

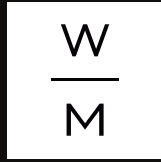
WRONGFUL DEATH



GETTING JUSTICE

AFTER THE LOSS OF A LOVED ONE

———— YOUR ————
ACCIDENT LAWYER
———— BY WARNOCK MACKINLAY LAW ————



Welcome to Warnock MacKinlay Law, PLLC.

WE'RE HERE TO HELP

When someone dear dies in an accident, it brings a plethora of emotions. Amidst grief - there is pain, emptiness, and confusion. For most families, it results in the loss of financial stability. The accidental death of a loved one is difficult enough to bear, but it should not be a forever burden.

If your loved one died due to someone else's fault, it is wrongful death.

As a family member, you have the right to seek justice and compensation for your loss.
You have the right to hold the ones accountable for their negligence.

This is where Warnock MacKinlay Law can assist you.

Let us help you in this difficult time. We have put together this guide so you can understand what goes behind wrongful death claims. We hope that you can find the strength to move through the process and make crucial decisions that will affect the rest of your family's life.



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INTRODUCTION

Did you know that, in the old days, there was no such thing as “wrongful death”? Back then, death by unnatural means would usually come from only a select few things related to crime: robbers, murderers, or a horribly angered person.

Wrongful death statutes in the United States trace their roots from an old English law known as the Lord Campbell’s Act of 1846. This law was established during those times because the crown (English government) would confiscate the properties of the person who committed a crime. Hence, the family of the victim would be left with nothing, regardless of how much damage the death has brought into them. In another part of the world, the “Lord Campbell’s Act of 1846” was the doctrine of recovery. It has served as a way for the families of people who died unnaturally, to receive compensation.

Several decades later, the age of industrialization brought myriads of people from towns to cities. Soon, factories were filled with workers. Consequently, danger ensued as transportation and occupations shifted to automobiles and complicated machinery.

During the nineteenth century, the concept of fatal accidents was entirely new to lawmakers. American legislatures did not have constructive measures to answer the complexities of the emerging economy. But one thing remained certain, individuals and enterprises must be held responsible if their wrongdoings caused death to another person. Hence, some states began to adopt the facets of The Lord Campbell’s Act in their laws. While provisions in each state differed, the adopted law gave the heirs of the persons wrongfully killed, a chance to recover damages as the jury may deem right.

From what started as a law designated for surviving husbands, wives, parents, and children, the law evolved as time went by. According to Merriam-Webster, the first known use of the term, “wrongful death” was in 1952. So much has changed since then, and because wrongful death laws vary from one state to another, having an experienced attorney makes the difference in filing a successful claim. Therefore, this book focuses on the wrongful death laws in Arizona. We at Warnock MacKinlay Law, aim to guide you through this trying time and recover the damages for your loss.

CHAPTER 1

Wrongful Death

A black and white photograph of a gavel and a pen resting on a document. The document has the words "Wrongful Death" written on it in a large, bold, serif font. The gavel is positioned at the top left, and the pen is at the top right.

WHAT IS WRONGFUL DEATH?

By legal definition, it is “the death of a human being as the result of a wrongful act of another person.” Such wrongful acts include:

- Negligence (of responsibilities)
- Carelessness (while operating vehicles or equipment)
- Intentional attack
- A death that occurs from another crime
- Manslaughter/ murder

Any inadvertent action that brings fatal injuries to another person qualifies as wrongful death. It could be a miscalculated swerve that topples the driver from the other side of the road. Or it could be a result of a medication error that flatlines the poor patient on the hospital bed.

In workplaces, wrongful death may also be the aftermath of multiple OSHA violations. When industry regulations are ignored, it compromises the safety of the workers. Hundreds of workers die every year due to dangerous work environments. Most of the occupation-related wrongful deaths come from the construction industry.

Any fatality which could have been avoided if proper decisions were implemented, constitutes wrongful death.

WHAT DOES THE LAW SAY ABOUT IT?

In Arizona, an entire section of statutes is dedicated to the topic of wrongful death. The Arizona Revised Statutes Section from 12-611 up to 12-613 is all about the Wrongful Death Act. A.R.S. § 12-611 explains that the cause of death must be due to negligence.

12-611. Liability

“When death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to murder in the first or second degree or manslaughter.”

Simply stated, if the deceased victim had lived through the ordeal, he/she may have instead filed for a personal injury lawsuit. Either way, the liable party will still bear the responsibility. In a wrongful death case, the surviving family of the victim may file the lawsuit.

The Arizona Wrongful Death Act summarizes the following:

1. The persons who are eligible to file a wrongful death claim
2. Recovery and distribution of the amount recovered in a wrongful death action
3. Grounds for disqualification of a statutory beneficiary
4. Authorization of a personal representative for the estate of the deceased

Several amendments have changed the wrongful death statute throughout the years. However, the changes were only limited to: the eligibility of the persons who may file the legal action; and the distribution of the recovered amount. The objective of this law remains the same: to allow the surviving families to recover damages for the wrongful death of their loved ones.

WHAT IS A WRONGFUL DEATH CLAIM?

A wrongful death claim is a legal action. It is designed to seek compensation for the losses brought by the wrongful death incident. It is filed by the beneficiaries of the wrongful death victim, against the party at fault.

In a wrongful death action, the persons who have been named as beneficiaries will be listed collectively as plaintiffs. The individual or parties who are held liable for the wrongful death will be called the defendant/s.

Wrongful death claims are best filed with the help of a personal injury lawyer. In a wrongful death lawsuit, the court decides if the damages are valid and reasonable. Upon assessment of claims, the court will require the defendant/ liable parties to pay the damages in terms of financial compensation. The recovered amount will either be awarded to the beneficiaries, or to the deceased's estate.

WHAT IS A WRONGFUL DEATH SETTLEMENT?

Like other personal injury cases, wrongful death claims may be settled pre-trial. The amount may be agreed upon by both parties even if the case is already in court.

Out-of-court settlements may or may not be enough to justify all the liabilities of the negligent person or entities. If you are offered a settlement before the case goes to court, it is still best to consult a lawyer before making an agreement with the other party.

The amount offered in a wrongful death settlement may be different from the value filed in the claim. However, there are instances when a wrongful death settlement is already acceptable.

Considering the time and cost it takes for court trials to end, a reasonable amount may be agreed upon through negotiation. Wrongful death settlements may be structured in periodic payments, or they may be paid in the form of a lump sum.

ARE WRONGFUL DEATH SETTLEMENTS TAXABLE?

Arizona conforms to the federal law, which eliminated the state death tax credit on January 1, 2005. Therefore, most wrongful death settlements in Arizona are not subjected to tax. However, if the estate receives a settlement value higher than the federal exemption, taxes may still apply.

In addition, there is no inheritance tax in Arizona. Thus, the beneficiaries of the decedent's estate do not need to pay taxes upon receiving the wrongful death compensation or settlement.

WHAT SHOULD BE AVOIDED WHEN FILING A WRONGFUL DEATH CLAIM?

