

TAX AND WEALTH ADVISOR ALERT: ESTATE PLANNING THE FIRST SIN — "LETTING A STRANGER DECIDE"

People describe an estate plan in a number of ways. Some people use very technical jargon, focusing on the specific tools: wills, trusts, powers. Others describe what the plan does—who gets what property and when. But in my opinion, planners need to help clients understand the “why”; that is, why they should invest in an estate plan. The answer to “why?” is that an estate plan is a strategy to take care of the people we care about when we, for whatever reason, cannot.

In that context, perhaps the most important issue that an estate plan must address is who should raise minor children if something happens to the parents. It's an interesting, but little-known fact outside of the legal world, that the decision of who will raise the children falls solely in the hands of a probate court judge. Unfortunately, that judge has no idea who the right person is; that is, the person who shares the parents' values, beliefs, and convictions. The judge will look to the parents for guidance on who that person is, and the place the judge will look is in the parents' wills. But if the parents are like 70% of Americans and do not have wills, the judge will be lost without guidance from the people most qualified to provide it.

Stated simply, there is no planning issue more important for parents of minor children to address than the nomination of a guardian. Parents who abdicate that responsibility are truly committing a sin.