

ABAG PLAN CORPORATION
LIABILITY CLAIMS PROCEDURES MANUAL

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ABAG PLAN CORPORATION OFFICE:

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SECTION 1

INCIDENT REPORTS

An important way to reduce the financial consequences of claims and law suits against your entity is to document the incident or accident as soon as it happens, before the claim or suit is filed.

The initial documentation of the events by your staff, and when appropriate the follow-up precautionary investigation by ABAG PLAN, can serve to preserve perishable information and evidence that may be needed later for an effective defense to a claim.

Each department head must be well acquainted with incident reporting procedures and the proper routing of those incident reports to the designated staff member having the responsibility for reviewing and forwarding those reports to ABAG PLAN. We recommend you utilize three separate report formats for recording incident/accident facts:

FORWARDING INCIDENT REPORTS

Using the ABAG PLAN "Incident Report" form (section 8, page 2) as a cover, all incident reports should be sent to:

ABAG PLAN Corporation
Attn: Claims Manager
P.O. Box 2050
Oakland, CA 94604-2050

The claims manager for ABAG PLAN will review all incident reports and determine whether either a precautionary investigation needs to be made, or if the member city needs to implement loss control procedures to assure a similar accident does not happen in the future.

IMMEDIATE NOTIFICATION OF SERIOUS INCIDENT

If you learn of any occurrence involving a city employee or city property that results in death, major injury or substantial property damage, immediately telephone the information to the claims manager at ABAG PLAN (510) 464-7954. Should the incident or accident occur on a weekend or holiday, call the ABAG PLAN Claims Manager or Risk Manger at the emergency number listed on the first page of this manual.

INCIDENT REPORT RETENTION

It is recommended that each agency of the ABAG PLAN Corporation have a single individual who receives (1) all verified claims and (2) all incident reports.

Incident reports should be filed chronologically by date of loss. Some entities like to file everything alphabetically by claimant's name; however, because incidents often involve several people, you must either guess which person is likely to be a claimant later on, or make copies and file the incidents under the names of all potential claimants. Even then, sometimes the claimant turns out to be none of the people listed in the incident report. Also, incident report files in alphabetical order are too difficult to purge after you've accumulated many years' worth of reports.

For reasons stated above, we recommend all incident reports be filed chronologically by date of incident. That way the incident report can always be found no matter who ultimately files a claim. Your files will also be much easier to purge years from now.

SECTION 2

CLAIM SUBMISSION

QUICK REFERENCE

- 1.) Stamp date received on claim.
- 2.) Fill out "LIABILITY/LOSS" form.
- 3.) Send white copy of form and a copy of the claim and enclosures to:

Claims Manager
ABAG PLAN Corporation
P.O. Box 2050
Oakland, CA 94604-2050

- 4.) **Attach envelope with postmark** to original claim and file them away. Follow any other internal procedures your city has for logging in and sending copies of claims.

GENERAL RULES FOR CLAIM FILING

An individual or entity wishing to be compensated for damages from a public entity (with few exceptions) must file a claim: (1) within six months of the date their legal cause of action arose if the nature of the damage is personal injury, death, damage to personal property, damage to growing crop; or (2) within one year for other types of damage; e.g., such as damage to real property, California Government Code Section 911.2 (GC 911.2).

The public entity may provide claim forms for claimants to fill out. An exemplar claim form can be found in Section 8, Page 6. If the claimant does not use the public entity's form, the claimant must assure the claim submitted includes all the information statutorily required (GC 910, et seq.).

CLAIM SUFFICIENCY

In spite of the legislated claim sufficiency requirements in GC 910, the courts have adopted a concept of "substantial compliance," which means that, if the claimant has substantially complied with the requirements of GC 910, although not exactly, the claim will still be deemed sufficient. A written communication to the city asking for damages and giving enough information to do an investigation will be considered sufficient by the courts.

ABAG PLAN claims staff will determine claim sufficiency. If it is felt the claim is insufficient, the city will be advised immediately with appropriate recommendations. The city must advise the claimant within twenty days of the date it was filed, or the city waives the defense of claim insufficiency (GC 911).

**CLAIM
TIMELINESS**

The time period for filing a claim is measured from the time the claimant's legal cause of action arose (which varies depending on the nature of the injury and the type of cause of action), and the time the claim was either hand-delivered or postmarked to be delivered to the entity.

