California Government
Tort Claims Act

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The Government Claims Act

“... except as otherwise provided by statute [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” (G.C. § 815.)
The Government Claims Act also includes claim presentation requirements (G.C. §§900-935.7) and other matters relating to legal actions against public entities and employees, including statutes of limitation and petitions for relief from the claim presentation requirements.
The procedural requirements for claim presentation are prerequisites to litigation against a public entity or employee based not only on tort liability, but *any* state law claim for "money or damages" (G.C. §945.4), including breach of contract claims.
Subject to certain exceptions, 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 entity and rejected in whole or in part. (G.C. §§905, 905.2, 945.4.)
Purpose of Claims Presentation

Statutes:

The claims presentation requirements serve two basic purposes:

(1) they give the governmental entity an opportunity to settle before suit is brought; and

(2) they permit the entity to make an early investigation of the facts.
The claims procedures in the Government Claims Act apply to all claims for "money or damages." (G.C. §§905, 905.2.)
“Money or “Damages”

“Money or damages" is comprehensive and includes tort claims arising from:

• Negligence
• Nuisance
• Breach of statutory duties
• Dangerous condition of public property
• Intentional wrongs, such as:
  – Fraud
  – False arrest
  – Assault and battery
  – Defamation
  – Intentional Infliction of Emotional Distress
Breach of contract actions seeking damages are also claims for "money or damages."
Can a Claimant Rely on Another Party’s Claim?

A party can present a claim on behalf of multiple claimants (G.C. §§910, 910.2) but if that claim cannot be read to expressly include a claimant, that potential plaintiff cannot use that claim. Even though another party may have presented a claim that provided full information to the entity about the alleged basis of liability, which fully applies to the excluded plaintiff, that plaintiff's failure to present a timely claim on his or her own account will bar the plaintiff's action.
Examples:

• Claim filed by minor against medical center for malpractice that did not name parents as claimants or describe any injury to them was insufficient to support causes of action by plaintiff's parents for negligent infliction of emotional distress (*Nguyen v. Los Angeles* (1992) 8 CA4th 729);

• Personal injury claim by victim held insufficient to satisfy heirs’ duty to file claim for wrongful death when victim later died (*Lewis v. San Francisco* (1971) 21 CA3d 339);

• Wrongful death claim presented by widow on her own behalf held insufficient to constitute compliance on behalf of decedent's daughter (*Peterson v. Vallejo* (1968) 259 CA2d 757)
If the plaintiff relies on more than one legal theory of recovery, “the facts underlying each cause of action in the complaint must have been fairly reflected in a timely claim.” As long as the facts underlying each cause of action in the complaint were fairly reflected in the timely claim, then the claim served its purpose, i.e., to provide the entity with sufficient information to investigate and evaluate the claim.
A cause of action subject to the statutory claim procedure must allege either that the plaintiff complied with claims presentation requirements, or that a recognized exception or excuse for noncompliance exists.
If a plaintiff alleges compliance with claims presentation requirements, but the entity's files show no compliance, the entity can request that the court take judicial notice under Evid. Code §452(c) that the entity's records do not contain a claim.
Roster of Public Agency Filing

Public agencies should maintain a current filing with the Secretary of State of the entity's Statement of Facts, required pursuant to G.C. §946.4. A failure to maintain current information could result in loss of the protections of the Tort Claims Act.
“Public agency” includes a district, a public authority, public agency and any political subdivision in the State, but does not include the State, a county or a city. (G.C. §53050)
Government Code section 946.4 provides:

“(a) Where provision is made by or pursuant to law that no suit may be brought against a public agency as defined in Section 53050 unless and until a claim is presented to the agency, the failure to present a claim does not constitute a bar or defense to the maintenance of a suit against such public agency if, during the 70 days immediately following the accrual of the cause of action:
(1) **No statement** pertaining to the public agency is on file, or **is placed on file**, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, as required by Section 53051; or

(2) **A statement or amended statement** pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, **but the information contained therein is so inaccurate or incomplete that it does not substantially conform to the requirements of Section 53051.**
(b) On any question of fact arising within the scope of paragraphs (1) and (2) of subdivision (a), the burden of proof is upon the public agency ...”
Public entities lose the protections of the Tort Claims Act entirely where there has been no filing of any kind. Further, public entities are vulnerable to losing the protections of the Tort Claims Act where the information in the filing is "so inaccurate or incomplete that it does not substantially conform to the requirements of Section 53051."
Government Code section 53051 provides:

“(a) Within seventy (70) days after the date of commencement of its legal existence, the governing body of each public agency shall file with the Secretary of State on a form prescribed by the Secretary of State and also with the county clerk of each county in which the public agency maintains an office, a statement of the following facts:

1. The full, legal name of the public agency.
2. The **official mailing address** of the governing body of the public agency.

