

## Estate, trust and fiduciary litigation will continue to grow



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Over the last several years, there has been a substantial uptick in the size, volume and contentiousness of contested trust and probate matters. Conventional wisdom says that this is principally a product of the Great Transfer, where financial experts previously estimated that from 2007 through 2061, 96.3 million estates in the U.S. would transfer \$59 trillion to younger generations and charitable causes. From this massive intergenerational transfer, coupled with increasing incidence of dementia and a stagnant divorce rate, many predicted that the flood of litigation for estates, trusts and fiduciaries would be here to stay.

Indeed, a recent [article in the Wall Street Journal](#) paints a starker and more compressed picture. Revised predictions of the Great Transfer indicate that older generations will hand down more than \$70 trillion between 2018 and 2042 alone. And while tales of the associated increase in litigation are largely anecdotal, at least one objective metric confirms the prediction. The State of New York's court system reported an approximate 350 percent increase in contested estate cases between 2016 and 2019—from 1,005 cases to 3,500 cases just three years later. And, with the federal gift tax exemption scheduled to return soon to the 2017 level of \$5.49 million per person together with other uncertainty about further changes to the tax code under the Biden administration, it is reasonable to expect that there will be many newly revised estate plans for concerned beneficiaries to scrutinize in the coming years.

### Act now to help prevent litigation

Because estate and trust litigation is an increasingly likely outcome, now is the time for professional trustees to take steps that can help prevent or mitigate potential litigation. Trustees should:

- Review their internal administrative processes to identify problematic practices.
- Evaluate their client due diligence and risk rating during the on-boarding process.
- Identify troublesome current clients – grantors and beneficiaries – and take affirmative steps to mitigate risk.

**For more information on this topic, or to learn how Godfrey & Kahn can help, contact a member of our Estate, Trust & Fiduciary Litigation Practice Group.**

*The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.*