ABAG PLAN claims staff will determine timeliness. If the claim is untimely, the city will be advised immediately with appropriate recommendations. A public entity has forty-five days from the date of filing to reject the claim as untimely, or the entity waives the defense of untimeliness (GC 911.3).

Since the claim filing period may be measured by the date postmarked, it is imperative the postmark envelope containing the claim is saved. The postmark may be used as evidence to prove the claim was submitted after the six-month or one-year statute.

All claims should be date stamped "received" by the entity on the day of receipt. If the claim was hand-delivered, it should be noted as such next to the date stamp.

**SENDING
CLAIMS TO
ABAG**

Make one set of readable copies of the claim, its enclosures and the envelope, and then forward the copy to ABAG PLAN Corporation, as addressed above.

Claims should be sent to ABAG PLAN Corporation with the "Liability/Loss Notice" form (see Section 8, Page 1) appropriately filled out. Be sure to fill in your claim number using a two-letter identification code (see Section 8, Page 4) and your three digit numerical code. We recommend you continue sequentially the 3 digit numerical code, even if lasting several years, and not start over until you have received 999 claims. The WHITE copy of the Loss Notice goes to ABAG, a copy should be retained in your files.

Enclose with the claim any reports or comments by city staff that pertains to the claim.

**"INPUT ONLY"
CLAIMS**

Each agency has the option of handling PROPERTY DAMAGE ONLY claims having a value not exceeding 10% of the deductible. If you wish to handle such a claim yourself, mark the box on the Loss Notice form that says "FOR INPUT ONLY."

We recommend you maintain a separate file for each claim, and keep all correspondence related to the claim within its respective file.

SECTION 3

CLAIM RESPONSES

GENERAL INFORMATION

An investigation into the facts of all bodily injury claims will be initiated upon receipt by ABAG PLAN claims staff. Property damage only claims that are not stamped "FOR INPUT ONLY" will be handled by ABAG PLAN staff as directed by the ABAG PLAN Claims Manager.

A preliminary report, with a description of the facts and estimated reserves, will be forwarded by ABAG PLAN to the city within ten days of ABAG's receipt of the claim. Whenever possible, ABAG PLAN will advise the city in the preliminary report as to a formal response to the claim. The city should not reject a claim without first receiving guidance from ABAG PLAN staff. There are ten ways in which to respond to a claim, as outlined below.

10 WAYS TO RESPOND TO A CLAIM

CLAIM ACCEPTANCE

1. This requires no formal acknowledgement and is simply accomplished by settlement of the claim either in the amount requested on the form, or a compromised amount agreed to by the claimant and the person settling the claim on behalf of the city. With few exceptions, a release of all claims should be signed by the claimant prior to tendering a check or draft. A "form" release may be used. Each city may utilize its own form releases, as found acceptable by city counsel, or may draft a specific release for each claim. The ABAG PLAN staff will utilize form releases except where a form release may be inappropriate or in the case of settlement after litigation has begun. An exemplar of a General Release and a Property Damage Release can be found in Section 8, Pages 7 & 8.

CLAIM INSUFFICIENCY

2. If a claim fails to meet the statutory requirements for claim contents expressed in GC 910 et seq., the public entity has twenty days to state specifically why the claim is insufficient. The claim should not be returned the the claimant. A format for such a notice is found in Section 8, Page 9.

Per GC 910.8, a public entity may not take action on a claim that is insufficient for 15 days. This wording suggests the claim may be rejected after lapse of the 15 day time period. Mailing a rejection notice at this time would assure that only a six (6) month, rather than two (2) year, statute of limitations was applicable to the claim. A recommended form for such a follow-up rejection of the claim is found in Section 8, Page 17.

**NORMAL
REJECTION**

3. NORMAL REJECTION - Should a claim be timely and sufficiently filed but for an amount not justly due, or for an instance where there is no liability on the part of the public entity, the public entity may reject the claim.

If the public entity fails to take any action on a claim, the claimant would have two years from the date the cause of action arose in which to file a law suit (GC 945.6).

If the public entity rejects the claim and does so by sending formal notice to the claimant, the claimant then has only six months from the date the rejection notice was delivered or placed in the mail to the claimant in which to file a lawsuit. Find exemplar notice in Section 8, Page 10.

