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MEMORANDUM

To: LaVonda Wallace

From: Examinee

Date: July 28, 2026

Re: Estates of Linh and John Nguyen

This memorandum seeks to explain the correct distribution of the Nguyens' assets. Linh and John Nguyen, a married couple, were tragically killed in a car accident. They were survived by their daughter and son, Melissa Nguyen-Stevenson and Brandon Nguyen. Melissa is the executor of her parents' estates. Both Linh and John had simple wills which were declared to be valid in the State of Franklin. Melissa has asked advice on the distribution of her parents' estates. This memorandum addresses the applicability of the Uniform Simultaneous Death Act and how that statute, in addition to the governing documents executed by Linh and John, should control the distribution of their assets.

1. Applicability of the Uniform Simultaneous Death Act of 1993

1(a) - General rule

The Uniform Simultaneous Death Act of 1993 was designed to address inheritance issues that arise when two or more individuals die simultaneously or in close succession to each other, and would've inherited from each other (Walker's Treatise on Trusts and Estates). The core provision of the Uniform Simultaneous Death Act (USDA) of 1993 stipulates that if an individual does not survive another by at least 120 hours, the individual is deemed to have predeceased the other for purposes of asset distribution (Walker's Treatise on Trusts and Estates). Franklin's Probate Code applies the USDA specifically in that "an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other individual" (USDA 2). This rule expands the literal concept of simultaneous death to people who die within 120 hours of each other. This rule applies unless a will, trust, or other governing instrument states otherwise (governing instrument applies to deeds, wills, trusts, and insurance/annuity policies (Franklin Probate Code USDA 1(2))). As a result of this, and regardless of the orders of their deaths, neither spouse's assets pass to the other spouse or the other spouse's estate if the bequest was subject to a survivorship contingency. Rather, it will pass to each spouse's secondary beneficiary. The rule requires proof by clear and convincing evidence that the person survived the event by 120 hours. It essentially presumes that the person did not survive the event by 120 hours. A certified or authenticated copy of a death certificate provides "prima facie evidence of the fact, place, date, and time of death."

Here, the record includes the certified death certificates of John and Linh Nguyen. The Certified Death Certificates show that Linh died on March 18 at 10:32 pm and John died on March 20 at 10:03 pm, and that they died from trauma and multiple organ failure, respectively. John lived

approximately 48 hours longer, which is less than 120 hours. Therefore, the USDA presumption applies that one did not survive the other by 120 hours. There is no clear and convincing evidence that one survived the other by 120 hours, as required by section 3 of the USDA. Each will be deemed to have predeceased the other under the USDA presumption. The certified death certificates provide prima facie evidence of the times of their deaths, and there is no evidence rebutting that presumption.

1(b) - Exception

The USDA adopted by Franklin has specific exceptions. The survival by 120 hours rule is not required if (1) the governing document contains language dealing explicitly with simultaneous deaths or deaths in a common disaster, or (2) the governing instrument expressly indicates that an individual is not required to survive an event (including the death of another) by any specified period.

The exception will apply to several of the Nguyen's distributions because some of their governing documents contain language dealing with simultaneous death. Specifically, John's life insurance policy deals with simultaneous death, and Linh's will deals with simultaneous death.

Thus, the UDSA will apply to the distribution of John and Linh's assets, but several of the governing documents may override the statutory presumptions.

2. Distributions of Nguyen Assets

2(a) -- Joh's interest and Linh's interest in the home at 432 Fairview Drive

Generally, joint tenancy involves co-owners with rights of survivorship. This means that the surviving joint tenant is entitled to the whole property on the death of the other joint tenant (USDA section 1(1)). As it applies to co-owners with Rights of Survivorship, if it is not established by clear and convincing evidence that one of two co-owners with the right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours (USDA 4).

As explained above, John lived 48 hours longer than Linh. There is no evidence rebutting that presumption, so the 120 rule applies and will result in their deaths being considered simultaneous (USDA 2). The Deed to 432 Fairview Drive, Utopia Springs, Franklin granted title to Linh Ha Nguyen and John Khanh Nguyen "as joint tenants with rights of survivorship and not as tenants in common." Since they were expressly granted rights of survivorship by the conveyance, the USDA section 4 provision applies and the property will be passed in halves. One-half of the property will pass as if Linh survived John by 120 hours and the other one-half will pass as if John survived Linh by 120 hours.

In Linh's will, she expressly addressed simultaneous death. Her will first granted her real property to John, if he survived her, but then said "If we die simultaneously, or if we die within three days of each other, I give my property in equal shares to my son Brandon Nguyen and my daughter Melissa Nguyen-Stevenson. The fact that her will "otherwise" gave to Brandon, Melissa, and the animal rescue is irrelevant because the will expressly addressed simultaneous death. Since the will addresses the exact situation implicated here, dying within 3 days of each other, Linh's one-half of the property will pass to Brandon and Melissa.

