



GOVERNMENT TORT CLAIMS ACT

A GENERAL USE GUIDE

General Guidelines Regarding the Handling of Claims:

- A District should have a designated person(s) in charge of receiving claims (in any format; Mail, Email, etc.) on behalf of the District.
- All District sites and appropriate personal (Including the School Board) should be advised of the designated claims person and where to forward claims once received.
- All documents considered as claims that are received:
 - Should be date stamped when received by the District.
 - Should be logged into a database.
 - The envelope should be affixed to the claim.
 - A copy of the claim and envelope should be made and stored for seven years (min.) or per your records retention policy.
- All notices to a claimant should include a “proof of mailing” (See addendum) and copied for the record. Districts may wish to use United States Postal Service tracking options such as Certified Mail or Return Receipt when issuing statutory letters.

In General, Public Entities are Immune:

- Governmental entities are generally immune from civil liability unless certain requirements are met ([See Government Code Section 815.](#))
 - If the requirements of the Tort Claims Act are satisfied, then the immunity is waived. (See *State of California v. Superior Court (Bodde)*, (2004) 32 Cal.4th 1234, at 1243.)

What is the Purpose of the Government Tort Claims Act?

- To provide the District with an opportunity to settle a claim before it is litigated.
- Permits early investigation into the facts.
- Provides an opportunity for risk transfer to those owing defense and indemnity via a contract or agreement.
- Avoids unnecessary legal fees by not being sued immediately after an incident occurs.
- Does the right thing for the District and the claimant.

What Actions Require a Claim to be Filed?

- General rule – A claim is required to precede all actions against a public entity seeking money or damages, except when the action is expressly excluded. (See [Cal. Gov. Code §905](#)).

Where do the Claim Requirements Apply?

- Physical injuries and any other type of personal injury.
- Intentional torts (a wrongful act or infringement of a right-other than under a contract) leading to civil legal liability) both as to persons and property.
- Contracts.
- Damage to real and personal property.
- Statutory Actions (e.g., employee's wrongful injury action against a third party in employer's subrogation action).
- Class Actions.
- Subrogation Actions.
- Indemnification Actions.

Are there any Exceptions? Yes, Statutory Exceptions:

- Claims related to tax matters and assessments. [Gov. Code §905\(a\), \(h\)](#).
- Mechanics and other construction liens. Gov. Code §905(b).
- Claims for salary, expenses, pension benefits, workers' compensation and employment compensation. Gov. Code §905(c), (d), (f), (l).
- Welfare claims. Gov. Code §905(e).
- Claims on bonds, notes or other evidence of indebtedness and other public-financing matters. Gov. Code §905(g).
- Claims by public entities. Gov. Code §905(l).
- Claims to penalties withheld on public works projects. Gov. Code §905(k).
- Claims concerning the creation of pedestrian malls. Gov. Code §905(l).
- Inverse condemnation actions are expressly exempted from the claim requirement. Cal. Gov. Code §905.1.

Are there Claims for Specific Relief that are Exempt from the Claims Filing Requirements? Yes:

- Actions for relief, other than for money or damages, do not require a claim.
- Not strictly an exception to the general rule, but outside the scope of the Act.
- No claim required for action for declaratory relief. *Minsky v. Los Angeles* (1974) 11 Cal.3d 113.
- No claim required for recovery of property seized by the public entity or damages in lieu thereof. *Holt v. Kelly* (1978) 20 Cal.3d 560.
- No claim required for a mandamus action for the release of funds or for the return of property.

What about Claims Against Public Employees?

- An action against a public employee acting in the scope of employment is barred if the plaintiff has not complied with the claim filing requirements. ([Cal. Gov. Code §950.2.](#))
 - Exception: If plaintiff pleads and proves that he or she neither knew, nor should have known, either (1) the public employee's involvement; or (2) the public employee was in fact a public employee during the time in which a timely claim could have been filed. (Cal. Gov. Code §950.4.)

Claim Presentation Procedures

Recognizing a Claim:

- Any document received by a school district indicating that monetary damages are sought and that litigation may ensue, must be treated as a claim.
- An untimely, or incomplete document simply determines how the claim will be handled.
- A District may only take no action if the document fails to provide any return address.
- A failure to treat the document as a claim will result in a loss of claim defenses. ([Cal. Gov. Code §910.8, 911.](#))
- The District may provide forms (see Addendum 1) specifying the information to be contained in claims against the District. Cal. Gov. Code §910.4.

