

FILING A NOTICE OF CLAIM

[NOTE: Persons without counsel are advised to consult with an attorney. Court staff MAY NOT give legal advice, prepare your papers or act as your attorney.]

Anyone who wishes to commence a civil lawsuit against New York State, your local government¹ (county, city, town, village) or most government agencies for damages because of certain alleged conduct or negligence must first file with the State or municipal government agency a document known as a Notice of Claim and must do so within a fixed deadline after the accident or event. **This is vital. Failure to file on time may result in dismissal of the case.** What follows is a brief summary of the where's, when's and how to's of the notice of claim process. This is not intended to be an exhaustive or complete recitation of the law. The self-represented person is strongly advised to consult a lawyer or, failing that, a recognized treatise. A treatise is a book or set of books by a recognized expert that explains a particular law or laws, such as Bender on N.Y. Practice.

A. When is a Notice of Claim required?

The filing of a Notice of Claim may be required by a contract with the government or a statute (*another word for a law*). State law imposes such an obligation upon people who wish to sue New York State, local government or a government agency for money damages.

A lawsuit against the State of New York may only be filed in the Court of Claims. First, however, you must file a Notice of Claim with the State (see Court of Claims Act §10). For more information about this process, for forms, or for contact information, you can visit the website for the New York State Court of Claims at <http://www.nycourts.gov/COURTS/nyscourtofclaims/index.shtml>.

The most broadly applicable notice of claim provision is set forth in the General Municipal Law (GML for short). These lawsuits are filed in Supreme Court and are actions against your municipal governments (county, city, town, village, fire district or school district). Again, you must first file a Notice of Claim before starting any action or special proceeding for personal injury, wrongful death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the municipal entity or of any officer, agent or employee thereof (GML §50-i.) A proper and timely Notice of Claim must be served upon the government and at least 30 days must elapse before a lawsuit can be instituted. This allows the government agency, if it chooses, to begin a quick investigation of the facts concerning the claim. The papers that start the lawsuit in court must specifically recite the timely service of a notice of claim and the passage of the 30-day period.

¹ This does not apply to lawsuits against agencies or entities of the United States government. As to such cases, self-represented litigants should consult the Pro Se/Self Representation web page for the U.S. District Court for the Northern District of New York at <http://www.nynd.uscourts.gov/representing-yourself-federal-court>.

B. When must the Notice of Claim be served?

General Municipal Law requires that a Notice of Claim be served within 90 days after the claim arises (GML §50-e)². The claim will normally arise on the date of the accident (for ex., slip and fall) or the event (for ex., assault) that forms the basis for the claim. However, in breach of contract cases, the rules are more complicated and beyond the scope of these instructions.

C. What form of Notice is required?

The notice must be in writing, sworn to before a notary public, by or on behalf of the claimant (the person who wishes to make the claim), and set forth the following:

- (i) the name and post-office address of each claimant, and of his/her attorney, if any;
- (ii) the nature of the claim;
- (iii) the time when, the place where and the manner in which the claim arose, being as precise as possible; and
- (iv) the items and dollar amount of damages or injuries that are claimed to have been sustained to the extent practicable at that time.

The claimant should take care to list all the claims he or she has. If not, the claimant runs the risk that the deadline will expire before the assertion of certain claims and the government may argue that those claims are untimely and therefore time barred.

Starting a lawsuit is not a substitute for filing a Notice of Claim.

D. How must the Notice of Claim be served?

The Notice of Claim must be served on the municipal government agency, by personal delivery, or registered or certified mail. The service must be made upon a person designated by law to receive summonses in Supreme Court actions or an attorney regularly engaged in representing such public corporations.

E. When must a lawsuit be commenced?

General Municipal Law provides that, even if a Notice of Claim is timely filed, the lawsuit must be

² However, in a wrongful death case, the 90-day period runs from the appointment of a representative of the decedent's estate.

instituted within one year and 90 days after the incident or event upon which the claim is based.³

F. Late Notice of Claim

Despite the above, the court has some authority to permit the filing of a Notice of Claim that is not served within the 90 days. The court may not, however, grant an extension that exceeds the outside limit of one year and 90 days. A person wishing to serve a late Notice of Claim must commence a special proceeding in Supreme Court. The application must be accompanied by a copy of the proposed Notice of Claim.

In deciding an application for leave to serve a late Notice of Claim, the court will consider whether the government acquired actual knowledge of the essential facts constituting the claim within the 90-day period; whether the claimant was a minor or incapacitated; whether there was justifiable reliance upon settlement discussions; whether the claimant made an excusable error about the identity of the government against which the claim should be asserted; and whether the delay in serving the notice substantially prejudiced (hurt) the government in maintaining a defense on the merits.

H. Examination of the Claimant

General Municipal Law gives the government the right to conduct an examination of the claimant about the incident and the extent of the injuries or damages allegedly suffered. This examination is in the form of a deposition, which are oral questions posed to the claimant who is sworn to tell the truth. The questions and the claimant's answers are recorded by a stenographer. The government may also have the claimant examined by a duly qualified physician. The claimant has the right to have his or her own physician present, as well as a relative or other person.

³ Wrongful death actions are given a deadline of two years from the date of death.