

# **PROCEDURAL ISSUES OF THE TORT CLAIMS ACT**

by

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## **I. INTRODUCTION**

Almost forty years ago, the California Legislature passed a set of interrelated statutes dealing with public entity liabilities and immunities now commonly referred to as the Tort Claims Act. The Act institutes, among other things, a uniform procedure for bringing claims against public entities.

Specifically, the Tort Claims Act mandates that all claims for money or damages against a public entity must be presented in writing to the public entity prior to filing suit. The procedure gives cities and other public entities an opportunity to investigate claims and to negotiate with those potential plaintiffs who have meritorious claims. However, it also gives cities a mighty shield which can be used in defending litigation brought against them. A city attorney deftly wielding the Tort Claims Act can protect many a taxpayer dollar from being paid to parties who have not complied with its procedures. This shield can also prevent significant taxpayer dollars from being spent on attorneys' fees by narrowing a plaintiff's lawsuit, if not outright dismissing it.

This paper is organized into three sections, according to the chronological process of the Tort Claims Act: (i) the claimant's requirements for filing a tort claim, (ii) the city's response to the tort claim, and (iii) the city's use of the Tort Claims Act in litigation.

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## **II. FILING CLAIMS UNDER THE TORT CLAIMS ACT**

The statutes governing the claim presentation procedures of the Tort Claims Act are located at Government Code § 900 *et seq.* The first and most important step in the process is a burden borne by the claimant, who is the allegedly aggrieved party. He or she must present a written tort claim to the public entity.

### **A. Claims Against Cities And Their Employees Must Be Presented**

Tort claims must be presented for all claims against 1) a public entity or 2) a public employee acting within the course and scope of his or her employment. Gov. Code §§ 905, 950.2.

There are only a few exceptions to this requirement. For instance, the failure to file a tort claim may be forgiven where the plaintiff was reasonably unaware that the defendant was a public employee acting within the course and scope of his or her employment. Gov. Code § 950.4. Also, a cross-complaint against a public entity plaintiff may be pursued without a previously filed tort claim if it arises out of the same transaction that forms the basis of the public entity's complaint. See People ex rel. Dept of Parks and Recreation v. West-A-Rama, Inc., 35 Cal.App.3d 786, 794 (1973). Note, however, that if a cross-complaint is sought to be filed against a third party public entity, the failure to present a tort claim will bar the cross-complaint. Fidelity & Deposit Co. v. Claude Fisher Co., 161 Cal.App.2d 431 (1958).

If representing a local public agency other than a city, such as a redevelopment agency or a joint powers agency, the attorney should check if it is properly listed in the Roster of Public Agencies. Gov. Code § 53050-53051. If a public entity is required to list itself in the Roster, but does not have a proper listing, the claim requirements, and the protections that flow therefrom, do not apply. Gov. Code § 946.4(a).

### **B. Claims For Money Or Damages Must Be Presented**

The Tort Claims Act defines the type of claims subject to its requirements by subtraction. All claims seeking money or damages are subject to the claim requirements *except for actions which are excluded*. Gov. Code § 905.

With this broad definition, the claim requirements apply to all types of personal injuries, Martinez v. County of Los Angeles, 78 Cal.App.3d 242 (1978)(negligence); Shelton v. Superior Court, 56 Cal.App.3d 66 (1976)(loss of consortium), including

injuries to reputation. Miller v. Hoagland, 247 Cal.App.2d 57 (1966). The claim requirements also apply to intentional torts. Cooper v. Jevne, 56 Cal.App.3d 860 (1976)(fraud); Illerbrun v. Conrad, 216 Cal.App.2d 521 (1963)(false arrest). They apply to claims for damage to real and personal property. Mehl v. People ex rel Dept. of Public Works, 13 Cal.3d 710 (1975). They also apply to statutory actions for money or damages. Pacific Telephone & Telegraph Co. v. County of Riverside, 106 Cal.App.3d 183 (1980). Class actions can be subject to the claim requirements if their claims are otherwise subject to them. City of San Jose v. Superior Court, 12 Cal.3d 447 (1974). The tort claim requirements even apply to actions for money or damages based upon **contracts**. Baines Pickwick Ltd. v. City of Los Angeles, 72 Cal.App.4th 298 (1999); Alliance Fin. v. City & County of San Francisco, 64 Cal.App.4th 635 (1998).