3. The **name and residence or business address of each member of the governing body** of the public agency.

4. The **name, title, and residence or business address of the chairman, president, or other presiding officer, and clerk or secretary** of the governing body of such public agency.
(b) **Within 10 days after any change** in the facts required to be stated pursuant to subdivision (a), an **amended statement** containing the information required by subdivision (a) **shall be filed** as provided therein. The information submitted to the Secretary of State shall be on a form prescribed by the Secretary of State.

(c) It shall be the duty of the Secretary of State and of the county clerk of each county to establish and maintain an indexed "Roster of Public Agencies," to be so designated, which shall contain all information filed as required in subdivisions (a) and (b), which roster is hereby declared to be a public record.”
A danger lies in allowing information in a filing to become inaccurate or incomplete. Courts have held that claimants are entitled to completely ignore the claims presentation requirements of the Tort Claims Act when information is too inaccurate or incomplete.
Even more onerous is the California Supreme Court's holding that a claimant, in failing to file a tort claim, does not need to show that they were confused by the public agency's filing. (*Wilson v. San Francisco Redevelopment Agency* (1977) 19 Cal.3d 555.) Therefore, even if a claimant was actually aware of the requirements to file a tort claim, and their failure was not caused by any information contained in the public entity's Statement of Facts on file with the Secretary of State, the claimant is still excused from the requirements of filing a tort claim.
Recommendations:

It is recommended that public entities regularly update their Statement of Facts on file with the Secretary of State. Handouts include a copy of the form taken from the Secretary of State's website for the filing of this information.
Specifically and most importantly, the legal name and official mailing address must be completely accurate for all filings. Further, anytime the legal name or the official mailing address of the public entity is changed, this filing must be updated. A change of this nature affects the information needed by any claimant to properly present a tort claim to the public entity. Failure to include this current information has been held to be per se non-compliance, and the protections of the Tort Claims Act are lost.
Anytime an election has resulted in a change of board members, the chairman, president, presiding officer, secretary, or clerk, a new filing should be made updating the most current information.
Excepted Claims (Not for Money or Damages)

Examples:

- Petition for Writ of Mandamus:
  A proceeding in mandamus seeking an order compelling a public officer to perform a mandatory duty to disburse public funds allegedly detained wrongfully is not an action for "money or damages" within the meaning of G.C. §905.2.
  
  A request for back pay and benefits incidental to a mandamus action for reemployment is not a claim for money and damages within the scope of G.C. §905. But other employment claims may be.
Excepted Claims (Not for Money or Damages) (cont)

- Suit for injunctive relief
- Claims under the Fair Employment & Housing Act (FEHA) are not subject to the claims procedure. But non-FEHA employment claims are not exempt.
- Federal claims, such as claims based on violation of civil rights statutes (42 U.S.C. §1983, 42 U.S.C. §1981) are not subject to claim procedure.
Excepted Claims (Not for Money or Damages) (cont)

• Claims against the Regents of the University of California are expressly excluded from the claims procedures by G.C. §905.6. (See G.C. §943.)
The same claim requirements apply to claims against public employees. The employee must have been acting within the scope of his employment as a public officer or employee at the time of the alleged tort.
Government Code section 910(e) requires that the claimant state the name of the public employee only "if known."
Exception: If the plaintiff did not know or have reason to know, "within the period for the presentation of a claim to the employing public entity," that the injury "was caused by an act or omission of the public entity or by an act or omission of an employee,” compliance is not required. (G.C. §950.4.)
“Substantial Compliance”

If a claim provides the entity with timely notice of the nature of the claim, a court may hold that the claim “substantially complied” with statutory requirements for a valid claim and that it should therefore be treated as valid, despite technical deficiencies.
“Substantial compliance” cannot cure total omission of an essential requirement for a valid claim. Substantial compliance excuses claims that give public entities the essential information they need despite the claims' deficiencies; but a claimant who omits essential information cannot invoke substantial compliance.
The substantial compliance doctrine cannot cure a claimant's failure to attempt to comply meaningfully with the claims statutes. The doctrine does not apply if the claimant does not attempt to present a claim, but later contends that some other document served the same purpose as a claim.
Examples:

The Court held that two letters sent by an attorney advising the public entity of a demand for monetary damages and threatening litigation if not resolved was insufficient to constitute a Tort Claim because the time frame provided for by the attorney for the public entity to respond did not adhere to the procedures in the Tort Claims Act (Shaefker Dixon v. Santa Ana (1996) 48 CA4th 524.).

