



[Houston Wrongful Death Lawyer](#)

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DISCLAIMER: The following is provided as a public service, and is not intended to be a definitive list of all matters of immediate concern upon death. The laws may be different from state-to-state and from jurisdiction to jurisdiction. We therefore urge you to contact a specialist in your jurisdiction.

It can be intimidating to visit a lawyer. You may not understand the answers given to your, know what to ask, or exactly what to expect. For truck wreck victims, the number one concern they are probably wondering about is if the attorney will let them know whether they have a viable case (can you collect money damages for injuries suffered) or not.

Remember your prospective attorney is the person who will represent your interests throughout the case. It is your decision when deciding if you would like to hire an attorney.

Your lawyer must work together with you to present your case. You have to get an attorney that's a great match for what you really want. The only means to ascertain if or not a truck accident lawyer is a fantastic fit would be to ask questions throughout the consultation.

Locate any Will and all Codicils

It is important to immediately locate any will. Often, instructions as to funeral services and the disposition of his or her remains are contained in the decedent's will. If the will is in a safety deposit box, you may or may not need a court order to gain entry, depending on your relationship to the deceased, the jurisdiction you are in, and any bank regulations.

Gather all Pertinent Information and Identification Numbers for Immediate Reference:

Check off the below items as you complete them.

_____ Full Name, Other Names by Which the Decedent was Known, Date of Birth, Place of Birth, Address at Time of Death, Place of Death

_____ Social Security Number, Employer ID Number, Military I.D. Number, VA Number, and Medicare/Medicaid Number

_____ Insurance Policy Numbers (for all insurance: home, auto, boat, RV, casualty, fire, health, group, Medicare, life, etc.)

_____ Banking, Checking, Saving, Pension, Stock Account Numbers

_____ Names, Addresses, and Telephone Numbers of Decedent's Employer, Banking Officers, Physicians, Accountants, Stockbrokers, Insurance Agents, Former Spouses, Natural and Adopted Children

_____ Locate Marriage Certificates for any Surviving Spouse of the Decedent, any Divorce Papers re: Former Spouses, and Birth Certificates for any Surviving Children

Determine the Disposition of the Body

This will undoubtedly be controlled by statute. The right to control the disposition of the body may differ from state to state. Texas law determines who can make decisions about funerals and body disposition -- that is, burial or cremation -- after someone dies.

This right and responsibility goes to the following people, in order:

- an agent you name in a written document before your death
- your surviving spouse
- any one of your adult children
- either one of your parents
- any one of your adult siblings
- one or more of the executors or administrators of your estate (as of September 1, 2015), or any adult next of kin in the order named by law to inherit your estate. (**Texas Health & Safety Code § 711.002(a).**)

Locate any Deed to a Burial Plot

Determine if a Gift has Been, or Will be, Made of the Body or Body Parts

Persons responsible for authorizing donations of all or any part of a decedent's remains are listed below in order of priority:

Decedent's written donation: The donative intent shall be evidenced by a card provided by the Texas Department of Public Safety).

The following persons, in the following priority, *may* authorize donation provided

- 1) a higher priority person is not available;
- 2) there is no actual notice of contrary indications by the decedent; and
- 3) there is no actual notice of opposition by a member of the same or a higher priority class:

1. the decedent's spouse.
2. the decedent's adult child.
3. either of the decedent's parents
4. the decedent's adult brother or sister.
5. the decedent's guardian at the time of death.
6. Any other person authorized or under an obligation to dispose of the body.

[Requires donors be registered after August 31, 2005](#), for their registration to be valid. Anyone registered before this date should re-register to ensure their wishes are upheld by law.

Texas Statutes Regarding Organ Donation Law

[Code of Criminal Procedure Chapter 49](#)

[Texas Health and Safety Code, Chapter 692](#)

[Transportation Code Sections 521.401 and 521.402](#)

Autopsy

[Autopsies are not performed in every case of death](#). In Texas, for instance, Justices of the Peace may order autopsies, and they are required if ordered by the County Attorney or Attorney General. Consent of the family or next of kin is not required.

An autopsy may otherwise be performed if the proper relative gives consent. In some situations, it may be advisable to procure an autopsy.

For instance, if the decedent was covered by an accidental death insurance policy, and the cause of death is contested by the insurance company, it may be advisable to procure an autopsy to prove that the death was accidental.

Similarly, if your loved one dies in a hospital, and you suspect his or her death involved medical negligence, an autopsy would certainly be in order. We suggest you pay for an independent autopsy, rather than allow the hospital to conduct its own. We have heard of alarming stories where the hospital's risk manager will confront a grieving family with the purpose of deterring them from having an autopsy performed. The excuse used is that an autopsy will only prolong or increase the family's suffering. Of course, though, if there is no autopsy, there is less evidence of medical negligence.