In a wrongful death claim, it is extremely important to show credibility. The plaintiff/s must be able to prove that it is really negligence that caused the wrongful death of their loved one. That burden of proof depends on the quality of the evidence presented - which mostly consists of testimonies,

eyewitness accounts, and expert evaluations. Thus, it is crucial to avoid these things while pursuing a wrongful death claim:

- **Tensions and arguments among family members** – Fighting among family members during this difficult time will only add unnecessary stress. Not only will it make the conversations difficult, but arguments will also cause important details to be missed due to poor communication.
- **Public statements regarding the case** – Whether the case has been reported in the news or not, the persons involved should refrain from making public statements. This includes posts on social media about the case. As the defendants may use these words for their benefit, letting other people know the details may cause more harm than good.
- **Speaking with insurance companies** – Insurance companies are there to do business, and a higher settlement means less profit on their part. Hence, these entities will try everything to reduce the value of your claim. It is always better to let your lawyer speak on your behalf.
- **Quick settlement offers** – More often than not, these quick offers of compensation are done to avoid cases going to court. Beneficiaries should be wary of any amount that is not carefully evaluated. When you accept the first offer from the negligent parties, you may be freeing them from the full accountability of their actions. Worse, you may not be able to file a wrongful death claim anymore because you have already agreed to their meager settlement.
- **Failing to identify all the parties involved** – There may be other parties who share the fault of your loved one's wrongful death. It takes a while to realize how many other people might have contributed to the negligent action. Holding them all accountable will strengthen your claim. A personal injury lawyer can help you identify all the potentially liable parties in a wrongful death case.
- **Taking time to file a case** – There is an allowable time to pursue a wrongful death claim in every state. In Arizona, you have 2 years to file a wrongful death claim. Due to the length of time involved in gathering evidence, you should talk to a lawyer as soon as the funeral proceedings have been concluded.
- **Filing a claim without the help of a lawyer** – While there is an abundance of free legal resources which can be read online, nothing compares to the help of an experienced attorney. There is a multitude of complexities and deadlines required in legal proceedings. From building a strong case to negotiating the highest possible settlement, you have a greater chance of winning a claim through a lawyer.

CHAPTER 2

The Beneficiaries



WHO HAS THE RIGHT TO FILE A WRONGFUL DEATH CLAIM?

Tracing back to the roots of the Wrongful Death Law, this rule originated from the “Act for Compensating the Families of Persons Killed by Accidents”, otherwise known as the Lord Campbell’s Act of 1846. Therefore, in all states, it is acknowledged that the spouse, children, and parents of the deceased may file a wrongful death claim.

SO HOW DOES THE ARIZONA LAW DIFFER FROM OTHER STATES?

The degree of familial relationship is one of the factors that determine the eligibility of a wrongful death claim. While some states allow siblings and other relatives like cousins or grandparents to file claims, the case is much different in Arizona.

12-612. Parties plaintiff; recovery; distribution; disqualification

A. An action for wrongful death shall be brought by and in the name of the surviving husband or wife, child, parent or guardian, or personal representative of the deceased person for and on behalf of the surviving husband or wife, children or parents, or if none of these survive, on behalf of the decedent's estate.

B. Either parent may maintain the action for the death of a child, and the guardian may maintain the action for the death of the guardian's ward.

C. The amount recovered in an action for wrongful death shall be distributed to the parties provided for in subsection A of this section in proportion to their damages, and if recovery is on behalf of the decedent's estate the amount shall be an asset of the estate.

Simply stated, only the abovementioned persons have the right to receive wrongful death compensation in Arizona. A wrongful death claim may only be filed by the following:

- **The surviving spouse** – Only the legal husband or wife can be named as a beneficiary in a wrongful death claim. Since the state of Arizona does not recognize common-law marriages (as stated in [A.R.S. § 25-111](#)), domestic cohabitants and same-sex partners may not be eligible for wrongful death compensation.

- **The child/children of the deceased** – The natural-born and adopted children (if there are any) are both eligible beneficiaries of the wrongful death claim.
- **The parents or guardian** – The law provides the parents, whether natural, adoptive, or legal guardian, the right to maintain a wrongful death action in Arizona.
- **The legal representative** – As long as it is named in a will or a testament of the deceased, a personal representative may file a wrongful death lawsuit on behalf of the estate.

The immediate family members of the deceased have a favorable chance of recovering damages as long as the wrongful death claim is deemed valid. The parents, legal spouse, and children are considered statutory beneficiaries. Their names will be collectively acknowledged as “claimants” in the tort claim, and “plaintiffs” in the disclosure statements.

WHAT HAPPENS WHEN THE DECEASED HAS A CHILD WITH HIS/HER UNMARRIED PARTNER?

In such a situation, the unmarried partner will not be eligible to file a wrongful death claim in Arizona. However, the child of the deceased may be named as the plaintiff, and with the help of Warnock MacKinlay Law, may be able to receive compensation for his/her deceased parent’s wrongful death.

HOW WILL THE WRONGFUL DEATH COMPENSATION BE DISTRIBUTED?

As stated in the law, all of the statutory beneficiaries listed in the wrongful death claim are entitled to compensation. Any amount that will be recovered in a wrongful death action will be allocated to all of them. The proportional amounts will be assessed according to their damages.

Moreover, as long as there is a surviving immediate family member, the wrongful death claim will be primarily filed for the statutory beneficiary, instead of the estate of the deceased.

CAN BENEFICIARIES BE DISQUALIFIED?

Yes, there are instances where a beneficiary can be disqualified in a wrongful death claim. Having a name included in the decedent’s will does not grant absolute rights to the beneficiary. The Arizona law provides a safety net for the estate of the deceased in case something drastic or unfortunate happens.

In a wrongful death claim, there are two grounds for beneficiary disqualification:**1** DIVORCE, ANNULMENT, A DECREE OF SEPARATION

Married people often name their husband or wife as the primary beneficiary in their will. At the same time, the spouse is also designated as the estate representative. When the will-maker changes marital status, the law presumes that the intent changes. Unless it is mentioned in the will that the spouse remains this right even after a divorce, the law does not consider ex-spouses as beneficiaries.

A.R.S. § 14-2802 outlines the termination of marital rights:

14-2802. Effect of divorce, annulment and decree of separation

A. A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, that person is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

B. For the purposes of this section, "surviving spouse" does not include:

1. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of the marriage if that decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

2. A person who, after an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person.

3. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Therefore, as stated above, divorce automatically revokes the spouse of any gift that may be distributed in a will. Consequently, it also removes all other benefits that may be received through the estate of the former spouse.

The termination of marriage, and the revocation of probate and non-probate transfers in Arizona can be found in [A.R.S. § 28-04](#). An excerpt of this law further states that divorce revokes any revocable "Nomination in a governing instrument that nominates a divorced person's former spouse or a relative of the divorced

person's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent or guardian."

With the divorce severing the right of survivorship, a former husband or wife may no longer file a wrongful death claim.

