

A Guide to **WRONGFUL** Death Claims in Iowa



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A Guide to Wrongful Death Claims in Iowa

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January 2011

This book is intended as a guide for those who have lost a family member through the negligent, reckless or intentional misconduct of another person or business. In addition to the overwhelming grief and loss caused by the death of loved ones, families who lose a loved one under these circumstances commonly experience financial devastation, outrage over the needlessness of the death, and a deep need to understand and make sense of the tragedy.

Even more importantly than providing critically needed compensation for dependents, a wrongful death action can and should be an important part of the process of understanding, healing and recovering from the tragedy of unnecessary and preventable death. While much of the discussion that follows is about the specific details of claims for monetary recovery in wrongful death action, our experience from helping many families with these cases is that the most important goal of wrongful death actions is to assist in the more general process of recovery and healing.

We hope that this book will provide some useful information and clarity to survivors at a very difficult and confusing time. This book is intended to provide general guidance for those who may need to consider pursuing a wrongful death claim; however, it is by no means a substitute for thoughtful and detailed advice from an experienced attorney, based on the particular circumstances of each individual's claims.

1. What is a “wrongful death claim”?

A wrongful death claim is an abbreviated way of describing all legal claims that may be brought by an estate and/or the family of a person who dies as the result of negligent, reckless or intentional conduct of another person or business. Wrongful death claims are part of tort law, designed to compensate those who suffer losses through the fault of a third party. There are many potential causes of wrongful death, including vehicle accidents, construction and agricultural accidents, deaths caused by dangerous premises, defective equipment, medical devices and other product failures, medical malpractice, “dram shop” claims against bars that served alcohol to intoxicated persons, assaults and other criminal behavior, and excessive force by law enforcement causing death.

The most common wrongful death claims arise from the same circumstances that give rise to personal injury actions, for example, serious auto, truck and motorcycle collisions, construction or agricultural injuries, or medical malpractice. In addition, wrongful death claims commonly arise when the death is caused by an assault or other criminal act. Because they involve circumstances where death has resulted, the incident that caused the death is often the subject of much more extensive investigation than in personal injury claims.

The legal basis for wrongful death claims have been defined and developed over many years, both through statutes passed by the Iowa legislature and in a number of decisions by Iowa courts. Some of the most important Iowa wrongful death laws are set out in the last section of this book. There is no single comprehensive body of law in Iowa that encompasses all aspects of a wrongful death claim in Iowa. Wrongful death law varies significantly from state to state, so the rules that apply to wrongful death claims in other states may differ from those described in this book.

2. Who may recover compensation for a wrongful death?

There are several different claims that may be made on behalf of different persons for wrongful death. Under Iowa law, with limited exceptions, all of these claims must be joined in one action, brought by the personal representative of the deceased person's estate, as discussed below.

Spouse and children – The spouse and children, including both minor children and adult children, may bring claims for the losses they have suffered due to the death of their spouse/parent. These losses obviously are substantial and are a primary reason that family members consider bringing these claims. The types of claims that spouses and children may pursue are discussed more extensively below.

Wrongful death claims may be pursued on behalf of both natural and adopted children. Iowa law does not recognize a claim by a stepchild for wrongful death of a step parent. The law in our state concerning death claims relating to unborn children is more complicated. The estate of an unborn child does not have a claim for wrongful death, but the parents of a child, whether born or unborn, may bring a claim for their losses, as discussed below. In addition, an unborn child has been considered to be a “person” under an uninsured motorist policy so that its parents could recover for their losses resulting from the unborn child's death.

Parents of a deceased child – Under Iowa law, the parents of a deceased child, including a deceased adult child, may bring a claim for their losses due to the death of their child. Iowa law previously only recognized a parent's claim for the wrongful death of a deceased minor child. In 2007, Iowa law was changed so that parents of a deceased adult child could also bring claims for their losses. The statute provides that the claims of parents of a deceased adult child are “subordinate” to any claims of the spouse and children of the deceased adult child. This new

statute has not yet been interpreted by the Iowa appeals courts, so the scope and extent of claims for loss of an adult child has not yet been well developed.

