

LIABILITY 101

Maureen Houska · Woo | Houska LLP
mhouska@woohouska.com · 805.658.6300

GOVERNMENT CLAIMS ACT

NOTES

BACKGROUND

- All governmental liability is statutory
- Uniform procedures to make gov't claim
- Gives public entity time to settle claim or investigate the facts of the claim

“MONEY OR DAMAGES”

- Intentional acts
- Negligent acts
- Contract claims
- Subrogation claims
- Indemnity claims

EXCEPTIONS

- Govt. Code 905 and 905.1 have an exhaustive list

CAUSES OF ACTION

- MUST comply with claims presentation requirements

CONSIDERING THE CLAIM

ESSENTIAL ELEMENTS OF THE CLAIM

- Name and address of both claimant and person to whom notices are to be sent
- Details of the circumstances of incident
- Details about the incident itself
 - Must have enough detail so that the entity can investigate
- Amount of damages claimed
- Claim must be signed by claimant or third-party with authority

SUBSTANTIAL COMPLIANCE

- Must be some compliance with each requirement
- Compliance must be substantial
 - Allows entity to investigate and settle claim
- NOT substantial compliance if:
 - Total omission of one of the required elements
 - Claimant sends the claim to the wrong entity
- Even if the public entity knows the facts about the claim, the claim must still be supported

PRESENTING THE CLAIM

- Claim must be submitted to a representative of entity
- Can be mailed or personally delivered
- Claimant has burden of proving receipt by entity

WHEN MUST IT BE PRESENTED

WHEN DOES CAUSE OF ACTION ACCRUE

- Continuing injuries / injuries worsening
- Minor/ incompetent person claims
 - Claimants minority does not change applicable time to present a claim
- Subrogation claims
- Indemnity claims

MANDATORY TIME LIMITS

- Statutory time limits are mandatory
 - Apply equally to public employees

ONE PERSON RELYING ON ANOTHER'S CLAIM

- Not unless a claim can be read to include the claimant

EQUITABLE ESTOPPEL

RESPONDING TO THE CLAIM

NOTES

POSSIBLE OPTIONS

- Return the claim as “late”, no action taken
 - Must be done within 45 days of presentation
- Serve a Notice of Insufficiency
 - Within 20 days, written notice of defects or omissions
 - Gives claimant opportunity to amend claim
- Serve a Notice of Rejection
 - Entity has 45 days to accept or reject claim once claim has been presented
- Do nothing

THE APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM

- Presentation must be done within a reasonable time – not to exceed one year
- Responding to the Application for Leave to Present a Late Claim
 - Serve Notice of Action on Application within 45 days
 - Claim is deemed presented on the day the application is granted
 - Timelines are re-set
 - Deny or Do Nothing
 - At 45 days the application is deemed denied by operation of law
 - When to Grant
 - Govt. Code Section 911.6
 - Claimant has the burden
 - When to Deny
 - What if the 45 –day period has lapsed?