2 MURDER OF THE DECEDENT

So what happens when in cases where domestic violence caused wrongful death? You may have heard of news reports where the victim was fatally shot during an argument or battered by an abusive spouse.

In some unfortunate situations where the decedent was intentionally killed by his/her spouse, parent, or child, an Arizona law disqualifies that person from becoming a beneficiary. This law, which is often referred to as the slayer statute, is discussed in [A.R.S. § 14-2803](#):

14-2803. Murder of decedent; effect; federal law; definitions

"A person who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed that person's intestate share."

In addition, even if the beneficiary in question was not the one who directly killed the victim, but was involved in the murder, he/she will still be disqualified. As stated in [A.R.S. § 12-612](#):

"If any party listed in subsection A of this section is found guilty of or guilty except insane for, or pled guilty or no contest to, a violation... involving the death of the decedent, the party is deemed to have predeceased the decedent and is disqualified from recovering wrongful death benefits."

Furthermore, even if the beneficiary was named in the decedent's will, the act of intentional killing removes his/her every right to share in the estate of the victim.

CHAPTER 3

The Claiming Process

WHAT ARE THE STEPS IN FILING A WRONGFUL DEATH CLAIM? WHERE DO WE START?

In Arizona, wrongful death claims undergo multiple phases (Investigation/Pre-Litigation, Litigation, and Trial). Pursuing this legal process depends upon who initiated the claim. Wrongful death cases in Arizona may either be filed by legally recognized family members or by a duly appointed representative.

Under the local statute, it is a civil action when the wrongful death claim is initiated by the surviving family members. These are the persons described in Chapter 2 – The Beneficiaries. While every case is unique, here is an overview of the process of pursuing a wrongful death claim:

Investigation and Pre-Litigation

It is a must, for the surviving family members to understand, that there should be a sufficient basis to file a wrongful death claim. It should be established that the death of the decedent was caused by someone else's recklessness or negligence.

If the reason to file a wrongful death claim is valid, then the wrongdoer will be identified. Several factors may have contributed to the accident. Sometimes, it is a result of a string of negligent actions by multiple parties. Through investigation and pre-litigation, all the liable parties will be determined.

During the investigation and pre-litigation stage, the evidence must be collected and testimonies must be documented. This lengthy process may be overwhelming for the surviving family. This is where the expertise of a wrongful death attorney proves to be helpful. Our wrongful death lawyers at Warnock MacKinlay Law are highly skilled in:

- Gathering evidence
- Speaking with potential witnesses
- Consulting with experts
- Researching relevant laws

Our extensive knowledge of the local statutes helps us build a solid foundation for your case. With the assistance of a wrongful death lawyer, you are off to a good start. The wrongful death claim becomes more legally compelling when the facts are supported by the state's wrongful death laws.

It is also during the investigation and pre-litigation stage that we prepare a formal demand against the defendants. The defendants are the parties responsible for the wrongful death of the decedent. The formal demand is a letter that enumerates the damages suffered by the wrongful death victim and his/her family.

There are particular circumstances where special procedures must be done before filing a wrongful death lawsuit. In Arizona, for example, a Notice of Claim must be submitted first, before a wrongful death claim is filed against a government office or public entity.

With the knowledge and skills of an experienced attorney, the wrongful death claim is prepared while complying with all the pre-lawsuit legal procedures.

Litigation

In a wrongful death claim, the lawsuit technically begins in the litigation phase. At this stage, a formal demand is now conveyed to the liable parties. All the evidence documented during the investigation process are used to constitute factual allegations of negligence.

The documents which are filed when starting a lawsuit are known as **pleadings**. These legal papers contain the basis for your claims. Thus, you should be able to understand its context with the guidance of your lawyer. The pleadings mark the start of your lawsuit.

One of the first documents in a wrongful death claim are the **Complaint and Summons**. It will be served against the person/s whose recklessness caused the death of your loved one.

The **Complaint** is a petition that outlines the legal claims that hold the said person/s liable for the wrongful death. It also includes the following:

- Identification of the parties involved in the case, otherwise known as the defendants
- Identification of the claimants, otherwise known as the plaintiffs
- Overview of the incident which led to the wrongful death
- Summary of the police investigation
- Autopsy report
- List of damages

If a public entity or a local government unit was named as one of the defendants, a Notice of Tort Claim will be sent to its office.

Some states limit the complaint documents to a minimal length. Thankfully, the Arizona Court allows plaintiffs to include all the necessary details to make the complaint as accurately as possible.

The Complaint begins the litigation process. When this document is filed in court, it formally starts the civil action. A copy is also delivered to the defendant/s.

The **Summons** is a document that comes from the court. It contains the following information:

- A court order announcing where the hearing will take place
- Notification for the defendant/s of the lawsuit
- Reference of the complaint
- The time limit for the defendant's answer
- Description of the consequences should the defendant fail to respond on time

This form document serves as a notice to inform the defendant that he/she has been sued. The Summons bear the court identification number and is served with the Complaint.

The service of process must be duly observed when delivering the Summons to its intended recipients. The defendant's identity must be confirmed upon the receipt of the document. Either by sending the document personally or through the mail, a properly served Summons enables the court to uphold its jurisdiction over the defendant/s.

Therefore, if the defendant did not answer nor seek for the case to be dismissed, it may result in a default. The court may decide even if the defendant ignored the summons, by examining the evidence filed in the complaint.

The last part of the pleadings is the **Answer**. Once the defendant is informed of the allegations enumerated in the Complaint, he/she is given a time frame to dispute. The Answer sets forth the affirmative defenses of the liable party. If there are counter-claims against the plaintiff, they will be included in the Answer as well.

The Answer is more than a reply, it provides the court a glimpse of the defendant's side of the story. More often than not, instead of accepting the allegations, the defendants would question the Complaint. The liable party would make a motion, request clarifications and even point out errors in the allegations.

If deficiencies found in the claim are valid, the Complaint may be amended. Worse, the case may even be dismissed by the court.

Thus, you need to hire an attorney who specializes in wrongful death claims. Our lawyers at Warnock MacKinlay Law are well-versed in using relevant legal theories to support all the allegations. We make sure that the liable parties do not stand a chance in trying to dismiss the lawsuit

After filing the pleadings, the litigation process enters the phase of **Discovery**. This is where the plaintiffs and the defendants exchange information about the wrongful death case. With the help of your attorney, you will obtain relevant details from the defendants. Using various strategies, you may uncover new documents and evidence from the opposing side. These bits of information may shed more light on your case, or you can use them for further investigation.

The Discovery period lengthens the duration of the lawsuit. The gathering of information happens before the trial is officially commenced. One of the strategies used to discover more details in the case is through **interrogatories**. This is where information is formally gathered by sending questions to the other party. Your wrongful death lawyer will also request copies of legal documents from the defendants.

Another tool used in discovery is the request for admission. Here, a party would ask the opposing side to admit or deny certain details of the case.

Through **depositions**, the lawyers of both sides may question key witnesses under oath. A court reporter records the answers which may be used for comparison later on. Depositions provide facts from different points of view. The answers from witnesses may reveal inconsistencies in the case and determine credibility. If a witness will not be able to attend the trial, the recorded answers from the depositions may also be presented in his/her place.