Estate of the deceased person – The estate of the deceased person has a separate claim for pre-death injuries and also for “loss of accumulation of value to the estate.” Iowa’s wrongful death statute is a “survival” statute, which means that the claims that a deceased person had before he or she died survives after the death. Before these statutes were adopted, under “common law”—the law that has historically developed over time through court decisions—the legal claims of a deceased person were extinguished when that person died. Because of Iowa’s survival statute, the estate of a deceased person may bring any claims that the deceased person could have brought if he or she were still living, including claims for the injury that ultimately caused his or her death.

The types of losses that may be recovered for each of these three types of claims are discussed in greater detail in Section 4 below.

3. How is a wrongful death claim commenced?

Under Iowa law, wrongful death actions must be brought by the “personal representative” of the estate of the deceased person. An estate, called a “probate estate”, must first be opened by filing a “petition” in the district court of the county where the deceased person resided at the time of death. If the deceased person had a will, the personal representative is the person named in the will as an executor. If the deceased person did not have a will, then the personal representative, called the “administrator”, is appointed by the court. Under Iowa law, and in order of priority, the court may appoint as administrator the surviving spouse, heirs of the deceased person, creditors of the deceased person, or “other persons showing good cause”. On many occasions, especially in cases involving deaths of minors or young persons, the estate has few assets other

than the claims arising from the wrongful death, and the only reason that an estate is opened is to allow those claims to be pursued. In cases where the only reason for opening an estate is in order to pursue a wrongful death claim, our office often handles opening the estate and all estate filings as part of our representation in the wrongful death claim, without charging an additional fee.

After the probate court enters an order appointing the personal representative, the personal representative then can file a lawsuit, which typically must be filed in the district court in the county where the responsible party resides or does business or where the injury causing the death occurred. Before determining whether a wrongful death lawsuit should be filed, it is frequently necessary to attorney to conduct an investigation, including gathering records such as related criminal and law enforcement investigation files, medical records and autopsy and medical examiners reports, and consulting with retained experts. The lawsuit is governed by the same rules of procedure as other civil claims in Iowa. If the lawsuit is settled, the personal representative must get the approval of the probate court. When the lawsuit is concluded, either by settlement or trial, the probate court also must approve the distribution of the proceeds to the survivors.

Even if a claim is settled with the party responsible for the death and/or that party's insurance company without filing a lawsuit, it still is necessary to open an estate in order to have the court approve of the settlement and the distribution of the money paid in settlement.

Wrongful death claims actually include different types of claims by different persons, as discussed below. However, with very limited exceptions, all of these claims must be brought in one lawsuit by the personal representative. In cases where all family members cannot be joined in a single action because of conflicts, it may be possible for family members to bring separate claims.

4. What types of losses are compensated in wrongful death actions?

Under Iowa law, wrongful death claims include several related but distinct claims, including: (1) the claim of the deceased person for injuries and damages up to the time of death; (2) the claim of the estate of the deceased person for losses to his or her “estate”; and (3) the claims of the spouse, children and parents of the deceased person for loss of their relationship with the deceased person, commonly called loss of “consortium”. Each of these claims is discussed separately below.

- a. **Pre-death injuries and claims:** If a person who was killed through the fault of another survives for any period of time after the fatal injury and before death, that person’s estate may recover the damages that the person suffered between the time of the injury and death, including medical expenses, lost earnings, physical and mental pain and suffering and loss of enjoyment of life, and loss of function of the mind and body. Even if the death was nearly instantaneous, it is important for your attorney to carefully investigate whether there was any delay that may give rise to these claims, since per-death injuries claims may be significant.
- b. **Lost accumulated value of the estate and burial expenses:** In a wrongful death case, the estate also is entitled to recover the “present value” of amounts the person would reasonably be expected to have accumulated if he or she had survived to his or her life expectancy. Essentially, this is the amount of the estate that the deceased person would have accumulated if he or she had lived to his or her natural life expectancy. In order to assist in arriving at an estimate of this loss, an economist, finance professor, or other professional with economic expertise typically reviews background information about the deceased person, including

education, training, employment history/experience, earnings, benefits, and assets and debts, and calculates what the deceased person would have earned and accrued, after living expenses for that person and his or her dependants. The estate may recover only the “present value” of this amount—a reduced amount that, if safely invested, would produce, at the end of the deceased person’s life expectancy, the estimated amount of this future loss. This is known as “discounting an amount to present value.” Financial experts differ on what this discount should be, or even if there should be any discount.