A person presenting a claim may use the form or may submit documentation that substantially satisfies the requirements of Cal. Gov. Code §§910 and 910.2.

How are Claims Presented to a District?

- The claim must be delivered or mailed to the clerk, secretary, auditor, or the governing body of the District. ([See Cal. Gov. Code §915.](#))
- If it is mailed, the claim is considered “presented” on the date it is deposited in the United States mail, not the date it is received by the District, if ever. Cal. Gov. Code §915.2. (which is why districts must keep the postmarked envelope in which the claim was received.) Each claimant must comply with the claims requirement, even if some other person has presented a claim which fully discloses the facts and theory of liability.
- A personal injury claim presented by the victim is not sufficient to allow heirs to proceed with a wrongful death suit when the victim subsequently dies.

Sufficiency of Claim; When is a Claim a Good Claim?

- Claims must contain all of the following information:
 1. Name of the claimant.
 2. Mailing address to which notices should be sent.
 3. The date, place and circumstances giving rise to the claim.
 4. A general description of the injury, damage or loss for which the claimant seeks payment.
- Additionally, claims must contain the following information:
 5. The name of any public employee causing the loss, if known.
 6. The amount claimed and basis of computation if the claim is under \$10,000.
 - If the amount is over \$10,000, no amount is to be included, but the claim must indicate whether the claim would be a limited civil case (\$25,000 or less). ([Cal. Gov. Code §910.](#))

What is Substantial Compliance by a Claimant?

- A claimant must make an effort to supply each of the essential elements of a claim.
- Substantial compliance is met when the claim contains sufficient information to reasonably enable the District to make an adequate investigation of the merits of the claim. (*Loehr v. Ventura Community College District* (1983) 147 Cal.App.3d 1071.)
- A Claimant will not be permitted to proceed on a theory of liability in the lawsuit which is not fairly reflected in the claim.

What are the Districts Response Times to a Filed Claim?

- A District is generally allowed 45 days, after the claim or amended claim is presented, to take action.
- If the claim is mailed to the District, the District's response time is extended as follows:
 - 5 days if claimant's address is within California.
 - 10 days if address is outside California, but within U.S.
 - 20 days if address is outside U.S. ([Cal. Gov. Code §915.2.](#))

What are the Options for Responding to a Claim?

1. Do nothing.
2. Approve all or part of the claim.
3. Reject the claim.
4. Provide notice of insufficiency.
5. Provide notice that claim is untimely.

#1. The “Do Nothing” option = Deemed Rejected:

- If the entity fails to take action on a claim within the period allowed by statute (45 days) or as extended by agreement, the claim is deemed automatically rejected by law on the 45th day or last day of the extended period.
- If no action is taken, or no notice of an action is sent to the injured, then the time allotted to file a lawsuit is extended two-years from the 45th day.

#2. The “Approve all of part of the claim” option:

- A District can either reject or allow a claim, in whole or in part. ([Cal. Gov. Code §912.6\(a\)\(3\)](#)).
- If the claim is allowed in whole or in part, or if the District offers to compromise the claim, it may require that acceptance by the claimant results in full settlement of the claim. (Cal. Gov. Code §912.6(b).)

#3. The “Reject the Claim” option:

- The content of the written notice of the action on the claim, including that it has been deemed rejected, is specified in [Gov. Code §913\(a\)](#).
- If the claim is rejected in whole or in part, the notice must warn the claimant of the six-month statute of limitations in which to bring a lawsuit. (Cal. Gov. Code §913(b).) (See sample letter in addendum).
- If the claim is rejected, but no notice is sent to the claimant, the statute of limitation in which to file a lawsuit is extended to two-years.

#4. The “Provide Notice of Insufficiency” option:

- If the claim does not provide the required information, the entity should give notice of the insufficiency, stating which details are missing. [Cal. Gov. Code §910.8](#).
- District must provide written notice of the missing details within 20 days after the claim is presented.
- The entity may not take action on a claim for 15 days after sending a notice of insufficiency. (Cal. Gov. Code §910.8.)
- A claim may be amended at any time before the claim period expires or the entity takes final action on the claim. (Cal. Gov. Code §910.6(a).)

