CODOSSIER
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Decedent Asset Entitlement Map and Probate Deadline Verification

Prepared for counsel

FORUM **Illinois**

- 401(k) account value (approximate, no formal valuation) About $650K
- Life insurance policy face amount (approximate) $300K
- Trust corpus value (approximate, no formal valuation) About $2.1M
- Assets outside trust, pass through probate (approximate) About $180K
- 401(k) plus policy combined $950K ← *401(k) about $650K; policy face $300K*
- Sum of approximate values across identified assets $3.23M ← *trust about $2.1M; outside trust about $180K; 401(k) about $650K; policy face $300K*
- Children of decedent (either marriage or otherwise) 0
- Decedent's trust executed 2011
- Divorce of decedent and first wife 2014
- Decedent marries client 2017
- Decedent marries client (month per client, certificate not pulled) 2017-06
- Close of spousal renunciation window (runs from admission of will) 2026-05

> *This matter resolves what the client is entitled to from each of the decedent's assets (the 401(k), the life insurance policy, the 2011 trust, and assets outside the trust), including whether ERISA preemption controls the 401(k), so that the entitlement map withstands challenge from the first wife's counsel.*

THE BOTTOM LINE

On the record as it stands on [date not on the record], the client is entitled to nothing from the roughly $2,100,000 trust: the 2014 divorce most likely routes it to the siblings, and renunciation reaches only the probate estate. Her statutory claims are the spouse's award, not less than $20,000, and a renunciation share of one-half of the roughly $180,000 probate estate after claims, because the decedent left no descendants. The ERISA question is resolved as to the Illinois divorce-revocation statute: it does not control the roughly $650,000 401(k), which pays by plan documents. Her only route is the federal surviving-spouse rules, which depend on whether the plan uses the spousal default and whether she ever signed a valid post-marriage consent (not yet established; plan records not yet requested). The $300,000 policy remains open on whether it is ERISA-governed, with no Illinois authority located otherwise. No earliest dated deadline exists because the death date is undated in the record. The nearest consequential point is the two-year claims bar running from death (position estate_creditor_claims_bar), plus the renunciation and contest periods that start only on admission. Blockers are the plan records, the marriage certificate, the decree, the deed search and the death date from the certificate. The first act is notice to the administrator and insurer, since payment cannot be undone.

WHAT WAS ASKED — WHAT THIS PLAN ANSWERS

I believe the renunciation right is a probate-estate concept, unlike an augmented-estate state that pulls in non-probate transfers.
Your understanding is correct, and it is settled rather than open. A validly created revocable trust is not illusory as against a surviving spouse, and its corpus is outside the estate on which the renunciation share is computed. Renunciation therefore reaches only the probate estate, one-half after just claims here, so her remedy against the trust by that route is nil. What remains for the client is the award, the renunciation share of the roughly $180,000, and any federal rights in the 401(k).

I want it confirmed before anyone calculates a deadline from it.
The deadlines cannot yet be confirmed, because their triggers are not in hand. No will has been admitted, so the 7-month renunciation period and the 6-month contest period have not started. The two-year claims bar runs from the death, but the death date must first be taken from the certificate and entered before anything is calendared, so no date can be stated now.

A defensible map of what she's entitled to from each asset, with the ERISA preemption question resolved one way or the other.
The preemption question resolves against the Illinois divorce rule on the 401(k): under Egelhoff the state revocation statute does not control, so the plan pays by its documents, and the first wife takes unless federal surviving-spouse protections apply. Those protections can favor the client if the plan uses the spousal default and she gave no valid written consent after the June 2017 marriage; a consent signed before the marriage does not count. The trust and probate lines of the map are settled in outline, but the 401(k) and policy lines cannot be closed until the plan document, the form, any consent and the insurer's records are in hand.

I need to know what she's entitled to before I tell her anything.
The client takes nothing from the roughly $2,100,000 trust and has no ownership or occupancy right in the home; she may stay only while the brother as successor trustee allows it. Her statutory claims lie in the roughly $180,000 probate estate: the surviving spouse's award of not less than $20,000 and, if she renounces, one-half of the net estate. The roughly $650,000 401(k) and the $300,000 policy are not yet determinable until the plan records, the decree and the marriage certificate are in hand, so tell her nothing about them beyond that they are unresolved.