Burial Expenses: Technically, only interest on the reasonable burial expenses from the time of death until the time when those expenses would have been paid if the deceased person had lived to his or her natural life expectancy, may be recovered. As a practical matter, in cases involving young or middle aged persons, the amount of burial expenses is awarded.

- c(1). Spousal Support:** The present value of the amount of financial support that the deceased person would have contributed to his or her spouse, but for his or her death. In calculating this amount, the calculations are limited in time to the shorter of the spouse’s or deceased person’s normal life expectancy. Again, this amount commonly is calculated by an expert economist.
- c(2). Support – Children:** The present value of the amount of financial support which the deceased person would have contributed to his or her children, but for decedent’s death, limited in time to when the child reaches the age of eighteen (or marries before then), unless there is proof that the child will have a need for

support beyond that date. Again, an expert economist is commonly employed to provide evidence of amounts for lost financial support for a spouse and child.

c(3). Spousal Consortium: The present value of the “services” that the deceased person would have performed for his or her spouse, but for the premature death. This is commonly called spousal consortium, and is defined under Iowa law as “the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family.” Again, this amount is limited in time to the shorter of the spouse’s or deceased person’s normal life expectancy.

c(4). Parental Consortium: The present value of the “services” that the deceased person would have performed for his or her children (including adult children), but for the premature death, and further defined as the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. Neither spousal consortium nor parental consortium includes “mental anguish” or emotional distress caused by a parent’s death.

In certain cases, where the conduct that resulted in death was intentional, or “willful and wanton”, in the words of the Iowa statute, punitive damages also may also be awarded. No claims for punitive damages are available against the state or a governmental subdivision, for example, a city or county. If the conduct was intentional but not directed toward the deceased person, 75% of any punitive damage award will be paid into a state fund.

Amounts that are recovered for losses described in paragraphs 1 through 3 above are considered to be “property of the estate”. These amounts will be distributed to the persons named in the will if the deceased person had a will. If not, the property is distributed according the laws of inheritance in Iowa. Those laws are complicated and cannot be set in detail here. Generally, property of person who dies without a will is distributed to a spouse, then children, then parents and then more distant relatives. Amounts recovered under paragraph 3 above are distributed to those who suffered the loss.

Unlike many kinds of property owned by a deceased person, property recovered in a wrongful death action is protected from claims of persons who were creditors of the deceased person. An order from the court in the probate case will be required to distribute the funds. The court also must approve any payment of attorney fees.

5. What is the relationship between a wrongful death lawsuit and a criminal prosecution against the person causing the death?

Virtually every criminal act that causes death can also be the basis for a wrongful death claim, both against the person who committed the crime and often against other responsible third parties whose fault or negligence contributed to the tragedy. A criminal prosecution, which is brought by a state, or sometimes federal, prosecuting attorney and a wrongful death action, which is brought by the survivors of the deceased proceedings, are distinct proceedings. The goal of the criminal prosecution is primarily to punish the wrongdoer, and the goal of a civil proceeding is primarily to obtain compensation for the family of the victim. Since our criminal justice system includes many constitutional protections for the person charged with a crime, and since the family members of a victim of a crime are not directly involved as parties in the criminal prosecution, they often are frustrated or discouraged by the criminal prosecution,

despite the best efforts of prosecutors and victim advocates who maintain contact with the family during the criminal process.

A related criminal action can affect a wrongful death claim in several important ways. First, if the criminal defendant is convicted or pleads guilty to a charge causing the death of another, the conviction or guilty plea may be admissible in the wrongful death action to prove that the person is liable for damages. By contrast, if a person is acquitted of a criminal charge, the acquittal is not admissible, and the person still may be sued for wrongful death. The reason for this difference is that the burden of proof in a criminal case, “beyond a reasonable doubt,” is higher in a criminal case than in a civil case, which only requires proof by “a preponderance of the evidence.” As a result, a person may be acquitted based on reasonable doubt in a criminal case but still be responsible in a civil action for wrongful death. In addition, pending criminal cases may delay completion of the civil case. For example, the person charged with causing the death has a constitutional privilege against self-incrimination in the criminal proceeding, and frequently will refuse to testify in the civil proceeding, at least until the criminal proceeding has been resolved.

