



November 2021, ISSUE 3

# YOUR TRUSTED LEGAL COUNSELOR



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## IN THIS ISSUE:

### *Estate Planning*

1

7 Things You Should Do When Your Loved One Dies

### *Intellectual Property*

4

Copyright Protected Music is just that-- Protected!

### *Estate Planning*

6

Properly Title Accounts Before the Death of a Loved One

## 7 THINGS YOU SHOULD DO WHEN YOUR LOVED ONE DIES

*Written by Francine D. Ward*

When a loved one passes away, more often than not we are filled with a mix of emotions. Feelings of denial, depression, grief, shock, hurt, guilt, and anger can sometimes be overwhelming. Gathering documents, making phone calls, and organizing final arrangements are not uppermost on the mind of the surviving loved one. While you can hold off doing some things, other items must be addressed immediately. The following is a guide that will help you facilitate this emotional and stressful process.

*Continued on page 2*



**INSIDE THIS MONTH'S  
ISSUE:**

*7 Things You Should Do When  
Your Loved One Dies-1*

## 1 GIVE YOURSELF TIME.

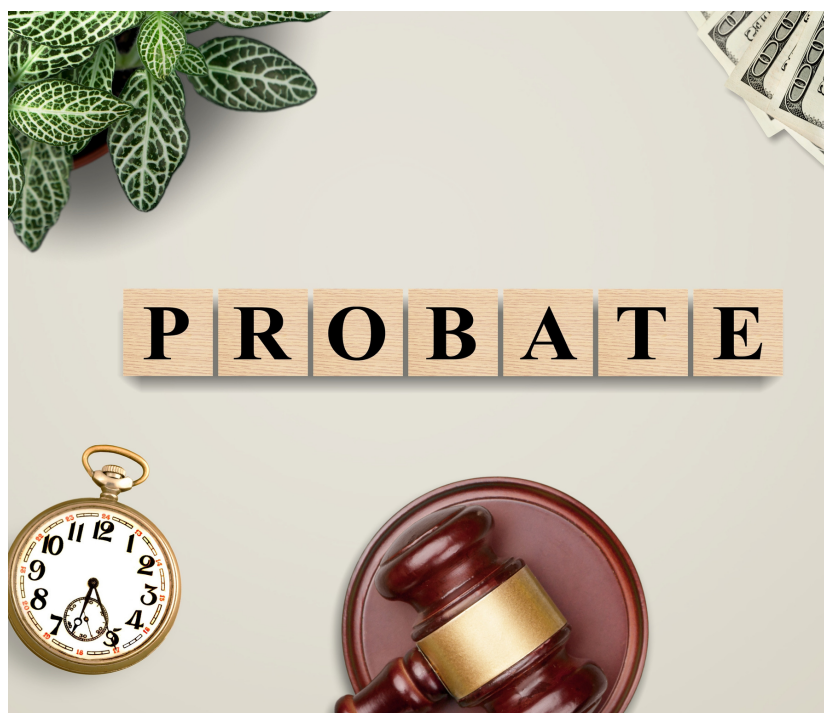
It is important to give yourself time to just Be. In the immediate moments following the passing of a loved one, you don't need to do anything. If you choose, just sit with your loved one for a while, even if your family member died in a hospital. Just let the hospital staff know if you need a little time. Or, if before the body is removed, there are any religious rituals or customs that you would like to observe. Call your pastor, priest, rabbi, or other spiritual advisor, as well as close family members or friends whose presence will be comforting.

**\*Note:** An exception is if your loved one wanted to be an organ donor. Here, the appropriate party should be notified, so the proper steps can be taken. If you are not sure, check your family member's driver's license or health care directives. Even if your loved one has signed up for organ donation in a state or national registry, family members are responsible for making a final decision if a doctor lets you know that your loved one's organs are medically suitable for donation.



## 2 SECURE OFFICIAL TIME OF DEATH.

As soon as possible, secure a legal pronouncement of death by a doctor or hospice nurse. If no one is present who can make the official pronouncement of death, the body may be taken to the emergency room. There, a doctor can make the declaration. Excepting the need for further medical examination or autopsy, a declaration will enable a death certificate to be prepared. A death certificate is required before some of the subsequent actions can be taken.



## 3 ARRANGEMENTS FOR PICK UP.

Make arrangements for the body to be picked up, typically by a funeral home. If your loved one is ill, making those arrangements beforehand is advisable. If not, and if your loved one died in a hospital or nursing facility, the staff may be able to help.

*Continued on page 3*



## 4 ARRANGE FOR CARE.

If necessary, arrange for dependent children, adults, and pets to be cared for, in accordance with your loved one's written requests. If no will or guardianship nomination exists, you may need to request a court. That will ensure that children or dependent adults are properly cared for and protected.

