

Top Five Probate Litigation Trends: What Estate Planners and Trust Practitioners Need to Know

June 30, 2026

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The United States is in the midst of a historic generational transition. The so-called “Great Wealth Transfer” is estimated to exceed **\$84 trillion** in assets passing from Baby Boomers and the Silent Generation to their heirs over the coming decades. This wealth transference is reshaping the landscape of estate administration and trust practice. Against this backdrop, an aging population, the rising complexity of blended family structures, and the rapid proliferation of digital assets are combining to produce unprecedented levels of estate probate and trust litigation. Courts across the country are contending with both more numerous and meaningfully more complex disputes than those of prior generations.

Much like the Midwest’s flat dustbowl lends itself to more frequent tornadic activity than elsewhere in the country, here in the “DMV” (D.C./Maryland/Virginia), home to a dense concentration of federal employees, government contractors, military families, and high-net-worth households, conditions are particularly ripe for contested estate and trust dispute activity. It shouldn’t be a surprise, therefore, that Virginia’s and Maryland’s Circuit Courts, and D.C.’s Probate Division are all experiencing a meaningful uptick in contested proceedings. The five trends identified below reflect the most consequential litigation developments that estate planners and trust practitioners in this region should be tracking in 2026.

UNDUE INFLUENCE CLAIMS ARE SURGING

Caregiver-beneficiary relationships, late-in-life marriages, and deathbed changes to estate plans are generating a wave of undue influence claims across the DMV region consistent with the nationwide trend. And with statutory changes favoring the challengers, such claims are only likely to continue to increase. Virginia’s multi-part undue influence test and shifting evidentiary burdens, nominally at least, favor challengers of wills, see § 64.2-454.1. and, with a newly-enacted equivalent governing the trusts context, effective as of July 1, 2026, of trusts as well, see § 64.2-724.1. In situations where undue influence may be presumed from basic circumstances, often easily established by the challenging plaintiff, cases of late have become more about an accused’s needing to disprove wrongdoing than about the skeptical plaintiff’s duty to prove the contrary. Alleged influencers who occupied a position of trust or physical dependency should presume a legal challenge when changes to testamentary planning result in a plan favoring the one in that position for the decedent. In Maryland, the Court of Appeals (FKA the Court of Special Appeals) has affirmed that undue influence may be proven through cumulative inference, permitting plaintiffs to build their cases through patterns of conduct rather than direct evidence. In D.C., the Probate Division has demonstrated a notable willingness to allow contested matters to reach trial based on affidavit evidence alone, lowering the practical threshold for advancing such claims. For the devoted family member who has done only right by their deceased parent(s) while asking or expecting nothing in return, a parent’s reward of a greater than equal distributive share may result in little more than authorized judicial scrutiny and second-guessing of actions taken when t-crossing and i-dotting were not the primary (or even secondary) priority. These shifted burdens may operate unfairly to the detriment of the selfless doting loved ones their dying parents saw fit to reward, but we have decided societally to err in favor of protecting against overriding our elders’ testamentary intentions over the perceived substantially more limited likelihood that the decedent independently intended and resolved to recognize and reward their loved one’s selfless

kindness. We have effectively shifted the presumption in this context to one of expected wrongdoing by anyone rewarded by a dying loved one.

Practice Tip: Document the testator's independent judgment at every planning stage, especially for any amendment in contemplation of more imminent death. Consider independent counsel for vulnerable clients and retain contemporaneous notes of all meetings.

LACK OF TESTAMENTARY CAPACITY CHALLENGES

Dementia diagnoses are rising in lockstep with an aging client base, and contests premised on lack of testamentary capacity are becoming more common and considerably more sophisticated. The classical four-pronged capacity standard, i.e., requiring that a testator understand the nature of the testamentary act, the character and extent of their property, the natural objects of their bounty, and the nature of the will itself, remains the legal benchmark across the DMV jurisdictions, but the evidentiary battles to establish or defeat capacity have grown considerably more technical. Plaintiffs now routinely retain geriatric psychiatrists and forensic neurologists as expert witnesses, and the battle of the experts has become a defining feature of capacity litigation. Virginia Code §§ 64.2-403 and -404 govern will execution formalities (and/or the excusability of noncompliance therewith), and courts scrutinize compliance with these requirements closely when capacity is disputed, particularly regarding the role of attesting witnesses and notaries.

Practice Tip: Consider recommending a contemporaneous medical assessment for clients with any documented cognitive impairment; consider a "golden period" video execution for "high-risk" matters, but recognize the "red flag" signal such a step may suggest and/or the potentially disproportionate impact of even the most minor lapses or misstatements. Likewise, a capacity assessment memorandum prepared by the drafting attorney at the time of execution might be invaluable in future litigation but is not without its own caveats.

