



CALIFORNIA TORT CLAIMS ACT

aka 910 Claims

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OCTOBER 23, 2024

California Tort Claims Act (Gov. Code 810-998.3)

- Gives sovereign immunity for CA public entities (*but they still have vicarious liability for employees)
- Numerous exceptions including:
- **allows injury victims a limited opportunity to bring a claim and seek monetary damages**

Purpose of the Act

- (1) gives governmental entity an opportunity to settle just claims before suit is brought.
- (2) permits entity to make early investigation of facts on which a claim is based, enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

Requires a written claim to be presented to public entity. If you don't timely submit the claim, you can lose your right to sue!

- An action for "money or damages" may not be maintained against the "state" or a "public entity" unless a written claim has first been timely presented to the defendant and rejected in whole or in part. (With some exceptions that don't apply to us.)
- A claimant may present a claim, an amendment to a claim, or an application for leave to file a late claim by either delivering the document:
 - to the clerk, secretary, or auditor of the public entity, or mailing it to one of these people or to the entity's governing body at its principal office. [Govt C §915\(a\)](#);
 - Electronically, if expressly authorized by an ordinance or resolution of the public entity. Govt C §915(a).

“Money or damages”
includes tort
claims arising
from:

Negligence/Dangerous Cond.

Nuisance

Breach of statutory duties

Intentional wrongs.

Definition of “injury?”

- The Act defines "injury" to include death and injury to person, reputation, character, feelings, or estate that would be actionable if inflicted by a private person. [Govt C §810.8.](#)

Quick deadline!

- In most **California Tort Claim Act** claims (damage to personal property or injury to person), proper notice of a claim must be filed *within six months of the injury or accident*. Exception for minors filing late. See Gov. Code Gov. Code 911.6(b)(2).
- Concerning School Districts, DO NOT CONFUSE TORT CLAIM PROCESS with the Uniform Complaint Process! Good way to blow SOL
- Damage to real property must be filed within one year.

When is a claim deemed as “presented?”

- A mailed claim is deemed received when the claimant deposits it in the mail in a properly addressed postage-paid sealed envelope. [Govt C §915.2\(a\)](#). (*Note: differs for a claim against the state which requires also a fee to be deemed received*)
- These dates can be used to determine whether a claim presented to the department was commenced within the period provided by law. See Govt Code §911.2(b).

Defects on claim:

- Since laypersons generally file claims, courts have ruled they “need not adhere to the standards of clarity and precision expected in pleadings.” See *Martinez v County of LA* (1978) 78 CA3d 242.
- The public entity must give written notice of defects within 20 days, **or the entity waives its defense of insufficiency** (unless claimant gave no address to send the notice to).
- If the entity provides notice, the claimant has an opportunity to amend the claim to remedy any defect. Govt Code §910.6.
- “Substantial compliance” doctrine may be applied when defects in the contents of the claim exist – it is less likely to apply to requirements for the entity’s reply to the tort claim.

- Name/address of claimant and person to whom notices are to be sent
- Statement of “date, place, and other circumstances of the occurrence or transaction”
- Description of the indebtedness, obligation, injury, damage, or loss incurred, as far as they are known when the claim is presented;
- The name of the public employee who caused the injury, if known; and
- The amount claimed if less than \$10,000, on the date the claim is presented or
- If more than \$10,000, no dollar amount is to be included, but the claim must state whether the claim is to be a limited civil case (\geq to \$35,000).

What must be included on the claim?

(Note: claimants *need not* use forms provided by municipalities like City of LA)

1. ADDRESS OF CLAIMANT AND/OR TO WHOM NOTICE SHOULD BE SENT

If both addresses are absent, the entity need not give notice of rejection, making it difficult for the claimant to calculate the last day to file a complaint. A statement of the address of claimant's counsel substantially complies with the requirement that claimant's address be given.

2. DESCRIPTION OF CLAIM; FACTS; PRESERVING THEORIES OF RECOVERY

- “General description” of injury and statement of “date, place and other circumstances of the occurrence”
- Should be sufficient “for investigation and consideration of the claim” (but evidentiary detail is not required)
- If a complaint relies on more than one legal theory of recover, “the facts underlying each cause of action in the complaint must have been fairly reflected in a timely claim.” *Stockett v Association of Cal. Water Agencies Joint Powers Ins. Auth.* (2004) 34 C4th 441, 447.
- If contents of claim conflicts with a later filed complaint in court, it’s vulnerable to demurrer or motion for judgment on the pleadings. (Consider amending claim if new facts or legal theory are discovered)

INCLUSION OF ALL CLAIMANTS

the claim, courts have allowed it to cover them all. See Lucy v City of Monrovia (1974) 44 CA3d 152 (husband's claim sufficient to encompass claims of wife and child). Better to file separate claims.