**CLAIM MAY
BE REJECTED
AT ANY TIME**

Some public entities are under the belief that in order for the public entity to invoke the six-month statute of limitations, it must reject the claim prior to the forty-five day expiration date, at which time it is deemed rejected by operation of law. This belief is not shared by ABAG PLAN, nor defense attorneys known to ABAG PLAN in the Bay Area. It is our belief a claim can be rejected at any time after it has been submitted, whether before or after the filing period, and the six-month statute is invoked at the time the notice is delivered or sent to the claimant. A case in point is Kane v. San Diego (1969) 2 CA 3d 550.

**ACCEPT
JUST AMOUNT/
REJECT
BALANCE**

4. If the public entity finds the claim a proper charge against the entity, but for an amount greater than is justly due, the entity may either reject the claim or allow the claim in the amount justly due and reject it as to the balance (GC 912.6).

ABAG PLAN does not recommend utilizing the latter claim response. We have found in the past that such a rejection may be interpreted as initiating two separate statutes of limitations. It has been argued that since the claim was accepted in a specified amount, and consequentially not rejected in that amount, the two-year statute for filing a suit was in effect. So as to avoid legal arguments as to which statute is in effect upon issuance of such a rejection notice, we recommend that either the claim be compromised, or rejected in its totality. Accordingly, we are not providing a recommended format for such a rejection notice.

**LATE/SIX
MONTHS**

5. GC 911.2 provides a claim for death, personal injury, personal property, or damage to crops must be submitted within six months of the cause of action. If the claimant fails to file a claim within the six-month period, he or she may file with the entity an application to present a late claim. Should a claimant file a claim past the six-month

period that is not accompanied by an application to present a late claim, the public entity must advise the claimant within forty-five days of submission of the claim that the claim is late and an application to file a late claim must be filed (GC 911.3). The recommended format for a form notice advising the claimant of such a procedure is found in Section 8, Page 11.

LATE/1 YEAR

6. LATE CLAIM PAST THE ONE-YEAR STATUTE - GC 911.2 provides that a claim for damages other than death, personal injury, personal property, or growing crops must be filed within one year of the cause of action. There is no procedure for filing a late claim application that involves the one-year statute. A recommended form for this circumstance is found in Section 8, Page 12.

**REJECT LATE
CLAIM
APPLICATION**

7. If the claimant complies with GC 911.4 by filing a late claim application, the public entity has the discretion to accept or reject the late claim application, but if it fails to act on the late claim application, it is deemed rejected by operation of law on the forty-fifth day (GC 911.6).

GC 911.4 specifies that a claim shall be submitted along with the late claim application. If the late claim application is rejected by the entity, the claim need not be addressed. A recommended form for rejection of a late claim application is found in Section 8, Page 13.

**ACCEPT LATE
APPLICATION/
REJECT CLAIM**

8. Sometimes it is beneficial for the entity to accept the late claim application. It precludes a possible court appearance when claimant's attorney extends the time period for filing suit giving the entity breathing room to investigate/negotiate; it limits the causes of action in the complaint to only those pleaded in the claim; and it puts the claimant or claimant's attorney in a better mood for reasonable negotiations.

If the entity wished to accept the late claim application and accept the claim, again there would be no need for a formal response; the entity would simply enter into negotiations to compromise the claim.

If the entity wished to accept the late claim application, but reject the claim itself, a formal response is necessary. A recommended format for such a response can be found in Section 8, Page 14.

**LATE CLAIM
APPLICATION
IS LATE**

9. GC 911.4 provides that an application to file a late claim be presented to the entity within a reasonable time not to exceed one year after the accrual of the cause of action. Occasionally, an application will be filed more than one year after the cause of action arose. A recommended format for response to such a filing can be found in Section 8, Page 15.

**LATE CLAIM/
PARTIAL
REJECTION**

10. Because all causes of action which will be pleaded in a lawsuit must be stated in the underlying claim against the entity, many claims contain facts and allegations supporting several causes of action. Because the different causes of action may have different dates in which they arose and different statutory times pertaining to the claim filing requirements, it is occasionally necessary to reject part of a claim as untimely, while rejecting another part of a claim simply on its merits.

