CODOSSIER
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Trusts & Estates Intake: Illinois Second Wife, Trust, Home Occupancy and 401(k)

Trusts & Estates Law · counsel-led intake · 27 turns · 125 nodes analysed · your edited tree

As of 2026-11-04, the case timeline's date (when the conversation happened, as the record establishes it). A soft clock is running: Successor trustee's post-death action on the home or trust.

MERIT	CONFIDENCE	URGENCY	ROUTE
Moderate · 36	Moderate · 50 %	Now	Qualify
value-weighted likelihood of the claims	5 of 23 key facts documented	a soft clock is running: Successor trustee's post-death action on the home or trust	with one urgent step (Next Moves A1)

1 · REALITY CHECK — WHAT WAS ASKED, WHAT IS LIKELY

QUESTION · WHAT THE PARTY EXPECTED	LIKELY ANSWER	SEE
What is she entitled to before I tell her anything?	**Qualified:** Award plus half the net probate estate; 401(k) likely hers absent consent; nothing from the trust.	→ **I1** T1
Asset map with ERISA preemption resolved one way or the other	**Qualified:** Preemption bars the state revocation route, but ERISA's own survivor rule likely pays her.	→ **I1** T3 …
Confirm death date before anyone calculates a deadline from it *Expected: Confirmed date of death drives any deadline*	**Confirmed:** Correct; renunciation has not started, but the 2-year claims bar runs from death now.	→ **I5** T7
Is renunciation a probate-estate concept, unlike augmented-estate states? *Expected: Trust remedy functionally zero*	**Qualified:** Yes under Johnson; the home enters the estate only if no trustee deed was delivered.	→ **I2** T15

The conversation to avoid: Telling her the 401(k) is lost to the first wife, or that it is hers. Both turn on a consent record nobody has seen, and either way unwinding it breaks counsel's T5 rule.

2 · THE ISSUES THAT DECIDE IT

I1 Whether ERISA survivor rights give her the 401(k) **SETTLED** 29 U.S.C. § 1055; 26 U.S.C. § 401(a)(11)(B)(iii); Egelhoff v. Egelhoff, 532 U.S. 141 (2001); Kennedy v. Plan Administrator, 555 U.S. 285 (2009) → **A1 · A2 · D2**
At stake: $650K, the largest reachable asset. Payout on the form before notice converts it to contested post-distribution recovery.
Likely: A pre-marriage designation fails against a surviving spouse absent her witnessed post-marriage consent. The risk is payout before notice, a QDRO, or plan terms. The T6 framing that preemption cuts against her is wrong. *Resolves it:* Plan document, dated beneficiary form, any spousal consent, claim status T5 · T6 · T25 · F:f24 · F:f27 …

I2 What the probate estate holds and her share of it **SETTLED** 755 ILCS 5/2-8(a); 755 ILCS 5/15-1; Johnson v. La Grange State Bank, 73 Ill. 2d 342 (1978) → **A5**
At stake: Probate recovery is about $100K, or it adds half the home's value. The $2.1M trust is otherwise unreachable.
Likely: Johnson excludes the revocable trust. She takes the award first, then half the remaining net estate (x2). Associates' $90K omits the award. The base grows only if no trustee deed was delivered. *Resolves it:* Recorded or delivered trustee deed for the marital home T9 · T15 · T27 · F:f11 · F:f12 …

I3 Whether the policy pays the first wife or the estate **VERIFY** Sveen v. Melin, 584 U.S. 811 (2018); 750 ILCS 5/503(b-5) → **A4**
At stake: $300K face. At most half reaches her, through the probate estate, and only if the policy is non-ERISA and the designation is revoked.
Likely: Group coverage pays the first wife by name under Egelhoff. Individual coverage pays the estate if 503(b-5) reaches a 2014 judgment, an applicability question the tree contradicts itself on. Policy routing enlarges the I2 base, and nobody is coordinating the two. *Resolves it:* Insurer's confirmation of group or individual coverage and contingent beneficiary; 2014 decree T21 · T22 · F:f03 · F:f24 · N:6cadeb69 …