## 5 SECURE HOME AND VALUABLES.

Make arrangements to lock up your loved one's house and car, and if the home will remain vacant, notify the police or the landlord to keep a closer eye on it. A friend or family could also regularly check for mail or phone messages, clean out perishable food, and water plants.

## 6 DETERMINE IF PRE-ARRANGEMENT SERVICES HAVE BEEN MADE.

Find out if your loved one made pre-arrangements for a funeral or memorial service. If not, ask a family member or friend to help out. If your family member was a military person, let the funeral home know. The funeral home can make the appropriate military accommodations.

## 7 OBITUARY

Prepare an obituary to send to the local newspaper and any other newspapers where you'd like the announcement to appear. If your loved one had significant connections in a second location, you might consider an obituary announcement there, as well as the primary residential location.

Once you've taken care of the initial concerns, it's time to start the probate or trust administration process. Some aspects of administration may be handled on your own. However, because of the complexities involved, you should consider legal counsel as soon as possible. Small mistakes can lead to a major headache down the road. My law office is available to help guide you through the legal process, so you and your family can focus on moving through grief toward healing.



# Copyright Protected Music is Just That—Protected!



*Written by Francine D. Ward*

Many political candidates use music during their campaigns. A great example is Hillary Clinton's use of Katy Perry's "Roar" during Hillary Clinton's 2016 presidential run. Many candidates recognize the importance of asking for permission before using someone's copyright-protected content. But what happens if a candidate's campaign fails to get permission to use a song? If they use copyright-protected music and it falls within the Fair Use Doctrine, no one will

likely be liable. But what happens if they use music without permission and it's not deemed to be of fair use? Then it's infringement.

On September 28, 2021, Judge John Koeltl of the U.S. District Court for the Southern District of New York denied Donald Trump's motion to dismiss Guyanese-British singer Eddy Grant's lawsuit (Grant et al. v. Trump et al., No. 1:20-cv-07103).

During his re-election

“ But what happens if they use music without permission and it's not deemed to be of fair use? Then it's infringement. ”



campaign, Trump posted a video using copyright-protected music, without permission. The Court's opinion noted that the video showed a high-speed red train displaying the words, "Trump Pence KAG [Keep America Great] 2020." As the train passes, Eddy Grant's song "Electric Avenue" begins to play.

Grant demanded that Trump cease using his copyright-protected music. Eddy Grant

*Continued on page 4*



threatened a lawsuit if Trump didn't refrain from using his copyright-protected music. However, Trump continued to use, and Grant sued in September 2020. The following November, Trump motioned the court to dismiss, asserting fair use. Trump argued that political use was transformative; therefore, fair use applied. In dismissing Trump's defense, Judge Koeltl stated, in part:

"While it is true that the animation is partisan political commentary and the song apparently is not, the inquiry does not focus exclusively on the character of the animation; rather, it focuses on the character of the animation's use of Grant's song. As the Second Circuit Court of Appeals recently stated [in *Andy Warhol*]: 'where a secondary work does not obviously comment on or relate back to the original or use the original for a purpose other than that for which it was created, the bare assertion of a higher or different artistic use is insufficient to render a work transformative.'"

He also notes that "Electric Avenue" is "instantly recognizable" and that the video incorporates copyrightable components of the song. Although there is an "[i]nherent tension between the promotion of valuable political satire and the copyright protections of the existing art that satirists may wish to use as source material," political use does not automatically mean the use is transformative.

# grateful

## THE WEALTHCOUNSEL TRAILBLAZER AWARD

*This award recognizes a member who has joined WealthCounsel within the last three years and has already made a big impact within the community.*



### WEALTHCOUNSEL DESCRIBED FRANCINE AS,

*"An experienced IP attorney-turned-estate planning attorney, Francine has blended her IP expertise with her passion for teaching and helping others. Recognized by her peers as a thought leader, Francine does not hesitate to share her knowledge and experience in intellectual property and how it can impact estate planning. Going above and beyond to provide valuable contributions to fellow members, Francine is a regular participant in forum meetings, WealthCounsel training sessions, the Practice Growth Program, and other educational opportunities."*

### EMMA CUMMINGS, VP MEMBER EXPERIENCE, STATED,

*"I would like to say "thank you" again for your {Francine} commitment and your contributions to WealthCounsel. We very much appreciate the time you take to give back to our community."*



