

Wrongful Death Actions: Before the Clock Starts Ticking, this is What You Need to Know

Every action filed in a court of law is subject to strict guidelines that vary from state to state. The statute of limitations on any legal action is in place to prevent misuse of the courts time and resources. The time limit is strictly enforced to discourage frivolous lawsuits years after the accident or injury occurred. This is especially true in the case of wrongful death actions.

When a specific statute of limitation runs out, the right to file a lawsuit is forfeited by the plaintiff regardless of validity. No matter how thorough the case may have been, a judge will immediately dismiss it if he or she finds it has exceeded the statute of limitations.

The legal jargon of it all: “derivative action”

Wrongful death is known to attorneys as a “derivative action”; the action arises due to a personal injury event that takes place alongside the death. In some instances, the derivative action may be time sensitive. This may occur because the deceased did not bring a personal injury action in accordance to the statute of limitations in the state in which he or she resided prior to death. Furthermore, this stance can be applied because the decedent failed to bring a personal injury claim or exceeded the statute of limitations when they attempted to do so.

Product liability and wrongful death: a different marketplace

As discussed in our *Product Liability for the Informed Consumer* article series, there are separate statutes that apply to wrongful death actions in the instance of a defective product that caused such serious injury that the consumer died as a result of reasonable use of the product. In the case of defective merchandise specifically, there are specific limitations that run from the time of death regardless of “reasonable” knowledge on the part of the decedent.

In certain states a “statute of repose” is applied in which after a product is a set number of months or years old, a lawsuit can no longer be brought against the manufacturer by the consumer.

Your attorney shouldn’t just know “the law”, but the laws in your state specifically

Each state differs on their statute of limitations regarding personal injury, but there are inherent differences between the statute of limitations surrounding personal injury and the statute of limitations surrounding a wrongful death. The state of Florida has clearly defined their statute of limitations in regard to wrongful death [on their website](#).

This is where the “Discovery Rule” is applied to such actions. Within a wrongful death lawsuit, the statute of limitations period is said to begin when the wronged party (the “plaintiff”) discovers through the reasonable due diligence of an attorney, the cause for the death of the victim.

Wrongful death actions: not the same in every state

Certain states have statutes stipulating that the right to bring a lawsuit in the event of wrongful death is “fundamental”, meaning, a right and not a privilege to the family of the victim and would begin at the time of death. Florida, however, is not one of those states. Your attorney should be well versed in the statutes within the state you reside.

The “discovery rule” is important to understand fully because it can be applied in the case of wrongful death actions in order for the court to determine whether the victim could have reasonably known that their illness or injury was to occur before they passed. If the victim can be proven to have reasonably known such things, the running of the limitation starts prior to the actual death. Each case varies, and your attorney can advise you of the specifics regarding the discovery rule as it applies to your individual claim.

“Call an attorney after an accident” is not just savvy marketing, it’s a necessity

After reading the points made within this article, the reasoning behind why the first thing one should do after an accident that results in wrongful death is to seek experienced legal counsel can be more fully understood. As always, an experienced attorney will know exactly what needs to be done to avoid exceeding the statute of limitations and obtain the compensation you deserve.

Even the most legitimate wrongful death actions can exceed the statute of limitations if the plaintiff doesn’t act in a timely manner to file a lawsuit.

Contact us to schedule a complimentary consultation. There’s no obligation. Take the first step and call today: (877) 529-0080



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