

# Wrongful Death Settlement Checklist<sup>1</sup>

This checklist assumes a judge is making the decision, not a jury. “Whenever the death of a person, injuries resulting in death, or death as described in [MCL 600.2922a] shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation that would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured or death as described in section 2922a, and although the death was caused under circumstances that constitute a felony.” MCL 600.2922(1).

## INITIAL PLEADINGS:

- Ensure there is an estate. See MCL 600.2922(2)
- Ensure plaintiff is the personal representative. See MCL 600.2922(2).
- Ensure a copy of the complaint and required notice was properly served on persons who may be entitled to damages. MCL 600.2922(2)-(4).

## SETTLEMENT:

- If a motion has been filed, hold a hearing; notice of the hearing is not required. MCL 600.2922(5).
- If a claim under MCL 600.2922 settles before a lawsuit has been filed, MCL 700.3924 applies to the distribution. MCL 600.2922(9).

## DISTRIBUTION:

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<sup>1</sup> See the Michigan Judicial Institute’s *Civil Proceedings Benchbook* for information on civil procedure.

- Review motion from the personal representative seeking authority to distribute proceeds. See [MCL 600.2922\(6\)\(a\)](#). It may be combined with the motion to approve settlement.
- If none of the persons entitled to proceeds is a minor, a disappeared person, or a legally incapacitated individual, all the parties can stipulate to the distribution; enter an order in accordance with the stipulation. [MCL 600.2922\(6\)\(e\)](#).
- If no stipulation and unless notice was waived, ensure proper notice of hearing on the motion to distribute proceeds has been provided. [MCL 600.2922\(6\)\(b\)](#).
- Hold hearing.
  - Decide whether the deceased experienced conscious pain and suffering because that claim, as well as any proceeds distributed thereto, belong to the estate. [MCL 600.2922\(6\)\(d\)](#). Normally, plaintiff requests a finding that there was no conscious pain and suffering so part of the settlement will not go through the estate. The court may wish to determine that there is no probate estate, and/or no creditors, before deciding there was no pain and suffering.
  - Bar any claim for damages not presented by the hearing date. [MCL 600.2922\(7\)](#).
  - Determine whether a claim should be barred if a person entitled to damages did not advise the personal representative's attorney of any material fact which may be evidence of a claim for damages. [MCL 600.2922\(8\)](#).
- Review any request for attorney fees and expenses. [MCR 8.121](#) addresses contingent attorney fees permitted in a personal injury, wrongful death, or no-fault benefits case.