

## **Wrongful Death: Naming the Proper Personal Representative of the Estate: A Trap for the Unwary**

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A wrongful death lawsuit is a suit brought for the benefit of the statutory beneficiaries who have suffered damages as the result of the death of a loved one. It is incumbent on the trial lawyer to have a thorough understanding of how to properly bring such a lawsuit in the state where the lawsuit will be filed. In Virginia, naming the proper personal representative of the estate of the decedent is essential and can be a trap for the unwary.

Virginia Code Section 8.01-50 (B) requires that a lawsuit for wrongful death must “be brought by and in the name of the personal representative of such deceased person”. The personal representative of the decedent must be duly qualified in Virginia in order to have standing to bring a wrongful death action. This requires that the proper individual be appointed by the appropriate circuit court in Virginia by an Order entered naming such individual as the personal representative of the decedent for purposes of bringing a wrongful death action. The qualification of a nonresident in a foreign state, even if it is the appointment of an executor pursuant to the decedent’s will, will not suffice as proper qualification for such person to bring a wrongful death lawsuit in Virginia. See, Virginia Code Section 26-59. Consequently, if a wrongful death suit is brought in Virginia by a personal representative qualified in a foreign state, but not in Virginia, such suit is considered a nullity in Virginia because the plaintiff is without standing to bring such a lawsuit. See, Moore v. Smith, 177 Va. 621, 15 S.E. 2d 48 (1941); Fowler v. Winchester Medical Center, 266 Va. 131, 580 S.E. 2d 816 (2003); Harman v. Sadjadi, 273 Va. 184, 639 S.E. 2d 294 (2007). If the statute of limitations ( 2 years for wrongful death) has run without a proper personal representative qualified in Virginia as the plaintiff, the case will be dismissed.

It is not at all uncommon for wrongful death lawsuits to be filed in Virginia regarding decedents who were out-of-state residents. In many such instances, a personal representative has been qualified for probate purposes in the decedent’s state of residence. Such probate qualification in a foreign state is of no moment with regard to bringing a Virginia wrongful death action. It is essential that the trial lawyer bringing a wrongful death suit in Virginia have the proper personal representative qualified in the appropriate Virginia circuit court. Relying on an out-of-state qualification of the personal representative as the plaintiff for a Virginia wrongful death suit is a trap for the unwary.

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