

SURVIVOR'S GUIDE TO
WRONGFUL DEATH LAWSUITS
IN CALIFORNIA



BERMAN & RIEDEL, LLP
ATTORNEYS AT LAW

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PREPARED TO YOU BY:

BERMAN & RIEDEL, LLP
ATTORNEYS AT LAW

Berman & Riedel, LLP has recovered over \$100 million in verdicts and settlements and earned national recognition for our success in wrongful death actions.



DO I HAVE A CASE?

Legal action may have been the last thing on your mind after suffering the loss of a loved one.

Once reality begins to creep in, you may find your grief giving way to anger and fear.

When someone else's actions have stolen your loved one's life and deprived your entire family of their love, guidance, and support, a wrongful death lawsuit can be a way to hold the at-fault party accountable. It can also help your family grieve properly without an uncertain financial future over your heads.

As you consider whether you should take legal action against the negligent party, one of the first questions you may have is whether you even have a case.

Let's explore the key features of a valid wrongful death claim.

DID SOMEONE (A PERSON OR A BUSINESS) CAUSE THE DEATH OF A LOVED ONE?

If so, survivors likely have a wrongful death claim
against the responsible party/parties.

**CALL 858-302-4264 TO
SPEAK DIRECTLY TO A PARTNER**

COMMON SCENARIOS INVOLVING WRONGFUL DEATH

A wrongful death lawsuit is brought against a person or business entity who has caused the death of another person. This is usually caused by negligence of some kind but it can also be the result of intentional action.

You may have a wrongful death case if you lost a loved one in one of the following scenarios.



ACCIDENTS & NEGLIGENCE

Most wrongful death claims result from negligence in some type of accident. The most common scenario that results in wrongful death in California is a traffic accident (car accident, trucking accident, motorcycle accident, bicycling accident). For example, if a speeding, or careless, or inattentive, or drunk driver caused an accident that killed your loved one, you likely have a wrongful death claim.

In addition to vehicular accidents, other types of negligence can result in a wrongful death case such as:

- Boating accidents
- Elder Abuse/Neglect cases
- Drowning accidents
- Worksite/Construction site accidents
- Pedestrian accidents
- Recreational accidents
- Defective products

INTENTIONAL HARM & CRIME

As difficult as it is to accept the loss of a loved one through an accident, many wrongful death claims instead arise from intentional harm inflicted on your loved one. If your loved one was killed due to criminal action, you may have a civil wrongful death claim, even if their attacker is not charged or convicted of a crime.

A wrongful death claim may be brought in murder or manslaughter cases involving the following common scenarios:

- Aggravated assault
- Burglary
- Carjacking
- Aggravated abuse of a disabled or elderly person (Elder Abuse)
- Sexual assault
- Kidnapping
- Fleeing police



MEDICAL MALPRACTICE

Do you suspect your loved one's death was caused by a medical professional's mistake(s) during treatment? Medical malpractice is estimated to cause 225,000 deaths every year, but only 3% of those who suffer death due to the medical negligence of a healthcare provider ever file a malpractice claim. A wrongful death claim involving medical malpractice requires more than unsuccessful treatment; a medical provider must have been negligent and failed to deliver the standard of care.

You may have a wrongful death claim if your loved one suffered death due to:

- Birth injuries
- Prescription drug errors
- Delayed diagnosis
- Surgical errors
- Misdiagnosis
- Failure to treat

FACTORS YOU MUST PROVE TO HAVE A CASE

You may have strong suspicions that someone else's negligence or wrongdoing is responsible for your loved one's death. How do you prove it?

A wrongful death lawyer at Berman & Riedel, LLP will help you investigate your loved one's death to prove the following factors crucial to winning a wrongful death case.

- ✓ **The person/company that caused the death owed your loved one a duty of care.**
 - Drivers, for example, owe others a duty to obey traffic laws and drive carefully. Physicians owe patients a duty to provide the standard of medical care.
- ✓ **This duty of care was breached.**
 - In the case of a car accident, for example, this may involve proving the defendant violated traffic laws, was inattentive while driving, failed to observe traffic conditions, ran a red light, or was driving under the influence. In some cases, there may be traffic citations or even an arrest related to the accident. However it is not required that the responsible party received a ticket or citation.
- ✓ **The breach of duty caused your loved one's death.**
 - The actions of someone/company was the actual and proximate cause of death. This means that the legal cause of death or injury was a foreseeable consequence and actually resulted in the death of the decedent.