PRESCRIPTIONS — WHAT TO DO, IN ORDER

01 **Put the plan administrator and the insurer on written notice of the client's surviving-spouse status.** This step leads because a benefit paid on the form on file may be unrecoverable, and recovery from the first wife afterward is uncertain; the other windows close later or have not started. Write to the 401(k) administrator and the insurer, identify the client as surviving spouse, ask for the plan document, the dated beneficiary form, any spousal consent, any qualified domestic relations order, and the status of any claim, and ask each to hold payment pending review. A hold request may be declined. Whether the policy is employer-plan coverage or individual is open, so ask the insurer which. This turns on the positions erisa_401k_surviving_spouse_benefit and life_policy_proceeds_entitlement; None of this requires contact with the first wife.

02 **Locate the original will and lodge it with the circuit clerk of the proper county.** Filing the original is a present duty, not an elective step, under the position duty_to_file_original_will. The holder is unknown and nothing has been filed, so identify the holder, confirm the decedent's county of residence, and see that the will is lodged. Whether and when to petition to admit it is a separate choice, addressed below.

03 **Enter the death date from the certificate before calculating any deadline.** The death date is not in the record and must be taken from the certificate. The two-year bar on claims runs from death whether or not probate opens (position estate_creditor_claims_bar); no calendar date can be stated until the death date is entered. The renunciation and contest windows run from admission of the will, which has not occurred, so they have not started (positions spousal_renunciation_of_will and will_contest_undue_influence_or_capacity).

04 **Pull the marriage certificate and the 2014 divorce decree.** The certificate verifies the June 2017 date, which gates the spouse's award and any one-year marriage condition in the plan. The decree shows any language on revoking the first wife's designations, any qualified domestic relations order, and the date that bears on the policy. Do these before relying on any statutory position in writing.

05 **Search the county title records for the home and order the creditor search.** A signed and delivered deed to the trustee puts the home in the trust even if unrecorded; if none exists, the home may be part of the probate estate. Also confirm that the outside accounts carry no beneficiary designations. The creditor search tells you whether the roughly $180,000 estate will be reduced before any renunciation share is computed.

06 **Write to the brother as successor trustee requesting an accounting, a statement of distributions, and his occupancy intentions.** Frame it as a request, since the client is not a beneficiary and cannot compel an accounting. Ask whether he knows of the client as surviving spouse and whether he is among the contingent siblings. Send it before any approach to the first wife. If he later seeks possession of the home, the Eviction Act process applies and self-help is not allowed.

07 **Decide when to open probate, then claim the award and calendar the renunciation period.** Once the marriage certificate confirms her status, plan to claim the surviving spouse's award in the estate, a fixed sum for nine months of support of not less than $20,000. Admission of the will starts the 7-month renunciation period and the 6-month contest period, so enter the admission date as soon as it exists. Renunciation reaches only the roughly $180,000 probate estate, so weigh it against that base after claims. The brother is the nominated executor, but he has no authority until letters issue. The duty to lodge the will is fixed; the timing of the petition to admit it is the elective choice.

08 **Give the client the map in writing with the 401(k) and policy shown as unresolved.** Tell her the trust appears closed to her on current analysis, subject to verification.

09 **Contact the first wife's side only after the document requests and inquiries return.** The client has deliberately deferred this. The administrator's and insurer's answers show whether a claim is already pending, so make first contact with that knowledge and with the brother's response in hand.

DATES & POSITIONS

None of these periods rests on a signed rule in this knowledge base — confirm each before relying on it.

POSITION	LAST DAY	ACT BY	BASIS
Spousal renunciation of will	–	–	
Surviving spouse award	–	–	
Erisa 401(k) surviving spouse benefit	–	–	
Life policy proceeds entitlement	–	–	
First wife trust gift revoked on dissolution	–	–	
Will contest undue influence or capacity	–	–	
Duty to file original will	–	–	
Estate creditor claims bar	–	–	

BUCKET 1 OF 3

Trustee control, housing, and information blind spots

TRUSTEE CONTROL — visibility by request only

> The brother as successor trustee controls the trust assets and the marital home, owes the client no accounting, and may or may not know she exists; the gaps in what he has done are closed by requests and a deed search, not demands.

Related — Bucket 1 (Trustee control, housing, and information blind spots): the contingent sibling class and the trustee's conduct feed the trust-reach and fallback-theory analysis.

Related — Bucket 2 (Entitlement by asset: ERISA, trust, probate reach): the records requests and creditor search run alongside the letter to the brother.

PROPOSITION 1.1 Trustee accounting duty runs to beneficiaries, not client

REQUEST ONLY — no accounting right

The brother owes information and accounting to the trust's beneficiaries, not the client, so your letter asking him for an accounting and a statement of distributions is a request he may decline, not an enforceable demand.