I4 Brother's control of the home and trust assets **SETTLED** 735 ILCS 5/9-101 et seq.; 760 ILCS 35/1 → **D1**
At stake: Her housing, and whether trust assets move before anyone with standing is watching.
Likely: She has no standing to compel an accounting. Counsel's T27 premise that a letter obtains one is wrong. The letter may prompt distributions or an Eviction Act demand. 760 ILCS 35/1 sends the trust to the siblings. *Resolves it:* Sibling identities, whether brother is one, and whether he knows of her T17 · T19 · T27 · F:f19 · F:f21 …

I5 Which clocks are running and who starts probate **SETTLED** 755 ILCS 5/2-8(b); 755 ILCS 5/6-1(a); 755 ILCS 5/18-12(b); 755 ILCS 5/8-1 → **A3 · A6 · D3**
At stake: The 2-year claims bar runs now. The renunciation and award periods wait on admission, which nobody has sought.
Likely: TL:m05 is a tree defect: it dates a window keyed to an admission that has not occurred. Counsel can seek admission instead of waiting on the brother, which is the option between letter and silence. *Resolves it:* Certified death date and county probate docket T7 · T8 · F:f07 · F:f08 · F:f09 …

Every other finding of the review is folded into these issues.

3 · NEXT MOVES

DO NOW, IN THIS ORDER

A1 Send written surviving-spouse claim to plan administrator and insurer; request plan, form, consent, claim status *Counsel · this week.* Stops payout on the form before notice I1

A2 Ask client neutrally whether she ever signed a plan consent or waiver; collect copies *Both · this week.* Consent alone decides $650K I1

A3 Pull certified death and marriage certificates and county probate docket; calendar from certified dates *Counsel · this week.* 2-year bar runs; one-year plan condition I5

A4 Obtain 2014 decree and insurer's confirmation of policy type and contingent beneficiary *Counsel · within 14 days.* Decides policy routing and QDRO exposure I3

A5 Pull recorded deed and run creditor search before stating any probate-estate figure *Counsel · before advising.* Deed and claims fix the renunciation base I2

A6 Locate original will; prepare petition for admission if brother has not filed *Counsel · within 14 days.* Starts award and renunciation under court control I5

DO NOT

D1 Do not send the brother the accounting letter before A1, A3 and A5 are complete. No standing to compel; letter may trigger eviction demand or distributions I4

D2 Do not let client sign any plan, insurer or trustee paper without review. A post-death waiver, disclaimer or release forfeits rights irreversibly `I1`

D3 Do not calendar from 'two months' or from TL:m05. TL:m05 assumes an admission that has not occurred `I5`

4 · CLOCKS — COUNTED BY CODE FROM THE RECORD'S DATES

CLOCK	STARTS	PERIOD	STATUS · LAST DAY	RULE
Two-year outside bar on estate claims *(added)*	decedent's death (certificate date)	2 years	**Running**	755 ILCS 5/18-12(b) **SETTLED**
Surviving spouse's award support period *(added)*	decedent's death	9 months of support (award not less than $20,000)	**Running**	755 ILCS 5/15-1 **SETTLED**

Soft clocks (another party can move at any time): Successor trustee's post-death action on the home or trust; First wife's plan or policy claim (may have passed).

Dormant until their trigger: Spousal renunciation of will, 7 months from admission of the will to probate; Will contest period, 6 months from admission of the will to probate; Published claims date and mailed-notice period, 6 months minimum; or 3 months from mailing for known creditors from first publication of claims notice by the representative; Plan one-year marriage condition and plan claim procedure, 1 year of marriage ending on death from decedent's death measured against marriage date.

5 · VALUE — WHAT IS AT STAKE, AND AGAINST WHOM

ASSET OR CLAIM	AT STAKE	THE CLAIM	OUTLOOK	EXPECTED	AGAINST
2011 trust (about $2.1M) including marital home	`$0–$2.1M`	Non-statutory theories only: invalid funding, trustee conduct, undue influence. Renunciation does not reach the trust (Johnson v. La Grange State Bank). **SETTLED**	**Remote**	`$0–$105k`	Brother as successor trustee; siblings as contingent takers
401(k) (about $650K), client as surviving spouse *swing*	`$0–$650k`	Spousal survivor rights: no written spousal consent to the first-wife designation (ERISA/IRC 401(a)(11)) **SETTLED**	**Even**	`$0–$390k`	401(k) plan administrator; first wife as named beneficiary
Life policy ($300K face)	`$0–$300k`	Revocation of ex-spouse designation on divorce, if the policy is non-ERISA; proceeds go to the estate **VERIFY**	**Unlikely**	`$0–$90k`	Insurer; first wife as named beneficiary
Probate estate outside trust (about $180K): renunciation share plus spousal award	`$0–$90k`	755 ILCS 5/2-8 renunciation (1/2 with no descendants) and 755 ILCS 5/15-1 award **SETTLED**	**Better than even**	`$0–$77k`	Estate and trust residuary takers (siblings); brother as successor trustee
Estate creditor claims against the $180K probate estate *exposure*	`$0–$180k`	Claims paid before the renunciation share; 2-year bar from death **VERIFY**	**Remote**	`$0–$36k`	Unknown creditors
Total recoverable	**`$1.57M`**			**`$0–$662k`**	

