

Holland Law Offices, LLC.

Wills, Trusts, Estates, Probate,
Asset Protection & LGBT Planning

Paul G. Holland, Jr., J.D., LL.M.

Large firm experience, small firm responsiveness

Quiambaug Cove Professional Center
107 Wilcox Road
Suite 102
Stonington, CT 06378

Tel. (860) 415-0075
Fax. (860) 415-0074
pholland@hollandprobatelaw.com
www.hollandprobatelaw.com

ESTATE PLANNING AND ASSET PROTECTION

The Federal Estate Tax exclusion amount is currently \$5,340,000 per person or \$10,680,000 per married couple. The Connecticut State Estate Tax exclusion amount is currently \$2,000,000 per person or \$4,000,000 per married couple. With numbers this high, it is no wonder that many attorneys who do not focus their practice exclusively on Estate Planning tend to minimize the number of trusts that are created at the death of a client. In fact, in New London County, it is very common for “general practice” attorneys to provide that spouses receive their inheritance outright and children receive their inheritances (at the death of the surviving spouse) once they attain age 35.

As an attorney who learned to practice complex estate planning and estate administration as a member of the Individual Clients Department of Cummings & Lockwood in Stamford, Connecticut, I do not espouse the view of a New London County “general practice” attorney. After all, Cummings & Lockwood is one of Connecticut’s largest law firms and is known throughout the country as one of the leading trusts and estate firms - with over 100 attorneys in the Trust & Estate department.

Estate planning has been described as the transfer of assets, from one generation to the next, while taking into consideration transfer taxes (Estate, Gift, and Generation-Skipping Taxes) and Asset Protection.

A properly drafted Estate Plan will typically include Wills, Living Trusts, Powers of Attorney, Living Wills, and Designations of Conservator. Of course, an important part of the estate planning process involves ensuring that a client understands the meaning and affects of the documents signed.

During this process, the client and the attorney should be focused on Asset Protection as well as transfer tax avoidance. With the prevalence of divorce as high as it is and considering the fact that we live in a very litigious society, Asset Protection planning should be a major consideration in almost every Estate Plan. Other reasons to consider Asset Protection include 2nd and 3rd marriages, special needs children or grandchildren, and disability. Asset Protection can be thought of as a method of arranging access, control, management, and ownership of assets to preserve value for an individual because of the risk of potential claims by creditors.

As noted above, most New London County attorneys terminate trusts for the benefit of children at or about age 35. Most sophisticated Trust & Estate attorneys will not end trusts for the benefit of children at such a young age. The reason is simple: Asset Protection. One of the most important qualities of trusts is that they can protect trust assets from the creditors of the trust beneficiary.

Statistically, most people who get divorced do so within the first twenty years of their marriage. With divorce rates as high as 50%, the most likely creditor one's children will have is a spouse who becomes an ex-spouse. Why then, would an attorney draft an estate plan whereby the trusts for the benefit of the children terminate at age 35?

A more reasoned approach would be to keep assets in trust for the benefit of children until they reach an age at which it is unlikely that they will get divorced. In order for this strategy to succeed, the trust must be drafted with Asset Protection as a primary goal. An Estate Plan which takes into account both transfer tax avoidance and Asset Protection is typically something that is drafted by an attorney who limits his or her practice to this specific area – not a general practice attorney.

You may not be subject to Federal or Connecticut Estate Taxes due to the high exclusion amounts. However, your children could be subject to a very costly divorce. If they are subject to such a divorce, shouldn't their inheritance be protected? If the divorce occurs after the child attains age 35 and after the death of you and your spouse, the child's inheritance may not be protected at all. Only an attorney who focuses on Estate Planning and Asset Protection can help you devise an Estate Plan that will protect your children from divorce.

Paul G. Holland, Jr., J.D., LL.M.