HOW TO WIN

+ Identify every sibling from sources outside the trust and will, such as the death certificate and family records, and confirm whether the brother is one of them.
+ The spouse's award is a support claim against the probate estate and does not depend on the decedent holding the home in his own name.

BLIND SPOTS

– The trustee's information and accounting duty runs to the trust's beneficiaries; the client is owed no notice or accounting as a non-beneficiary.
– Your letter to the brother for a trust accounting and statement of distributions is a request only; the client has no right to compel a direct accounting.
– The award gives the client no right to stay in the home; her occupancy lasts only while the brother permits it, so the deed search tells you who actually controls the house.
– Because the trust runs as if the first wife died at the 2014 judgment, whether she outlived the decedent does not change who takes; the siblings are the takers.

PROPOSITION 1.2 Trustee-sibling conflict voids self-dealing absent consent

BROTHER'S LEVERAGE — conflicts belong to beneficiaries

The brother as successor trustee controls the home and trust payments; conflicts in his decisions are the siblings' to challenge, but they show how much leverage he holds over the client's occupancy.

HOW TO WIN

+ When checking the brother's decisions about the house or trust payments, look past his own gain to siblings who share his stake; whether he is himself among the contingent siblings is not confirmed.

BLIND SPOTS

– A trustee decision where the brother benefits can be challenged by a beneficiary even at a fair price, but the client is not a beneficiary, so the challenge is not hers to bring.

BUCKET 2 OF 3

Entitlement by asset: ERISA, trust, probate reach

ONLY THE PLAN ASSETS REMAIN LIVE

> The trust appears closed to the client and her share appears to reach only the probate estate, subject to verification.

Related — Bucket 2 (Entitlement by asset: ERISA, trust, probate reach): plan document, beneficiary form and date, spousal consent, 2014 decree and marriage certificate are the records this map depends on; none has been requested or pulled yet.

Related — Bucket 3 (Deadlines, record verification, and creditor exposure): the successor trustee's control of trust assets and the possibility that the first wife or her counsel has a plan claim in process bear on the trust and 401(k) entries.

Related — Bucket 2 (Entitlement by asset: ERISA, trust, probate reach): the client's t07 question asks that the renunciation analysis be settled before any deadline is calculated from it.

PROPOSITION 2.1 Surviving spouse's consent required for 401(k) designation

FORM NOT FINAL — spousal consent decides

The beneficiary form naming the first wife does not by itself decide the roughly $650,000 401(k); federal surviving-spouse rules can override it if the plan uses them and the client never signed a valid consent after the marriage.

HOW TO WIN

+ A 401(k) escapes the survivor-annuity rules only if it pays the full benefit to the surviving spouse unless she consented, so the form alone does not settle who takes.
+ A waiver binds the client only if she consented in writing to the specific alternate beneficiary, acknowledged its effect, and signed before a plan representative or notary; a consent signed before the marriage does not count.

BLIND SPOTS

– Any backup tier on the form pays only if the first wife cannot take; the trust's gift to the siblings does not reach the 401(k), so check whether the form names a backup.

PROPOSITION 2.2 ERISA overrides state divorce rule; insurance question open

PREEMPTION RESOLVED — 401(k) pays by plan papers

The Illinois divorce-revocation rule does not displace the named beneficiary on the roughly $650,000 401(k), while the $300,000 policy turns on whether it is employer-plan coverage.

HOW TO WIN

+ Sveen v. Melin upheld a state revocation-on-divorce statute for non-ERISA assets against a Contracts Clause attack, but it does not decide how Illinois treats the policy.
+ Request the plan document, the dated beneficiary form and any spousal consent from the administrator, and the policy and its designation from the insurer, instead of inferring entitlement from the trust or will.

BLIND SPOTS

– Egelhoff holds ERISA preempts a state rule cancelling an ex-spouse's designation on divorce, so the administrator pays whoever the plan documents name, even the first wife.
– The form names the first wife; whether it predates the June 2017 marriage depends on its date from the administrator.
– The policy names the first wife after the divorce; whether she still takes depends on whether it is ERISA-governed and on the decree's language, and nothing has been requested from the insurer.
– The first wife may already have a plan or policy claim in processing, and payment on the form on file can issue before the client's position is heard; this is the loss that cannot be undone.
– If the plan pays the first wife, a state-law action against her for the proceeds is the only recovery route, and courts divide on whether it succeeds.
– Illinois's revocation-on-divorce statute does not remove the first wife from the 401(k), or from the policy if it comes through an ERISA employee welfare plan.
– If the policy is individual coverage rather than ERISA-governed, whether she or the estate takes the $300,000 turns on that ruling.