### **1. Types of Actions Exempted from the Tort Claims Requirement**

Several types of claims have been exempted from the claim requirements by statute or judicial decision. Government Code Section 905 et seq. exempts several particular types of claims, including:

- a. **Claims by other public entities.** Gov. Code § 905(i). However, they may be subject to claims presentation requirements in local charters, ordinances, or administrative regulations. Gov. Code § 935;
- b. **Tax and assessment disputes.** Gov. Code § 905(a),(h). However, tax refund claims based upon municipal ordinances or charter provisions might be subject to local claims presentation requirements. Volkswagen Pac., Inc. v. City of Los Angeles, 7 Cal.3d 48, 62 (1972);
- c. **Claims for salary, expenses, pension benefits, workers= compensation and unemployment compensation.** Gov. Code § 905(c), (d), (f), (j). However, one court has ruled that a tort claim was required to recover money and benefits in a pension system when tortious wrongdoing was alleged. Dalton v. East Bay Mun. Util. Dist., 18 Cal.App.4th 1566 (1993). The plaintiffs were not seeking money due to them under the system, but damages for alleged unfair treatment within the system. Id., at 1574;
- d. **Mechanics liens and other construction liens.** Gov. Code §

905(b);

- e. **Inverse condemnation claims.** Gov. Code § 905.1;
- f. **Claims against welfare and public assistance programs.** Gov. Code § 905(e);
- g. **Claims related to bonds and other public financing issues.** Gov. Code § 905(g);
- h. **Claims for penalties withheld on public works projects.** Gov. Code § 905(k); and
- i. **Claims concerning creation of pedestrian malls.** Gov. Code § 905(l).

The exemptions under Government Code Section 905 have been narrowly construed by the courts. Van Alstyne, California Government Tort Liability Practice, 4<sup>th</sup> ed., (CEB 2000), § 5.42, pp. 168-170.

Other claims have also been held exempt from the tort claim requirements. Employment discrimination claims under FEHA do not require a tort claim because they are already subject to a comprehensive scheme for administrative review through the Department of Fair Employment and Housing. Garcia v. Los Angeles Unified School Dist., 173 Cal.App.3d 701, 710-711 (1985).<sup>2</sup>

Federal civil rights violation claims are not subject to California's tort claim requirements because such would violate the supremacy clause of the U.S. Constitution. Williams v. Horvath, 16 Cal.3d 834, 842 (1976) However, a federal court will dismiss state law claims which failed to comply with the Tort Claims Act even if joined with

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<sup>2</sup> Conversely, a recent case held that the FEHA administrative claim requirements had been met by the filing of a tort claim. Murray v. Oceanside Unified School Dist., 79 Cal.App.4th 1338 (April 19, 2000). The claim for discrimination due to sexual orientation was not protected by FEHA when presented in 1995, but was then governed by Labor Code Section 1102.1. Claims under that Labor Code provision had been held subject to the Tort Claims Act. Effective January 1, 2000, FEHA prohibits discrimination based upon sexual orientation and claims under the Labor Code were retroactively subject to FEHA. Gov. Code § 12940. Since plaintiff complied with the proper administrative procedure in effect at the time, her tort claims were deemed sufficient compliance with FEHA's administrative provisions. Murray, supra, 79 Cal.App.4th at 1361.

federal civil rights claims. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 627 (9<sup>th</sup> Cir. 1988).

## 2. **Actions for Relief Other than Money or Damages are also Excluded**

Although the definition of claims is broad, many types of claims do not seek money or damages as relief. Since only claims for money or damages require tort claims, actions for other kinds of relief are excluded from the tort claim requirements by this definition. The types of relief excluded from the tort claim requirements include declaratory relief, Otis v. City of Los Angeles, 52 Cal.App.2d 605 (1942), specific relief such as the recovery of particular property, Holt v. Kelly, 20 Cal.3d 560 (1978), mandamus actions, County of Sacramento v. Lackner, 97 Cal.App.3d 576, 587 (1979), abatement of nuisance by injunction, Los Angeles Brick & Clay Prods. Co. v. City of Los Angeles, 60 Cal.App.2d 478 (1942), and an action on a judgment. Barkley v. City of Blue Lake, 47 Cal.App.4th 309 (1996).