#5. Provide “Notice of Untimely Claim” option:

- If a claim is not presented within the time allowed, the District may return the claim without any further action being taken. Notice is to be provided to the claimant using the specified language per [Cal. Gov. Code §911.3\(a\)](#). (See sample letter in addendum).
- Notice must be given within 45 days after the claim is presented. Cal. Gov. Code §911.3.
 - Even if notice of insufficiency has been given, notice of untimeliness must also be given. (See sample letter in addendum).

Timeliness for Certain Claim Types:

- A claim for wrongful death, personal injury, or damage to personal property or growing crops must be presented on or before six months after the cause of action accrues (when the damage is first sustained). ([Cal. Gov. Code §911.2.](#))
- A claim for any other cause of action can be presented as late as one year after the cause of action accrues. (Cal. Gov. Code §911.2.)
- Claims subject to the one-year period are basically those based on contract or damage to real property.

Accrual (The date at which an action becomes enforceable):

- The claim period begins when the cause of action accrues. (Cal. Gov. Code §911.2.)
- A cause of action against a District accrues on the same date the action would accrue against a private party. ([Cal. Gov. Code §901.](#))
- Causes of action accrue when all elements necessary for the claims have occurred, including damages.

Case Example – Locker Room

- After the regular football season ends, a ‘walk-thru’ practice is scheduled.
- Although the locker room is closed for the season, a few students gain access.
- The quarterback pushes a younger player into a locker, causing a tooth to fall out.
- The incident occurs on May 27, 2015, and the student’s father submits a claim with the District on June 11, 2015.
- Result: The claim is timely.

What is the Time Limit for Claimant to File a Lawsuit?

- If the District provides a notice of rejection of claim, the claimant has six-months to file suit.
- The six-month period of time is measured from the date the notice of rejection is placed in the mail or is personally delivered.
- If no notice of denial is given, the claimant has two years from the date the cause of action accrues to file suit. ([Cal. Gov. Code Section 945.6\(a\)](#)).

Case Example – Remodeling

- During a remodeling project, parents become concerned about possible exposure to asbestos.
- Twenty-seven students submit a claim with the District asserting exposure to asbestos.
- The District sends a notice of denial by mail.
- The law firm representing the students closes down its local office, preventing the notice of denial from being delivered.
- Result: The notice of denial is deemed delivered when it was placed in the mail.

Late Claims Procedures

If a Claim is Late, what are the Late Claims Procedures (Application for Leave To Present A Late Claim)?

- If the claim is not presented in a timely manner, the claimant must present an application for leave to present a late claim before commencing a lawsuit. ([Cal. Gov. Code §§945.4 and 946.6.](#))
- The application must be presented within a reasonable time period not to exceed one year.
- In calculating the one-year time period, the time during which the claimant is a minor, is counted, but time during which the claimant is mentally incapacitated and does not have a guardian or conservator is not.

What are the Grounds for Relief of the Application that a Claimant may Assert?

- The District must grant the application where one or more of the following is applicable:
 - Claimant was a minor
 - Claimant was physically or mentally incapacitated
 - Claimant died before the expiration of the claim period.
- The District must also grant the application if the claimant's failure to timely present a claim was caused by mistake, inadvertence, surprise, or excusable neglect.
 - However, if the District was prejudiced in its defense by the failure to present a timely claim, it is not required to grant the application. ([Cal. Gov. Code §911.6\(b\)\(1\).](#))

What Action is to be Taken on Late Claim Applications?

- The presumption should be that the application will be denied.
- The District is allowed 45 days after presentation of the application within which to grant or deny it, and the period may be extended by written agreement made before the period expires. (Cal. Gov. Code §911.6(a).)
- If granted, the claim is deemed to be presented on the date it is granted. (Cal. Gov. Code §912.2.)

What if a Petition to be Relieved is Made by the Claimant?