PROPOSITION 2.3 Divorce revokes ex-spouse's trust gifts; siblings take

TRUST OUT OF REACH — probate estate only

The 2014 divorce most likely sends the roughly $2,100,000 trust to the decedent's siblings rather than the first wife, and the client's only statutory claims are the spouse's award and a renunciation share of the roughly $180,000 probate estate.

HOW TO WIN

+ As surviving spouse, the client can claim the statutory award in probate, a fixed sum for nine months of support (not less than $20,000), and can renounce to take one-half of the probate estate after just claims because the decedent left no descendants; the base share governs the renunciation comparison.

BLIND SPOTS

– Pull the decree and check whether Illinois law revoked the first wife's trust gifts and executor nomination; the brother's nomination as executor depends on that.
– The pour-over devise is valid, so the roughly $180,000 in outside accounts goes through probate and then to the trustee, after claims and an administration expense deduction.
– Renunciation is a signed written instrument filed in probate court within 7 months after the will is admitted; an extension requires a petition filed before that deadline.
– The renunciation share does not reach the funded revocable trust: its corpus is outside the estate on which the share is computed, so the client's remedy against the roughly $2,100,000 is nil by that route.
– Renunciation is the client's only statutory share against the pour-over will; track admission of the will so the filing is made against the estate the brother administers.
– Defeating the first wife on the trust moves nothing toward the client: the contingent gift to the siblings takes effect and she is not a trust beneficiary.

BUCKET 3 OF 3

Deadlines, record verification, and creditor exposure

NOTHING CALENDARED UNTIL DEATH DATE ENTERED

> No window keyed to admission of the will has started, and the two-year claims bar runs from a death date that must still be entered from the certificate before anything is calendared.

Related — Bucket 1 (Trustee control, housing, and information blind spots): the renunciation right's reach (probate estate versus funded trust) and the ERISA question determine which windows matter.

Related — Bucket 3 (Deadlines, record verification, and creditor exposure): the letter to the brother for a trust accounting and distribution statement is part of counsel's plan but belongs to the trustee-information gap.

ACROSS THIS BUCKET — also drawn from Pour-over will, filing duty, and executor succession

HOW TO WIN

+ Under 755 ILCS 5/2-8(a), the renunciation share is taken after payment of all just claims, and only the residue then passes to the trustee under the pour-over devise.
+ No court removal is needed: on dissolution of the marriage the will's provisions for the former spouse, including her nomination as executor, are revoked and the will takes effect as though she died first, so the brother is the nominated executor.
+ Whoever holds the original will must file it with the clerk in the proper county immediately on death; the holder is unknown and nothing has yet been located.
+ A will or trust contest must be filed within 6 months after admission; the contestant bears the burden and a presumption arises only on specific showings, and with no pressure or capacity facts at intake it remains a fallback only.

BLIND SPOTS

– Revoking the first wife's nomination gives the brother no authority; only letters of office issued after admission do, so no estate representative exists yet.
– After admission the petitioner must notify the heirs and legatees, which reaches the client as surviving spouse even though the will does not name her; the notice also helps fix when the contest and renunciation periods run.

PROPOSITION 3.1 Two-year creditor bar and mailed notice requirement

TWO-YEAR BAR RUNS FROM DEATH

Claims against the estate are barred two years after death whether or not probate opens, so the death date must come off the certificate before any date is calendared.

HOW TO WIN

+ The representative must mail or deliver notice to each known or reasonably ascertainable creditor; publication alone does not bar such a creditor.

BLIND SPOTS

– All claims against the estate are barred 2 years after death even if no letters ever issue; the clock runs from the death, not from opening probate.
– The renunciation share is measured after claims, so the roughly $180,000 estate cannot be netted until the claims dates have passed.
– A known or reasonably ascertainable creditor who got only published notice stays live until the 2-year outside bar, so distributions made earlier carry exposure.
– A creditor appearing only in old papers who has not demanded payment may hold a live claim after the window looks closed; check old correspondence before dividing the outside accounts.

Every authority in this packet rests on law no one has signed in this knowledge base — confirm each before relying on it.