However, where the Primary purpose of an action is to obtain money or damages, the claim is subject to the claims presentation requirements even though a complaint includes requests for non-pecuniary relief as well. Loehr v. Ventura Community College Dist., 147 Cal.App.3d 1071, 1080 (1983).

Cities may enact their own local claims filing requirements which do not conflict with the Tort Claims Act. Gov. Code §§ 935-935.4. Also, cities may invoke claims procedures expressly in its contracts. Although limited to claims arising out of that contract, the procedures in the contract supersede the Tort Claims Act with regard to those claims. Gov. Code §§ 930, 930.2, 930.4, 930.6.

### C. **The Statute Of Limitations For Presenting Claims**

Claims concerning personal injury, wrongful death, damage to personal property, or damage to crops must be presented to the public entity within six (6) months of the accrual of the claim. Gov. Code § 911.2.

All other claims are subject to a one year statute of limitations for presentation of the tort claim. Gov. Code § 911.2. Principally, the one year limit applies to claims on contracts and for damage to real property. See Voth v. Wasco Pub. Util. Dist., 56 Cal.App.3d 353 (1976)(contract); Mehl v. People ex rel Dept. of Public Works, 13 Cal.3d 710 (1975)(flooding of real property).

Generally, a tort claim accrues and begins the running of the claims period at the same time that a cause of action would accrue, just as if the public entity were a private party. Gov. Code §§ 901, 911.2. Without going into all of the various rules of accrual, it is worth noting that at least the usual rules of tolling for minors, incompetents, and prisoners do not apply to tort claims. Cal. Civ. Proc. Code §§ 352(b), 352.1(b).

#### **D. Required Form Of A Tort Claim**

The claim must be in writing, and signed by the claimant or his or her representative. Gov. Code § 910.2. The claim must contain the following information to be a sufficient claim:

- ∃ Claimant's name and mailing address;
  - ∃ Name and address to which to send notices;
  - ∃ Date, place, and circumstances of the claim;
  - ∃ Description of the injury, damage, or loss for which payment is sought;
  - ∃ Name of any public employee causing the loss if known; and
  - ∃ An indication as to whether the claim would be made in limited jurisdiction court or not; or the amount of the claim if it is under \$10,000.
- Gov. Code § 910.<sup>3</sup>

Each individual claimant must present a claim. Nguyen v. Los Angeles County/Harbor UCLA Med. Cntr., 8 Cal.App.4th 729 (1992)(tort claim for injuries to a minor did not disclose injuries to parents). In some cases, an exception may be made if the injury to the other is disclosed on the face of the tort claim, such as when a husband's claim clearly disclosed the injuries to his wife as well. Lacy v. City of Monrovia, 44 Cal.App.3d 152 (1975). Particular exceptions have also been made in other recognizable situations. San Diego Unified Port Dist. v. Superior Court, 197 Cal.App.3d 843 (1988)(workers compensation carrier could intervene in plaintiff's personal injury action against the district without filing its own claim apart from the plaintiff's); Smith v. Parks Manor, 197 Cal.App.3d 872, 881 (1987)(subrogee may rely upon claim submitted by subrogor).

As for the description of events, claims are construed liberally. Foster v. McFadden, 30 Cal.App.3d 943 (1973)(facts stated only by inference). The description

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<sup>3</sup> However, if the amount of the claim is over \$10,000, no amount should be listed other than the indication of whether a lawsuit would be litigated in limited jurisdiction superior court.

need not be in evidentiary detail, Blair v. Superior Court, 218 Cal.App.3d 221, 225 (1990), but should be detailed enough to allow the city to investigate and consider the claim. Crow v. State, 222 Cal.App.3d 192, 201-202 (1990). Substantial compliance with the claims statute is what is required. City of San Jose v. Superior Court, 12 Cal.3d 447 (1974); Wheeler v. City of San Bernardino, 76 Cal.App.3d 841 (1978). Nevertheless, there must be some compliance with each requirement, and enough compliance to be fairly labeled substantial. City of San Jose, *supra*, 12 Cal.3d at 455-457.

Government Code Section 910 provides the information that Ashall $\cong$  be contained within a claim. Therefore, a clear failure to comply with that section could constitute an insufficient claim regardless of any substantial compliance analysis. Notably, the restriction against stating a claim amount if the amount is over \$10,000 per Section 910(f), is commonly violated in claims. Good practice would be for the city to return such a claim as insufficient.