Death Certificate

You will need a copy of the death certificate should the decedent's estate go through probate, or if you are making a claim for death benefits under any insurance policy, or if you choose to file a wrongful death suit.

Prepare an Obituary

A copy of the obituary is also required in most probate proceedings.

Funeral

Burial Expenses:

Determine if the surviving spouse is eligible for a lump-sum death payment from the Social Security Administration. These payments may be paid directly to a third party who paid for burial expenses, or they may be made directly to a funeral home.

If the decedent served in the military, his or her family may also be entitled to burial benefits from the Veterans' Administration.

Locate all Insurance Policies

Finding all available insurance policies is important in many respects. Some policies may name you as a direct beneficiary, other policies will provide protection in the event the decedent was at fault in causing someone else's injuries; other policies may terminate upon the decedent's death, potentially leaving you uninsured, and still others may afford you and your family some interim relief. Finding them immediately is made more important by the fact that insurance policies contain a notice requirement that will absolve them from paying anything should you fail to provide notice in the time period (i.e., 30, 60, 90 days) and manner required. Because this is so important, we are going to say this the same way over and over again . . . PROVIDE NOTICE.

Locate all of the following insurance policies: Life, Automobile; Accident; Disability; Health; Fire; and Casualty. Any health insurance policy should be liable for the costs of hospitalization and medical care, and, as with all policies of insurance, PROVIDE NOTICE of any claim.

Property and Liability Insurance:

_____ Determine whether or not the decedent's property or liability policies will remain in effect even after his or her death;

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_____ In the event you are making a claim under such insurance, check the policy carefully to determine when (i.e., within 30 days), to whom, and the precise manner (i.e., written), you must provide notice of death/notice of claim;

_____ PROVIDE NOTICE. This is extremely important. We haven't come across an insurance policy yet that doesn't require notice of your claim. If you fail to provide the notice in the time period and manner required by the policy, then the insurance company has a way out of paying you anything, no matter how serious your damages, and no matter how obligated they would have otherwise been. In the absence of any contrary policy language, we recommend that you send your WRITTEN NOTICE by certified mail, return receipt requested to ensure that you have proof of having provided notice;

_____ Cancel any policies no longer needed, and collect any unearned premiums.

Automobile Insurance:

_____ Determine whether the decedent's automobile policies will protect persons driving the decedent's automobiles after death;

_____ If the decedent died as a result of injuries received in an automobile accident, in addition for recovering property damage, it is important to determine whether or not the decedent paid for Personal Injury Protection Insurance (PIP) and/or Uninsured/Underinsured (UM/UIM) Insurance. The PIP insurance will pay for medical bills, and a percentage of lost earnings for the insured driver of the car, as well as all occupants of the car. The Uninsured/Underinsured coverage will pay damages, up to the amount of the UM/UIM insurance, if the injuries were caused by a person who was uninsured, or whose own insurance is an amount less than the total damages suffered;

_____ Check the policy carefully to determine when (i.e., within 30 days), to whom, and the precise manner (i.e., written), you must provide notice of death/notice of claim;

_____ PROVIDE NOTICE. If you fail to provide the notice in the time period and manner required by the policy, then the insurance company has a way out of paying

you anything, no matter how serious your damages, and no matter how obligated they would have otherwise been. In the absence of any contrary policy language, send your WRITTEN NOTICE by certified mail, return receipt requested to ensure that you have proof of having provided notice;

_____ Cancel any automobile policies no longer needed, and collect any unearned premiums.

Life Insurance:

_____ Determine who the beneficiaries are;

_____ Check the policy carefully to determine when, to whom, and the precise manner (i.e., written), you must provide notice of death/notice of claim;

_____ PROVIDE NOTICE. If you fail to provide the notice in the time period and manner required by the policy, then the insurance company has a way out of paying you anything, no matter how serious your damages, and no matter how obligated they would have otherwise been. In the absence of any contrary policy language, send your WRITTEN NOTICE by certified mail, return receipt requested to ensure that you have proof of having provided notice;

_____ Consider an autopsy in cases where the precise cause of death may be open to doubt. For instance, where there is an accidental death policy, and the decedent dies from a gunshot wound, it is conceivable that the insurance company would argue a self-inflicted gunshot, barring the beneficiaries' right to recover, while the beneficiary would argue an accidental shooting. An autopsy would provide the evidence necessary to resolve the matter.

