



TRUST & ESTATE CONTROVERSY VIRTUAL FORUM

NOBODY LIKES A KILLER

**SLAYER STATUTES & WRONGFUL DEATH: CIVIL MURDER
STATUTES MAKE CERTAIN CRIME DOESN'T PAY**

**McDermott
Will & Emery**

Thursday, October 29, 2020

mwe.com



SPEAKERS



David A. Baker
Partner
dbaker@mwe.com



Lisa A. Linsky
Partner
llinsky@mwe.com



Margaret E. Sanne
Partner
msanne@mwe.com



Peter B. Allport
Partner, *Moderator*
pallport@mwe.com

OVERVIEW

- What Is “Civil Murder”?
- Wrongful Death
- Slayer Statutes

WHAT IS “CIVIL MURDER”?

- Criminal Law punishes killing with incarceration or death.
- The State prosecutes, to punish wrongdoers and protect the public.
- Civil Murder Laws are private actions between victims, their estates and families, on the one hand, and the perpetrators, on the other.
- Civil Murder Laws are designed to prevent perpetrators from benefitting financially from killing people, in part to discourage murder and killing for profit, and in part *just because*.
- The assumption is that there would be a lot more killing if it paid off, and then, *nobody likes a killer*.

WRONGFUL DEATH & SLAYER STATUTES

- There are two kinds of civil murder laws: Wrongful Death and Slayer Statutes.
- These differ primarily in the *remedies* available.
 - In Wrongful Death, the victim's estate and survivors receive monetary damages. *See, e.g.*, 740 ILCS 180/1.
 - In Slayer Statutes, people who would otherwise get some or all of the dead person's money, by inheritance, contract or you-name-it, get blocked from inheriting. *See, e.g.*, F.S.A. § 732.802.
- So, Slayer Statutes will typically only operate when the victim has money; Wrongful Death can apply to anybody.

WRONGFUL DEATH

- Statutory lawsuit that did not exist at Common Law. See 22A Am. Jur. 2d Death § 3.
- In the Good Old Days, if somebody killed you in an accident, with no criminal intent, nobody got a pay-off from people causing the death.
- If the same people badly injured you, they would pay damages for your injury.
- So, there was effectively a bounty: If you were going to injure somebody, better to go for broke, to escape financial liability.
- The railroads were known to be arranging seating to make train crashes more likely to be fatal than simply injurious (in the Good Old Days).

WRONGFUL DEATH

- So, state legislatures created Wrongful Death Statutes, designed to punish criminal and non-criminal death-causers with civil liability for damages.
- Most states, at the same time, changed the laws so a claim for personal injury damages was no longer extinguished by death.
- So, typically, a death caused in an accident will be pursued with both an injury claim and Wrongful Death action. *See, e.g.,* 42 Pa.C.S.A. §§ 8301, 8302.
- Unless the death was instantaneous, then only Wrongful Death.
- The Executor of the Estate owns the personal injury claim—it is an estate asset. *See id.*

WRONGFUL DEATH

- On the other hand, because the Wrongful Death action is a statutory creation, designed to compensate survivors for the death, Wrongful Death belongs to the “Survivors”.
- This has significant tax consequences:
 - Injury damages paid post-death are taxable in the dead person’s estate. I.R.C. § 2033.
 - Wrongful Death awards are not subject to death tax. Rev. Rul. 75-127, 1975-1 CB 297.
 - Both types escape income taxation. I.R.C. § 104(a).
- Settlements need special attention: Allocation of how much is being paid for personal injury versus Wrongful Death can have significant death tax consequence, and insurance carriers tend to lump them.

WRONGFUL DEATH: WHO FILES? WHO OWNS?

- Wrongful Death recoveries “belong” to the *Survivors*: Those people so closely related to you that they are dependent on you financially.
- The Determination of who these people are, and how dependent on you they really are, is made by the Court hearing the Wrongful Death case, *in the Wrongful Death proceeding*.
- How’s that work?
- Typically, it will follow customary family relationships that usually track intestate heirship: Spouses are always dependent; minor children are always dependent; everybody else, it’s facts and circumstances. See, e.g., Cal.C.C.P. § 377.60; 740 ILCS 180/2; N.Y. Est. Powers & Trusts Law § 5-4.4.

