

THIRD PARTY CLAIMS PROCESS OVERVIEW

Under California law, before any payment is made to a Third Party (the Claimant) for injuries or damage to real or personal property, a claim must be filed with the public entity specifying the allegations against the public entity and the amount of the claim. SDRMA as a Joint Powers Authority, self administers the claims filed against participating Property / Liability Program members. SDRMA claims staff investigates, evaluates and determines the members' potential liability exposure on all claims and will negotiate a settlement or deny liability on behalf of the member. In some cases, a claim will proceed into litigation and claims staff will direct counsel in the defense of the action and ultimate resolution of the claim. This section outlines what steps a member will take when a claim is presented to the public entity.

1. A claim is any written request for payment arising out of a claim of liability and must be presented to the public entity prior to the filing of a lawsuit. The claim must be signed by the claimant or by some person on their behalf.
2. Under Government Code §911.2, a claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented not later than one year after the accrual of the cause of action.
3. The following information must be contained in the claim:
 - a. Name and post office address of the claimant.
 - b. Post office address to which the person presenting the claim desires notices to be sent.
 - c. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim.
 - d. A general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim.
 - e. The name or names of the public employee or employees causing the injury, damage or loss, if known.
 - f. The amount claimed, if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage or loss, insofar as it may be known at the time of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim, but the claim shall indicate whether the claim is a limited civil case.
 - g. The signature and date of claimant or some person on claimant's behalf.
4. Following receipt of the claim, the public entity has 45 days in which to act on the claim. Otherwise, the claim is deemed to have been automatically rejected as a matter of law.
5. It is suggested that all claims be rejected since this reduces the time available to the claimant for filing a lawsuit from two years to six months from date notice of rejection is mailed.
6. A rejection letter must be sent to the claimant or their representative at the address specified in the claim. The rejection notice must contain the mandatory notification language advising the claimant that they have six (6) months from the date of the Notice of Rejection to file a lawsuit.

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7. Avoid any references to insurance, insurance company adjusters, risk managers, or any other statements that might indicate that the claim is being given any further consideration. Statements of that type may lead to a voiding of the rejection and extend the time frame available to a claimant for filing a lawsuit.
8. If you have sent a Notice of Insufficient Claim within the time prescribed and the claimant (or attorney) has not filed an amended claim correcting the insufficiency; your Governing Body should reject the claim.

It is essential that you use the correct letter format so that the time for filing a lawsuit is not extended and so that you do not waive insufficiencies as a defense.

9. If you have sent a Notice of Insufficient Claim and the claimant (or attorney) has filed an amended claim, but has not done so within the time allowed by the Government Code (15 days), your Governing Body should reject the claim, but should reserve the right to assert the untimeliness of the filing of the amended claim, as a defense.
10. Your District Counsel should assist you through this stage of the process, but SDRMA will answer your questions if you call 800.537.7790.
11. Under California Government Code your agency is not required to provide a claim form when requested. A General Claim Form is available to provide a claimant or their representative in this claims manual.

EVALUATING THE CONTENTS OF A CLAIM

Do this work immediately upon receipt of claim

Checking Contents of the Claim

The claim must contain information required by Government Code §910 and §910.2. If the claim elements meet all the requirements of §910 and §910.2 the claim is evaluated for acceptance or rejection. If the public entity disputes with any of the allegations of the claim or the amount claimed, the claim should be rejected. The Governing Body needs to take formal action to reject the claim. Use the **NOTICE OF REJECTION OF CLAIM** form.

After 45 days from the date the claim was received by the public entity and the public entity has taken no action to reject or accept the claim, the claim is deemed rejected as a matter of law. Use the **NOTICE OF REJECTION BY OPERATION OF LAW** form.

Insufficient Claim

Assuming that a claim has been presented, the public entity has the responsibility of reviewing it and notifying the claimant if the claim is (1) insufficient, or (2) untimely. A failure to notify a claimant of defects or omissions in his or her claim can result in a waiver of the deficiencies. §911. The entity should not take any action on the claim but should return the claim to the claimant using the **NOTICE OF INSUFFICIENCY OF CLAIM FORM AND RETURN WITHOUT ACTION** form. The member should identify the specific deficiencies in the claim.

Time for Notifying of Insufficiency

The claimant must be notified of an insufficiency within twenty (20) days of the time of presentation of the claim. A mailed claim is deemed presented on the date it is mailed. §915.2

Notifying Claimant of Insufficiency of Claim

If a review of the claim shows that the claimant has failed to comply “substantially” with the requirements regarding the contents of the claim, the public entity must notify the claimant of the insufficiency. §910.8.

No Governing Body Action for 15 Days After Notice of Insufficiency

The Governing Body of the public entity which acts upon claims cannot reject a claim until at least 15 days have elapsed from the date notice is sent to the claimant of the insufficiency of his or her claim. §910.8. This delay gives the claimant time to remedy the deficiencies.

Claimant Neglects to Give Address

The public entity is relieved of the necessity to give any notices whenever no mailing address is supplied by the claimant. §915.4(b), 911.3(b).

Complete the Proof of Service Section

Complete the **PROOF OF SERVICE** section on each form and keep a copy for documentation purposes.

NOTE: Dates begin on date of postmark - Save all envelopes.

CLAIM FORM

NAME OF PUBLIC ENTITY:	
CLAIMANT'S NAME:	ADDRESS:
SSN:	PHONE:
The post office address to which the person presenting the claim desires notices to be sent:	
The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted:	
A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim:	
The name or names of the public employee or employees causing the injury, damage, or loss, if known:	
The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.	
If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.	
SIGNATURES	
SIGNATURE OF CLAIMANT:	DATE:
SIGNATURE OF CLAIMANT REPRESENTATIVE:	DATE:
DATE RECEIVED BY ENTITY:	

NOTICE OF REJECTION OF CLAIM

NAME OF ENTITY:

Notice is hereby given that the Claim which you presented to _____ (NAME OF ENTITY)
on _____ (DATE) was rejected by _____ (NAME OF ENTITY)
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 enuring to the benefit of the _____ (Name of Entity), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____ (DATE), I served the within **NOTICE OF REJECTION OF CLAIM** on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

I declare under penalty of perjury that the foregoing is true and correct. Executed at _____
_____, (LOCATION), California, on _____ (DATE).

NAME:

SIGNATURE:

NOTICE OF REJECTION BY OPERATION OF LAW

NAME OF ENTITY:

Notice is hereby given that the Claim which you presented to _____ (NAME OF ENTITY) on _____ (DATE) was rejected Without Action 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 enuring to the benefit of the _____ (Name of Entity), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____ (DATE), I served the within **NOTICE OF REJECTION BY OPERATION OF LAW** on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

I declare under penalty of perjury that the foregoing is true and correct. Executed at _____ (LOCATION), California, on _____ (DATE).

NAME:

SIGNATURE:

NOTICE OF INSUFFICIENCY OF CLAIM AND RETURN WITHOUT ACTION

NAME OF ENTITY:	
TO:	DATE OF CLAIM:
<p>This is to advise you that your Claim has been reviewed, evaluated, and found to be deficient for the reason(s) circled below:</p> <ol style="list-style-type: none"> 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. <p>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.</p>	
<p>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.</p>	
<p>PROOF OF SERVICE</p>	
<p>On _____ (DATE), I served the within NOTICE OF INSUFFICIENCY OF CLAIM on the claimant by placing a true copy (Date) thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.</p> <p>I declare under penalty of perjury that the foregoing is true and correct. Executed at _____ _____ (LOCATION), California, on _____ (DATE).</p>	
SIGNATURE:	DATE: