


**50<sup>th</sup>**  
*Anniversary*  
PARMA Annual Conference  
February 20-23, 2024  
Indian Wells, CA

# Responding to government claims: Getting it right and why it matters

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# **MODERATOR**

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**SPEAKERS**  
**SPEAKERS**  
**SPEAKERS**  
**SPEAKERS**



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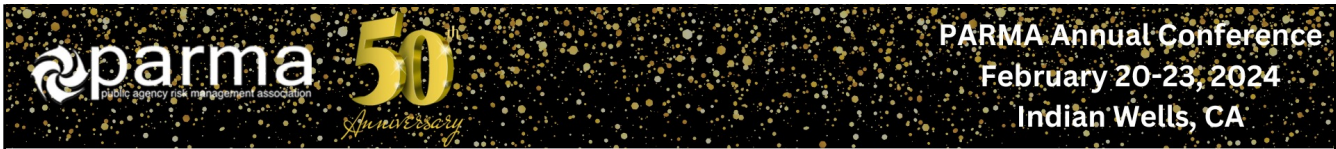
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Why is it important to understand the government claims requirements?

- Protracted expensive litigation
- Increasingly large jury verdicts and hard market for insurance
  - *Zachary Rowe v. County of San Mateo* – Tree fell on 12-year boy. Settlement - \$47.5 million settlement
  - *Stephen De La Cruz/Summer Johnson v. Town of Apple Valley* - Teenager crossing highway at controlled intersection is killed on his way to school. Jury verdict - \$60 million verdict
  - *Jane Neeley v. State of California* acting by and through the Department of Transportation- Tree branch fell on passing motorcycle and driver - \$16,420,725 million verdict
- Protect against paying on meritless claims

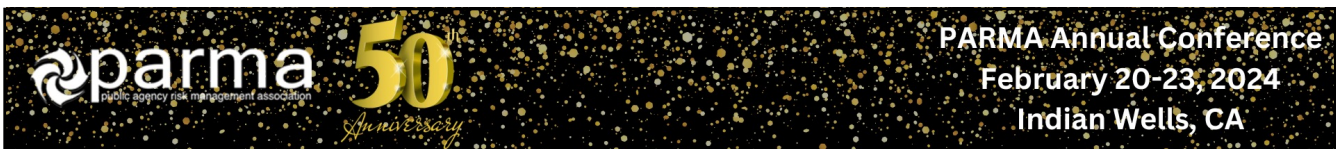
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## The California Government Claims Act (Government Code sections 810-996.6)

- No lawsuit for money or damages may be brought against a public entity until a claim has been presented to a public entity and has been acted upon by the board or has been deemed to have been rejected upon by the board. Government Code Section 945.4
- A party filing suit for money or damages against a public entity must allege facts demonstrating compliance or excusing compliance with the government claims act. Failure to do so could subject the lawsuit to dismissal.
- A public entity may be estopped from arguing noncompliance with the Government Claims Act if a claimant has been misled as to the procedural and time requirements of the claim statute.

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## AGENDA

1. Purpose of California's Government Claims Act
2. Contents and presentation of a government claim
3. Suggestions for claim handling
4. Notices of insufficiency and untimeliness
5. Applications to submit a late claim
6. Petitions to the court for relief
7. Rejections on the merits
8. Proofs of service
9. Lessons learned
10. Questions

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### What is the purpose of the government claims act?



Provides the public agency 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



Helps avoid unnecessary legal fees by avoiding immediate suit


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### Requirements for a government claim

- 01** Name of the claimant
- 02** Mailing address to which notices should be sent
- 03** The date, place and circumstances giving rise to the claim
- 04** A general description of the injury, damage or loss for which the claimant seeks payment

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## More requirements of a government claim

- The name of any public employee causing the loss, if known.
- 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, the claim must indicate whether the claim would be a limited civil case (\$25,000 or less). (California Government Code Section 910)
- The claim must be signed.