This is done quite easily by expressing in the rejection notice that all damages arising prior to the six-month period are rejected because they are untimely; as to all damages arising after the six-month period, claims for those damages are simply rejected. A recommended form for advising the claimant of such circumstance, is found in Section 8, Page 16.

**PROOF OF
SERVICE BY
MAIL**

At the city's discretion, it may wish to utilize a proof of service by mail (CCP 1013a) when sending out rejection notices. A recommended format can be found in Section 8, Page 18. The proof of service by mail will be utilized should it become necessary to later prove that a notice was, in fact, mailed to the claimant. Some entities have set procedures in their offices that preclude the necessity of proof of service by mail. In such cases the procedures provide that all mail is specifically deposited in a government mail chute the same evening of the date which is on the letter. Someone in the office in question has that responsibility and is always prepared to sign an affidavit that the letter was, in fact, deposited in the mail the same day it was typed and dated. If your city has such a procedure, and if mailing the proof of service by mail is an inconvenience, you may consider the second procedure as an alternative.

Remember that all notices to claimants shall be mailed to the address that appears on the claim form that specifies the address where notices are to be mailed. Occasionally a claimant will misunderstand that description on the claim form and will leave it blank or fill in the entity's own address. In such cases, in order to assure compliance with the GC requirements, the entity should mail the rejection notice to the address on the claim form designated as the address to which notices are to be sent, even if the address is believed to be in error. If the claimant's personal address is listed, or if the city later learns of a different address that might better be utilized as an address to assure notices have reached the claimant, it should send notices to that address as well.

SECTION 4

SUBROGATION COLLECTION

SCOPE OF SERVICES PROVIDED

ABAG PLAN does not have the responsibility of collecting on behalf of the member agency monies due it arising out of accidents involving agency personnel, equipment, or property.

There are times, however, when a claim against the agency will also involve damage to agency property or injury to agency personnel. Such cases often result in damage to the respective parties property due to the comparative negligence of both the claimant and the agency staff; thus, the amount of damages each owes needs to be determined. Under such circumstances, ABAG PLAN will make the determination as to comparative negligence values, and will assist in the coordination of either offsetting the damages or assisting the entity in collection of damages due them by a claimant or a claimant's insurer.

ABAG PLAN ASSISTANCE FROM CITY

Should a suit be filed against your agency that involves damage to the agency's property or injury to agency personnel, the agency should bring to the attention of ABAG PLAN any monies due the agency, or liens pending due to the expenditure of worker's compensation benefits. ABAG PLAN will, of course, assure that defense counsel takes those factors into consideration when either settling or trying a case.

SECTION 5

HANDLING LAWSUITS

WHAT TO DO IF SERVED

Should your entity, or any employee of your entity, be sued either personally or receive a suit by mail, and if it contains a cause of action for damages that may possibly be covered under the ABAG PLAN policy for the time period you have been in the ABAG PLAN, a copy of the Summons and Complaint and all attached documents, along with the envelope if mailed, should be sent to:

ABAG PLAN Corporation
ATTN: Claims Manager
P.O. Box 2050
Oakland, CA 94604-2050

Further, immediately call the Claims Manager at (510) 464-7954 and inform of service.

WHAT TO ENCLOSE

The Summons and Complaint should be sent accompanied with the usual Loss Notice. If the suit pertains to a claim previously filed against your agency, indicate the agency's claim number on the Loss Notice. If you have a particular preference as to which law firm should defend the agency should it be necessary to refer the matter to outside defense counsel, indicate the name of the law firm in the comments section of the Loss Notice. If anyone in the agency has had contact with the claimant or claimant's attorney, or has any other information regarding the claim or suit that has not yet been brought to the attention of ABAG PLAN, enclose those reports or comments as well.

INTERNAL PROCEDURES

Because in all state court actions a responsive pleading must be filed within thirty (30) days, and in federal court actions twenty (20) days, it is imperative the suit move through appropriate channels and be sent to ABAG PLAN as quickly as possible. You should have effective procedures to assure that all employees are familiar with the appropriate procedure for forwarding a suit through channels. Each employee must know that the original of all papers served upon them shall be forwarded through channels, even if the papers are duplicates of each other, and even if they are served later with the exact same set of pleadings.