- But if it's not clearly stated, one person's claim cannot cover others, even if it involves the same incident.
- Minors and incompetent persons must also timely comply with the claims presentation procedure.
 - **2 CAVEATS for MINORS:** If a minor claimant files a claim through the child's parents, **the parents, acting as guardians ad litem, must file their own claim for any separate and distinct injuries they may have suffered, including negligent infliction of emotional distress arising from witnessing the harm to their child that gave rise to the child's claim. Also: if the six month deadline is missed, a "late claim" may be filed if within 1 year of injury. If a late claim is filed within this period by a minor, it MUST be accepted. (Does not always happen but should). Gov. Code**
- Incapacity, mental disability, and inadvertence or mistake

4. Name of Public Employee Causing Injury or Damage

- If a name of employee is known, it must be included, or else claimant may waive right to sue public employee as an individual defendant.
- The employee must have been acting within the scope of his employment as a public officer or employee at the time of the alleged tortious act or omission.

5. Either Dollar Amount or Court's Jurisdiction Must Be Specified

- If damages (*both current and estimated future damages*) are expected to be under \$10,000, the claim must specify the amount claimed. Damages may include medical expenses, lost time from work, emotional distress, etc.
- If over \$10,000, the amount sought is not to be specified in the claim, but the claim must indicate whether it would be a limited civil case. Govt C §910(f).

6. Signature

- Claims do not require verification under oath.
- Attorneys and other third parties can sign on claimant's behalf. However, if a claimant later disavows the claim, the unauthorized claim may not bind the claimant.
- The signature of the person presenting the claim authenticates it and assures its truthfulness and reliability.
- Anyone who signs a false or fraudulent claim and presents it to the public entity is guilty of a misdemeanor or felony, depending on how charged, if the claim is presented with the intent to defraud the entity. **Penal Code §72.**
- **The lack of a signature is a waivable defect, as are other requirements of form. See Govt C §910.8.**

Sample worksheet:

**Damages
Incurred to
Date //
Estimated
Prospective
Damages as
Far as
Known**

Current/ Future expenses for medical and hospital care	\$_____
Current / Future loss of earnings	\$_____
Other current / prospective special damages	\$_____
Current / prospective general damages	\$_____
Total estimated damages	\$_____
Total amount claimed as of date of presentation of this claim	\$_____

What happens after submission of claim?

- Entity has **20 days** to give claimant written notice of any substantial defects or omissions that prevent the claim from substantially complying with the requirements of Govt C §§910 and 910.2 .
- The entity cannot take action on the claim for 15 days after it provides a notice of insufficiency. Govt C §910.8.
- Failure to do so constitutes waiver of any defense based on the defect or omission. Govt C §911.
- BUT entity is absolved from any duty to give a notice of defects if the claimant fails to supply an address to which such a notice may be sent.

By when must City respond?

- "Within 45 days after the claim has been presented." Govt C §912.4(a).
- (A claim is "presented" when it is placed in the mail. Mailing extends any period of notice or duty to respond by 5 days if the address is in CA, 10 days for outside CA, and 20 days if outside US. Certified mail receipt is acceptable proof.) I recommend emailing the claim as well. Receipt is often acknowledged via email if claim is sent this way, and then you do not have to worry as much about mail tracking, etc. **NOTE: Priority vs. Certified Mail +/- s**
- The public entity's failure to take action on the claim within 45 days is, by operation of law, deemed rejection of the claim. Govt C §912.4.
- **If the response vetoes for the failure to file within the six months (late claim" defense), but DOES NOT COMPLY w/mandatory language, even if claim is late this defense is waived and P. has 2 years to sue. (Gov. Code 911.3(b))**
- The 45-day limit to respond to a claim is not a jurisdictional provision and can be extended (e.g., claimant can agree, amended claim, reconsideration of rejected claim)

Amending Claims:

- Allowed before the prescribed period for claims presentation has expired (e.g., 6 mos), or before final action on the claim is taken by the public entity's governing board, whichever is later. Govt C §910.6.
- A timely amendment of a claim has the effect of extending the 45-day period within which the entity may take action on the claim, with the period starting when the amended claim is presented. *Potstada v City of Oakland* (1973) 30 CA3d 1022.
- **WARNING:** To qualify as an amendment, the document submitted by the claimant should be **carefully labeled as such** and should be formulated in amendatory language.

