



PROPER PLANNING MAY CREATE PEACE OF MIND



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Florida's Wrongful Death Statute—Part 2

Part two of this article focuses on matters relating to the actual settlement and disposition of proceeds.

Settlement Prior to Filing Suit: There is no bar to settling a wrongful death action prior to filing suit. However, courts have ruled that an insurer who offers its policy limits is to settle the entire action. Generally, this can be done only by the personal representative if all of the beneficiaries are in agreement. *Williams v. Infinity Ins. Co.*, 745 So.2d 573 (Fla. 5th DCA 1999). An insurer cannot unilaterally settle a wrongful death claim with some of a decedent's statutorily determined survivors to the exclusion of other survivors.

Court Approval: Court approval can be in the civil division and service of the petition and the notice of hearing should be made on all interested persons in the probate (beneficiaries and creditors). If a beneficiary objects to the settlement amount or proposed apportionment, the wrongful death act requires that it be approved by the court. Fla. Stat. 768.25. Similarly, if a survivor who will be affected by the settlement is a minor, court approval is required.

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Apportionment: The trial attorney will want to petition the court to apportion the settlement proceeds between the survivors and the estate. This can be done in either the trial court or the probate court. The method of apportionment must be reasonable and equitable so as to avoid the appearance of fraud as to creditors. *Estate of Wiggins v. Destin*, 729 So.2d 523 (Fla. 4th DCA 1999).

If the personal representative is also a survivor of the decedent and has a personal stake in the allocation of proceeds between the survivors and the estate, the probate court has the ability to appoint an administrator ad litem who has no self-interest. The ad litem's role is to represent both the estate and the survivors in the apportionment proceeding. *Continental National Bank v. Brill*, 636 So.2d 782 (Fla. 3d DCA 1994). In certain cases it may be necessary to introduce an expert opinion as to the full value of the wrongful death claim as a basis for a plan of equitable distribution of the proceeds. A practice tip is to serve the estate creditors with the notice of hearing and the petition in order to bar any later claim that the request for apportionment was inequitable or, that is attempted to circumvent the claims of creditors. The order of

apportionment will then serve as a final order.

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