

# Wrongful Death Claims in North Carolina

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## Introduction

When someone is injured by the negligence of another, the injured party often has a legal claim against the at-fault party under North Carolina law. Sadly, however, sometimes these incidents result in the death of the injured party. When that happens, the family or other legal representative of the deceased has a potential "wrongful death" claim under North Carolina law.

## North Carolina's Wrongful Death Statute (N.C. Gen. Stat. § 28A-18-2)

Section 28A-18-2 of the North Carolina General Statutes authorizes the filing of wrongful death claims in North Carolina. A wrongful death claim exists when "the death of a person is caused by a wrongful act, neglect or default of another." Under Section 28A-18-2, the wrongful death action must be brought by the "personal representative" of the deceased, who typically is the executor or administrator of the deceased's estate.

The potential damages that can be recovered in a North Carolina wrongful death case also are controlled by Section 28A-18-2. The statute combines what traditionally were considered two separate parts of a death claim:

- The *survival action*, which is the claim the deceased possessed before passing away (e.g., pre-death pain and suffering, medical bills, and pre-death lost income); and,
- The *wrongful death* action, which is brought on behalf of the deceased's family members for what they themselves lost due to the death (e.g., pain and suffering from losing a loved one, funeral expenses, and lost economic support that would have been provided by the deceased).

These claims are no longer separated, and Section 28A-18-2 combines both into one individual cause of action.

Section 28A-18-2 specifically lists the following types of damages that are recoverable in a wrongful death lawsuit:

- Medical expenses associated with the deceased's injury resulting in death;
- Compensation for the deceased's pain and suffering;
- Funeral expenses incurred on behalf of the deceased;
- The loss to the deceased's family resulting from the untimely death, including:
  - The monetary value of the loss of the net income the deceased would have earned;
  - The monetary value of the loss of the services, protection, care, and assistance the deceased

- would have provided;
- The monetary value of the loss of the deceased's society, companionship, comfort, guidance, kindly offices, and advice; and,
- Punitive damages, if applicable.

When damages are awarded, they are distributed according to the North Carolina Intestate Succession Act, or, in other words, according to North Carolina's default rules that apply when a person dies without a Will. This means that, even if the deceased had a Will that otherwise distributed the deceased's assets at death to specified people or institutions, or to the same people but in different proportions, the damages will not be distributed that way, but instead according to the rules of the Intestate Succession Act. Each circumstance is different, and an attorney can help the family of a deceased individual understand this process.

### **Is Another Party Liable?**

As with other North Carolina personal injury cases, an "at fault" party must first be legally liable before that party (or that party's applicable insurance company) is required to pay any damages for the wrongful death of another. In most cases, the analysis is whether the other party was negligent, and whether that negligence actually caused the deceased's death.

In North Carolina, negligence is a failure to act with "reasonable care." When a party fails to act with reasonable care, and that party's actions cause the death of another, the "at-fault" party can be liable for wrongful death damages unless a legal defense applies.

Examples of negligence by a party include:

- A driver in a car accident who was speeding or ran a red light (or the employer of that driver);
- The manufacturer of a defective product who knew or should have known that the product was defective; or,
- A medical provider who committed malpractice.

There are several potential legal defenses that can apply in a wrongful death case. For example, North Carolina is one of only a few states that continue to recognize the doctrine of "contributory negligence." Under that doctrine, if the deceased negligently contributed to the incident in the slightest manner—even 1%—the deceased's family may not be able to recover at all under a wrongful death action. There are exceptions to this rule, such as the doctrine of "last clear chance," or possibly where the other party is "grossly negligent," but those exceptions only apply in a minority of cases.

Another potential defense is the statute of limitations. If a wrongful death action is not brought within the specific amount of time required by the applicable statute of limitations, it is legally barred forever. Importantly, the statute of limitations for wrongful death claims in North Carolina is only two years—not the typical three years for most other negligence claims. Thus, it is important to speak with a skilled attorney as soon as possible if you feel you may have a potential wrongful death claim.

### **Conclusion**

The loss of a loved one is heartbreaking. No legal action can bring that person back. Still, when another party is responsible for the death, North Carolina provides a legal cause of action under its wrongful death statute.

While money can never replace the person lost, North Carolina law seeks to "balance the harms" by providing financial compensation for the medical and funeral expenses, lost income, pain and suffering, and other losses resulting from the death. In many cases, this money can be used to pay expenses, and to financially

support loved ones left behind.

As with other personal injury cases, the best course of action is to contact a skilled attorney who can assist with a potential wrongful death case. That attorney can help with the claim process and navigate the various legal intricacies of wrongful death claims in North Carolina.

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