

WRONGFUL DEATH

What is it?

Wrongful death is a legal term for a civil action. Usually when an accident caused by negligence occurs the injured party can file a lawsuit to obtain compensation from the careless person. Unfortunately, sometimes the injuries can be so severe that they result in death. The personal injury claim is then brought by the surviving family members in the wake of a loved one's death. The death of a loved one is not only detrimental to a family but also creates economic and non-economic losses. Although no type of money can make up for the loss of a family member, this civil action was created to prevent wrongdoers and negligent individuals from escaping liability by causing the death of the victim. Additionally, the money can ensure that financial hardship doesn't occur to the family.

Examples:

- Medical malpractice
- Fatal auto accident
- Defective product
- Deadly slip and fall
- Drug with unexpected side effects
- Child drowns in pool of negligent homeowner

Burden: plaintiff needs to be able to prove that the person they are seeking compensation from is the one who directly caused the death

How to prove: preserve evidence, witnesses need to be identified, photographs taken, and right kind of legal counsel must be consulted

Damages:

- Lost future financial support (loss of income)
- Lost of companionship (loss of happiness even though hard to put a price on it)
- Funeral bills
- Medical costs incurred before death
- Compensation for the benefits of the deceased lost (retirement)

Things to consider: age, character, and condition of the decedent, his/her earning capacity, life expectancy, health, intelligence, and circumstance of the distributee.

If the accident is especially egregious (willful, wanton, or grossly negligent) then punitive damages may be available in order to punish the defendant.

This lawsuit is intended to make the victim whole or try to put them back together in the same position they would have been if the accident never occurred. However it is very complicated because it is uncertain how much the deceased would have made if she/he lived. Expert testimony of economists can be used to establish the value of the descendant to his family.

M.G.L. c.299 § 2 → elements to prove cause of death by another:

- Negligence (failure of reasonable care)
- Malicious/willful/wanton/gross negligence
- Breach of warranty

Statute of limitations → 3 years or the date the executor first knew or should have known a wrongful death claim was available

Factors:

1. Degree of consciousness
2. Severity of pain
3. Apprehension of impending death
4. Duration of suffering

Massachusetts has certain procedures that govern wrongful death lawsuits. The personal representative of the decedent's estate must bring the action on the estate's behalf. The individual is appointed in the decedent's will to handle his/her affairs at the time of the decedent's death. If there is no individual appointed in the estate plan then the court can appoint someone. The surviving heirs of the decedent can also seek compensation for the loss of their loved one's companionship, love, and support.

Executor = person identified and selected by the decedent in his will

Administrator = court appointed personal representative when will is silent or there is no will

Estate = legal continuation of a living person after death

*There can be 2 more representatives appointed as co-executors or co-administrators

Mass. General Laws c. 229, § 2 provides that the damages recovered shall be for the benefit of the persons entitled to receive them pursuant to **M.G.L. c. 229, § 1**. The beneficiaries as set out



in **M.G.L. c. 229, § 1** are the spouse and children of a married decedent, or the next of kin of an unmarried decedent. The statutory beneficiaries set out in **M.G.L. c. 229, § 1** are exclusive, and no other relatives may share in the recovery.

^ unmarried decedent (either child or adult) survived by parents the siblings are not next of kin

Comparative Negligence Statute:

M.G.L. c. 231, § 85 permits comparative negligence as a defense in wrongful death cases. According to the statute, “any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.” This rule requires reduction of any wrongful death recovery by the percentage of negligence attributable to the decedent. A jury can determine that the decedent was more negligent than the defendant and bar any recovery.