What a wrongful death lawyer establishes first, and who the statute lets bring the claim

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Who is allowed to bring a wrongful death claim?

A state statute decides, and the list is shorter than most families expect. Usually a spouse, a child or a parent, and in many states only the personal representative of the estate may file, acting for them. A wrongful death lawyer starts there, because the claim is created by that statute rather than inherited from the person who died.

Who answers for a death, and why it is seldom one party

The question of fault is the same one an injury claim asks. What is different is the question underneath it. A death claim is a creature of statute, so before anybody argues about how it happened, the statute has to say that this person is entitled to ask. A grandchild raised by the person who died, an unmarried partner of twenty years, a stepchild never formally adopted: each of those is a familiar situation and each one turns on the wording of one statute rather than on the strength of the relationship.

Two claims often run at once and they belong to different people. The survivors have their own losses, meaning the support, the services and the relationship they no longer have. The estate has a separate claim for what the person themselves went through between the injury and the death, and for what the death cost in funeral and burial. In some states these are two filings. In others they are one, brought by the personal representative and divided afterwards.

Where the death happened at work, or in a vehicle somebody was driving for a company, the employer is usually in the picture beside whoever caused it. That matters more here than in an injury case, because the employer's insurance is ordinarily the larger of the two and because a workplace death also starts a separate regulatory file that nobody has to sue to obtain.

What already exists after a death, and who is holding it

Much of what decides a death claim is created without anybody asking. The death certificate names a cause and a manner, and it is signed by a physician or by the medical examiner. Where the death was sudden or unexplained, the examiner's file will also hold an autopsy report and a toxicology panel, and those two documents frequently say something the certificate does not.

The second body of evidence is financial and it surprises families. What the statute measures for the survivors is the support they no longer receive, so the file ends up containing tax returns, pay records, an employment history and sometimes an economist's calculation built from them. A person who was self-employed, paid partly in cash, or between jobs at the time is harder to account for, and it is worth gathering those records early rather than reconstructing them two years later.

The third is the probate side, and it is the one that causes delay. If the statute requires the personal representative to file, somebody has to be appointed by a probate court before the claim can be brought at all. That appointment takes time, it is a separate proceeding in a separate court, and a family that has not started it can find the appointment, rather than the accident, is what the claim is waiting on.

The policies a wrongful death lawyer traces, and the liens behind them

A death reaches the upper layers of a policy far more often than an injury does. That changes who turns up. A claim that exhausts a primary policy puts an excess or umbrella insurer into the file, each with its own adjuster, its own counsel and its own view, and a settlement that involves more than one layer is negotiated with all of them rather than with the first one that called.

Behind the policies sit the liens, and this is the part families are least warned about. A health insurer that paid the final hospital bill, a workers compensation carrier that paid benefits, and Medicare or Medicaid where either was involved, may all have a right to be repaid from whatever is recovered. Those rights are asserted against the recovery rather than against the family, which is why a figure agreed with an insurer is not the figure that reaches anybody.

A third thing worth knowing early: where the person who died carried underinsured motorist cover of their own, that policy can be in play even though they were not at fault. It is the family's own insurer, it has its own notice requirements, and telling it late is one of the ordinary ways a real claim gets smaller.

The two claims, and the words courts use for them

The terminology is worth knowing because it is what the paperwork will say. The claim belonging to the survivors is the wrongful death action proper, and what it measures is usually described as pecuniary loss: the earnings and the household services the family no longer receives, alongside, in most states, the loss of the relationship itself, which appears variously as loss of consortium, loss of society or loss of companionship depending on the jurisdiction and on who is bringing it.

Running beside it is the survival action, which is the claim the person who died would have had, surviving them and passing to their estate. Where they lived for hours or months between the injury and the death, that interval is what the survival action is about, and in many states it is the only route by which their own conscious suffering is recoverable at all.

Two procedural points follow and they catch families out. Where a beneficiary is a minor, a settlement generally cannot be concluded without a court approving it and frequently without a guardian ad litem appointed to represent that child’s interest separately. And where several beneficiaries share one recovery, dividing it is its own decision: some states fix the shares by statute, others leave the apportionment to the court, and a dispute between siblings over that division is resolved in the probate or trial court rather than by agreement with an insurer.

What is counted after a fatal crash, and what is not

The federal record of fatal crashes is the Fatality Analysis Reporting System, kept by the National Highway Traffic Safety Administration. It is a census rather than a sample: every crash it covers is coded, with the vehicles, the people, the roadway and the sequence of events in separate linked files, and the data is published for anybody to download and query.

What it covers is narrower than people assume, and the boundaries matter if you are trying to find a death in it. A crash is in the system when it happened on a public road, involved a motor vehicle in transport, and killed someone within thirty days of it. A death on private property, in a parking structure or on a farm road is outside it. So is a death on day thirty-one. Nothing in it records fault, and nothing in it records what any claim was resolved for.

For deaths that were not traffic deaths, the underlying national record is the mortality file compiled from state death certificates and published through the Centers for Disease Control and Prevention. This site holds no export of either system, so this block names them rather than showing you figures whose file we cannot put in front of you.

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Sources

NHTSA, Fatality Analysis Reporting System:
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CDC WONDER, the national mortality files compiled from death certificates:
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