- If the application is denied, the claimant may file a petition with the court to be relieved from the claims requirement. ([Cal. Gov. Code §946.6\(e\)](#).)
- Although the grounds for relief are the same as on an application, the claimant may present entirely different grounds in the petition, although such grounds might be subject to a defense of waiver.
- Petition must be filed within six months after the time the application is denied. (Cal. Gov. Code §946.6(b).)
- The petitioner bears the burden of proof for granting the petition.
- If the petition is granted, the claimant must file suit within 30 days. (Cal. Gov. Code §946.6(f).)
- An order granting a petition is not appealable but may be reviewed by a petition for writ of mandate.
- An order denying a petition is an appealable order.

Addendum

1. Sample Claim Form
2. Notice of Insufficiency
3. Rejection of Timely Claim
4. Return of an Untimely Claim
5. Denial of Timely Application to Present a Late Claim
6. Declaration of Service by Mail
7. Public Entities and the Claim Presentation Statute —
Accept, Reject, Provide Notice or Do Nothing?

By Seymour B. Everett, III Esq., David L. Martin, Esq., and Samantha E. Dorey, Esq.

SAMPLE CLAIM FOR DAMAGES FORM

DIRECTIONS: Complete and send an original and one copy to: _____
(Insert District Name, Contact and Address).

Name of Claimant: _____
(Injured or damaged party) (Last) (First) (Middle)

(Date of Birth)* (Social Security No.)* (CA Drivers License No.)
Home Address: _____
(Number/Street) (City/State/Zip Code) (Area Code & Phone No.)

Business Address: _____
(Number/Street) (City/State/Zip Code) (Area Code & Phone No.)

Claimant receives or is eligible for SSDI or Medicare* Yes No

Directions: Indicate to which address you wish notices sent. Home Business

When Did Injury or Damage occur? _____
(Month/Day/Year) (Day of Week) (Time of Day)

Where Did Injury or Damage Occur? _____
(School site, street address, intersecting streets, or other locations)

How Did Injury or Damage Occur? _____
(Describe accident or occurrence in complete detail/attach additional pages if needed)

Names, Addresses and Phone Numbers of Witnesses, Doctors, Hospitals or persons who may have information regarding Your Injury or Damages: _____

Names of School Employees Involved: _____

Police Report Number: _____

What Action or Inaction of District Employee(s) Caused Your Injury or Damages? _____

What Injuries or Damages Did You Suffer? _____

State the amount of the claim if it is less than \$10,000 _____.

Include the estimated amount of any prospective injury, damage or loss insofar as it may be known at the time the claim is presented and list the basis for the computation of the amount claimed:

If the dollar amount of the claim is more than \$10,000, no dollar amount will be stated but please indicate whether the claim is a limited civil claim(total dollar amount less than \$25,000): Limited Civil Case: Yes No

Directions: Sign and date this Form below. If the signer is not the Claimant, indicate the relationship of the signer to the Claimant (parent, attorney etc.) and address.

(Signature) (Date) (Relationship if not Claimant and address)

Directions: Attach and include, with this Form, any bills for medical treatment or expenses/estimates for personal property damage.

*RESPONSES REQUIRED FOR FEDERAL MEDICARE SECONDARY PAYER REPORTING
Note: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to CA Penal Code Sec 72)

[LETTERHEAD AND DATE]

[NOTICE OF INSUFFICIENCY]

Dear _____:

Your claim which was received by the _____ [insert title of board or officer] on _____ [date] failed to comply substantially with certain Government Code sections. It was insufficient for the following reasons:

[Give reasons for insufficiency]

For your information, consult sections 910, 910.2, 910.4 and 910.8, and the other sections of the Government Code pertaining to the filing of the claims against public entity. Pursuant to Government Code section 910.8, no action will be taken on this claim by [entity] for a period of 15 days after the date of this notice. Therefore, if you wish to file an amended claim correcting these deficiencies, you should do so within that time period.

[Title]

[Reference: Government Code section 910.8; Section 2 of text.]

[LETTERHEAD AND DATE]

[REJECTION OF TIMELY CLAIM]

Dear _____:

Notice is hereby given that the claim you presented to the _____ [insert title of board or officer] on _____ [date] was rejected on _____ [date] by _____ [title of board or officer] [or] [operation of law].

WARNING

Subject to certain expectations, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code section 945.6.

This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Government Tort Claims Act, Government Code sections 900 et. seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

[Title]

[Reference: Government Code section 913b; Section 5 of text.]