Also, a city may create its own form on which claims against it can be submitted. The forms can request whatever information the city desires as long as it also meets the requirements of Government Code Section 910. A claim which substantially complies with the requirements of the local form is deemed to comply with the statutory requirements. Gov. Code  $\cong$  910.4. It can be good practice for a city to create its own claim form because it can request more extensive information which may aid its investigation of the claim. The form should be constructed carefully. For example, the form should not ask every claimant to state a dollar amount. This would likely waive any argument that claims which state an amount over \$10,000 are defective. Although they cannot be required to do so, many claimants will use such a city=s form. Some example claim forms of cities are attached hereto.

A claim may be amended if the amendment would still be timely as an initial claim and if the entity has not taken final action on the claim. Gov. Code  $\cong$  910.6(a). Thus, the reason for the Notice of Insufficiency that the public entity is required to give for defective claims, discussed below, appears to be to allow a claimant to cure the defect if possible.

#### **E. The Manner Of Presenting A Tort Claim**

The Tort Claims Act requires that the claim be submitted to the clerk, secretary, auditor, or governing body of the public entity. Gov. Code  $\cong$  915(a). The claim may be delivered personally or sent by mail. Gov. Code  $\cong$  915(a)(1-2), 915.2. Although courts are occasionally reluctant to dismiss claims for failing to mail a tort claim to the proper department within a public entity, Jamison v. State, 31 Cal.App.3d 513 (1973), other courts have held claimants strictly to the statutory requirements. Life v. County of Los

Angeles, 227 Cal.App.3d 894 (1991). In Life, *supra*, 227 Cal.App.3d at 900, the Court of Appeal upheld the dismissal of a claim for which a tort claim was mailed to the hospital's legal department instead of the County Board of Supervisors.

### **III. CONSIDERING CLAIMS FILED UNDER THE TORT CLAIMS ACT**

As a threshold matter, many letters not intended to be claims have been subsequently held by courts to be valid tort claims. Phillips v. Desert Hosp., 49 Cal.3d 699 (1989)(letter indicating intent to bring medical malpractice lawsuit considered a tort claim even though author did not know the hospital was a public entity); Foster v. McFadden, 30 Cal.App.3d 943 (1973)(attorney letter asking defendant to forward it to its insurance carrier to avoid formal proceedings). Thus, recognizing tort claims is an important first step in the process of considering them. Since, as discussed below, cities can waive various defenses by not taking certain actions in response to a claim, city attorneys should advise their personnel who might receive such letters of complaint to recognize possible claims and to forward them to the proper persons for consideration of the claim.

A city has numerous possible responses to a tort claim, including the following:

#### **A. Notice of Insufficiency**

A city must give notice of any substantial defect in a presented tort claim within twenty (20) days. Once it has done so, the city cannot take action on the claim for fifteen (15) days, while it gives the claimant a chance to correct the defect. Gov. Code § 910.8. If the city does not give notice of the defects in the tort claim, it waives the right to assert the defect as a defense in subsequent litigation. Gov. Code § 911; Martinez v. County of Los Angeles, 78 Cal.App.3d 242, 245 (1978).

A claimant may amend a claim on the same occurrence to cure a defect either until the end of the claims period or until the public entity takes action on the claim. Gov. Code § 910.6. An amended claim restarts the forty-five (45) day consideration period. Postada v. City of Oakland, 30 Cal.App.3d 1022 (1973).

#### **B. Notice of Untimeliness**

Cities should always pay attention to the dates the claimant alleges for the incidents supporting his or her claim in considering a tort claim. If a city contends that a tort claim is not timely, it must give written notice of untimeliness within forty-five (45) days and return the claim. Gov. Code § 911.3(a). Failure to give this notice will waive



the city's defense of untimeliness of the tort claim in subsequent litigation. Gov. Code § 911.3(b). The notice is required to preserve the defense even if the city has already issued a notice of insufficiency as to the same claim. Phillips v. Desert Hospital, 49 Cal.3d 699 (1989).

### 1. Procedures for Filing A Late Claim

A claimant may be able to overcome the failure to submit a timely tort claim. The Tort Claims Act allows a claimant to submit an application for permission to file a late claim. Gov. Code §§ 945.4, 946.6. An application to present a late claim must be presented within a reasonable time, not to exceed one year after expiration of the claims period. Gov. Code § 911.4. This period may be tolled for a mentally incapacitated claimant who does not have a guardian or conservator. Id. The late claim application period is not tolled for a minor, but a claimant who was a minor during the entire claim period may file a late claim. Gov. Code § 911.6.

