

PUBLIC ENTITIES AND THE CLAIM PRESENTATION STATUTE

—ACCEPT, REJECT, PROVIDE NOTICE, OR DO NOTHING?

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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 Section 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. Cal. Gov. 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 Section 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 Hosp. Med. Ctr.*, 67 Cal. App. 4th 978, 981 (1998).

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 Section 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. Cal. Gov. Code § 911.2(a).

According to Government Code Section 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 year after the accrual of the cause of action. *Id.* at § 911.2(a).

To determine the date of the accrual of the cause of action, one must look at the date on 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. *Id.* at § 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

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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. Cal. Gov. Code § 915.2. Either way gives adequate notice to the public entity that a claim is being brought against it. *Id.* at § 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 section 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. Cal. Gov. Code § 912.6. If the claim contains insufficient information, the public entity must provide notice within twenty days or this defense is waived. *Id.* at § 910.8. It must then wait another fifteen days prior to taking any action, during which time the claim can be amended. *Id.* If the claim is untimely, the public entity must provide notice within forty-five days or this defense is waived. *Id.* at § 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-day time period expires, or after the period expires if a lawsuit has not commenced and is not barred by the statute of limitations. *Id.* at § 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*, 92 Cal. App. 4th 1211, 1216 (2001). 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. Cal. Gov. 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 allowing 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 could 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 Sections 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. Cal. Gov. 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 days after the notice is issued. *Id.* 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. *Id.* at § 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 days within which to take action. *Id.* at § 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 months from the accrual of

the cause of action and it is not presented within that time period,

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a written application for leave to present the claim may be made to the public entity within a reasonable time not to exceed one year after the accrual of the cause of action. *Id.* at § 911.4. The key word is "reasonable." If

a claimant presents an application for leave to present the claim within one 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 incapacitated claimants and incarcerated claimants can toll the one-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-year period. Neither does the time in which a minor claimant is "detained or adjudged to be a dependent child of the juvenile court." *Id.*

The public entity has forty-five 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. *Id.* at § 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. *Id.* A late claim

shall also be excused if the claimant was a minor, physically or mentally incapacitated, or died during the presentation time period. *Id.*

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 Section 945.4 requirements. *Id.* at § 946.6. If the court grants relief, then the lawsuit must be filed within thirty days. *Id.*

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.



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