During the Discovery period, your wrongful death lawyer will seek the support of **expert witnesses**. Our legal team at Warnock MacKinlay Law is well-connected with specialists in various industries. If an argument is too technical as it seems, we ask the experts to validate the information. Through the testimony of expert witnesses, the degree of suffering and the extent of damages are proven.

Motions also occur during discovery. If there are procedures that are needed to be clarified, both parties may use motions to request action from the court. For example, a piece of evidence that is being presented may not be truly connected with the case. The other party may file a motion to exclude such evidence from the trial. Motions are also filed if there are disputes and objections to be resolved.

BUT WHAT HAPPENS IF THE OTHER PARTY WOULD NOT RESPOND TO THE REQUESTS?

A motion to compel compliance may be filed against them. The court has the power to impose a penalty for violation of discovery requests. Such penalties may include financial sanctions for the party that refused to respond.

HOW LONG WOULD THE DISCOVERY PROCESS TAKE?

All of these actions occur while both parties agree on the **timing** of the discovery period. Since these actions will affect the duration of the lawsuit, the plaintiffs and the defendants must decide on the schedules. After conducting all the legal actions related to discovery, the court will set the trial dates depending on its availability.

DO WE REALLY NEED TO TAKE THE CASE TO TRIAL?

At any point in time, before the trial takes place, both parties may consider other ways to end the wrongful death lawsuit. These alternatives may save your time and expenses, instead of going through a lengthy trial.

- **Settlement** – Throughout the litigation process, you may be offered a settlement. Negotiations are best done through your lawyer. When negotiating a wrongful death settlement, you should establish the strengths of your case. By evaluating your damages accurately, you will be able to come up with a borderline amount that is acceptable enough for you.

While the court does not require settlement discussions, you may still request its assistance for settlement procedures. It may be included in a status conference or a pretrial conference. These hearings provide the court a chance to manage the litigation faster since settlement discussions tend to narrow down the issues within the case.

- **Mediation** – When you and the defendants attempt to negotiate the settlement without court intervention, you may go through mediation. This involves a “mediator”, a neutral third party who will assist in the negotiations. The selected mediator must be agreed upon by both parties.

In mediation, the mediator holds private meetings for each side and discusses the weaknesses and strengths of their case. Risks are identified and their effects are considered. However, the mediator cannot force you nor the defendants to agree on a wrongful death settlement. Still, having one can help you evaluate your goals and reach a resolution.

- **Arbitration** – Contrary to mediation, arbitration uses an adversarial approach. Simply stated, judgment is done to reach the settlement. Here, both parties select an “arbitrator”, a neutral third party who will decide on the case.

In arbitration, the plaintiffs and the defendants must present their evidence to the arbitrator. You need to justify the arguments of your case just like a trial but in a less formal manner. The arbitrator, upon reaching a decision, resolves the case.

Trial

Wrongful death cases that did not succeed in negotiations would end up in **Trial**. Here, the wrongful death lawsuit goes through a lengthy series of hearings and deliberations. Most wrongful death cases take months and even years to reach an outcome, depending on the several circumstances.

Full-blown trials can be costly. It also demands a lot of time for all the parties involved. For this reason, only a few wrongful death attorneys would be willing to take the case to trial. Thankfully, our lawyers at Warnock MacKinlay Law are always ready to pursue your claims in court if the need arises.

In a wrongful death trial, the case is tried before a judge or a jury. Both parties present documents and evidence to support their arguments. As your legal representative, we make sure to build a strong foundation for your case. Our wrongful death lawyers work with expert witnesses and gather more evidence to demonstrate the extent of your loss.

We strictly follow the [*rules of civil procedure*](#) for the Superior Courts of Arizona. From the opening statements and rebuttal to cross-examinations and closing arguments, we back up your claims with the burden of proof. Based on the testimonies and other evidence presented during the trial, the judge will decide or a verdict will be given by the jury. It is only after the verdict that you will be able to recover your damages, if the court awards the wrongful death compensation in your favor.

Our goal is to seek justice for the wrongful death of your loved one. Thus, whether the litigation ends in negotiations or in a court trial, we strive to obtain the best possible compensation for your damages. No amount of money can take the place of your loved one, but we can hold the liable party for their negligence.

CHAPTER 4

Types of Recoverable Damages

WHAT IS THE LEGAL BASIS FOR RECOVERABLE DAMAGES IN A WRONGFUL DEATH CLAIM?

The law broadly states the types of damages which may be recovered in a wrongful death action. The rule may be read in [A.R.S. § 12-613](#) entitled, “Measure of damages; nonliability for debts of decedent”. This statute assigns the responsibility to the jury in determining the validity of the claim. According to the law, the jury shall:

- Give or award the “...damages as it deems fair and just with reference to the injury resulting from the death to the surviving parties”
- Assess or review the mitigating or aggravating circumstances that led to the wrongful act, neglect, or default.

The general scope of this statute provides the jury freedom to consider the uniqueness of each case. Because the evidence and circumstances of each family are varied, the amount which may be considered and awarded depends largely on the discretion of the jury. Hence, the qualified beneficiaries must be able to prove the pain, suffering, and damages brought by the wrongful death into their lives.

WHAT IF THE DECEASED HAD DEBTS?

[A.R.S. § 12-613](#) protects the beneficiaries from the creditors of the deceased. As written in the statute, “The amount recovered in such action shall not be subject to debts or liabilities of the deceased, unless the action is brought on behalf of the decedent’s estate.” The surviving spouse, children, or parents are not required to use the compensation they have received to pay the debts left by the deceased.

However, this only applies to wrongful death claims filed by statutory beneficiaries. Therefore, if the action was filed on behalf of the estate of the deceased (that is, through a personal representative), only then can the creditors (liens, including Medicare) go after the debts of the deceased.

WHAT TYPES OF LOSSES CAN BE COMPENSATED? HOW ARE THE DAMAGES CALCULATED?

There are different types of losses that can be compensated in a wrongful death claim. These are **economic damages**, **non-economic damages**, and when applicable, **punitive damages**. The damages or losses filed in a wrongful death claim are subject to the assessment of the court.

Wrongful death damages undergo several considerations based on the facts and circumstances of the case. Several factors are taken into account while measuring the financial strain caused by the victim's death.

The Revised Arizona Jury Instructions summarizes the various damages that a statutory beneficiary may recover for wrongful death:

1 ECONOMIC DAMAGES

Economic damages include the **cost of funeral and burial expenses**, from the memorial services to the cemetery fees.

For those who died in vehicle collisions, the beneficiaries may also reimburse for the value of the damaged vehicle. If the deceased has collision coverage, his/her insurance company will handle the claim. However, in wrongful death cases where the deceased is usually not the one at fault, the beneficiaries can choose to reimburse the amount from the defendants. The amount to be recovered is called the fair market value, which takes the age, condition, and mileage of the vehicle into consideration.

