

What Is the Difference Between a Survival Action and Wrongful Death?

Our Houston attorneys can help you take legal action after a death caused by negligence

When a loved one dies due to someone else's negligence or wrongdoing in Texas, surviving family members may have the right to seek legal recourse. Two types of legal claims can arise in such situations: survival actions and [wrongful death claims](#).

Whether you're the family or the estate of a deceased person, it's important to understand the difference between these two types of claims. Read on to find out if you qualify and how to take the next steps toward pursuing your case.

What is a survival action in Texas?

A survival action allows the estate of a deceased person to bring a claim for damages (legal term for financial losses) that the individual suffered before their death. The claim "survives" the person's death, hence the name. The estate can recover losses incurred between the time of the injury and the time of death.

The personal representative of the deceased's estate (e.g. the executor or administrator) typically brings a survival action on behalf of the estate. If the deceased had a will, the executor named in the will can file the claim. If there is no will, the court can appoint an administrator to handle the estate's legal affairs, including filing a survival action.

What damages can I recover in a survival action?

In a survival action, the estate can seek compensation for the damages that the deceased person experienced before their death. Such damages often include:

- Medical expenses related to the injury that led to the death.
- Lost wages and benefits from the time of the injury until the time of death.
- Pain and suffering endured by the deceased before their death.
- Property damage related to the incident that caused the death.

However, a survival action doesn't allow recovery for the losses suffered by the deceased's family members, such as loss of companionship or financial support.

What is a wrongful death claim in Texas?

A wrongful death claim allows certain family members to seek financial compensation for the losses they have suffered due to the untimely death of their loved one. In Texas, the surviving spouse, children, and parents of the deceased can bring a wrongful death claim. Siblings, unfortunately, don't have the right to file a wrongful death claim in Texas.

The purpose of a wrongful death claim is to compensate the family members for their own losses, separate from the damages incurred by the deceased before their death.

What damages can you recover in a wrongful death claim?

In a wrongful death claim, eligible family members can seek financial compensation for:

- Loss of the deceased's financial support, including future earnings.
- Loss of inheritance that the deceased would have accumulated.
- Loss of companionship, love, and emotional support.
- Mental anguish and emotional pain suffered by the family members.
- Loss of household services that the deceased provided.

Calculating these damages often requires expert testimony from economists and other professionals to determine the full extent of the family's losses.

What types of negligence lead to survival actions and wrongful death claims?

The most common examples of negligence that leads to survival actions and wrongful death claims include:

- Errors by healthcare professionals that result in death.
- Negligent driving (e.g. distracted driving, drunk driving, and speeding) that leads to fatal crashes.
- Workplace accidents due to unsafe working conditions.
- Product liability due to defective products.
- Premises liability due to unsafe property conditions.
- Nursing home abuse or neglect that leads to a resident's death.
- Deaths resulting from violence due to inadequate security measures.
- Negligent supervision or maintenance of swimming areas.
- Contaminated food products that cause fatal illnesses.

Can you bring both a survival action and a wrongful death claim?

In many cases, the family of a deceased individual can bring both a survival action and a wrongful death claim. This approach allows the recovery of damages for both the deceased's losses and the family's losses.

For example, if a person is injured in a car accident caused by a negligent driver and suffers for several months before succumbing to their injuries, their estate could bring a survival action to recover damages for the deceased's medical expenses, lost wages, and pain and suffering.

At the same time, the surviving spouse and children could bring a wrongful death claim to seek compensation for their own losses, such as loss of financial support and companionship.

What are the statutes of limitations for survival actions and wrongful death claims in Texas?

Both survival actions and wrongful death claims in Texas must be brought within two years of the deceased person's death. However, some exceptions may apply depending on the circumstances of the case.

For example, if the wrongful death was caused by medical malpractice, the statute of limitations may be extended to two years from the date the malpractice was discovered or should have been discovered, up to a maximum of 10 years from the date of the negligent act.

It's best to file your survival action or wrongful death claim as soon as possible. As evidence begins to disappear and witnesses lose memory of the details leading to the deceased person's death, building a case can be difficult.

How do I file a survival action or wrongful death claim in Texas?

To file a survival action or wrongful death claim in Texas, begin by determining your eligibility. Next, gather the required evidence for your claim. This includes medical records, accident reports, witness statements, and financial documents.

Then, consult with an experienced Houston attorney who understands how to pursue these types of cases. Never accept a first settlement from the at-fault party's insurance provider. Let an attorney determine the true value of your survival action or wrongful death claim and calculate the appropriate damages.

The pre-trial process often involves discovery, depositions, and potential settlement negotiations. If a settlement isn't reached, your attorney will be prepared to proceed to trial and present your case before a judge or jury.

Protect your rights and honor your loved one's memory

If you've lost a loved one in Texas due to someone else's negligence, a Houston wrongful death attorney at [Smith & Hassler](#) can help you seek justice and compensation for your loss. We'll investigate the circumstances surrounding your loved one's death, gather evidence, and build a strong case to hold the responsible parties accountable.

Don't let concerns about legal fees stop you from seeking help from our law firm. We work on a contingency fee basis, which means you pay nothing upfront and only owe fees if we win your case. We also offer a free initial consultation to discuss your situation and explain your legal options moving forward.

To speak to one of our attorneys, [contact us online](#) or call one of our Houston-area law offices. We'll provide honest answers to any questions you have and help you get justice for your loved one.