The burden of proof in a wrongful death claim is lower than that in a criminal case. These elements of negligence must be shown "by a preponderance of evidence" which means it was more likely than not that the defendant caused your loved one's death.



TRUST YOUR INSTINCTS

If you suspect that someone's negligence or wrongdoing led to your loved one's death, trust your instincts and call Berman & Riedel, LLP. We will investigate your case. While the grounds for bringing a wrongful death lawsuit aren't always obvious, if you suspect the death of a loved one was caused through the acts of another, you may be correct.

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WHO CAN FILE A WRONGFUL DEATH LAWSUIT?

Wrongful death actions usually belong to the "heirs" of a person who has suffered death. The term "heirs" is a legal term, but it usually means the surviving family members of the decedent (such as spouses, children, parents, or sometimes siblings). But even persons that can show that they were dependent upon the decedent for financial support may have a rightful claim for wrongful death.

As difficult as it is to consider the legal aspects of a loved one's death, a wrongful death claim can hold the responsible party accountable. It can also give your family the financial compensation you need as you move on without your loved one's support.

If you are eligible to file a wrongful death lawsuit, it can result in a **settlement or verdict that benefits your loved one's entire family**, including young children deprived of a parent or elderly parents who relied on their adult child's support.

Only certain people are able to bring a wrongful death lawsuit in California. This claim is brought for all eligible members of the family and may be shared among the decedent's spouse, children, parents, and others. The following parties have first priority for filing a claim:

- Surviving spouse
- Surviving children

If there is no surviving spouse or children, a wrongful death claim may be brought by someone who "would be entitled to the decedent's property by intestate succession." This means anyone who would stand to inherit without a valid will. This can include siblings.



Anyone financially dependent on the decedent also has standing to bring a claim. This can include stepchildren, parents, and a “putative spouse” and their children.

Finally, the personal representative of the decedent’s estate can file a wrongful death lawsuit on behalf of the estate and its heirs. The personal representative may be named in the decedent’s will or may be appointed by a probate court. In many cases, the personal representative is also a close family member.

CALIFORNIA’S ONE ACTION RULE

Under California law, all parties eligible to file a wrongful death claim must join in a single legal action either by name or sometimes as a nominal defendant. At Berman & Riedel, LLP, we will ensure your family’s wrongful death action covers all eligible claims against the responsible party.

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WHAT SHOULD I DO NEXT?

After the unexpected death of a loved one, you are likely overwhelmed with grief, and struggling to deal with financial challenges. Legal action may seem like something that can wait, but it's important to take certain steps as soon as possible.

GATHER EVIDENCE

In the aftermath of a sudden and tragic loss, it can be easy for information or evidence to get lost. It's important to gather any evidence you think may be useful in investigating your loved one's death or proving negligence and keep it somewhere safe.

Keep track of the following:

- Accident or police reports
- Death certificate
- Autopsy report
- Medical records
- Receipts
- Photos and video of the accident or your loved one's injuries



We recommend keeping a journal to document:

- Hardships your loved one faced after their accident and before their death
- Your family's emotional and financial struggles
- Details of what happened the day of the accident and afterward

It can be easy for details of your loved one's accident, medical treatment, and expenses to be lost when you are struggling through the fog of grief. Keeping a journal can be a helpful way to keep track of these important details that may affect your case.

TIME IS LIMITED TO FILE YOUR CLAIM!

As important as it is to take time to grieve, it is important to know that you have a limited amount of time to pursue a wrongful death lawsuit. You usually have just 2 years from the date of death to file a lawsuit but some exceptions give you even less time. You may have just 6 months to file a wrongful death claim, such as a claim against a public entity such as a city, state, other governmental agency or even against the United States! In most medical negligence cases, you only have 1 year to bring a claim/lawsuit. Contacting an experienced lawyer can help you know how long you have to protect your claim while you take time to heal. Every claim is different but if you do not bring a timely claim, your ability to do so may "expire" as a matter of law.