WRONGFUL DEATH: WHO FILES? WHO OWNS?

- All sorts of other people, from adult children to shirt-tail relatives, can establish dependence through actual financial support evidence.
- However, the more remotely related or tangential the financial support, the lower the degree of dependency.
- So, loners with no family and no deadbeats hanging on, make for poor Wrongful Death cases and recoveries.
- State laws differ on exactly how the Court is to make this determination; it can even include loss of consortium, or *emotional dependence*. See 22A Am. Jur. 2d Death § 3.
- But, in each case, it is a determination by the Court hearing the claim.

WRONGFUL DEATH: WHO FILES? WHO OWNS?

- Since the true owners are determined by the court during the Wrongful Death proceeding, they can't file the suit (because they don't know who they are—guessing or assuming doesn't count).
- As a result, the dead person's executor has the right to initiate the suit, even though the proceeds will not pass under the will or pass through the decedent's estate.
- If there is no executor, because there are no estate assets (including, no injury claim, which is rare), the court can appoint an executor for the sole purpose of filing the Wrongful Death action.
- Most often, the executor files a double action: Wrongful Death and personal injury—the Wrongful death proceeds just bypass the estate.

WRONGFUL DEATH: WHY BOTHER?

- If there are no direct dependents, why file for Wrongful Death?
- Only civil remedy for poor decedents with no money subject to blocked inheritance.
- Covers over some loopholes in Slayer Statutes (more below, but the most common involves joint tenancy, which includes many residences).
- Can be used (as can Slayer Statutes) to “shake loose” a stalled or non-existent criminal murder prosecution or investigation.
- Because the burden of proof is lower than criminal cases (preponderance—sort-of guilty, versus Beyond Reasonable Doubt—really guilty), it can get the authorities investigating by the record established at trial. See Uniform Probate Code § 2-803.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- Slayer Statutes are designed to block inheritance of the dead person’s assets, so that money and property does not pass to the person causing the death.
- That language is important: Most Slayer Statutes say, “A Person intentionally, without justification, causing the death of a person, shall be treated for all purposes as though that person predeceased the decedent”. See, e.g., Cal.Prob.Code § 252; 755 ILCS 5/2-6.
- So, this is not murder—murder requires *intent*—“I am going to kill Dad,” and then, you do.
- Instead, some states require an intentional *act* that *causes* death.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- How’s this different from Murder?
- Depending on the jurisdiction, a killer may or may not be required to act intentionally and cause death. Even if the act does not result in a criminal conviction, if it causes death and isn’t justified, the killer won’t inherit.
- But, murder counts too, because it’s intentional and causes death.
- Some Slayer Statutes cover lesser offenses, without criminal intent.
- So, for example:
 - Reckless, Criminally Negligent Homicides.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- You think your spouse is cheating, so you hire somebody to kill them—solicitation for murder and triggers Slayer Statute.
- You think your spouse is cheating, so you take out an insurance policy on his/her life and enlist your paramour to shoot them. You may still be subject to Slayer Statutes as an accomplice.
- You think your spouse is cheating, so you really want to punish them, but you still love them—just want to teach them a lesson—so you booby trap the front doorway to your house with a falling mannequin dressed like a paramour, and it backfires in a freak accident and kills them. Probably not even manslaughter, but, still triggers Slayer Statute.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- Yes, even stupid acts not reasonably foreseeable as causing death count, so long as they are intentional and not justified or “unlawful and felonious:
- Seems like overkill, but the idea is to completely disincentivize dangerous behavior that could in any way cause death, and punish with disinheritance if you don’t get the message.
- So universal, every state but New Hampshire has one.
- Applies to virtually anything that can pass to the killer at death.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- How does criminal law overlap?
- The burden of proving a Slayer Statute case is lower, preponderance, just like Wrongful Death—a greater than 50% chance—than criminal cases, where the burden is beyond a reasonable doubt—really, really guilty. See, e.g., Uniform Probate Code § 2-803.
- This is why a person acquitted of a murder can be sued for Wrongful Death and violating Slayer Statutes—no double jeopardy.
- So, like Wrongful Death, these cases are often used by heirs and relatives to “shake loose” criminal prosecutions stalled or not even initiated.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- But, the Prosecutors still get first dibs.
- Most Slayer Statutes state that you can't pursue them until a criminal prosecution is completed, and in some cases, this includes exhausting appeals.
- Conversely, a criminal conviction for murder or manslaughter is usually treated as prima facia evidence of a Slayer Statute violation. See F.S.A. § 732.802.
- In other words, if the Prosecutors get a conviction, there is a presumption of an unlawful killing that benefits the party seeking to preclude rewarding the killer.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- What happens when Slayer Statutes are triggered?
- Universally, the person causing death is treated, *for all purposes*, as though they *predeceased* the decedent. See, e.g., 755 ILCS 5/2-6; F.S.A. § 732.802.
- So, anything they stood to receive goes to whoever would get the property if the killer died first.
- These Statutes are so broad, they expressly apply to every which way you can get property from a dead person:
 - Inheriting under a will or intestate.
 - Receiving proceeds under insurance policies or employee benefit plans.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- Survivor proceeds under Joint Tenancy.
- Beneficiary under a Trust.
- Successor interests under a Partnership or LLC agreement.
- Even stuff in your joint safe deposit box.
- This even applies to block spousal benefits under a pension, profit sharing plan or Individual Retirement Account (IRA), where Federal law says only your spouse can receive the money. *See, e.g., Laborers’ Pension Fund v. Miscevic*, 880 F.3d 927 (7th Cir. 2018).
- Because, Nobody Likes a Killer.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- What’s it mean to be “Treated like you predeceased the decedent”?
- In wills and trusts, the next named taker gets the money, usually your kids, unless there’s an alternative disposition, like collateral relatives or charity.
- In insurance and benefit plans, which pass by beneficiary designation, there is often no named additional beneficiary, so the plan governs, which will likely be close or more distant relatives.
- But, many states have an “Indirect Benefit” rule, which means if these secondary takers got the money and it made the killer better off, then they get knocked out too.