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## How does a claim need to be presented?

- Addressed to the clerk, secretary, auditor, or the governing body of the public agency. (See California Government Code Section 915).
- Claim can be presented by the following methods:
  - Mail. If sent by mail, the claim is considered “presented” on the date it is deposited in the United States mail, not the date it is received by the public agency, if ever (See California Government Code Section 915.2).
  - In person. A government claim can be presented in person. The date presented would be the date it was presented in person to the clerk, secretary, auditor or other governing body of the public agency.
  - Electronically. The government claim can be presented electronically if the public agency has passed a resolution allowing electronic service of claims. The date of the claim is presented would be the date the email was sent.
    - If someone does submit a claim electronically, that person is consenting to service of notices from your agency via electronic means as well.
- If an appropriate public employee or board never receives the claim, an undelivered or misdirected claim fails to comply with the statute. *DiCampi Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991-994.

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### Are these claims?






- A letter on personal stationary ranting for 25 pages about road conditions in your city?
- A draft complaint alleging property damage to a personal home.
- A voice message left on the City Clerk’s office phone number describing a tree branch that fell and injured the person’s leg.
- An email sent to the police department describing an auto accident and alleging dangerous design of a city intersection.

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### Substantial compliance

-  Courts will recognize a claim if it substantially complies with the requirements of the Government Claims Act.
-  The claim fulfills the purpose of the Government Claims Statute if it gives the public agency notice so that it can investigate and settle those claims that have merit without litigation.
-  A claimant must make clear that he or she intends to sue if their demands are not met.
-  There must be a demand for money damages or estimate of prospective damages, injury, or loss.
-  There is a difference between an inadequate claim and no claim at all.

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### Is this letter a claim?


- Any document received by a public agency indicating that monetary damages are sought, and that litigation may ensue, should be treated as a claim
- An untimely, or incomplete document simply determines how the claim will be handled by your district
- Your agency may provide forms, but a person presenting a claim may use the form or may submit documentation that substantially satisfies the requirements of California Government Code Sections 910 and 910.2
- A failure to treat the document as a claim may result in a loss of claim defenses (California Government Code Sections 910.8, 911)
- A public entity may only take no action if the document fails to provide any return address

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### You received the claim. Now what?


Your agency should have a designated person in charge of processing claims on behalf of the agency.



Should be date stamped when received

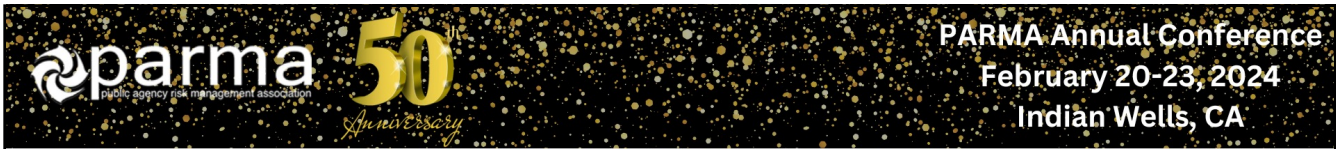


Should be entered into a database



The outer envelope should be stapled to the original claim and kept

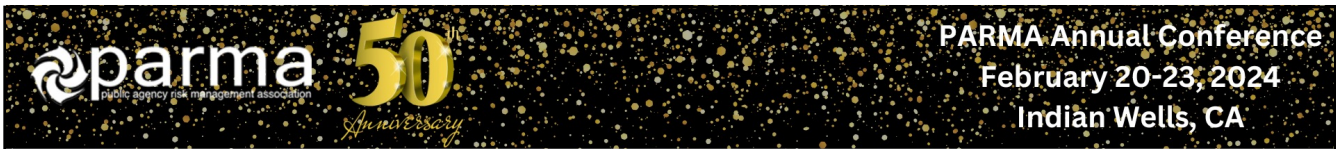
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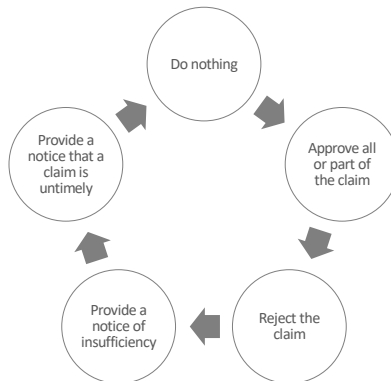
### Critical steps in document retention?

- Your agency should have a designated person in charge of processing claims on behalf of the agency.
- All documents considered as claims that are received:
  - A copy of the claim and envelope should be made and stored in a manner consistent with your records retention policy
  - All notices to a claimant should include a “proof of mailing” and copied for the record. They should be mailed to the address provided by the claimant. You may wish to use United States Postal Service tracking options such as Certified Mail or Return Receipt when issuing notices

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### How should my agency respond to claims?



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### Do nothing?

Doing nothing is not a preferred option but may delay litigation or avoid unfavorable publicity

If you don't take action on a claim within the period allowed by statute (45 days), the claim is deemed automatically rejected by law on the 45th day or last day of the extended period


Results in a 2-year statute of limitations from the date of incident. You may shorten the 2-year statute of limitations by sending a notice of rejection by operation of law.

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### Approve all or part of the claim?



APPROVING A SMALL CLAIM (UNDER \$10K) MAY AVOID IT BECOMING A LARGER CLAIM




YOUR AGENCY CAN ATTEMPT TO NEGOTIATE THE CLAIM OR OBTAIN AN AGREED EXTENSION



AS A PRACTICAL MATTER, THIS IS RARELY DONE

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## You decide on a notice of insufficiency...What is it?

- If the claim does not provide the required information, the entity should give notice of the insufficiency, stating which details are missing (California Government Code Section 910.8)
- The public agency may not take action on a claim for 15 days after sending a notice of insufficiency (California Government Code Section 910.8).
- The public agency must provide written notice of the missing details within 20 days after the claim is presented.
- Review any Dangerous Condition of Public Property claim carefully for potential insufficiencies. The claimant must identify the particular condition.

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## Why are notices of insufficiency important?

- It may be used as a vehicle for fact-finding, allowing an entity to investigate the facts giving rise to the claim.
- It may preclude a claimant from advancing a vague theory (or theories) regarding the cause of the incident by compelling the claimant to allege a specific theory (or theories) regarding the cause.
- The claimant will not be able to later allege different or additional theories in a complaint if they were not originally set forth in the claim.
- A court may later be able to dismiss a lawsuit if it alleges facts or theories outside those included in the government claim if a notice of insufficiency was sent.

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## Notice of insufficiency sample

NOTICE OF INSUFFICIENCY OF CLAIM AND  
RETURN WITHOUT ACTION

Date: \_\_\_\_\_ Date of Claim: \_\_\_\_\_

To: \_\_\_\_\_


This is to advise you that your Claim has been reviewed, evaluated, and found to be deficient for the reason(s) circled below:

1. The Claim fails to state the name and mailing address of the claimant.
2. The Claim is not signed.
3. The Claim fails to state the mailing address to which the person desires notices to be sent.
4. The Claim does not provide enough information to determine when, where, and/or how the incident/accident occurred.
5. The Claim does not provide enough information to determine what the loss, damage, or injury is.
6. The Claim does not provide enough specific information to determine what, if anything, the public entity did or failed to do to create liability exposure.
7. The Claim does not comply with Government Code 910(f) as to the amount sought or the court of appropriate jurisdiction.
8. The Claim does not provide the name(s) of any of our employees who may be responsible for the incident/accident.
9. The Claim does not comply with Government Code 910.4(a) in that all claims against a public entity shall be submitted on a claim form supplied by the public entity.

