and your normal workflow returns, reach out to our attorneys to discuss establishing a plan worthy of year-round celebration. Call us to schedule a time when we can put your list into action.