[LETTERHEAD AND DATE]

[RETURN OF UNTIMELY CLAIM]

Dear _____:

The claim which you presented to the _____ [title of board or officer] on _____ [date] is being returned because it was not presented within six (6) months after the event or occurrence as required by law. See sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

WARNING

Your only recourse at this time is to apply without delay to _____ [name of public entity] for leave to present a late claim. See actions 911.4 to 912.2, inclusive, and section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Government Code section 911.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

[Title]

[Reference: Government Code section 911.3(a); Section 6 of text.]

[LETTERHEAD AND DATE]

["HYBRID FORM"]

Dear _____:

The claim which you presented to the _____ [title of board or officer] on _____ [date] is being returned because it was not presented within six (6) months after the event or occurrence as required by law. See sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

WARNING

Government Code section 911.3 provides that when a claim is denied because it was not presented within the time allowed by law, notice to the claimant shall so state and further give notice in substantially the following form:

"Your only recourse at this time is to apply without delay to the _____ [Name of Public Entity] for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See section 911.5 of the Government Code.

"You make seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

If you dispute the [public entity]'s conclusion that your claim was untimely, the following warning may be applicable.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited into the mail to file a court action on this claim. See Government Code Section 945.6.

[Title]

[Reference: Government Code section 911.3(a); Section 6 of text.]

[CAUTION: This form has not been legislatively approved and should be reviewed by the public entity's counsel before use. See Section 6.7 of text.]

[LETTERHEAD AND DATE]

[DENIAL OF TIMELY APPLICATION TO PRESENT A LATE CLAIM]

Dear _____:

Notice is hereby given that the application to present a late claim which you presented to the _____ [insert title of board or officer] on _____ [date] was denied on _____ [date] by _____ [title of board or officer] [or] [by operation of law].

WARNING

If you wish to file a court action in this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code section 945.4 (claim-presentation requirement). See also Government Code section 946.6. Such petition must be filed with the court six (6) months from the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

[Title]

[Reference: Government Code section 911.8; Section 8.4 of text.]

DECLARATION OF SERVICE BY MAIL

[Alternative No. 1]*

State of California
County of _____

I am employed in the County of _____, State of California. I am over the age of 18 and not a party to the within cause or claim; my business address is: _____

I served the foregoing document _____ [name of document; e.g.: "Rejection of Claim"] by depositing a true copy of thereof in the United States Mails in _____, State of California, on _____, 19____, enclosed in a sealed envelope, with the postage thereon fully prepaid, addressed as follows: _____ [name and address of claimant, or claimant's attorney].

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ [day] of _____ [month], 19____, at _____, California.

[Type or Print Name]

[Signature]

[Alternative No. 2]*

State of California
County of _____

I am employed in the County of _____, State of California. I am over the age of 18 and not a party to the within cause or claim; my business address is: _____

I am familiar with the practice of _____ [name of public entity or business] for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

I served the foregoing _____ [name of document; e.g.: "Rejection of Claim"] by placing a true copy thereof for collection and mailing, in the course of ordinary business practice, with other correspondence of _____ [name of public entity or business], located at _____ [address of public entity or business], on _____ [date], enclosed in a sealed envelope, with the postage fully prepaid, addressed as follows: _____ [name and address of claimant or claimant's attorney].

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ [day] of _____ [month], 19____, at _____, California.

[Type or Print Name]

[Signature]

* Use Alternative No. 1 only if declarant personally deposits in U.S. mail

Public Entities and the Claim Presentation Statute — Accept, Reject, Provide Notice or Do Nothing?

By Seymour B. Everett, III Esq., David L. Martin, Esq., and Samantha E. Dorey, Esq.

Introduction

When a claim is brought against a public entity or its employees, to ensure early resolution or the best possible defense, one must be especially attentive to a multitude of unique claim presentation procedures and timing requirements afforded by the Government Code and related authorities. This article will assist public entity employees, city managers, city attorneys, risk managers and insurance professionals by addressing the strict time requirements a claimant must adhere to when presenting a claim, the different responses an entity can have when a claim is brought against them, and how a public entity should respond to late claim relief to avoid many of the most common mistakes made by public entities.

What Type of Claims May Be Brought Against A Public Entity?