SLAYER STATUTES: "PERSON CAUSING DEATH"

- Sounds harsh, but it most often applies in unfair, obvious situations, like where the killer's kids would take, but they are step kids to the decedent person, and it would rob the decedent person's family of any benefit.
- Harsh or not, they really want to disincentivize killing for money, so if they think these secondary takers are going to give a killer any money, or even make the killer happy, they will likely be disqualified too.
- Because the killer is treated as having pre-deceased the decedent, death tax attributes attach to the survivors: For example, if the successor interest is charity, the estate gets the charitable estate tax deduction, even though the will says the property is going to humans.

SLAYER STATUTES: “PERSON CAUSING DEATH”

- There are loopholes:
 - Joint Tenancy is the most common: The disinherited “part” is often just the survivorship interest, typically one-half, such as with spousal residences.
 - This is true regardless of who contributed how much to the joint property, so this can be a windfall for killers with lots of equity in a joint residence.
 - Florida exempts killing by reason of insanity. *See Congleton v. Sansom*, 664 So. 2d 276 (Fla. Dist. Ct. App. 1995).
 - In New Hampshire, the entire state is a loophole.
- This is why Wrongful Death is often needed as additional relief.

THANK YOU

This material is for general information purposes only and should not be construed as legal advice or any other advice on any specific facts or circumstances. No one should act or refrain from acting based upon any information herein without seeking professional legal advice. McDermott Will & Emery* (McDermott) makes no warranties, representations, or claims of any kind concerning the content herein. McDermott and the contributing presenters or authors expressly disclaim all liability to any person in respect of the consequences of anything done or not done in reliance upon the use of contents included herein. *For a complete list of McDermott entities visit mwe.com/legalnotices.

©2020 McDermott Will & Emery. All rights reserved. Any use of these materials including reproduction, modification, distribution or republication, without the prior written consent of McDermott is strictly prohibited. This may be considered attorney advertising. Prior results do not guarantee a similar outcome.