The Claim will not be acted upon for fifteen (15) days from the date of this Notice to allow for your amendment of this Claim.

**WARNING:** A claim that is deficient or does not contain sufficient information, as required by law, may not be considered to have been filed in a timely manner and may prevent the prosecution of a lawsuit based on the incident/accident which is the subject of this Claim.

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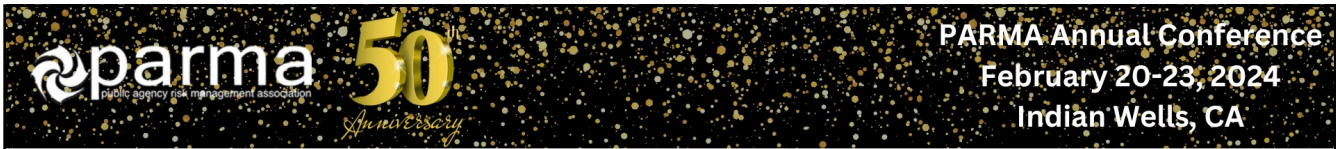
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## Can an insufficient claim be cured?

- The claimant can present an amended claim before the expiration of claim period, or final action is taken, which ever is later.
- The amendment is considered part of the original claim.
- The Board has 45 days to act on the amended claim.
- What if the claimant amends after final action is taken but within the claim period?

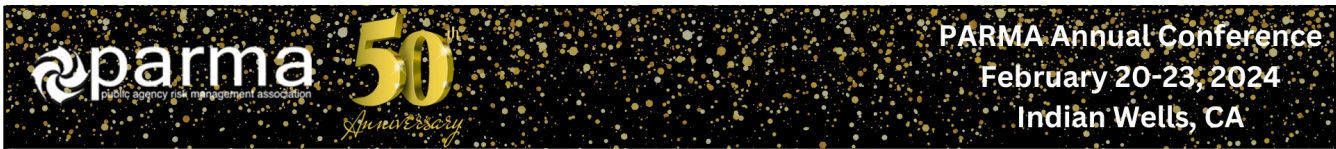
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### Notice of untimeliness

- If a claim is not presented in the time allowed, the public entity may return the claim without any further action taken.
- Notice is to be provided to the claimant using the specified language per California Government Code Section 911.3(a)
- Notice must be given within 45 days after the claim is presented per California Government Code Section 911.3
- A notice of untimeliness should be given even if there are other items about the claim that are insufficient.

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### Notice of untimeliness sample

**NOTICE OF RETURN, WITHOUT ACTION, OF A CLAIM REQUIRED TO BE FILED WITHIN SIX (6) MONTHS**

To: \_\_\_\_\_ Date: \_\_\_\_\_


Dear: \_\_\_\_\_

The Claim you presented to (Name of Entity) on (Date) is being returned to you because it was not presented within six (6) months after the incident/ accident 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. Your only recourse at this time is to apply, without delay, to (Name of 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 911.6 of the Government Code.)

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. If you dispute the Entity's conclusion that your claim was untimely, the following warning may apply.

**WARNING:** Subject to certain exceptions, you only have 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.)

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What is untimely?

- 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).
- A claim relating to any other cause of action (*i.e.*, a contract claim or a claim for damage to real property) must be presented within one year after the accrual of the cause of action. See Government Code Section 911.2.

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What about timeliness and these claims?

- A claim with both real and personal property?
- A claim for inverse condemnation that includes alleged emotional distress related to the loss of a house?
- A claim with multiple dates included as the date of loss?
- A claim with no date of loss?

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## When does the cause of action accrue?

