

Overview of the Laws Relating to Wrongful Death Actions in Virginia Caused By The Negligence of Another Person or Company

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If you lost a loved one as a result of the negligent actions, or inactions, of another, you may be able to file a lawsuit for financial restitution. A wrongful death claim may be brought by the personal representative of the decedent within two years after the death of the injured person, according to Virginia Code § 8.01-50 and 8.01-244. Wrongful death actions are controlled by state statute.

Statutory Definition of "Wrongful Death" in Virginia

According to [Virginia Code § 8.01-50](#) defines a "wrongful death" as a death "caused by the wrongful act, neglect, or default" of another party. The circumstances of the death must be the kind that would have supported a personal injury action if the deceased person survived. One or more of the "statutory beneficiaries" described below is required to file a wrongful death claim.

Individuals Entitled to a Financial Recovery in a Virginia Wrongful Death Case

The individuals entitled to receive a financial recovery in this type of action are known as statutory beneficiaries, according to [Virginia Code § 8.01-53](#). They include:

- (i) The surviving spouse, children of the deceased and children of any deceased child of the deceased or
- (ii) If there be none such, then to the parents, brothers and sisters of the deceased, and to any other relative who is primarily dependent on the decedent for support or services and is also a member of the same household as the decedent or
- (iii) if the decedent has left both surviving spouse and parent or parents, but no child or grandchild, the award shall be distributed to the surviving spouse and such parent or parents or
- (iv) if there are survivors under clause (i) or clause (iii), the award shall be distributed to those beneficiaries and to any other relative who is primarily dependent on the decedent for support or services and is also a member of the same household as the decedent or
- (v) if no survivors exist under clause (i), (ii), (iii), or (iv), the award shall be distributed in the course of descents as provided in Virginia Code § 64.2-200. For purposes of this section, a relative is defined as a person related to the decedent by blood, marriage, or adoption and includes a stepchild of the decedent.

The statute also provides that the class and beneficiaries eligible to receive a damages award be fixed (i) at the time the verdict is entered if the jury makes the specification, or (ii) at the time the judgment is rendered if the court specifies the distribution.

It is also important to note the fact that, under Virginia's wrongful death statute, half-brothers and half-sisters fall within same class as parents of decedent, and may participate in damages awarded if jury or court so specifies. See *Wolfe v. Lockhart*, 195 Va. 479, 78 S.E.2d 654 (Va. 1953).

Who Can Become the Representative of the Decedent's Estate in a Wrongful Death Action?

Our attorneys are asked this common question by clients in these situations. There are a series of laws in Virginia that determine who can be appointed as representative for a wrongful death lawsuit. We recommend that you contact our firm for free confidential consultation with any specific factual questions about the wrongful death claims process. Virginia Code § 8.01-50 (B) requires that a lawsuit for wrongful death must "be brought by and in the name of the personal representative of such deceased person". The personal representative of the decedent must be duly qualified in Virginia in order to have standing to bring a wrongful death action. This requires that the proper individual be appointed by the appropriate circuit court in Virginia by an Order entered naming such individual as the personal representative of the decedent for purposes of bringing a wrongful death action.

According to [Virginia Code § 64.2-454](#), an administrator may be appointed in a civil action for personal injury or wrongful death on behalf of the estate or the beneficiaries of the estate of a resident or nonresident of the Commonwealth who has died within or outside the Commonwealth if at least 60 days have elapsed since the decedent's death and an executor or administrator of the estate has not been appointed under § 64.2-500 or 64.2-502, solely for the purpose of prosecution or defense of any such actions, by the clerk of the circuit court in the county or city in which jurisdiction and venue would have been properly laid for such actions if the person for whom the appointment is sought had survived.



An administrator appointed pursuant to this section may prosecute actions for both personal injury and death by wrongful act.

If a fiduciary has been appointed in a foreign jurisdiction, the fiduciary may qualify as administrator. The appointment of a fiduciary in a foreign jurisdiction shall not preclude a resident or nonresident from qualifying as an administrator for the purposes

of maintaining a wrongful death action pursuant to § 8.01-50 or a personal injury action in the Commonwealth. A resident and nonresident may be appointed as co-administrators.

Does the Representative of the Decedent's Estate Control who Gets the Financial Recovery in a Wrongful Death Case?

