

Wrongful Death FAQs

Oregon wrongful death laws can seem complicated, and many questions arise in a wrongful death case, which is a civil lawsuit, as opposed to a murder case, which is a criminal action. In the famous O.J. Simpson case, he was found not guilty in the murder trial, but was held liable in the civil, wrongful death case. One of the reasons this was possible is because a criminal murder charge must be proven beyond a reasonable doubt, whereas a wrongful death action simply needs to show by a “preponderance of the evidence” that the defendant was more likely than not to have caused the death.

Wrongful death claims do not seek to put the perpetrator behind bars, though it’s quite possible the person being sued may end up in prison. We set out here just a few of the most common [questions and answers regarding wrongful death lawsuits](#).

What exactly is a “wrongful death?”

The general premise of a wrongful death lawsuit is that, as well as injuring the person who died, the people who have been left behind have also been injured, not just financially, but emotionally and psychologically. Wrongful death is caused by a negligent act by one person that causes the death of another, such as reckless driving or DUII, or a reckless or deliberate act, including but not limited to murder. In Oregon, statute ORS 30.010-30.100 allows family members to make a wrongful death claim against negligent parties.

Is there a time limit for filing a claim?

Yes, there most certainly is, and this can also be a tricky area in Oregon wrongful death laws. The wrongful death lawsuit must be filed within three years of the date of the injury that resulted in the victim’s death, not from the date of actual death. So if the victim goes into a coma for six months, then dies, the claim will have to be filed within three years from the date of the injury that caused the coma. Failure to strictly abide by this statute of limitations can destroy an otherwise perfectly valid wrongful death claim. It would be wise to seek the advice of an experienced Portland wrongful death attorney if you’re considering making a claim.

Who can make a wrongful death claim?

Generally speaking, it’s the spouse and/or children of the victim who make Oregon wrongful death claims. However, awards in Oregon can also be made to grandparents, step-children, step-parents and parents.

How are damages determined?

This is perhaps the most complicated issue dealt with in Oregon wrongful death laws. So many factors have to be taken into consideration. These begin with the injured person’s medical bills and burial expenses, but can also include:

- The loss of wages the person would have earned had they lived. This would obviously have to be an estimated figure and would probably require testimony from an expert witness.
- Pain and suffering of the deceased between the time of the accident and the time of death
- Compensation to the victim's spouse, children, step-children or other family for loss of companionship
- In cases where extreme negligence or intent can be proven, punitive damages may also be awarded in Oregon wrongful death cases.

Who receives the award? Must it be shared by the entire family?

Like most things in law, this is not always clear cut. If a will is in place, this can help determine how any award is divided. If no will is in place, a judge will listen to testimony from all claimants, and then make a decision based on the facts presented and relevant state laws.

Can a wrongful death judgment be discharged in bankruptcy?

This is another gray area. Bankruptcy laws permit the discharge of negligence damages. It's possible that a person could be released from having to pay a judgment for accidentally causing a death. However, it's also true that some bankruptcy courts will make damages resulting from someone's gross negligence or recklessness non-dischargeable. And debts arising from drunken driving cannot be discharged in bankruptcy.

Clearly, Oregon wrongful death laws are complex and multi-faceted. As well as a very strict statute of limitations, uncertainty also surrounds the determination of awards and who exactly receives those awards. Anyone considering making an Oregon wrongful death claim would be well advised to consult a [competent Portland wrongful death attorney](#). They will closely examine the details surrounding your claim, and then explain precisely what steps need to be taken in pursuit of that claim. They will guide you through the entire process and also give an opinion on the level of compensation you could expect to receive.