Not sized on this record: Marital home occupancy (home value not established) (against Brother as successor trustee), exposure, even. Missing pieces (7) says what sizes them.

Exposure: $0–$36k expected against the client.

Client's probate recovery at the statutory minimum award, before other claims: `award + share * (estate - award)` = **`$100k`**

6 · WHO ELSE IS ON THE OTHER SIDE

Brother (successor trustee, successor executor). Controls the trust assets and the home, and is a possible contingent taker with the siblings. *Next:* May ask the client to vacate or make distributions before any accounting; the client cannot compel one. `T13 · T17 · T19 …`

Decedent's siblings (contingent class). Take the trust, and the pour-over residue, if the first wife's gift is revoked. *Next:* Unknown; they may learn of the death through the trustee. `T13 · N:b068ad6b`

7 · MISSING PIECES — RANKED BY WHAT THEY MOVE

#	WHAT TO GET	MOVES	STATE
1	401(k) documents and consent; Marriage date June 2017; Plan spousal terms; Spousal consent; Form date.	`$130k`	Not asked · Claimed
2	Renunciation reach; There are no pressure or capacity concerns: he was in his forties in 2011, working, with no known illness; counsel raises undue influence only as what is left if the statute gives the client nothing; Deed funding.	`$53k`	Claimed · Not asked
3	2014 divorce decree terms; The policy names the first wife by name, not 'spouse', as do the trust and the 401(k) form; Policy erisa status.	`$38k`	Not asked
4	Debts unverified.	`$25k · 2 claims`	Claimed
5	No children; Outside-trust assets; No POD on outside accounts; Will execution date.	`$11k`	Claimed · Not asked
6	2014 divorce, no updates.	`gates all`	Claimed

9 further undocumented fact(s) move no claim's value and gate nothing.

8 · THE RECORD AND THE AUTHORITIES

The file rests on 23 key facts: 5 documented, 13 claimed, 5 not asked.

Documented or corroborated: The 2011 trust, pour-over will and 401(k) name the first wife, and the policy does too (T21). (T1,T13); The death date is within the last two months, from the certificate; the exact date is not stated and is not calendared. (T7); The trust is a revocable trust that is silent on remarriage, with no survivorship or marital provisions; the first wife is named by name with a contingent gift to the siblings. (T13); The trust became irrevocable at death and the brother is successor trustee. (T13); The will names the first wife executor and the brother successor, and pours the residue into the trust. (T23).

Read from the governing text in this run: Sveen v. Melin, 584 U.S. 811 (2018) **SETTLED** (www.law.cornell.edu) The holding is that retroactive application of Minnesota's revocation-on-divorce statute does not violate the Contracts Clause. It does not itself govern Illinois, and it does not reach ERISA-governed plans; **750 ILCS 5/503(b-5)(2)-(3)**

(added by P.A. 100-871) **SETTLED** (ilga.gov) The excerpt is fragmentary and the text of (b-5)(3) is partly elided. It routes proceeds to the alternate beneficiary, or to the insured's estate if none is named. I did not read the effective date or the exceptions in full; **755 ILCS 5/18-12(b)** **SETTLED** (codes.findlay.com) The 2-year bar is confirmed. The excerpt did not show the priority of claims over the renunciation share, so that part is unverified. Text is current as of 2025-01-01.

Also relied on, from memory: 26 U.S.C. 401(a)(11); post-distribution recovery against the beneficiary (contested); ERISA § 205 (29 U.S.C. § 1055); 755 ILCS 5/4-7(b).

Scores and dates are code's arithmetic on the record and the ranges above, not calibrated against outcomes. Only authorities marked read were read from their text in this run; confirm every other citation before reliance.