- Consult with your agency's attorney or claims manager regarding when a specific cause of action accrues.
- Generally, a claim accrues when the injury or damage occurs giving rise to a cause of action (i.e., the date of the auto accident or the date of the damage to claimant's property). Government Code Section 901.
- Claims for indemnification accrue when the claimant is served with a lawsuit.
- The date of accrual can vary depending on various circumstances. The following is a partial list of circumstances in which the date of accrual may vary:
  - Claims based on the "late discovery rule." There are occasions when the cause of action does not accrue until the injury or damage is actually discovered or, with reasonable diligence, should have been discovered.
  - An example may be medical malpractice which is not actually discovered for many months, or sometimes years, after the actual surgery or procedure.
  - Claims in which the cause of action does not accrue at the initial alleged injury but at the conclusion of a series of events. An example could be a claim for malicious prosecution in which the claim accrues as of the date of exoneration by a court hearing.
  - Claims on behalf of minors, generally, must be presented within six (6) months of the date of injury or damage. However, the cause of action for injuries to a minor accrues at the time the parent(s) or guardian knew or should have known, through reasonable inquiry, that the acts of the public entity or its employee(s) caused the injuries.

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## Accrual dates

- The date of accrual can vary. The following is a partial list of circumstances in which the date of accrual may vary:
  - Claims based on the "late discovery rule." There are occasions when the cause of action does not accrue until the injury or damage is discovered or, with reasonable diligence, should have been discovered.
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## What happens if the claim is returned as untimely?

- If a claim is returned as untimely, the claimant must apply to the agency's governing board for leave to submit a late claim.
- The application to the public agency for a late government claim usually should be submitted within one year from the date of accrual of the cause of action.
- In computing the one-year period the following shall apply:
- the time during which the person sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted.
- The time shall not be counted during which the person is detained or adjusted a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court law if both the person is in the custody and control of the public entity to which the claim is presented and that agency is required to report injury, abuse, or neglect, but fails to do so with the time required. In circumstances where the public entity or its agency makes a late report, the claim period shall be tolled for the period of the delay caused by the failure to make a timely report.
- The time shall not be counted during which a minor is adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

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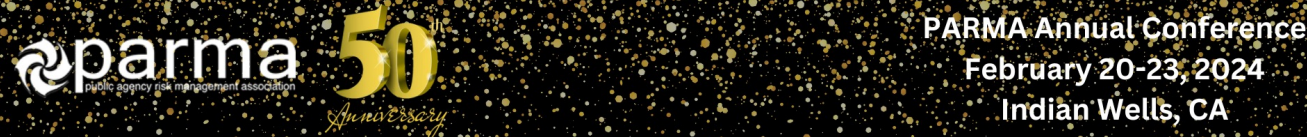


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## Application for late claims

- An application for leave to present a late claim must be submitted within a reasonable time, but generally no later than one (1) year after the accrual of the cause of action.
- The application must state the reason(s) for delay in filing the claim, and the proposed claim must be attached to the application. See, Government Code Section 911.4.
- The Application for leave to present a late claim should attach the proposed government claim.
- The public agency has 45 days to respond to the application for a late claim. If no action is taken it is presumed the application was denied. Government Code Section 911.6.
- The warnings are statutorily required. Follow exactly what is included in the code.

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## Sample notice of rejection of application of a late claim

**NOTICE OF BOARD ACTION  
ON APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM**

Date: \_\_\_\_\_  
Dear \_\_\_\_\_:

Please be advised that on (Date), the (Name of Entity) took the action circled below with regard to the application for leave to present a late claim filed with (Name of the Entity) and presented to the Board on \_\_\_\_\_ (Date).

1. The application has been granted and your Claim accepted for processing. After your Claim is evaluated, you will receive additional notice from this office as to the status of your Claim.
2. The application has been denied.

**WARNING**

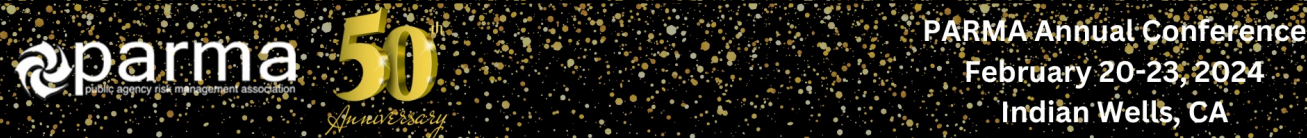
If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (Claims Presentation Requirement). See Government Code Section 946.6. Such petition must be filed with the Court within six (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.

