



*Every inheritance fails the same way. Until now.*

# THE PRE-AUTOPSY CHECKLIST

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*Ten signals the Council looks for  
before an inheritance fails.*

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## *Every inheritance fails the same way. Until now.*

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The Council examines estate-planning outcomes the way a pathologist examines a body — systematically, after the fact, looking for the mechanism that failed. What we publish are not opinions. They are patterns drawn from public filings, statutes, and outcomes.

This Pre-Autopsy Checklist is the Council's standard pre-check: ten signals we test for before we assign a family to the "likely to fail" column. A family that can answer yes to all ten has already avoided the most common mechanisms of collapse. A family that cannot has a before-it's-too-late window — usually short — to act.

How to use this file. Print or fill digitally. One sheet per parent. Date the review. Revisit every twelve months and every time a major asset changes hands. Bring the completed sheet to a licensed estate attorney in your state — it shortens the intake from hours to minutes.

### **THE COUNCIL'S NOTE**

This document is educational. It is not legal advice. Laws vary by state; the citations on every item are New York-specific and federal. Families in other states can use the same ten questions — the statute numbers will differ. The Council is not a law firm, does not represent any reader, and does not form an attorney-client relationship through this publication. A licensed estate or elder-law attorney in your state is the professional qualified to apply any item to the facts of a specific family.

# The checklist

## 01. Signed durable powers of attorney

Financial POA and health care POA, one per parent. Without them, a loss of capacity triggers guardianship proceedings in Surrogate's Court — the Council has observed these run 4 to 9 months in New York and cost \$12,000 to \$25,000 before any estate action moves forward.

NY GOL §5-1501B · NY Mental Hygiene Law Art. 81

## 02. Deed title on the primary residence

Sole ownership, joint tenants, tenants in common, tenancy by entirety, or held in a revocable trust — each behaves differently at death. A will cannot redirect a joint-tenancy house; only the deed form controls.

NY EPTL §6-2.2 · NY Real Property Law §240-c

## 03. Asset transfers inside the 60-month look-back

Every gift, retitling, and below-market sale since today minus five years. The 2025 median NY Medicaid penalty divisor was \$13,834 per month — a \$50,000 uncompensated transfer creates roughly 3.6 months of unpaid nursing-home cost.

42 U.S.C. §1396p(c) · 18 NYCRR §360-4.4

## 04. Current beneficiary designations on non-probate assets

IRAs, 401(k)s, life insurance, annuities, TOD and POD bank accounts. These pass outside the will. An outdated designation — an ex-spouse, a deceased parent, an unplanned minor — overrides every line of the will, and courts will not correct it at probate.

29 U.S.C. §1055 (ERISA) · NY EPTL §13-3.2

## 05. Trust funding — asset by asset

For each asset intended to avoid probate, the deed, account registration, or assignment must actually show the trust as owner. An unfunded trust is a document without effect. A pour-over will does not complete the funding.

NY EPTL §7-1.18 · Uniform Trust Code §402

# The checklist

## 06. The original signed will, physically located

New York Surrogate's Court requires the original document for standard probate. A missing original invokes a revocation presumption. Copy-only probate is possible, but it takes months of additional litigation to meet the clear-and-convincing standard.

NY SCPA §1407 · Matter of Fox, 9 N.Y.2d 400 (1961)

## 07. Advance medical directives per parent

Health care proxy (NY statutory form), living will, MOLST where end-stage illness applies. Without a proxy, next-of-kin priority under the NY Family Health Care Decisions Act governs — and disagreements among siblings can stall hospital decisions for days.

NY Public Health Law §2980 · NY Public Health Law Art. 29-CC

## 08. Ownership status on every joint financial account

True joint tenancy transfers to the surviving holder outside the will. A "convenience signer" does not. The documents at the bank — not the family's assumption — determine which is which.

NY Banking Law §675 · Matter of Friedman, 104 A.D.3d 930 (2013)

## 09. Medicaid resource limits against current assets

New York 2025 non-exempt asset limit for nursing-home Medicaid: \$32,396 for a single applicant, \$157,920 community-spouse resource allowance, \$1,097,000 home-equity ceiling. Limits update annually.

42 U.S.C. §1396r-5 · NY DOH 2025 Medicaid Levels · NY SSL §366

## 10. Key contacts and document custody

Estate attorney, CPA, financial advisor, named health care agents, executor, trustees, and the contact of record at each bank and brokerage. In Council casework, 40 to 80 hours of avoidable work consistently follows an incapacity or death when this list was not maintained.

Council casework observations 2023–2025 · methodology on sources page

# The record

*Every figure, rule, and case cited in this file.*

CITATION	WHAT IT GOVERNS
42 U.S.C. §1396p	Liens, adjustments, recoveries, transfers of assets
42 U.S.C. §1396r-5	Treatment of income and resources for institutionalized spouses
29 U.S.C. §1055	ERISA surviving-spouse annuity rules
18 NYCRR §360-4.4	NY Medicaid transfer-of-assets regulation
NY GOL §5-1501B	Statutory short-form power of attorney
NY EPTL §6-2.2	Tenancy in common, joint tenancy, tenancy by entirety
NY EPTL §7-1.18	Funding of a lifetime trust
NY EPTL §13-3.2	Rights of designated beneficiaries
NY SCPA §1407	Proof of lost or destroyed will
NY Banking Law §675	Joint deposits
NY Mental Hygiene Law Art. 81	Guardianship
NY Public Health Law §2980	Health care proxy
NY Public Health Law Art. 29-CC	Family Health Care Decisions Act
NY Social Services Law §366	Medical assistance
NY Real Property Law §240-c	Tenancy rules, real property
NY DOH 2025 Medicaid Levels	Annual resource and income limits
Matter of Fox	9 N.Y.2d 400 (1961) — lost-will probate
Matter of Friedman	104 A.D.3d 930 (2013) — joint-account construction
Uniform Trust Code §402	Requirements for the creation of a trust

The Council's methodology. We draw on public court dockets, state statutes, CMS manuals, and published probate-court decisions. We do not cite individual attorneys, financial advisors, or insurance products in educational materials. Casework figures refer to the anonymized case-log the Council maintains internally; individual case files appear only in the published Case File video series with identifying details removed.



## NEXT CASE

# *The Look-Back Rule Cheat Sheet.*

A companion file that maps the 60-month transfer window against the Medicaid penalty divisor in every US state.

[heircouncil.com/lookback](https://heircouncil.com/lookback)

### **THE COUNCIL'S DISCLOSURE**

The Council's Brief newsletter and this checklist are free to read. We occasionally link to tools or services families have found useful — estate-document platforms, medical-alert providers, and similar. Where we link, we may earn a commission. The commission does not change what we share, and we do not accept editorial input from any partner. Full disclosure at [heircouncil.com/disclosure](https://heircouncil.com/disclosure).

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