Other Insurance: Credit Cards and Membership in Associations:

_____ Determine if there is other insurance available, such as with the decedent's credit cards, or memberships or associations to which he or she belonged (i.e., unions, police officers killed in the line of duty, etc.). Many credit cards provide insurance for accidental death or dismemberment, providing such coverage for a limited time or for

the length of card membership. Some cards may increase coverage for death in certain types of situations (i.e., plane crashes). We suggest you gather all of the decedent's credit cards and locate any and all credit card agreement information as a starting point. From there, if you are missing information, contact the credit card companies themselves and have them provide you with copies of any insurance agreements or benefit information;

_____ Check the policy carefully to determine when (i.e., within 30 days), to whom, and the precise manner (i.e., written), you must provide notice of death/notice of claim;

_____ Again, PROVIDE NOTICE. If you fail to provide the notice in the time period and manner required by the policy, then the insurance company has a way out of paying you anything, no matter how serious your damages, and no matter how obligated they would have otherwise been. In the absence of any contrary policy language, send your WRITTEN NOTICE by certified mail, return receipt requested to ensure that you have proof of having provided notice.

Locate all Other Agreements Signed by the Decedent

These might include employment contracts, "Buy-Sell" agreements, partnership agreements, Franchise Agreements, Royalty Agreements, etc.

Contact Decedent's Employer Re: Pay, Benefits, and W-2 Forms

Locate all Pension, or Profit Sharing Plans

Some pension plans might include death benefits. For instance, if the decedent was employed by the state, county, or municipality, his or her beneficiaries might be entitled to death benefits.

Bank Accounts, Funds, IRAs, and Stocks

Locate all checking accounts, savings accounts, Certificate of Deposit, Stock and other similar arrangements to determine whether they are individual accounts, joint accounts, trust accounts, or payable upon death. Money remaining in other types of accounts will belong to the survivors, or others, and may be subject to Texas community property laws.

Real Property

Gather all evidence of real estate owned by the decedent, including appraisals, tax receipts, real property surveys, deeds, title policies, copies of notes and mortgage documents, and all payments on any such notes and mortgages.

Cars, Boats, and Other Motorized Vehicles

Locate all title and lien information. You will want to locate any loan payment books.

Are you Entitled to Social Security Payments?

Determine whether or not the surviving spouse is entitled to a lump-sum payment from the Social Security Administration. As stated above, this lump-sum payment may also be made to any third party who assumed the burial expenses, and may even be made directly to the funeral home.

The decedent's family may be entitled to monthly payments from the Social Security Administration. Before payments are received, you will be required to fill out an application, and provide all supporting documents to the local Social Security Administration office.

Did the Decedent Serve in the Military? (Find the DD-214)

If so, the decedent's family may be entitled to burial benefits from the Veterans' Administration. Locate the decedent's military certificate of discharge, separation papers, or DD-214 as proof of service. Other benefits may be available to the decedent's family as a result of the decedent's status as a veteran. Call your local Veterans' Administration office to find out exactly what benefits to which the decedent's family is entitled.

Locate all Other Evidence of Money Owed to or by the Decedent

If the Decedent's Death was Caused by the Negligence or Intentional Act of Another Person, Hire a Lawyer.

It is unfortunate that at the time of death, in grief and turmoil, you might have to think about hiring an attorney. However, the time limits placed on personal injury claimants by the various state legislatures often require a victim to act swiftly.

The statute of limitations is the time period in which a person may file suit. **In Texas, the statute of limitations for personal injury or wrongful death is two years from the date of the injury or death.** In malpractice actions, the statute of limitations is two years from the date of the malpractice.

It may be that you eventually choose not to pursue a claim; but in the meantime, it is important that you protect your rights. Do not let the time obstacles imposed by tort reformers and legislatures make the decision for you by default.

Frequently Asked Questions About Wrongful Death Lawsuits

1. What is a wrongful death lawsuit?

An action for actual damages arising from an injury that causes an individual's death may be brought if liability exists under this section.

A person is liable for damages arising from an injury that causes an individual's death if the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

A person is liable for damages arising from an injury that causes an individual's death if:

- (1) the person is a proprietor, owner, charterer, or hirer of an industrial or public utility plant or of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers; and
- (2) the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

A person is liable for damages arising from an injury that causes an individual's death if:

- (1) the person is a receiver, trustee, or other person in charge of or in control of a

railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery; and

(2) the injury was caused by:

(A) the person's wrongful act, neglect, carelessness, unskillfulness, or default;

(B) the person's servant's or agent's wrongful act, neglect, carelessness, unfitness, unskillfulness, or default; or

(C) a bad or unsafe condition of the railroad, street railway, or other machinery under the person's control or operation.

A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a receiver, trustee, or other person in charge of or in control of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery; and

(2) the action could have been brought against the owner of the railroad, street railway, or other machinery if he had been acting as operator.

2. What is a survival action?

A cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person or because of the death of a person liable for the injury.

A personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person. The action survives against the liable person and the person's legal representatives.

The suit may be instituted and prosecuted as if the liable person were alive.

3. Who can benefit from bringing action?

An action to recover damages as provided by this subchapter is for the exclusive benefit of the surviving spouse, children, and parents of the deceased.

The surviving spouse, children, and parents of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all.

If none of the individuals entitled to bring an action have begun the action within three calendar months after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals.



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