There are some misconceptions about what the word "estate" means. It simply means that, legally, whatever claim that the person killed has, is passed to the intangible estate of that person, and the estate's interest in proceeding in the wrongful death lawsuit needs to be brought in court, by a personal representative. However, the personal representative does not have any particular interest in the amount of money recovered, because the amount of recovered losses or restitution in a wrongful death lawsuit and who gets what portion, must be approved by a judge under a wrongful death settlement. If the wrongful death lawsuit goes to trial, the judge or jury must specify the monies that are to be paid to each beneficiary in a judgment order or on a verdict form.

If for any reason the lawful beneficiaries cannot agree on the distribution amounts when a negligent party is prepared to pay a settlement, a judge must determine this either in a trial or hearing over what interest each beneficiary may have. So, the takeaway is that the personal representative does not automatically get any say-so over what lawful beneficiaries receive what particular amount, even if the personal representative may qualify as being a beneficiary.

In practical application, let's say that we are representing the personal representative in a wrongful death case and we convince the negligent party or company to make a lump sum significant settlement payment. First, the total amount of such a settlement must be approved by the personal representative of the estate. Our lawyers are often able to settle any disputes between beneficiaries over what percent or proportion of a settlement each will receive. Once the beneficiaries are in agreement, the settlement is presented to a judge for approval. Again, there are situations where beneficiaries fail to agree on a distribution and that is when a hearing or trial may be necessary.

The Forms of Financial Restitution You Can Seek in a Wrongful Death Action

A judge or jury may award financial restitution that is "fair and just," according to [Virginia Code § 8.01-52](#). Forms of financial restitution typically awarded include:

1. Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;
2. Loss of income of the decedent;
3. Loss of services, protection, care and assistance provided by the decedent;
4. Expenses for the care, treatment and hospitalization of the decedent as a result of the injury, or injuries proximately caused by the accident;
5. Funeral expenses (including burial costs); and

6. Punitive damages may be recovered for willful or wanton conduct, or such recklessness as evinces a conscious disregard for the safety of others.

Statutory Deadline for Filing a Virginia Wrongful Death Lawsuit

Virginia law requires wrongful death claims to be filed within two years of the date of the deceased person's death. If a wrongful death claim is not filed within two years, the state's "statute of limitations" bars it from being heard in court.

There are some very narrow exceptions to the two-year statute of limitations, such as when a person might be under disability when the statute of limitations runs, or if the negligent party has actively concealed its negligence. So if you feel one of these highly unusual circumstances could apply, please obtain a free confidential consultation from one of our Virginia wrongful death lawyers.

Example of a Virginia Wrongful Death Lawsuit

Our law firm represented the family of a man who was burned alive when his Ryobi lawn mower suddenly caught fire. Frank Wright was on his Ryobi ride-on lawn mower cutting grass. Just two days before Christmas, the Wrights were planning to come together at Frank's home to enjoy each other's company. Mr. Wright's mower suddenly exploded and engulfed him in flames. The fire was so powerful that Mr. Wright died just moments after the explosion.

Firm attorney Rick Shapiro, with the assistance of co-counsel, filed a wrongful death lawsuit on behalf of Mr. Wright's estate. The case was filed against the lawn mower manufacturer, Ryobi, and the seller of the mower, Home Depot U.S.A., Inc. The case was litigated in the Eastern District of Virginia, Norfolk Division.

After a five-day jury trial, [the jury returned a \\$2.5 million verdict](#) in favor of Mr. Wright's estate, which included Mr. Wright's widow. The jury determined that Ryobi was negligent in manufacturing the fuel tank and fuel line and that they owed a duty to Mr. Wright, along with thousands of other Ryobi customers, to warn of the discovered defects.

What To Do if Your Loved One was Killed by the Negligence of Another Person or Company

As you can see, hiring an experienced Virginia wrongful death attorney makes sense. It provides you and your family peace of mind knowing that a seasoned and skilled litigator is working on your case and protecting your legal rights. An attorney can also effectively build a case that will persuade a judge or jury to award a substantial sum of damages, or to convince the defendant to offer a fair and reasonable settlement.

Contact our law firm today to schedule a free, confidential case review. You can reach us online or by calling our toll free phone number: 833-997-1774

Three Reasons to Contact Our Firm

1. Rated as some of the Best Lawyers in America by U.S. News & World Report (since 2010) for personal injury law
2. Recognized in the "Super Lawyers" Magazine for personal injury law (an accolade bestowed on only 5 percent of practicing attorneys)
3. [Millions recovered for clients](#) in wrongful death cases through settlements and jury verdicts

The logo for Super Lawyers, featuring the words "Super Lawyers" in a large, stylized, gold-colored serif font with a drop shadow effect.