Personal properties which are damaged or lost during the wrongful death scenario may also be reimbursed. The deceased may be carrying a phone or wearing jewelry at the time. The plaintiffs have the right to determine and file a claim for the value of damaged or missing personal properties.

Economic damages are also attributed to the value of the monetary contributions of the deceased to his/her beneficiaries during his/her lifetime. **Lost wages** include the income and services that have already been lost as a result of the death, and that are reasonably probable to be lost in the future.

In other words, the amount is an estimate of past and future losses stemming from the date of the wrongful death. All of the decedent's past and **future earning capacity** and household services such as wages, expected benefits, and performed services will be accounted for.

For example, the deceased may have been paying for the family's medical needs, savings account, retirement plan, insurance, and other benefits. Depending on the age at the time of death, a healthy person could be expected to work for at least 10 to 20 years and even more.

The plaintiffs are entitled to seek expert opinions to determine the pecuniary loss. In line with this, the current salary is also calculated with an expected increase of at least 3% each year of life expectancy.

If any of the beneficiaries experienced overwhelming grief that needed professional intervention, the costs may also be reimbursed. One of our clients sought **grief counseling** and the total billing charges were included in the wrongful death claim.

► **What happens when the deceased had a pending personal injury claim prior to his/her death?**

There are instances where personal injury claims become wrongful death claims. Some victims experience a gradual health decline due to the severity of their injuries, leading to death. One of our former clients, an elderly man, suffered multiple injuries due to a grocery store accident. He needed rehabilitation and medical assistance throughout his ordeal. After seven months, he succumbed to death.

Hence, his statutory beneficiaries filed for a wrongful death claim. We at Warnock MacKinlay Law, on the other hand, took over his former personal injury claim. As the appointed personal representative, our firm opened **an estate** on behalf of our deceased client.

If an estate is filed, reimbursement of medical expenses is also calculated. All the reasonable expenses of necessary **medical care and services** for the injury that resulted in the death will be listed in the wrongful death claim. Therefore, we provided a list of the financial costs associated with our deceased client's injuries. On behalf of the estate, we held the negligent party liable for the following expenses:

- Ambulance services
- Emergency physicians
- Surgical specialists
- Diagnostic imaging
- Rehabilitation center
- Affiliated hospitalists
- Hospital bed for home use
- Wheelchair rental
- Miscellaneous expenses

In this particular case, our firm was able to handle both a wrongful death claim and an estate's surviving claims. Your loved one might have suffered reasonable pain and suffering prior to his death due to someone else's negligence. That may be entitled to a **survival claim** for the deceased's estate as well. We can help evaluate the strengths of your case.

2 NON-ECONOMIC DAMAGES

Non-economic damages do not have a fixed monetary value. These are the intangible losses that the surviving family experiences after the wrongful death.

All of these pertain to the **loss of love, affection, companionship, care, protection, and guidance** since the death and in the future.

Moreover, it includes the **pain, grief, sorrow, anguish, stress, shock, and mental suffering** that the beneficiaries have already experienced, and are reasonably probable to be experienced in the future.

These losses are significant, as families will no longer receive the emotional support of the deceased. The parents will no longer receive comfort and care from the deceased child. The spouse will no longer have the affection and company of the significant other. The children will no longer experience the guidance and training of the deceased parent.

► How do we get the value of non-economic damages?

Evidence of loving relationships between the deceased and survivors is a factor. When filing a wrongful death claim, the beneficiaries must be able to narrate their memories with the deceased. Such stories should reflect the impact of the decedent's existence on their lives. Moreover, old photographs can be presented as part of the evidence of the decedent's fruitful life.

Lost companionship, mental and emotional pain and suffering, and lost guidance and instruction are damages that can be pursued in a wrongful death claim. These things can be expressed through the recollection of significant memories that will show just how much void has been left behind by the deceased.

► Why do you need to sue for non-economic damages?

Your loved one's life is priceless, and no amount could ever replace the void that is left in your family. The compensation that you are entitled to collect is for the trauma caused by the wrongful death.

It is meant to make the negligent party responsible for the relationship you have lost.

Think about the days and years that could have been spent together if not for the wrongful death. For all the goals and the dreams that will never see fruition; for this lifetime deprivation caused by someone else's negligence – the wrongful death claim compensates all of these.

3 PUNITIVE DAMAGES

Also known as exemplary damages, punitive damages are awarded in addition to the full compensation for the victim's beneficiaries. It is meant as a punishment for the wrongdoer's actions, and to prevent others from doing the same conduct.

Punitive damages may only be imposed when the wrongful death was done with "*an evil mind or willful and wanton conduct*". When the act has disregarded the safety of the person who was killed, punitive damages may be applied.

The mental state of the wrongdoer must be proven evil when the wrongful act occurred. This may mean that the liable person had been reckless, oppressive, or morally culpable for his/her conduct.

Punitive damages go beyond miscalculations and oversight. It happens when the wrongdoer is fully aware that the action is harmful, yet continues to do it anyway. The act causing the wrongful death must be done in a deliberate manner.

► Which wrongful actions are usually evaluated for punitive damages?

An aggravated assault may be charged with punitive damages since it is done intentionally. Here, the wrongdoer clearly knows that the action may cause danger to another person.

Another example would be, someone who drives while intoxicated understands that he/she poses a risk for others on the road. If a crash happens due to this reason, that driver may be charged with punitive damages. It is common knowledge that you should not drive when drunk or under the influence of drugs.

While not all traffic-related deaths fall under the punitive level, there are cases where the liable party had shown complete disregard for the safety of other people on the road. One of the cases we've handled involved a woman crashing on a truck who suddenly stopped in the middle of a dark freeway.

The truck driver committed a string of safety violations that resulted in the loss of the woman's life. The said driver did not use the emergency lane, failed to deploy warning lights and signals, and served as a hazardous obstruction to other drivers at that moment. His employer was also held liable for punitive damages since it continued to operate a vehicle with serious mechanical defects, which created a grave risk of harm to the safety of other people.

Another case would be for bad faith and unfair claims practice. As with the many cases we handled at Warnock MacKinlay Law, there are insurance companies that blatantly ignore settlement claims. This practice causes an unreasonable delay for the medical needs of the victims. Hence, victims of serious personal injuries sometimes die before they could get the necessary compensation. By not failing to timely evaluate and process a claim, insurance companies violate the Arizona Revised Statute [§ 20-461\(6\)](#), Unfair Claim Settlement Practices:

"6. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear."

Therefore, if the liable party's insurer had not responded in reasonable circumstances, they will be charged with punitive damages for bad faith claims.

► **How difficult is it to prove punitive damages?**

The Arizona law provides a vague assessment of punitive damages. It goes beyond the act of gross negligence. Punitive damages are reserved only for the most egregious of wrongful acts. It is for the punishment of fraudulent, malicious, and outrageous conduct. When filing for punitive damages, the beneficiaries must be able to present a substantial burden of proof. The court rarely affirms punitive damages without sufficient evidence.