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CONTACT A WRONGFUL DEATH LAWYER

As soon as possible, contact an experienced wrongful death lawyer in California to help you protect your family's claim. An attorney can help you navigate the initial steps you need to take to file a wrongful death lawsuit and preserve evidence before it is lost.



DO I NEED A LAWYER?

You are not legally required to have a personal injury lawyer represent your family in a wrongful death claim, however, proceeding without legal representation can threaten your chances of success. Any type of personal injury lawsuit is complex, but wrongful death claims are among the most difficult in California. When a wrongful death is involved, the value of a claim tends to be high. This means insurance companies will fight even harder against a settlement.

HOW A WRONGFUL DEATH LAWYER CAN HELP YOU

A wrongful death attorney does far more than just completing legal paperwork and filing your case. Here is how an experienced lawyer can help you during this difficult time in your life.

A WRONGFUL DEATH LAWYER CAN REPRESENT YOUR FAMILY ON A CONTINGENCY-FEE BASIS.

You benefit from sound legal representation without out-of-pocket attorney's fees. You only pay attorney's fees if your claim is successful.

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Here's why it's a good idea to work with a wrongful death attorney to pursue a claim.

A wrongful death attorney can:

- Offer sound legal advice and guidance at every stage of your case
- Identify parties who may be liable for your loved one's death
- Gather and preserve evidence as soon as possible
- Conduct an investigation to determine the cause of your loved one's death
- Work with experts to prove causation, liability, and damages
- Determine the damages available to your family and calculate the fair value



- Assess whether your loved one's death qualifies for a survival action
- Handle all negotiations with the insurance companies to reach a settlement
- Present a persuasive case to a jury if a settlement can't be reached
- Assist with the distribution of settlement funds to your family

Your lawyer can give you the support you need to heal while taking on the burden of building and pursuing your claim. Your family should be focused on grieving and healing, not a complicated legal process and emotional battle with insurance companies.

PREPARING FOR YOUR INITIAL CONSULTATION

Ahead of your initial consultation with a wrongful death attorney, you may find it helpful to know what to expect.

During this initial consultation, the lawyer will listen to your story about how your loved one died. He or she will ask questions to better understand the strength of your potential case and help determine who might be responsible. The lawyer will also review any documentation you bring such as notes you took after your loved one's accident and correspondence with any parties involved.

Your consultation isn't just an opportunity to find out if you have a valid claim; you can also think of it as an interview. You want to choose a wrongful death attorney you trust to represent your family in seeking justice and fair compensation.

Don't be afraid to ask questions:

- How many years of experience do you have?
- What is your experience with wrongful death claims?
- What share of your practice is dedicated to these types of claims?
- How many of your cases result in a settlement or jury award?
- Will you be my main point of contact during the case?
- Do you think I have a strong case?
- What elements of my case do you think will be the most challenging?



CHAPTER 4

HOW THE ATTORNEYS AT BERMAN & RIEDEL, LLP CAN HELP YOU

Berman & Riedel, LLP is a prominent California law firm renowned for our success in handling personal injury, elder abuse, and wrongful death cases. We have a particular focus on wrongful death with **millions recovered for our clients in wrongful death claims** involving:

- Vehicular accidents
- Defective products
- Nursing home abuse
- Premises liability
- Elder neglect
- Medical malpractice
- Workplace accidents

Our **wrongful death case** results speak for themselves.

Berman & Riedel, LLP has recovered over \$100 million in verdicts and settlements and earned national recognition for our success in wrongful death actions. Our distinctions include California Top Rated Lawyer for 10 years running and the prestigious top AV Rating by Martindale-Hubbel.

With our decades of success and multiple news-worthy verdicts and settlements, our law firm can be very selective in the cases we accept. If we take on your case, you can be sure **we believe in you and your case and we will not rest in providing an aggressive pursuit of the maximum compensation that your family deserves.**

At Berman & Riedel, LLP, we strive to deliver compassion, experience, tenacity, and exceptional results to each and every client we represent. You deserve a compassionate and experienced wrongful death lawyer on your side to fight for the justice and compensation your family needs. We are here to put our experience and reputation to work for you.

Contact Berman & Riedel, LLP today for a
FREE CASE EVALUATION.
You pay nothing unless we win.