The starting point of the entire process is determining whether a valid claim was brought against the public entity. Government Code § 905 states that any claim for money or damages can be brought against a public entity. This includes claims relating to a cause of action for death, personal injury, injury to personal property or growing crops, damage to real property, and economic damage. One consideration to keep in mind is that claims that do not seek a monetary award or damages, such as injunctive or declaratory relief, are not subject to the claim presentation requirements.

Furthermore, public entities can establish their own claim presentation provisions in a written agreement. Government Code § 930. Therefore, if a claim relates to a written agreement that provides its own presentation procedure, those agreed-upon guidelines must be followed instead of the Government Code provisions.

Timely Presentation of the Claim

Before litigation can be brought against the public entity, Government Code § 945.4 requires that a written claim for either money or damages must be timely presented to a public entity according to Chapter 2 of the Government Code commencing with § 910. The timely presentation of a claim serves two main purposes. It first allows the public entity to evaluate and potentially resolve claims before litigation begins and second, it provides the public entity with an opportunity to investigate the facts of a claim so that it can adequately defend itself and correct any "conditions or practices which gave rise to the claim." Martell v. Antelope Valley Hospital Medical Center (1998) 67 Cal. App. 4th 978, 981.

One of the most important considerations when a claim is brought against the public entity is to look at whether the claimant followed the specified timing requirements because a failure to timely present a valid claim will completely bar a claimant from filing a lawsuit against the entity. Government Code § 911.2 provides two different timing requirements based on the type of claim that is brought against the entity. A claim relating to a cause of action for death, personal injury, or injury to personal property or growing crops must be presented to the public entity within six (6) months from the accrual of the cause of action. Government Code § 911.2(a).

According to Government Code § 810.8, the term "injury" is defined very broadly and encompasses damage to an individual's person, reputation, feeling, character, or estate. A claim relating to any other cause of action, including claims for damage to real property, breach of contract, or economic damage, must be presented to the public entity within one (1) year after the accrual of the cause of action. Government Code § 911.2(a).

To determine the date of the accrual of the cause of action one must look at the date at which the cause of action would accrue for the running of the statute of limitations if the cause of action were between private individuals, which is usually the date of injury. Government Code § 901. One thing to keep in mind is that the time limit to present a claim can be extended as a result of the delayed discovery rule. A cause of action only accrues when the claimant suspects or should suspect that a wrong has been done. Therefore, the date of accrual does not begin until this level of discovery and knowledge is present even if it is after the date of the actual injury.

Determining the date of accrual; however, becomes difficult for continuous injuries. For example, a cause of action for defamation may have multiple accrual dates if the original defamatory publication is republished. In a situation like this where the injury occurs over time, the claimant may pursue two different options. The claimant may either present multiple claims as the damage persists, for example with each subsequent defamatory publication, or the claimant may treat the injury in its entirety and present one claim from the date of the last event that occurred.

After determining whether a valid claim was brought against a public entity and whether the claim is within the specified time requirements, a claim must be presented to the public entity, according to Government Code § 915, either by delivering it to or mailing it to the clerk, secretary, auditor, or governing body. A mailed claim is considered to be presented and received at the time and date the claim is deposited in the mail. Government Code § 915.2. Either way gives adequate notice to the public entity that a claim is being brought against them. Government Code § 915.4.

It is essential to pay close attention to these timing requirements because if a claimant fails to timely present a claim for money or damages to the public entity, the claimant may be completely barred from filing a lawsuit against the entity and the entity

need only give the claimant notice that the claim was not timely filed pursuant to Government Code §§ 911.3 or 913.

Public Entity's Action/Response After a Claim is Submitted

When a public entity is presented with a claim, it has several options, including accepting the claim, rejecting the claim, providing notice that the claim is insufficient or untimely, or doing nothing. Government Code § 912.6. If the claim contains insufficient information, the public entity must provide notice within twenty days or this defense is waived. Government Code § 910.8. It must then wait another fifteen days prior to taking any action, during which time the claim can be amended. Government Code § 910.8. If the claim is untimely, the public entity must provide notice within forty-five days or this defense is waived. Government Code § 911.3(b).