A series of documents cannot collectively constitute substantial compliance with the Tort Claims Act (Dilts v. Cantua Ele Sch Dist (1987) 189 CA3d 27).
Actual notice of the alleged circumstances is not an excuse for failure to comply with the Tort Claims Act.
Substantial compliance does not apply if a claim is presented to the wrong public entity.
Waiver & Estoppel Excuses:

Waiver and estoppel may be asserted to excuse noncompliance with claims presentation statutes.

Waiver is the intentional relinquishment of a known right after full knowledge of the facts; estoppel, however, applies when the conduct of one side has induced the other to take such a position that it would be injured if the first should be permitted to repudiate its acts.
Estoppel often results from false or misleading statements or concealments about the claim or its settlement:

- made by the entity's employees or agents;
- with knowledge of the claims procedure;
- to a claimant or someone acting for him or her who is ignorant of the procedure;
- when the claimant detrimentally relies on the statements or concealments.
Required Elements of a Claim:

The essential contents of a claim include:

• The names and addresses of the claimant and the person to whom notices are to be sent;
  • A statement of the "date, place, and other circumstances of the occurrence or transaction";
  • A 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.

(G.C. §910)
An entity cannot refuse to accept claim because it wasn’t on that entity’s special form.
Time Limits for Presentation

Claims "relating to" causes of action for death, injury to person, injury to personal property, and injury to growing crops must be filed **within 6 months** (or 182 days) after a cause of action accrues.

Claims relating to "any "other" cause of action (e.g., damage to real property and most actions for breach of contract) must be filed within 1 year after accrual. (G.C. §911.3.)
A mailed claim is deemed received when the claimant deposits it in the mail in a properly addressed, postage-paid sealed envelope. (G.C. §915.2(a).)
Accrual of Cause of Action:

A claim must be presented within 6 months or, if appropriate, 1 year “after the accrual of the cause of action." (G.C. §911.2(a).) The accrual date marks the starting point for calculating the claims presentation period.
A cause of action for defamation may have multiple accrual dates if the original publication of the defamatory statement is republished.

In certain cases, the delayed discovery rule may extend the time limit to present a claim.
Childhood Sexual Abuse:

Under CCP §340.1, actions against public entities for childhood sexual abuse are exempt from the claims presentation requirements for conduct occurring after January 1, 2009. (G.C. §905(m).) For conduct occurring before January 1, 2009, a timely claim is a prerequisite to maintaining an action for negligence arising out of sexual abuse, notwithstanding CCP §340.1, which extends the time during which an individual may bring an action for childhood sexual abuse. A cause of action based on sexual molestation when the molestation is continuous accrues on the date of the last act of molestation.
Statute of Limitations for Childhood Sexual Abuse:

Code of Civil Procedure section 340.1 provides in relevant part:

"(a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:
(1) An action against any person for committing an act of childhood sexual abuse.

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the Plaintiff.

(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the Plaintiff.”
Notice of Insufficiency:

Within 20 days after a claim is presented, the public entity may give the claimant written notice of any substantial defects or omissions that prevent the claim from substantially complying with the requirements of G.C. §§910 and 910.2. The entity cannot take action on the claim for 15 days after it provides a notice of insufficiency. (G.C. §910.8.)
Failure of the entity to provide this notice constitutes waiver of any defense based on the defect or omission. (G.C. §911.)
Example of Claim & Notice of Insufficiency
Amendment of Claim:

The Act also authorizes amendment of a claim before the period for claims presentation has expired, or before final action on the claim is taken by the entity, whichever is later. (G.C. §910.6.) This means that a claim may be amended and any defects cured, even after it has been rejected, as long as the time allowed to present claims has not expired.
45-day Rule:

The public entity must act on a claim “within 45 days after the claim has been presented.” (G.C. §912.4(a).)
A claim is "presented" when it is placed in the mail, not when it is received. Mailing extends any period of notice or duty to respond by 5 days if the address is in California, 10 days for addresses outside of California, and 20 days if the place of address is outside of the United States. (G.C. §915.2(b).)
If the claim is delivered or mailed to the wrong address, but the correct recipient ultimately received it, presentation occurred on actual receipt. (G.C. §915(e).)

