

Florida Population Boom Is Taxing on Trust and Estate Litigation



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The Sunshine State has become an attractive place to live—not just for the tropical weather but also for its tax advantages. On the heels of business and wealth migration to Florida, Bruce Katzen of Kluger, Kaplan, Silverman, Katzen & Levine has seen an immense uptick in demand for probate litigation.

People started moving to South Florida in the 1940s after World War II because it was a great place to settle after retirement. Florida has a higher percentage of elderly people, and there are a lot of wealthy elderly people in Southeast Florida.

The trend of wealthy moves to South Florida has become more pronounced during the past 10 years. Unlike other states, Florida doesn't have a state income tax or estate tax, which significantly benefits wealthy individuals. Tax planners are advising their clients to move their residency to Florida because it's beneficial for tax reasons when compared to states such as New York, Connecticut, and New Jersey. More recently, there has been an influx from California and Illinois.

The net moves to Florida further accelerated because of Covid-19. The state welcomed [nearly 260,000 new residents in 2021](#) and had the largest growth in home buyer migration in the country. In addition to having lower taxes, the new residents were taking advantage of the technology that facilitated remote work. Consequently, they were exceedingly a financially enabled class.

Traditionally, retired parents move down to South Florida while their working-age children remain up north. As a result, the children aren't always aware if their parents lose the ability to make sophisticated financial decisions. Elderly parents sometimes make financial decisions they don't understand the financial impact of, which includes being defrauded by vultures in the community who prey on them.

Uptick in Demand for Trust and Estate Litigation

More wealthy people moving to Florida for tax reasons has also impacted probate, trust, and guardianship litigation, as well as plans for their trust and estates. It's an interesting and important area of practice because the South Florida community is graying and there are more wealthy elderly, so there are more large disputes here. It's probably true to some extent in other areas of the country, but these issues are intensified in Florida.

There also has been a notable expansion in the number of upper-middle-class and upper-class families. Home prices in South Florida are soaring as wealthier demographics seek housing, which pushes up the demand for housing. Changes in the population pattern foretell that when there are deaths, there are going to be fights over bigger estates.

The advancement of medical science also has affected trust and estates litigation by enabling people to better take care of their physical health in many areas. However, there have been no similar advances in memory-related disorders like dementia. Many cases involve elderly people who can physically get around but mentally have deteriorated.

These trends—wealthier people moving to South Florida, coupled with people living longer but having more brain-related health diseases—have contributed to rising demand for probate litigation.

Family Dynamics and Common Types of Cases

The cases often involve alleged fraud and taking advantage of elderly people. We see cases, for example, in which siblings take advantage of a parent when they didn't have mental capacity, or untrustworthy caretakers and employees take advantage of them by moving funds from one account and transferring them to their account name, by taking valuables, etc.

Every case is different, but it's typically a combination of legal and academic areas combined with raw emotion. These cases are often very emotional disputes between family members, so it can be even nastier than other types of contentious cases, such as divorce.

Plan Ahead and Communicate

Probate disputes often become complicated due to a lack of planning and communication prior to mental and physical decline. A familial understanding of the will in place and honest conversations about beneficiaries can almost always circumvent any tension or intense disputes.

For example, if a parent has bequeathed to one child a more substantial amount of benefits than to another child, they need to explain that to them prior to death so that the children understand and they don't have to fight after the parent dies. If the parent had just sat down with their kids and explained their reasoning, it would have eliminated finger pointing after death.

Elderly parents don't necessarily need to sign off on management of their assets to the kids, but they must communicate with them what these assets are and give a plan of succession such that if they lose the ability to make those decisions, this trusted child, along with a professional fiduciary, is appointed to take control and make appropriate decisions.

There is a definite group of elderly people who know they're losing their capacity and are struggling with their situations. They are often in denial and try to conceal it from others. It's difficult, it's sad, and it's frustrating. There needs to be a system where a plan is in place so that when an elderly person is on that decline, the control of their assets doesn't fall into the hands of someone who is untrustworthy.

There also has been an increase in litigation unique to this dynamic where estate planners from other states did not comply with Florida law. Then their clients moved to Florida and failed to have a Florida lawyer review and update the planning to comply with Florida law. This is an area requiring additional due diligence.

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