A public entity has forty-five days within which to approve or reject a claim. However, the time period may be extended by written agreement if made before the forty-five (45) day time period expires or after the period expires if a lawsuit has not commenced and is not barred by the statute of limitations. Government Code § 912.4. Additionally, a public entity is permitted to reject a claim after the forty-five day deadline. Doing so is sufficient to trigger the six month deadline for the plaintiff to file suit.

Katellaris v. County of Orange (2001) 92 CA4th 1211, 1216. However, failure to provide proper notice of rejection causes the plaintiff to have two years from the date of accrual of the claim within which to file suit. This is the case even though the claim is deemed denied on the forty-fifth day after receipt. Government Code § 912.4.

No Response Option

It is important to note that a public entity has the option of not responding to a claim and merely allow it to lapse. For example, a public entity may decide a claim has no merit and responding to the claim will send a message to the claimant that the claim is legitimate and possibly encourage the claimant to pursue litigation. In addition, a public entity may determine that the time and resources it takes to respond to claims is not worth the benefits associated with the applicable government code. If a Public entity does not respond to a claim, the burden will remain on the claimant to file a lawsuit within the relevant statute of limitations.

Amendment of the Claim

Once a claim is timely presented to a public entity, it is important that the entity accurately reviews the claim to see whether it substantially complies with the content that must be included pursuant to Government Code §§ 910 and 910.2. If the claim fails to substantially comply, the entity has the option of issuing a written notice of insufficiency to the claimant within twenty days after the claim is presented, noting with particularity any defects or omissions. Government Code § 910.8. If the entity chooses to issue the notice of insufficiency, it cannot take action on the claim for a period of fifteen (15) days after the notice is issued. Government Code § 910.8. However, the

entity must be aware of the fact that if it decides not to give the claimant notice of insufficiency, then it waives any defense as to the sufficiency of the claim based on any of the claim's defects or omissions. Government Code § 911. If a notice of insufficiency is issued, then the claimant may amend the claim according to Government Code § 910.6. After the amended claim is presented, the entity then has forty-five (45) days within which to take action. Government Code § 912.4.

Response to Late Claim Relief

It is essential for a claimant to present a timely claim within the specified time period otherwise the lawsuit is completely barred. However, there are certain circumstances where the failure to present a timely claim may be excused. If a claim is required to be presented within six (6) months from the accrual of the cause of action and it is not presented within that time period, a written application for leave to present the claim may be made to the public entity within a reasonable time not to exceed one (1) year after the accrual of the cause of action. Government Code § 911.4. The key word is reasonable. If a claimant presents an application for leave to present the claim within one (1) year, but the time is not reasonable considering the cause of action, then the entity can deny the application.

Something to keep in mind is that circumstances involving mentally capacitated claimants and incarcerated claimants can toll the one (1) year period in which the claim must be brought. The time in which a claimant was mentally incapacitated and did not have a guardian or conservator appointed does not count towards that one (1) year period. Neither does the time in which a minor claimant is "detained or adjudged to be a dependent child of the juvenile court." Government Code § 911.4.

The public entity has forty-five (45) days within which to grant or deny the application unless a written agreement created before the expiration of the period extended the time period in which to respond. Government Code § 911.6. An entity should grant the application if the failure to present a timely claim was a result of a "mistake, inadvertence, surprise or excusable neglect and the . . . entity was not prejudiced in its defense of the claim by the failure to present the claim" in a timely manner. Government Code § 911.6. A late claim shall also be excused if the claimant was a minor, physically or mentally incapacitated, or died during the presentation time period. Government Code § 911.6.

If an application for leave to present a late claim is denied, the claimant may petition a superior court for an order relieving him or her from following Government Code § 945.4 requirements. Government Code § 946.6. If the court grants relief, then the lawsuit must be filed within thirty (30) days. Government Code § 946.6.

Implementing the Right Action Plan

While claims brought against public entities may at first appear to be confusing and overwhelming due to the fact that many of the general civil rules for a civil lawsuit

do not apply, the intricate government code sections can be easily deciphered to lay out the unique claim presentation procedure and responses required by a public entity when a claim is brought against them. It is in the best interest of a public entity to know the Government Code and implement a well thought out policy that allows the public entity to handle claims in an efficient manner and resolve just claims and defend against meritless claims.