OPEN QUESTIONS — WHAT DECIDES THIS MATTER AND WHO CAN ANSWER IT

WHAT DECIDES THIS MATTER

? Has the absence of a prenup or postnup been confirmed with your client and the decedent's papers, and the non-trust account designations verified with the institutions? · *blocks part of this analysis*
? Has the brother taken any distributions or transfers since the death, and does he know your client exists as surviving spouse? · *blocks part of this analysis*
? Has the first wife or her counsel contacted you or asserted any claim? Is there any indication she knows he died? · *blocks part of this analysis*
? Have you obtained the 401(k) plan document and beneficiary form, and did your client ever sign a spousal consent? · *blocks part of this analysis*
? Do any debts or creditor claims exist against the estate, confirmed by a creditor search? · *blocks part of this analysis*
? Does current Illinois law apply the divorce-revocation rule to a funded revocable trust? · *blocks part of this analysis*
? Does the client hold any occupancy or estate-based interest that would qualify her? · *blocks part of this analysis*
? What date was the designation form retrieved relative to the death date? · *blocks part of this analysis*
? Has any beneficiary or the settlor signed a release or authorization? · *blocks part of this analysis*
? Has the brother made any distributions or obtained any releases? · *blocks part of this analysis*
? Is the first wife living and are the siblings identified? · *blocks part of this analysis*
? Will probate be opened so the claims period can start? · *blocks part of this analysis*
? Will the brother accept appointment as executor? · *blocks part of this analysis*
? Was the trust amended after the 2014 divorce? · *blocks part of this analysis*
? Will a personal representative open probate? · *blocks part of this analysis*
? What are the exact marriage date and deadline triggers?
? What has the brother trustee done, and does he know?
? Does the first wife know, or have a claim pending?
? Is the brother in the contingent sibling class?
? Did the first wife sign a spousal consent?

QUESTIONS ONLY YOU CAN ANSWER

? Whether the first wife or her counsel has been notified of the death, has filed any plan or policy claim, or has asserted any claim? The record does not supply it; likely source: inquiry to 401(k) plan administrator and insurer, and to first wife's counsel when contacted. · *blocks part of this analysis*
? Whether the successor trustee knows of the client as surviving spouse and what occupancy terms, if any, he has set for the marital home? The record does not supply it; likely source: written communication from the successor trustee. · *blocks part of this analysis*
? What is Post-death actions by the successor trustee (distributions, transfers, and any trust accounting)? The record does not supply it; likely source: trust accounting and written statement from the successor trustee. · *blocks part of this analysis*
? What is Confirmation that the outside-trust bank and brokerage accounts carry no beneficiary or payable-on-death designation? The record does not supply it; likely source: bank and brokerage account records. · *blocks part of this analysis*
? What is Confirmation that there is no prenuptial or postnuptial agreement between client and decedent? The record does not supply it; likely source: decedent's personal papers and client confirmation. · *blocks part of this analysis*

FACTS THE RECORD STILL NEEDS

? Whether the first wife survived the decedent, which determines whether the contingent sibling gift applies? The record does not supply it; likely source: death records and trust instrument; the first wife's status is not stated. · *blocks part of this analysis*
? What is Recorded deed or title record showing the marital home was transferred into the trust, and the transfer date? The record does not supply it; likely source: county recorder title search. · *blocks part of this analysis*
? What is Date the pour-over will is admitted to probate, which triggers any renunciation period? The record does not supply it; likely source: probate court record; none filed as of intake. · *blocks part of this analysis*
? Whether the life insurance policy is employer-sponsored group coverage (ERISA) or individual coverage? The record does not supply it; likely source: insurer or employer benefits records. · *blocks part of this analysis*
? What is 401(k) plan document and its spousal-rights terms (including any spousal survivor requirements)? The record does not supply it; likely source: 401(k) plan administrator. · *blocks part of this analysis*
? What is Execution date of the pour-over will and any codicils or amendments? The record does not supply it; likely source: original will and probate or estate counsel file. · *blocks part of this analysis*
? What is Marriage certificate verifying June 2017 marriage date? The record does not supply it; likely source: certified marriage certificate. · *blocks part of this analysis*

QUESTIONS OF LAW

? Whether the 2014 divorce under Illinois revocation law removed the first wife as pour-over will executor, and whether the policy and 401(k) are subject to that revocation? The record does not supply it; likely source: current Illinois statute review applied to the decree and policy form. · *blocks part of this analysis*

RAISED AT INTAKE, NOT PLACED IN THIS ANALYSIS

· Undue influence is only a fallback theory (under Entitlement by asset: ERISA, trust, probate reach)
· Revocable trust (under Entitlement by asset: ERISA, trust, probate reach)
· Probate windows and the date calculations (under Deadlines, record verification, and creditor exposure)
· Creditor claims period (under Deadlines, record verification, and creditor exposure)