An entity's failure to take action on the claim within 45 days is, by operation of law, deemed rejection of the claim. (G.C. §912.4.)
The board of a public entity is authorized, within 45 days to:

- Reject the claim entirely;
- Allow it in full;
- Allow it in part and reject the balance;
- Compromise it, (G.C. §912.6(a)); or
- Do nothing, and allow the claim to be denied by operation of law (G.C. §912.4(c)).
The public entity must give written notice of its action on a claim, or of the inaction that, under G.C. §912.4, constitutes a rejection of the claim by operation of law. (G.C. §913).
If an entity fails to provide statutory notice under G.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. (G.C. §945.6.)
Even if the entity does not give the §913 notice within 45 days of the claim's presentation, and the claim is deemed rejected by operation of law, the entity can still serve a §913 notice any time. Once it does so, the 2-year statute of limitations is superseded by the 6-month statute of limitations, which runs from the date the entity delivered or mailed the §913 notice.
Example of Notice.
Late Claims:

When a claim that is required to be presented within 6 months after accrual of the cause of action is presented late (without an application to present a late claim), "the board or other person designated by it may, at any time within 45 days after the claim is presented, give written notice to the person presenting the claim that the claim was not filed timely and that it is being returned without further action." (G.C. § 911.3(a).)
Example of Notice.
If the public entity does not provide this notice within 45 days after the claim is presented, any defense on the time limit to present a claim is waived. (G.C. §911.3(b).)
Example of “Hybrid Rejection.”
Late Claims Procedure:

The failure to present a claim within the 6-month claim presentation period may be excused on a showing of special circumstances. (G.C. §§911.4, 911.6, 911.8, 912.2, 946.6.) The late claim procedure applies only to 6-month claims and is not available for claims that are late under the 1-year rule.
The claimant must first apply to the entity for leave to present the claim after the 6-month period has expired. (G.C. §911.4(a).) The application must be presented within a reasonable time not to exceed 1 year after the accrual of the cause of action. (G.C. §911.4(b).)
The entity has 45 days to grant or deny the application (G.C. §911.6(a).) Failure to act within that period operates as denial of the application on the 45th day. (G.C. §911.6(c).)
If the entity denies the application, the claimant has 6 months in which to petition the court for an order for relief from the requirement of G.C. § 945.4 that a timely written claim be presented. (G.C. § 946.6(a)-(b).) Failure to petition the court after denial of the application, unless excused, (e.g., because of equitable estoppel), usually bars action on the claim.
If the court grants the petition, the claimant must file a civil lawsuit within a special 30-day limitations period. (G.C. §946.6(f).)
The entity must grant the application to present a late claim if the failure is due to one or more of the following:

- mistake, inadvertence, surprise, or excusable neglect (and there has been a no prejudice to the entity);
- Claimant's minority status during the entire claim presentation period;
- Claimant's mental or physical incapacity during the entire claim presentation period; and
- Claimant's death during the claim presentation period. (G.C. § 911.6.)
“The time during which the person who sustained the alleged injury . . . is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted” toward the 1-year deadline for presenting the claim. (G.C. § 911.4(c)(1).)
After considering the late claim application, the entity may grant the request, in which case the claim attached to the application is deemed to have been presented to the board on the day the request is granted. (G.C. §912.2.) Thereafter, the governing board must grant or deny the claim itself, within 45 days.
Alternatively, the governing board may deny the application for late claim relief on the ground that:

• It was not timely presented;

• Adequate proof of one or more of the statutory grounds for late claim relief was not presented; or

• The entity was prejudiced by the delay, and the ground asserted for relief is mistake, inadvertence, surprise, or excusable neglect.
The entity must give written notice (under G.C. §915.4) to the claimant (or designee) of the action taken on the application. (G.C. §911.8(a).) If the application is denied, the written notice must contain a warning concerning the limitations period for filing a §946.6 petition and the right to consult an attorney in substantially the form specified in G.C. §911.8(b).
Example of Notice.
Thank You

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