In John's will, he did not expressly address simultaneous death. It states only that real property was to pass to Linh if she survived John, and if she did not survive him, then in three equal shares to Brandon, Melissa, and the University of Franklin Medical Center. The Walker's Treatise on Trusts and Estates describes that the practical effect of the USDA is that neither spouse's assets pass to the other spouse or the other spouses estate when it was subject to a survivorship contingency. Here, John's bequest to Linh was subject to her surviving him, which did not happen. Since there's no evidence that Linh survived John by 120 hours, she did not meet the survivorship contingency. Therefore, the treatise provides that the assets will instead go to the decedent's secondary/contingent beneficiary in their will. The secondary beneficiary in John's will was to Brandon, Melissa, and the University of Franklin Medical Center. Therefore, John's one-half of the property will pass to those 3 parties.

The resulting interest in the home at 432 Fairview Drive is that Linh's one-half of the property will pass to Brandon and Melissa, and John's one-half of the property will go to Brandon, Melissa, and the University of Franklin Medical Center.

2(b) -- Proceeds of life insurance policies

The USDA relating to the 120 hour rule applies to governing instruments including deeds, wills, trusts, and **insurance**/annuity policies (Franklin Probate Code USDA 1(2)). Both Linh and John had a Franklin Mutual Life Insurance Policy. Since insurance policies are within the bounds of the USDA 120 hour rule, we must determine whether the default presumptions apply of if the governing documents dealt with simultaneous death.

John's policy dealt with simultaneous death. His beneficiary designation was to Linh if she survived him, and then stated "If my wife and I die simultaneously, or if we die within three days of each other, I designate my estate to be the beneficiary of this policy. Since the designation addresses the exact situation implicated here, dying within 3 days of each other, John's $600,000 death benefit will pass to his estate to be distributed with the residuary clause. The USDA exception in section 6 applies here since simultaneous death is expressly provided for and operable under the facts. The fact that he designated to Brandon and Melissa the benefits if they don't die simultaneously is not controlling since simultaneous death was expressly provided for. His estate will be distributed according to his will, which, as explained above, included a survivorship contingency. The Walker Treatise on Trusts and Estates will control the resulting effect. Namely, that the assets will go to the decedent's secondary beneficiary's if the spouse's bequest was conditioned on survivorship. The secondary beneficiary in John's will was to Brandon, Melissa, and the University of Franklin Medical Center. Therefore, John's $600,000 death benefit will pass to those 3 parties.

Linh's policy did not address simultaneous death. It states only that the $500,000 death benefit would go to John, if he survives her. If John did not survive her, it was to go to Brandon and Melissa in equal shares. Since the couple died within 48 hours of each other, the law will treat John as predeceasing Linh. Therefore, the practical effect is that the secondary beneficiaries under the policy will be awarded the death benefits. Since the secondary beneficiaries were Brandon and Melissa, they will share equally in Linh's $500,000 death benefit.

Thus, John's $600,000 death benefit will pass to Brandon, Melissa, and the University. Brandon and Melissa will share equally in Linh's $500,000 death benefit.

2(c) -- Other assets under applicable will provisions

As explained above, when there is no clear and convincing evidence that one survived the other by 120 hours, each is deemed to have predeceased the other (USDA 2). The court in *In re Estates of Skow* analyzed a similar fact pattern to determine how the residuary of assets were to be distributed when David and Mary, a married couple, died within minutes of each other from carbon monoxide poisoning. David had 3 of his own children and Mary had 2 of her own children. Each David and Mary granted their property to their spouse, if the spouse survived them. That court decided that since Mary didn't survive David by 120 hours, Mary is deemed to have predeceased David. Since David didn't survive Mary by 120 hours, David is deemed to have predeceased Mary. As a result, each failed to meet the survivorship provision of the other's will. The outcome of each will interpretation was that the contingent beneficiaries of their respective wills took the residuary since the survivorship condition had failed. The fact that Mary survived David by 4 minutes was irrelevant because the USDA presumption and consequences applied.

A similar result will occur here for the residuary of each of John and Linh's wills.There is no evidence that Lihn survived John by 120 hours, so Linh is deemed to have predeceased John for the purpose of interpreting John's will. John's will granted the residuary of real property and both tangible and intangible personal property to Linh, if she survived him. Since she is deemed to have predeceased John, the survivorship condition fails and his contingent beneficiaries will take. His contingency provided that his residuary would go, in 3 equal shares, to Brandon, Melissa, and the University of Franklin Medical Center. Therefore, if John has any interest in real property, tangible, or intangible personal property besides those discussed in 2(a) or 2(b) above, it will pass in 3 shares to Brandon, Melissa, and the University.

As for Linh's will, there is no evidence that John survived her by 120, so John is deemed to have predeceased Linh for the purpose of interpretting Linh's will. Linh's will specifically dealt with simultaneous death because it provided that if John and Linh die within 3 days of each other, then she gives her real property, and tangible and intangible property in equal shares to Brandon and Melissa. Section 6 of the USDA will apply since simultaneous death was expressly provided for, and thus any property not discussed in 2(a) or 2(b) above which Linh has an interest in will pass in equal shares to Brandon and Melissa.

Thus, any residuary interest that John held will pass in 3 shares to Brandon, Melissa, and the University. Any residuary interest that Linh held will pass in equal shares to Brandon and Melissa.

END OF EXAM