Determinations:

- Reject the claim entirely;
- Allow it in full;
- Allow it in part and reject the balance;
- Compromise;
- Do nothing for 45 days (the claim is denied by operation of law) BUT – writing after 45 days has been recognized.
- **NOTE:** Under [Govt C §912.6\(b\)](#), local public entities must pay the amount allowed on the claim, or in compromise of it, in the same manner as if the claimant obtained a final judgment for that amount against the local public entity. [Govt C §912.6\(c\)](#).
- If the claimant agrees in writing, the entity may pay the claim in ten installments for payment of judgments. [Govt C §912.6\(c\)](#). The rules re: interest on claims that are settled or compromised, absent an agreement to the contrary, are in [Govt C §906](#).

Deadline to file suit:

- If a public entity provides written notice of its action on the claim, and the notice contains the warning set out in Govt C §913(b), the claimant has 6 months after the date on which the notice is personally delivered or deposited in the mail to file a court action on the claim. Govt Code §945.6.
- **WARNING:** When notice of action is mailed, **the date on which the written notice is deposited in the mail is the date that triggers the 6-month statute of limitations** to bring an action, not the date of receipt. *Childs v State* (1983) 144 CA3d 155, 160.

If Notice is Not Given:

If a public entity fails to provide written statutory notice under Govt C §913, the applicable statute of limitations is extended to 2 years after the cause of action accrues rather than 6 months after notice is given. **Govt Code §945.6**. NOTE: Language for reply MUST follow 913, if written notice with 45 days is non-compliant, the two years also applies – but must be argued.

Nutshell of timeline

- **Date of injury: July 1, 2021**
- Claim must be submitted (mailed, or electronically if authorized) within 6 months of accident or injury (**i.e., by January 1, 2022**)
- Entity has 20 days from date claim is presented to to serve notice of defects in claim; claimant has chance to amend
- Entity has 45 days to make determination
- If entity does not respond, it's deemed denied
- If there is a written response, deadline to file lawsuit is 6 months; otherwise 2 years



[Home](#) > [Clerk Services](#) > [CPS](#) > [File a Claim](#)

File A Claim/Reward Application

Claim for Damages

A Claim for Damages can be filed if you feel that you have lost money or property as a result of any action or inaction by the City.

Claims for Damages may be submitted using the online form below and are processed by the Office of the City Attorney. If you experience difficulties completing the online form or have any questions regarding how to file your Claim for Damages, please visit the City Attorney's webpage for important information on the claims process and alternative ways to submit your claim form.



[Claim for Damages Online Form](#)



[City Attorney Claims Division Webpage](#)

Claim For Damages

Claimant

Select Prefix... First * Middle Last * Suffix

Birth Date of Claimant (mm/dd/yyyy)

Email Address

Sex

 Male Female

Home Address of Claimant

City

State

Zip Code

Home Telephone Number

Business Address of Claimant

City

State

Zip Code

Business Telephone Number

Give address to which you desire notices or communications to be sent regarding this claim

City

State

Zip Code

How did DAMAGE or INJURY occur? Please include as much detail as possible.

When did DAMAGE or INJURY occur? Please include the date and time of the damage or injury. (mm/dd/yyyy)

Where did DAMAGE or INJURY occur? For all accident claims, please upload a picture of a hand drawn diagram with the street names and addresses or measurements from specific landmarks.

Street City State Zip

What particular ACT or OMISSION do you claim caused the injury or damage? Please give names of City employees causing the injury or damage and identity any vehicles involved by license plate number, if known.

What DAMAGE or INJURIES do you claim resulted? Please give full extent of injuries or damages claimed

What is the AMOUNT of your claim?

Please itemize your damages

Attorney Information:

Name Prefix First Name (or Company) Middle Last Suffix

Address City State Zip Code

Phone

Email

Please list names and addresses of Witnesses, Doctors and Hospitals:

Type

Name Prefix

First Name (or Company)

Middle

Last

Suffix

Address

City

State

Zip Code

Type

Name Prefix

First Name (or Company)

Middle

Last

Suffix

Address

City

State

Zip Code

Type

Name Prefix

Select Prefix...

First Name (or Company)

Middle

Last

Suffix

Address

City

State

Zip Code

If you have received any insurance payments, please give the names of the insurance companies

FOR ALL ACCIDENT CLAIMS, PLEASE UPLOAD A DIAGRAM OR SIMPLE SKETCH, INCLUDING STREET NAMES, OF THE STREETS WHERE THE ACCIDENT OCCURRED, AND THE NEAREST CROSS STREETS. INDICATE THE PLACE OF THE ACCIDENT BY AN "X" AND BY SHOWING THE NEAREST ADDRESS AND DIS [Click Here](#)

Attach your diagram

Select files...

Diagram area with a signature line and a "Please sign above" label.

* signature is mandatory



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