DIGITAL ASSETS AND CRYPTOCURRENCY DISPUTES

The valuation, access, and proper distribution of digital assets, including, as relevant examples, cryptocurrency wallets, non-fungible tokens (NFTs), online brokerage accounts, and internet-based business interests, are creating novel litigation flashpoints that earlier probate frameworks were not designed to address. Virginia has enacted the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA") (Va. Code §§ 64.2-116 et seq.) to provide fiduciaries with clearer statutory access rights, but significant disputes persist around the possession of private cryptographic keys, the policies of third-party exchange platforms, and the correct estate-date valuation methodology for inherently volatile assets. Maryland and D.C. have enacted comparable RUFADAA statutes, yet litigation in all three jurisdictions reveals that statutory authorization and practical access remain separated by a significant gap, particularly where a decedent leaves no organized record of digital holdings or credentials.

Practice Tip: Ensure all estate plans include a digital asset inventory and an explicit fiduciary authorization clause; counsel clients to use platform legacy contact and beneficiary designation tools where available. A securely stored credentials memorandum, separate from the will, can prevent years of unnecessary litigation.

ELDER FINANCIAL EXPLOITATION AND CONSERVATORSHIP LITIGATION

Adult protective services referrals, emergency guardianship petitions, and civil claims for financial exploitation of vulnerable adults are rising sharply across all three DMV jurisdictions. Virginia's Adult Protective Services statutes (Va. Code §§ 63.2-1600, et seq.) and the Commonwealth's criminal elder abuse statutes are being deployed with increasing frequency in tandem with civil probate remedies, including claims for constructive trust, disgorgement, and punitive damages. Contested guardianship and conservatorship matters in Virginia Circuit Courts seem to have grown substantially in both volume and procedural complexity, with courts appointing guardians ad litem ("GALs") with greater frequency to safeguard the interests of alleged incapacitated persons. In Maryland, the intersection of the Health Care Decisions Act with surrogate decision-making disputes has generated a distinct body of contested proceedings, particularly where family members disagree about the scope of an agent's authority under a durable power of attorney.

Practice Tip: Counsel aging clients to establish durable powers of attorney, advance medical directives, and revocable trusts proactively BEFORE capacity becomes an issue. Encourage regular monitoring of financial accounts for irregularities and consider the use of trusted contact designations with financial institutions.

TRUST MODIFICATION, DECANTING, AND NO-CONTEST CLAUSE DISPUTES

Irrevocable trusts formed decades ago are being challenged, modified, or decanted with growing frequency as family circumstances evolve and tax laws change. Virginia's Trust Decanting Act (Va. Code §§ 64.2-779.1, *et seq.*) provides a statutory mechanism for trustees to distribute assets from one irrevocable trust to a second trust with more favorable terms (a process that is itself a growing trend), but this power is increasingly being contested by remainder beneficiaries who argue that decanting impermissibly alters their vested interests. No-contest (or in terrorem) clauses, long regarded as effective deterrents to meritless litigation, are being strategically challenged as beneficiaries weigh the financial calculus of contesting large estates and assess the likelihood of clause enforcement. Maryland courts have historically enforced in terrorem clauses with relative strictness, while D.C. courts have applied them more flexibly, creating meaningful jurisdictional variation within the same metropolitan region.

Practice Tip: When drafting no-contest clauses, consider including explicit carve-outs for good-faith challenges based on capacity or undue influence and/or gross mismanagement or self-dealing. Blanket clauses discourage otherwise meritorious litigation. Review irrevocable trusts periodically for decanting candidacy, particularly those with outdated distribution standards or unfavorable trustee succession provisions.

Conclusion

The litigation trends documented here share a common thread: each is, at its core, a failure of planning, whether a failure to document, communicate, update, or anticipate. Proactive, well-documented estate planning remains the most reliable and cost-effective litigation prevention tool available to practitioners and their clients. Comprehensive planning that accounts for cognitive vulnerability, digital asset complexity, blended family dynamics, and evolving trust structures will materially reduce the risk of costly, protracted disputes.

Practitioners serving clients in the DMV region are well-served by engaging colleagues who bring broad, multidisciplinary expertise to complex estate matters. If you do not believe you are equipped to navigate the generational, jurisdictional, and asset-class complexity that defines modern estate and trust practice, seek help. Remember, it is not failure to admit you don't know it all, rather consider it more of a professional imperative.