Hence, recovering punitive damages may be complex and difficult without the help of an experienced litigation attorney. Our lawyers at Warnock MacKinlay Law have extensive knowledge in recovering punitive damages. We can assist you.

CHAPTER 5

Common Causes of Wrongful Death

Wrongful death can be caused by several factors. Technically, these are personal injury cases, which have gone fatal. Which type of accidents often result in wrongful death?

MOTOR VEHICLE ACCIDENTS

Road crashes are the leading cause of wrongful death in the United States. From motorcycles and cars to buses and trucks, the roadways claim thousands of lives. In Arizona alone, at least 3 persons die from motor vehicle accidents each day. According to the [latest reports](#) from the Arizona Department of Transportation, that means one person is killed by road crashes every 8 hours. This data includes pedestrian deaths.

Drunk driving caused more than a quarter of all the fatal road accidents in the state. A wrongful death claim in an alcohol-related crash is relatively easier to prove, as it is common knowledge that a drunken driver loses his ability to think and act safely on the road.

But what happens to the greater part of the statistics? 75% of motor vehicle accidents are not alcohol-related, and yet it continues to kill hundreds of people every year. The number of fatalities is alarming, and the victims range from other drivers to passengers, cyclists, and pedestrians.

The state data identifies the most harmful types of crashes in Arizona:

- Collision with other motor vehicles
- Overturning
- Hitting pedestrians
- Collision with pedal cyclists
- Crashing to objects on the road

Most of these accidents usually happen on the highways, with urban crashes accounting for 60.52% of all the fatalities. In addition, 47.42% occurred in Maricopa County.

If you believe that your loved one was wrongfully killed in a motor vehicle accident, you need to gather evidence to seek justice. It is important to prove that the other driver was a fault. Negligent acts on the

road that show negligence include speeding, ignoring the stoplight, falling asleep, using a phone, driving under influence, and distracted driving.

PRODUCT LIABILITIES

Defective products that bring fatal injuries to a person can also count as wrongful death. Companies that manufacture defective products are liable for product liability claims.

A defective product liability claim falls into three categories:

- 1. Manufacturing defect** – Product flaws due to factory defects may cause injuries which can sometimes be fatal. Wrongful deaths have occurred from defective car parts, tainted food or medicine, and poorly fabricated safety gear.
- 2. Design defect** – Design defects are more dangerous because it affects an entire line of products. If one item was proved hazardous, it means that all the batches manufactured with it pose safety risks. For example, there was a time when a known brand of dressers led to child fatalities. This certain type of furniture had a design flaw that caused tipping over hazards. Following reports of toddlers killed due to the tip-over accidents, the manufacturer recalled all its models and was subjected to million dollars' worth of wrongful death lawsuits.
- 3. Marketing defect** – Failing to provide adequate warnings and forgetting to include crucial information on product labels may bring serious to fatal injuries. Some examples would be medications that result in deadly side effects and machinery that may explode or cause electrocution.

As explained in [A.R.S. § 12-681](#),

"Product liability action" means any action brought against a manufacturer or seller of a product for damages for bodily injury, death or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product, the failure to warn or protect against a danger or hazard in the use or misuse of the product or the failure to provide proper instructions for the use or consumption of any product."

Therefore, if your loved one suffered and died from a defective product, you may file a product liability claim for his/her wrongful death.

WORKPLACE ACCIDENTS

Unsafe working conditions may result in fatal workplace accidents. Workers can die due to faulty equipment and dangerous procedures. By failing to provide necessary safety gear, companies can be held liable for wrongful death.

Do you know that on average, there are about 15 workplace deaths that occur every day? In recent years, the [Bureau of Labor Statistics](#) reports that more than 100 workers die at their jobs each week. Those fatalities mostly occur from motor vehicle accidents. Moreover, construction-related occupations have caused more deaths due to negligence, than in any other industry.

An employee's wrongful death is usually caused by these factors:

- Transportation accidents
- Caught-in/ caught-between or trapped by machinery
- Explosions/ fires
- Contact/ struck-by harmful objects
- Fatal injuries from falls
- Electrocution
- Exposure to toxic substances/ chemical poisoning

If negligence caused the death of your loved one while doing his/her job, you can file a wrongful death claim. This is entirely different from a worker's compensation claim, which allows you to collect death benefits easily. More often, the meager amount that you may receive from worker's compensation will likely be just enough to cover funeral costs. This is how wrongful death claims differ, it gives you compensation for most of the damages that you have suffered. A wrongful death claim provides you the

right to seek compensation for emotional pain, loss of companionship, loss of care and guidance from the deceased, and more.

MEDICAL MALPRACTICE

Health care providers are prone to human error, but mistakes should not be so bad that it costs someone their life. Surviving families can sue for the wrongful death of their loved ones if they believe that the fatality was preventable.

Studies have shown that thousands of patients die every year due to medical malpractice. Such deaths which are deemed to be preventable, occur in hospitals and other healthcare facilities. Errors that often lead to wrongful death include:

- Poor monitoring of medical conditions
- Misdiagnosis
- Surgical errors
- Medication errors
- Device and equipment failure

Medical malpractice remains one of the common causes of preventable deaths in the U.S. It is unfortunate that no matter how hard health care professionals work to save lives, the number of incidents is still high.

Modifying systems and processes that lead to mistakes can help prevent them from making harmful errors. But as long as the healthcare system begs to see such improvements, the victims' families have wrongful death claims as a recourse. It is the only way to seek accountability for their loved ones' death due to hospital-related negligence.

PREMISE ACCIDENTS

Fatal injuries caused by defective and unsafe conditions in someone else's property can lead to wrongful death. It uses the same rule that applies in premises liability cases, wherein the property owner's negligence must be proven in order to win the case.

Such negligence means that the owner failed to provide reasonable care in maintaining the property. However, an unsafe condition in a property does not automatically imply negligence. The owner should have been reasonably aware of the unsafe condition and was not able to make the necessary repairs in a reasonable time.

Premise accidents may happen due to these factors:

- Unfenced swimming pools
- Slippery floors and pathways
- Unguarded stairways
- Poorly lit walking areas
- Lack of safety signs
- Inadequate building maintenance
- Areas that are in dire need of repairs
- Inadequate security (apartments, commercial properties, and event locations)
- Presence of vicious animals
- Defective amusement park rides
- Chemical exposure/ electrocution/ explosion

A wide range of circumstances may happen in both domestic and commercial properties. The premises liability law makes the owner liable only for the injuries only if the victim was lawfully permitted inside the property. Claims, whether for personal injury or wrongful death, cannot be filed for trespassers.

ASSAULT AND BATTERY

While most of the causes of wrongful death come from negligence, there are cases where victims are intentionally killed. Assault and battery happen when physical injury is knowingly inflicted upon its victim. These deliberate actions have separate definitions, yet in wrongful death cases, these two words are distinctly correlated.

Assault is defined as a threat, a signal, or an implication of harm. These are words and gestures that cause fear. For example, raising a fist or an object as a threat to hit someone, may be considered a form of assault.