The public entity must grant an application to file a late claim if the failure to file a timely tort claim was due to:

- ∃ Mistake, surprise, inadvertence, or excusable neglect;
- ∃ Claimant's minority throughout claim period;
- ∃ Claimant's mental incapacitation throughout the claim period; or
- ∃ Claimant's death before the end of the claim period.

Gov. Code § 911.6.

But despite the mandatory language, the burden is on the claimant to establish grounds for a late application by a preponderance of the evidence. Toscano v. County of Los Angeles Sheriff's Dept., 92 Cal.App.3d 775 (1979). It is not a burden easily met, and cities should be wary of granting late claim applications unless the proper showing is made.

The standard for showing mistake, inadvertence, or neglect is the same standard as used for Code of Civil Procedure Section 473. City of Fresno v. Superior Court, 104 Cal.App.3d 25, 32 (1980). The mistake, inadvertence, or neglect must be reasonable in order to justify the delay. As reaffirmed by a very recent decision in a Court of Appeal, There must be more than the mere failure to discover a fact; the party seeking relief must establish the failure to discover the fact in the exercise of reasonable diligence. Department of Water and Power of City of Los Angeles v. Superior Court, 82

Cal.App.4th 1288, 1293 (July 21, 2000). Thus, where the potential claimant and his or her counsel has possession or access to information showing the liability of the public entity, the mistake in not presenting a timely tort claim is not excusable. Id., at 1291.

Late claim applications from minors present a difficult issue which will require careful consideration. The only question will be whether the minor acted diligently in presenting the claim. Any delays caused by the parents or attorneys are not attributable to the minor. Tammen v. County of San Diego, 66 Cal.2d 468, 480 (1967). Likewise, late claim applications on grounds of mental incapacity raise a difficult hurdle. The claimant must show that he or she was mentally incapacitated during the entire claims period, and that he or she was not well enough to contact an attorney and delegate responsibility for pursuing the action. Martin v. City of Madera, 265 Cal.App.2d 76, 80 (1968).

Other considerations can come into play in evaluating a late claim application. Even if the claimant shows sufficient excuse for the late claim, he or she must also show diligence in pursuing the late claim application. Greene v. State of California, 222 Cal.App.3d 117, 122 (1990) (five month delay not reasonable). On the other hand, equitable estoppel can also be used as an excuse to file an untimely claim if agents of the public entity have prevented or deterred the filing of a tort claim by some affirmative act. Christopher P. v. Mojave Unified School Dist., 19 Cal.App.4th 165 (1993).

## **2. City's Consideration of Application to File Late Claim**

A city has forty-five (45) days to consider an application to file a late claim, which may be extended by written agreement prior to its expiration. Gov. Code § 911.6(a). Written notice of the decision must be given to the applicant. If the application is granted, the tort claim is deemed received on that day. Gov. Code § 912.2. If the application is denied, the claimant must be informed in writing that he or she has six months to petition court for relief. Gov. Code § 911.8.

A city should actually deny both the late claim application and the tort claim in order to avoid estoppel problems. If a city only denies the claim, it may be estopped from claiming that a lawsuit was filed after the six month period for filing suit. That period is started by the rejection of a claim. Jenkins v. County of Contra Costa, 167 Cal.App.3d 152 (1985). However, denying both the application and the tort claim should avoid any estoppel problems. El Dorado Irrigation Dist. v. Superior Court, 98 Cal.App.3d 57 (1979).

As indicated above, the claimant has six months to file a petition in court for relief from the claims filing requirements. Gov. Code § 946.6. This is a de novo proceeding,

not a review of the city's denial of the application to file a late claim. Gov. Code § 946.6(e). The grounds are the same as for an application to file a late claim. If the petition is granted, the claimant has thirty (30) days to file a complaint if he or she has not done so already. Gov. Code § 946.6(f).

### **C. Act On The Claim**

A city must act on a claim within forty-five (45) days after the claim was presented. Gov. Code § 912.4. This period can be extended by written agreement of the claimant and the city. The forty-five (45) day period can even be extended this way after it has expired, if the statute of limitations has not yet expired. Id. The city can reconsider its action, or lack thereof, beyond the forty-five (45) day period. Gov. Code § 913.2.