If your application has been denied, this denial applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, other statutes or resources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (Name of Entity) will seek to recover all costs of defense in the event a legal action is filed in the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the (Name of Entity), its officers, officials, employees, agents, or representatives.

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## What happens to a claim if your agency rejects the application?

- Claimant may file a petition for relief from the six month claims requirement with the California Superior Court.
- The petition to the court shall show:
  - that application to present a late claim was made to the agency;
  - the reason for the late claim; and
  - the information required in a claim under Government Code Section 910.
- The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.
- The court may grant the petition because of mistake, inadvertence, surprise, or excusable neglect unless the public agency establishes that it would be prejudiced.
- The court may also grant the petition because the person was a minor during the claim presentation period, incapacitated, or deceased.
- If the court grants the petition for relief, the claimant has 6 months to file a lawsuit.

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## Untimeliness examples?

- Plaintiff's counsel argues that claims personnel extended the statute of limitations to present a claim.
- Claimant argues that defendant should have investigated the date of loss on her claim as the wrongful acts took place earlier than date included in claim.
- Claimant argues in a petition for relief from the Government Claims Act that she thought the vehicle that hit her belonged to the County and not the City. A timely claim was presented to the County, but no claim was sent to the City. Police report stated that the truck belonged to the City.

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## Rejection

- Remember who must sign the notice.
- If you don't have a resolution designating an employee to reject, the governing body must consider the claim.
- The content of the written notice of the action on the claim, including that it has been deemed rejected, is specified in Government Code Section 913(a).

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## Rejection

- If the claim is rejected, the notice must warn the claimant of the six-month statute of limitations in which to bring a lawsuit. (California Government Code Section 913(b)).
- 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 2 years.

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## Required warning language notices of rejection on the merits

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

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## Notice of rejection on the merits sample form

**NOTICE OF REJECTION OF CLAIM**

Notice is hereby given that the Claim which you presented to (Name of Entity) on (Date) was rejected on (Date).

**WARNING**


Subject to certain exceptions, you have six (6) months from the date this Notice of Rejection of Claim was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code Section 945.6.)

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.

This Notice of Rejection of Claim applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, or other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (Name of Entity) will seek to recover all costs of defense in the event a legal action is filed on the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the (Name of Entity), its officers, officials, employees, agents, or representatives.

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## Notice of rejection as a matter of law

**NOTICE OF REJECTION BY OPERATION OF LAW**

Notice is hereby given that the Claim which you presented to \_\_\_\_\_ (Name of Entity) on \_\_\_\_\_ (Date) was rejected by operation of law on \_\_\_\_\_ (Date).

**WARNING**

Subject to certain exceptions, you have six (6) months from the date this Notice of Rejection by Operation of Law was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code Section 945.6.)

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.

This Notice of Rejection by Operation of Law applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (Name of Entity) will seek to recover all costs of defense in the event a legal action is filed in the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws ensuring to the benefit of the (Name of Entity), its officers, officials, employees, agents, or representatives.

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### WHO CAN SIGN NOTICES?