Since frequently plaintiff attorneys do not know the home address of public employees, especially police and fire personnel, they often try to serve the suit pursuant to CCP 415.20 by leaving a copy at the place of employment and subsequently following up with service by mail to the office where the Summons and Complaint was left. Service is not effected

until ten days after receipt of the second Summons and Complaint by mail. Accordingly, it is important that ABAG PLAN knows that the follow-up service by mail was completed. Once again, it is important that employees know to forward all such papers, even if they are exactly the same pleading previously received, through the appropriate channels to be forwarded to ABAG PLAN.

**INFORMATION
NEEDED**

It is imperative on the Loss Notices accompanying the Summons and Complaint to ABAG PLAN, you specify the following:

1. The complete name of the individual that was actually served with the Summons and Complaint. If personal service was made; to whom, including his or her title, his or her department, and work telephone number.
2. The exact date and time of day personal service was accomplished.

Each entity should designate a person or office who is to receive service of Summons and Complaints on behalf of the entity. All employees should know where to refer a process server should one inquire as to the proper place for service. The person designated to receive service on behalf of the entity should:

**INSTRUCTIONS
FOR RECEIVING
SERVICE
OF PROCESS**

1. Not let the process server leave until all documents been reviewed.
2. If the document contains summonses for individual employees who have not expressly allowed the entity to accept service on their behalf, those summonses and complaints should be returned to the process server with notification that the designate is not authorized to accept personal service on behalf of those specific employees.

IMPORTANT

If service is made by mail, and the Summons and Complaint is accompanied with and "acknowledgement of service by mail," the acknowledgement should be signed but not returned to the plaintiff's attorney. The original of the signed acknowledgement should be forwarded to ABAG PLAN and a copy retained for the agency's own files.

No one in the agency should accept personal service on behalf of another individual unless that individual has given the agency, in writing, express permission to accept service on his or her behalf. If such written permission has been executed, the designate of the agency should be acquainted with the list of persons who have granted the agency the capacity to accept personal service on their behalf.

Once ABAG PLAN has received the Summons and Complaint it will be reviewed and, if practical, ABAG PLAN will try to resolve the case with plaintiff's attorney prior to referring the case to outside counsel.

REFERRAL

Should the case require referral to outside counsel, ABAG PLAN will refer the case and will instruct counsel to report to ABAG PLAN on all status reports with pleading, and to copy the appropriate designate within the agency.

**ABAG PLAN
ASSISTANCE
FROM AGENCY**

Unless the agency advises ABAG PLAN to the contrary, all interrogatories and other pleading requiring input from the agency will be sent to the designate of the agency receiving all other materials from ABAG PLAN, and said designate will be responsible for assuring the responses are obtained in a timely manner and returned to defense counsel.

It is the desire of ABAG PLAN to have a designate of the agency involved in all large cases or cases that will ultimately be going to trial. ABAG PLAN may ask the agency to have an employee respond to meetings with defense counsel, settlement conferences, trials, etc., in order to assure maximum communication with agency staff regarding all known possible defenses to a case, as well as, give feedback regarding possible loss control procedures the agency may want to initiate.

SECTION 6

CLAIM SETTLEMENT

AGENCY SETTLEMENT AUTHORITY & PROCEDURE

Each agency has settlement authority up to 10% of their deductible to settle property damage claims only. Once the agency has settled a claim that was previously noted "FOR INPUT ONLY," the agency will forward to ABAG PLAN a report of the settlement. A recommended form for reporting the settlement can be found in Section 8, Page 5. The agency shall use its own funds for claim settlements.

ABAG PLAN SETTLEMENT AUTHORITY & PROCEDURE

The ABAG PLAN Claims Manager has the discretion to handle any property damage claim not handled by the agency. The ABAG PLAN Claims Manager has the authority to settle claims up to \$50,000 with review and approval by the Risk Manager. The ABAG PLAN Risk Manager has settlement authority up to \$100,000.

All settlement amounts paid out by ABAG PLAN within the agency's deductible will be billed to the agency for reimbursement on a monthly basis. Balances due ABAG PLAN more than thirty days will accrue interest at a rate of ten percent (10%) per annum (0.83333% monthly).

CLAIMS COMMITTEE

Settlement authority above \$100,000, after the agency's deductible is exhausted, will be vested in the ABAG PLAN Claims Committee.

SETTLEMENT AUTHORITY