The Tort Claims Act leaves a city a variety of options. A city may allow a meritorious claim for a just amount. It may also reject meritless claims. Gov. Code § 912.6. There are several options for claims which are proper in part, or which overstate the amount of money that they seek. One option remains simply to reject the offer in its entirety. The city may also allow the claim in the proper amount and reject the rest. The city may also settle a disputed claim. Id. Finally, the city may condition settlement or allowance of all or part of a claim upon the claimant's acceptance of the amount in settlement of the entire claim. Gov. Code § 912.6(b). If the claimant accepts the money, it cannot bring suit against the city. Id.

The city should provide written notice of its action on a claim. The content of a rejection is regulated by the Tort Claims Act. The Government Code mandates that the notice should contain the following warning concerning the time limits for filing suit in substantially this form:

#### **WARNING**

Subject to certain exceptions, you have only six (6) months from the date this notice was personally served 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.

Gov. Code § 913. A city should use the statutory language as a base because a defective notice may be ruled to be no notice at all. Scott v. Los Angeles, 73 Cal.App.3d 476, 482

(1977). This is significant because, as discussed below, if a city fails to act on a tort claim, the claimant would have two years to file suit rather than six months. Gov. Code § 945.6.

**D. Take No Action (Whereby The Claim Is Deemed Rejected By Operation Of Law)**

If a city fails to take any action prior to the end of the period on which it can act on a claim, the claim is deemed rejected by operation of law on the last day. Gov. Code § 912.4(b). The most significant difference in a rejection by operation of law is that the claimant has *two years* in which to file its complaint. Gov. Code § 945.6(a)(2). Cities, therefore, should not fail to act on a tort claim and give the claimant such a long time to contemplate and investigate the possibility of filing suit. However, a city can trigger the usual six month statute of limitations for filing suit by sending a notice of rejection even after the claim was deemed rejected by operation of law. The six months starts to run from the date of the late rejection notice. Glorietta Foods, Inc. v. City of San Jose, 147 Cal.App.3d 835, 838 (1983). Therefore, even if a city has let time lapse for it to act on a claim, it should still send a notice of rejection of the tort claim in order to trigger a six month limitations period.

**IV. LITIGATING CLAIMS UNDER THE TORT CLAIMS ACT**

In litigation, the Tort Claims Act can be used as a powerful shield to fend off procedurally defective claims.

**A. Compliance With The Tort Claims Act Must Be Plead**

The plaintiff must plead compliance with the Tort Claims Act in any action that was subject to the claims presentation requirements. Dujardin v. Ventura County Gen. Hosp., 69 Cal.App.3d 350 (1977). If not properly plead, it is subject to attack. Id. Of course, if the plaintiff complied with the Tort Claims Act but simply failed to plead it, the defect may be cured by amendment. Bohrer v. County of San Diego, 104 Cal.App.3d 155, 160 (1980).

The public entity defendant can also plead the failure to comply with the Tort Claims Act as an affirmative defense. Rand v. Andreatta, 60 Cal.2d 846, 848 (1964). However, a defendant may assert the failure to comply with the Tort Claims Act in a summary judgment motion regardless of whether it was pled as an affirmative defense. Redlands High School Dist. v. Superior Court, 20 Cal.2d 348, 358 (1942)(construing prior claims law).

**B. There Are Numerous Grounds To Assert Against The Plaintiff**

The defense attorney for a public agency has numerous grounds by which he or she can attack a plaintiff's failure to comply with the Tort Claims Act. To ensure that you do not miss any of these grounds, most of which have already been discussed, we believe that it will be helpful to use the following checklist of the most commonly asserted grounds.