## 01

Notices must be signed by a public employee

## 02

In most cases You **cannot** delegate execution of the notices to a TPA or non-public employee exceptions county and school districts

## 03

Unless there is a statute, Your board must have a resolution in place delegating authority to the public employee

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### Delegating claim handling authority

- The public agency may delegate by ordinance or resolution authority to its employee to handle its claim handling duties. (Government Code Section 935.2)
- A public agency can only delegate authority to settle a claim for more than \$50,000 by charter provision.
- Either the governing body or delegated employee may send the notices of insufficiency and rejections of untimeliness.
- The delegated employee may reject the claim on the merits.
- Defenses including untimeliness may be waived if the claim is rejected by someone other than the employee delegated to handle or the public agency.
- A law may apply to specific types of public entities that allows that agency to delegate authority without the resolution or ordinance. For example, See Gov't Code Section 31000.8

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## Summary of claims handling authority needed

- The public agency's governing body considers the government claim if no ordinance delegating authority.
- The public agency's employee will consider the claim if there is an ordinance or resolution delegating authority.
- The ordinance or resolution should clearly describe the authority provided to the public employee.
- There may have specific laws to certain agencies that allow for a contracted party to issues notices.
- Public Utilities Code Section 30670
- Government Code Section 31000.8

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## Proof of service requirements

- A declaration based on personal knowledge is required that:
  1. The declarant deposited the notice at a United States Post Office, or a mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the U.S. government;
  2. A statement of where the declarant deposited it in the mail; and
  3. That the item mailed had proper postage. See, Government Code Section 915.2.
- Each entity should establish procedures requiring that the clerk mailing the notice check the applicable provision on the declaration and sign the declaration at the time the notice is mailed.

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### Proof of service sample

DECLARATION OF SERVICE BY MAIL

State of California, County of \_\_\_\_\_  
I am employed in the County of \_\_\_\_\_ State of California. I am over the age of eighteen (18) and not a party to the within cause or claim. My business address is \_\_\_\_\_

**Alternative No. 1**

I served the foregoing document \_\_\_\_\_ (Name of Document) by depositing a true copy thereof in the United States mail in \_\_\_\_\_ (Location), State of California, on \_\_\_\_\_, enclosed in a sealed envelope, with fully prepaid postage thereon, addressed as follows: (Name and Address of Claimant) \_\_\_\_\_

**Alternative No. 2**


I am familiar with the practice of \_\_\_\_\_'s (Name of Entity) collection and processing of correspondence for mailing within 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 placed the foregoing document \_\_\_\_\_ (Name of Document) by placing a true copy thereof for collection and mailing, in the course of ordinary business practice, with other correspondence of \_\_\_\_\_ (Name of Entity), located at \_\_\_\_\_ (Entity Address), on \_\_\_\_\_, enclosed in a sealed envelope, with fully prepaid postage thereon, addressed as follows: (Name and Address of Claimant) \_\_\_\_\_

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

Executed in \_\_\_\_\_ (City), California, on \_\_\_\_\_ (Date)

(Type or Print Name) \_\_\_\_\_ (Signature)

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### How do public entities get it wrong?

- A claim is late, but the entity sends out a notice denying it on the merits instead of as untimely - waiving the claims statute untimeliness defense;
- A claim is late, but the entity's late notice doesn't include the statutorily required warnings - waiving the claims statute untimeliness defense;
- A claim is timely, however, the entity incorrectly returns it as late, but doesn't provide the required warning. As a result, the two-year statute of limitations applies.
- An entity issues the correct form of denial but mails it to the wrong address - the notice ineffective.

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## Lessons learned

- Keep the envelope, claim and other claim related materials.
- Intentional decided whether to send a notice of insufficiency and rejection on the merits.
- Calendar deadlines from date of presentment for notices of untimeliness, insufficiency, and rejection.
- Consider the types of claims within the facts alleged and whether different deadlines apply.
- Consider early whether there is enough information included in the claim to investigate.

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## Cases demonstrating importance of Government Claims Act

- *J.M. v. Huntington Beach Union High School District*, 2 Cal.5th 648(2017)
- *Estill v. County of Shasta*, 25 Cal.App.5th 702 (App. 3d Dist. 2018)
- *Roger v. County of Riverside*, (2020) 44 Cal.App.5th 510
- *Cavey v. Tualla* (2021) 69 Cal.App.5th 310

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**QUESTIONS**

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