Meanwhile, **battery** refers to the completion of the intended harm. It occurs when the assault is physically projected to the victim. For example, when that raised fist lands as a punch, or that object hurled hits the target victim, the action now becomes a form of battery.

Assault and battery are intentional torts, which means these are purposely committed to hurt the victim. In Arizona, A.R.S. § 13-1204 describes death from battery as aggravated assault:

13-1204. Aggravated assault; classification; definitions

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.

In relation to this, the term “serious physical injury” is defined in a section of A.R.S. § 13-105:

13-105. Definitions.

... 39. “Serious physical injury” includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

Assault and battery are clearly criminal cases, but the defendant may still be held liable for the wrongful death. Regardless of the outcome of the criminal charges, a wrongful death claim can be lawfully filed against the defendant since it is a civil case.

CHAPTER 6

Why do you Need to Hire a Wrongful Death Lawyer

**WHY DO YOU NEED TO HIRE A WRONGFUL DEATH LAWYER?**

Suppose your loved one had survived the accident, he or she would have then filed a lawsuit, right? Wrongful death lawsuits are like personal injury cases, only worse. In the same manner, you have to prove that the injuries resulted from someone else's fault.

The burden of proving negligence is a tricky and complicated process. It requires a ton of hard work, research, and diligence to come up with enough evidence to make the parties accountable for their fault. Imagine doing all of these while grieving. Are you willing to spend so much effort while suffering at the same time? Besides, the liable people would surely get a lawyer to defend their side. It only makes sense that you hire a lawyer to defend the case for your peace of mind.

HOW DOES IT AFFECT YOUR WRONGFUL DEATH CLAIM?

Hiring a wrongful death lawyer can widen your chances of obtaining fair compensation. Your wrongful death claim may entail a lot more than you initially thought of. You may be entitled to additional damages that you may have not realized just yet. The experience of a wrongful death lawyer will be very beneficial in strengthening your claim.

HOW LONG CAN A WRONGFUL DEATH LAWSUIT TAKE?

A wrongful death lawsuit may take months or even years to resolve. It does not have a specific timeline due to the unique circumstances of each case. However, having a reliable wrongful death attorney by your side can make the difference. You may be able to receive a fair settlement in a shorter time if negotiations become successful. If the wrongful death case ends up in trial, you should get a lawyer that is willing to take it all the way to the court. This is what Warnock MacKinlay Law offers you. Whenever we take a case, we are always ready to defend it in front of a judge or jury.

WHY SHOULD YOU GET WARNOCK MACKINLAY LAW TO HANDLE YOUR WRONGFUL DEATH LAWSUIT?

If you have lost a loved one in Arizona due to an accident caused by someone else, Warnock MacKinlay Law can help you recover compensation for your losses. This compensation will ease the financial struggle of losing a family member. As with most of the wrongful death cases we have encountered, the deceased is often a breadwinner. With our goal of getting the highest possible settlement for your case, you can look into the future with fewer worries.

Moreover, with Warnock MacKinlay Law, you can:

Avoid legal technicalities that may invalidate your claim

In Arizona, you only have two years to file a wrongful death claim for your loved one. This statute of limitation removes your right to any claims filed after the timeframe. With the immense grief following the loss of your beloved, lawsuits are difficult to process. Time may easily pass and before you know it, you may no longer have enough time to file a case. Our lawyers at Warnock MacKinlay Law will work quickly to prepare and file a strong case for your claim.

Another issue would be eligibility. As discussed in an earlier chapter, Arizona limits the eligible beneficiaries in a wrongful death claim, by the degree of consanguinity and affinity. Unlike other states where siblings and close relatives may file a wrongful death lawsuit, only the parents, children, and legal spouse of the deceased have the right to file a claim.

If you are a common-law partner, you are not legally allowed for a wrongful death claim in Arizona. For example, in one of the wrongful death cases we have handled, the deceased had not been married to his partner at the time of his death. Hence, the considered wife cannot be named as his beneficiary. He had a surviving parent but unfortunately died while the case is being prepared. Our lawyers at Warnock MacKinlay Law were able to remedy this situation by doing the following:

The wrongful death claim was filed under the estate of the late surviving parent.

The only child, who is a minor – technically a baby during that time, was named as the plaintiff of the wrongful death claim.

In a seemingly hopeless case, Warnock MacKinlay Law was able to recover compensation would be enough to help the family get back on their feet.

Navigate the legal process with ease

The wrongful death claiming process is a complicated process. As a plaintiff, the burden of proof rests upon your shoulders. It is where the court's decision will be based upon. There is a great risk of losing the case if you miss out on significant details, ruining your chances of getting justice for the death of your loved one.

Navigating a lawsuit while grieving can add stress not only to you but to the rest of your family. Our wrongful death lawyers can help you understand the legal contexts which may otherwise confuse you while facing the schemes of the party at fault.

The liable parties may use several tricks to defend their case:

1. They may use self-defense as the reason for inflicting the fatal injury.
2. They may argue that the deceased was doing an unlawful act that caused his/her death.
3. They may pose an assumption of risk. They may say that the deceased should have known that the situation was already dangerous prior to the accident.
4. Since Arizona is a *comparative fault state*, the defendants may sway the court's decision in their favor. By using arguments that may lead the court to assume that the deceased was partly to blame for the accident, the percentage of compensation may be lowered to several degrees.

With the experience and expertise of Warnock MacKinlay Law, you are in a better position while pursuing your claim. We can argue aggressively with our knowledge of local statutes. Any issue which may arise during the lawsuit will be taken care of. We always aim to strengthen the arguments of your case with thorough investigation and evidence collection. We do all of these to save you from the further strain and pressure of going after the people who caused the death of your loved one.

We look out for your best interest

Warnock MacKinlay Law will probe deeper into your case, making sure that all liable parties are identified. Many wrongful death cases in Arizona are not caused by one person alone. As mentioned in the *Arizona Revised Statutes § 12-2506*:

"...To determine the amount of judgment to be entered against each defendant, the trier of fact shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against the defendant."

and

“In assessing percentages of fault the trier of fact shall consider the fault of all persons who contributed to the alleged injury, death or damage to property, regardless of whether the person was, or could have been, named as a party to the suit.”

Therefore, our legal team will use years of expertise in investigation and evidence collection. We direct our efforts to help you receive the highest possible amount of compensation. Like most of the wrongful death cases we handled, the defendants included employers from both private and public entities. We found out that such accidents could have been prevented if only the upper-level management strictly observed safety precautions.

For example, a construction worker died in a site accident. By coordinating with the police investigators, our lawyers were able to prove that negligence came from multiple parties. We were able to sue all the parties in charge of the construction site’s safety. From the contractors to the managers, all were found liable. Hence, our lawyers were able to demand compensation proportionate to the fault of all parties involved.

In another case, a woman died in a road crash due to a truck that blocked her right of way. By looking further into the cause of the accident, we discovered the truck driver’s erratic driving history. Also, the said truck has mechanical defects. Even worse, the truck driver’s employer still allowed him to operate the vehicle, putting the safety of other drivers on the road at risk. Thus, both the driver and his employer were found liable for the wrongful death.