- 1. No tort claim was ever presented.** Janis v. State Lottery Comm., 68 Cal.App.4th 824, 832 (1998); Spencer v. Merced County Office of Education, 59 Cal.App.4th 1429, 1495 (1997).
- 2. The complaint did not allege compliance with the Tort Claims Act.** (Chase v. State, 67 Cal.App.3d 808, 812 (1977))(the complaint must allege the presentation and rejection of a claim in all actions to which the Tort Claims Act applies).
- 3. The tort claim was presented to the wrong department or public entity.** Life v. County of Los Angeles, 227 Cal.App.3d 894 (1991)(dismissed action where tort claim was mailed to the County's legal department instead of the County Board of Supervisors); Spencer v. Merced County Office of Education, 59 Cal.App.4th 1429, 1438 (1997)(dismissed where attorney sued wrong entity despite letter in his file naming the proper entity); Jackson v. Board of Education, 250 Cal.App.2d 856 (1967)(claim presented to city clerk not sufficient to sue school district). However, some local entities have overlapping governing boards. In those cases, presenting the claim to one is likely to constitute substantial compliance. Carlino II v. Los Angeles County Flood Control Dist., 10 Cal.App.4th 1526 (1992).
- 4. The claimant is not the plaintiff.** Nguyen v. Los Angeles County Harbor/UCLA Med. Cntr., 8 Cal.App.4th 729 (1992)(child's claim does not support parents lawsuit); Pacific Tel. & Tel. Co. v. County of Riverside, 106 Cal.App.3d 183 (1980)(employers claim for workers' compensation benefits from death of employee does not support widow's wrongful death suit).
- 5. The tort claim was not timely filed with the public entity.** City of

San Jose v. Superior Court, 12 Cal.3d 447, 454 (1974) (the statutory time limits within which a claim must be presented to a city is regarded as mandatory).

6. **The lawsuit was not filed within six months of rejection of the tort claim.** Glorietta Foods, Inc. v. City of San Jose, 147 Cal.App.3d 835 (835).
7. **The claim did not name the proper defendant(s).** Spencer, supra, 59 Cal.App.4<sup>th</sup> 1429.
8. **The claim failed to plead material facts contained in the complaint.** Fall River Joint Unified School Dist., 206 Cal.App.3d 431, 434 (1988) (negligent supervision facts not alleged in tort claim). Many cases, however, appear to reject strict application of the rule where the facts and theories are very closely related to the content of the claim. Brownell v. Los Angeles Unified School Dist., 4 Cal.App.4th 787 (1992); Stevenson v. San Francisco Housing Authority, 24 Cal.App.4th 269 (1994).
9. **The claim failed to plead legal theories or causes of action contained in the complaint.** Crow v. State, 222 Cal.App.3d 192 (1990)(tort claim alleging assault on dormitory student did not support breach of dormitory contract by university).
10. **The damages sought in the complaint or at trial exceeds the amount specified in the tort claim.** Government Code § 910(f).

C. **There Are Numerous Pleadings In Which To Assert The Tort Claims Act As A Defense**

Attorneys defending cities should review the case for defects with the Tort Claims Act from the pleading stage of the case. However, do not hesitate to assert a Tort Claims Act defense whenever a defect becomes apparent. Public entities have successfully asserted the defense in nearly every manner of motion and opposition from the beginning of the case to the end, including:

1. **Demurrer** (Fall River, supra, 206 Cal.App.3d 431; Nelson v. State, 139 Cal.App.3d 72, 79 (1982));

2. **Opposition to plaintiff=s motion to amend complaint to add a cause of action** (Lopez v. Southern Cal. Permanente Med. Group, 115 Cal.App.3d 673 (1981));
3. **Motion to strike** (PH II, Inc. v. Superior Court, 33 Cal.App.4th 1680 (1995) (use of motion to strike generally));
4. **Motion for judgment on the pleadings** (Hunt v. County of Shasta, 225 Cal.App.3d 432 (1990));
5. **Motion for summary judgment** (Turner v. State, 232 Cal.App.3d 883 (1991));
6. **Motion in limine to exclude evidence of facts not alleged in the claim** (Turner v. State, supra, 232 Cal.App.3d 883 (excluding such evidence at summary judgment)); and
7. **Opposition to motion for new trial on a new theory** (Hata v. Los Angeles County Harbor/UCLA Med. Cntr., 31 Cal.App.4th 1791 (1995)).

5. CONCLUSION

The public lawyer would be well served to know in detail the requirements of the Tort Claims Act. While the procedures in the Tort Claims Act do not present a terribly difficult burden for a claimant with a legitimate claim to bear, they do present several legal hurdles which must be met. If a claimant=s tort claim remains defective by the time the case is in litigation, cities and other public agencies should invoke the Tort Claims Act as a shield protecting taxpayer dollars and barring a claim that is legally insufficient as a matter of law.