Also, often a wrongful death case will involve an additional or different defendant than the defendant in the criminal case. For example, often wrongful death cases are filed against businesses who failed to keep their premises safe resulting in a criminal death occurring on their property. The businesses may not be criminally responsible, but may be responsible in a civil suit. Another example is a dram shop claim. These claims are filed against a drinking establishment where the drunk driver was drinking. Iowa law often holds the drinking establishment responsible in a civil wrongful death case, even though the drinking establishment is not criminally charged. An experienced attorney will request and obtain all available

documents from the criminal investigation and prosecution in order to assist in pursuing the wrongful death lawsuit.

6. What are the time limits for bringing a wrongful death claim?

In most cases, a wrongful death claim must be brought within two years from the date of the death. Some parts of a wrongful death claim (for pre-death injuries and losses) must be brought within two years of the loss. Other time limits may apply. For example, in order to bring a dram shop claim against a bar for serving alcohol to an intoxicated person who causes a death, it is necessary to serve a notice on the bar or its insurance company at most six months after the collision.

More importantly, if you are considering pursuing a wrongful death claim, there are many reasons to act promptly in order to protect your rights. It often is necessary to conduct additional investigation, to locate and obtain information from critical witnesses and other evidence before memories fade and evidence is lost or discarded. In addition, it is necessary to identify all responsible parties – including those whose responsibility may not be evident at an early stage – before the statute of limitations expires. At minimum, you should obtain early information concerning your rights to assure that the delay does not diminish or eliminate your claims. All attorneys who practice in this area will provide initial consultation at no charge.

7. Conclusion

Wrongful death claims are often a critical step by the victim' survivors in the process of healing and recovery, by helping to make sense of and understand what has occurred, obtaining family support lost through the death of a loved one and assuring that those the person responsible for the death are accountable. It is a solemn and vitally important undertaking for an attorney, and one that we feel privileged to provide.

This guide is only a summary of the more significant features of wrongful death claims. If we can provide any further answers to questions you may have, please contact us at 319.866.9277 or www.bradyoshea.com.

Selected Iowa Wrongful Death Laws and Rules

Some of the most important Iowa laws and court rules about wrongful death claim are set out below. Other laws and rules not stated below also apply to wrongful death claims in Iowa.

The references below are current as of this writing. However, they may be changed. For the most recent version of the Iowa Code, consult with an attorney or visit the Iowa Legislature's website at <http://www.legis.iowa.gov>.

As with the rest of this book, the legal excerpts below are meant as general guidance for those who may need to consider pursuing a wrongful death claim and are not intended to a substitute for the legal advice of a licensed attorney.

Iowa Code section 611.20. Actions survive

All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same.

Iowa Code section 611.21. Civil remedy not merged in crime

The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former.

Iowa Code section 613.15. Injury or death of spouse or parent--measure of recovery

In any action for damages because of the wrongful or negligent injury or death of a woman, there shall be no disabilities or restrictions, and recovery may be had on account thereof in the same manner as in cases of damage because of the wrongful or negligent injury or death of a man. In addition she, or her administrator for her estate, may recover for physician's services, nursing and hospital expense, and in the case of both women and men, such person, or the appropriate administrator, may recover the value of services and support as spouse or parent, or both, as the case may be, in such sum as the jury deems proper; provided, however, recovery for these elements of damage may not be had by the spouse and children, as such, of any person who, or whose administrator, is entitled to recover same.

Iowa Code 633.336. Damages for wrongful death

When a wrongful act produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased;

however, if the damages include damages for loss of services and support of a deceased spouse, parent, or child, the damages shall be apportioned by the court among the surviving spouse, children, and parents of the decedent in a manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse, children, and parents respectively. Any recovery by a parent for the death of a child shall be subordinate to the recovery, if any, of the spouse or a child of the decedent. If the decedent leaves a spouse, child, or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate, except for amounts to be paid to the department of human services for payments made for medical assistance pursuant to chapter 249A, paid on behalf of the decedent from the time of the injury which gives rise to the decedent's death up until the date of the decedent's death.

Iowa Rule of Civil Procedure 1.206. Injury or death of a minor

A parent, or the parents, may sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child.