

## **Distribution of Personal Injury Proceeds to Heirs of a Decedent's Estate**

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In general, if there is a personal injury action concerning the death of the Decedent it is typical that two types of claims are asserted in this action. The first claim is typically a wrongful death claim, and the second claim may be a survivorship claim. In general, the survivorship claim is distributed in accordance with the Decedent's Last Will and Testament. Thus, the proceeds from the settlement or judgment are typically paid to the beneficiaries of the Decedent's Estate in the percentage set forth under the Last Will and Testament. That is because the survivorship claim is deemed to be property of the Decedent's Estate. The other claim which is brought, the wrongful death claim is not distributed in the same fashion to heirs of the Estate.

In a wrongful death claim, the proceeds realized from the personal injury lawsuit are not distributed in accordance with the terms of the Will. Instead, these proceeds are distributed in the same fashion as if the Decedent had died without a Will. This may result in a different distribution of the proceeds had they been distributed pursuant to the Last Will and Testament, as an heir or a child of the Decedent may not be a beneficiary under the Will, however, they would nonetheless receive a pro rata share of the proceeds from the wrongful death claim.

As such, in determining how the proceeds from a personal injury lawsuit may be distributed to the heirs or children of a Decedent, is important that both the Will, as well as all potential heirs of the Decedent's Estate be considered. If there are any questions as to whether a beneficiary and/or heir of the Decedent should receive proceeds from a personal injury action, it is suggested that you consult with an attorney.

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