Big companies may also be liable for wrongful death if they fail to train their workers properly. One of the wrongful death cases we represented was filed against a retail subsidiary. Under its management is a local grocery store, where an elderly man died due to an unfortunate incident. The deceased had been fatally injured by a recklessly propelled pallet along the grocery aisle.

We argued that the store employee acted in a careless manner resulting in the elderly man’s death. In addition, the management failed to protect the store premises from unreasonable risk of harm. The working system inside the grocery store posed a dangerous condition which is foreseeable if only safety inspections were implemented.

In these examples, you will realize that more than one person may be blamed in a wrongful death case. One person’s negligence may be a result of poor supervision and lack of training. More often, the people who cause accidents have been accustomed to the habit of thoughtless and careless behavior. The companies they work for would have made a difference if the risks were identified and corrected beforehand.

Thus, in many work-related accidents, employers are also found liable for wrongful death. By presenting a sufficient burden of proof, our claimants were able to achieve justice for the wrongful death of their loved ones.

Warnock MacKinlay Law can help you receive maximum compensation

With a hundred years of combined experience, our wrongful death lawyers know just how much you should be able to get for your claim. While each case has its specific details, we work with experts to determine the maximum amount that you may recover.

We know how difficult it is to account for everything from hospital bills to funeral expenses. Adding the valuation of pain and suffering for each of the beneficiaries makes the task even more complicated. But we can assist you in figuring out the amount that you should ask for. Our legal team conducts comparative analysis from past cases and the latest updates from the local courts. Having dealt with hundreds of personal injury cases for years, we will be able to come up with the appropriate value for your compensation.

Wrongful death claims can reach hundreds of thousands to millions worth of settlement values. Our [*history of winning cases*](#) is proof that we always aim to recover the highest possible compensation for our clients. And even if we decide to accept negotiations from the defendants, you can be sure that we will fight for a rightful amount for your losses.

As we always say, no amount can ever equal the loss of life. But, bereaved families should not have to suffer financially on top of all the pain and suffering brought by the wrongful death of their loved ones.

We bring you peace of mind

Managing grief and a lawsuit may take a toll on your mental and emotional health. Here is where our lawyers can help you. Warnock MacKinlay Law can save you from the stress of pursuing a case. Claims filed against a person or a company have consequences. The liable parties will try to do everything to reduce their fault. They may even partially blame the deceased for the accident, adding torment to your agony.

We will not let those people get away from their liability. Since we do not have an emotional attachment to the situation, we can focus on pursuing a favorable outcome for your case. Even if the defendants throw hurtful statements and arguments, it will only drive us to fight all the way to the court for you.



Though wrongful death claims are different from criminal cases, winning the lawsuit means making them accountable for their negligence. Achieving a favorable outcome means making them pay for the losses you have suffered due to their wrongful actions.

Best of all, we do not charge fees unless we win...and we do not stop until you have received your claim.

From the compensation that we will fight for you to receive, you can rest knowing that there is hope for the future. While no amount can equal the loss of your loved one, this compensation can help you get back on your feet. Above all, winning the claim is attaining justice for all the parties who have caused your loved one's wrongful death.

BENEFITS OFFERED TO CLIENTS OF WARNOCK MACKINLAY LAW

Warnock MacKinlay Law can lend you a helping hand, so you can get back on your feet. You can rely on our dynamic team of lawyers, who are highly skilled in negotiation and litigation.

We bring our decades of experience to seek fair compensation for personal injury victims. If you lost a family member due to another person's wrongful act, we can help you fight for the rights of the deceased.


Reach out to us, if you or one of your loved ones have suffered due to someone else's fault. From severe to fatal injuries, we represent clients for any of the following cases:

- ✓ WRONGFUL DEATH OF A FAMILY MEMBER
- ✓ PEDESTRIAN ACCIDENTS
- ✓ CAR CRASHES
- ✓ TRUCK COLLISIONS
- ✓ MOTORCYCLE/BICYCLE ACCIDENTS
- ✓ AUTOMOBILE ACCIDENTS
- ✓ CONSTRUCTION SITE INJURIES
- ✓ DOG/VICIOUS ANIMAL ATTACKS
- ✓ CARELESS USE OF FIREARMS/WEAPONS
- ✓ PHYSICAL ASSAULT AND BATTERY
- ✓ SWIMMING POOL ACCIDENTS
- ✓ INJURY FROM DANGEROUS PREMISES

You do not deserve to suffer the consequences of another person's negligent actions. Warnock MacKinlay Law is here to demand justice from the ones liable for your damages and loss.

This booklet is intended to provide general guidelines to assist you in dealing with wrongful death issues. It is not intended to provide specific legal advice. You should seek advice from qualified independent attorneys such as those at Warnock MacKinlay Law PLLC at (602) 600-6427. Furthermore, the booklet is written according to statutes and laws that are in effect today, and being mindful that new laws could take place at any time. Therefore, any legal question you might have should also be referred to your attorney.

MORE ABOUT ATTORNEY NATHANIEL B. PRESTON

A professional portrait of Nathaniel B. Preston, a man with short brown hair, smiling warmly. He is wearing a dark suit jacket, a white shirt, and a dark tie. He is standing with his hands in his pockets, looking towards the camera.

Nathaniel B. Preston (“Nate”) has helped clients recover millions of dollars for injury and wrongful death claims. He is an aggressive attorney who helps injured victims get the results they deserve. He is fluent in Spanish.

Nate earned his Juris Doctor from Sandra Day O’Connor College of Law at Arizona State University as a Pedrick Scholar Honor Student and the recipient of the CALI Excellence for the Top Student Award. He also earned a Master of Real Estate Development, graduating Summa Cum Laude, from the WP Carey School of Business at Arizona State University. Nate also graduated from Brigham Young University with a degree in Bachelor of Science in Human Development and a minor in Business Management. During his time there, Nate was a member of the Brigham Young University varsity football team.

Before concentrating his practice solely in the area of personal injury and wrongful death, Nate worked in various areas of the law. He worked for The Donald Trump Organization in Miami, Florida; Baker and McKenzie, one of the world’s largest and most prestigious law firms, in Caracas, Venezuela; and CB Richard Ellis in Salt Lake City, Utah. He also worked for the Arizona State University Civil Justice Clinic, where he played an instrumental role in establishing case law precedent in the Federal District Court of Arizona for claims arising under the Federal Debt Collection Practices Act (FDCPA).

Nate is a member of the State Bar of Arizona and the Arizona Trial Lawyer’s Association. He is also admitted to practice in the State Courts of Arizona and the United States District Court of the District of Arizona.

— YOUR —
ACCIDENT LAWYER
— BY WARNOCK MACKINLAY LAW —

ATTORNEY
NATE
PRESTON

Attorney Nate Preston is a prominent attorney in the personal injury field in Arizona. Mr. Preston is the co-founder and Managing Partner of the law firm Warnock MacKinlay Law PLLC, and is fluent in Spanish.



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