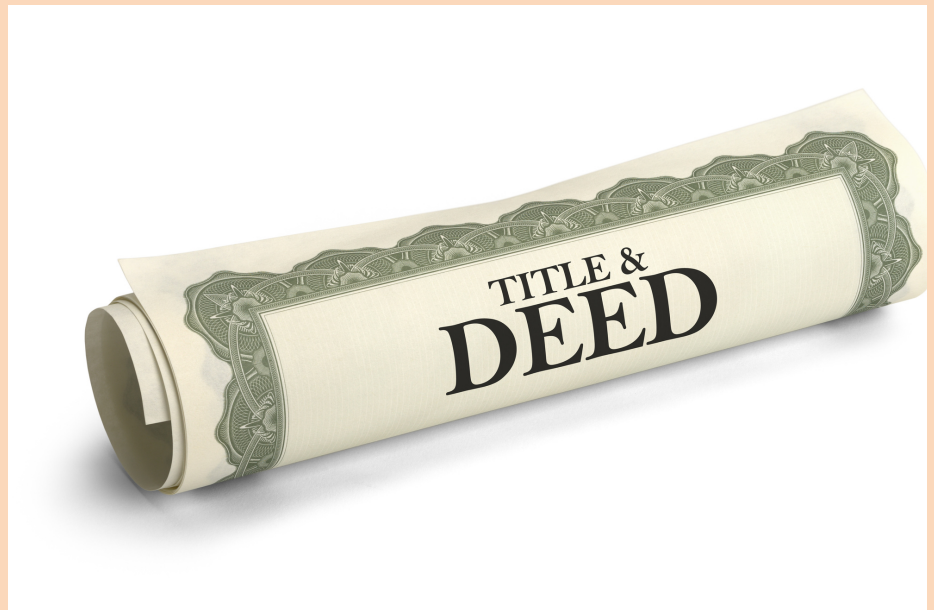
# Properly Title Accounts Before the Death of a Loved One

*Written by Francine D. Ward*

How your accounts and other assets are titled is important in estate planning. When you die, any asset left in your name will be subject to probate. The main objective is to ensure that no assets are in only your name when you die. Probate is not only public, but it's costly and time-consuming. Such court proceedings can last years before a settlement is determined. Therefore, it is important that you review your accounts and beneficiary designations to be sure that the death of your loved one has not compromised your previously established plan.

Beneficiary designated accounts, e.g., life insurance policies, retirement accounts, and annuities, will be distributed at your death. Here, probate can generally be avoided. If your designated beneficiary predeceases you, and there is no subsequent beneficiary named, the account will be distributed per the account's default terms. These default rules might distribute the funds to your spouse, your heirs, or your estate.

Similarly, some accounts permit you to name a beneficiary via a pay-on-death designation (e.g., cash account) or a transfer-on-death



registration (e.g., investment, brokerage, or stock accounts). With these accounts, you may retain ownership, while allowing for the transfer of funds and at the same time avoiding probate. Make sure you know which accounts have these types of beneficiary designation. Make sure you have a secondary beneficiary. If not, and your primary designated pay-on-death or transfer-on-death beneficiary predeceases you, the account will be subject to probate.

Sometimes to avoid probate, you might consider adding another person to an account or holding title as a joint owner with rights of survivorship. This form of ownership means that at the

death of the first owner, the surviving owner automatically owns the entire account or property. Probate is generally avoided. However, if your joint owner predeceases you, you will once again be deemed the sole owner. Your property will be subject to probate, unless we discuss other planning options. The same rule applies to any property you may own with your spouse as tenants by the entirety. If your spouse is deceased, you are now the sole owner and will need to consider other planning options for the property if you intend to avoid probate.

*Continued on page 7*





If your estate plan includes a revocable living trust, you should transfer most of your assets (with some exceptions, e.g., retirement accounts) from yourself as an individual to the RLT. Review your accounts and property and make sure that your revocable living trust is the owner of the assets.

Update your estate plan if you inherited assets from your loved one or discovered formerly unknown accounts or property.

Depending on the size and nature of these new items, updating your estate plan, as soon as possible, is advised.

### **Have you completed your estate plan?**

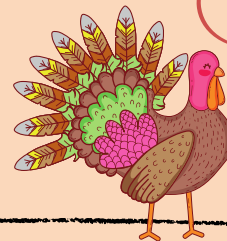
If not, act now! Maybe you started working on your plan but got sidetracked. Maybe you discovered accounts or property that now need to be planned for. Maybe you just didn't want to think about it.

Whatever the reason, get busy now, or the court will decide for you.

- Who will receive your money and property at your death,
- How much each person will receive, and
- When each person will be entitled to receive the money and property (adults will likely receive their entire share right away).

We can guide you through the process. My law office is here to help.

*Happy Thanksgiving*



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