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Tort Claims Notice Requirements: Contents & Delivery of the Notice

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In [personal injury lawsuits](#) against any governmental entity in New Mexico, the [New Mexico Tort Claims Act](#) requires that a Tort Claims Notice be sent to all possible governmental defendants within 90 days of the incident. This is a strict requirement and missing the 90 day deadline will bar the personal injury suit completely.

The contents of the notice are pretty straightforward. The Tort Claims Act simply requires that the entity be placed on notice of possible claims against it. The Act requires that the written notice state the time, place and circumstances of the loss or injury. In an abundance of caution, unless there is a good reason not to, we typically set forth all of the important details of the incident including date of the incident, the names and the parties responsible for our client's injuries, their titles or other relationship to the named entity, the location of the incident, a brief description of the incident and a description of our client's injuries.

The governmental entity to receive the notice is sometimes a little trickier to determine. You must first determine if a governmental entity is involved which is sometimes more difficult than it sounds. Once you have determined that a governmental entity is involved, the Act itself provides guidance on who should receive the notice in its language at NMSA §41-4-16:

"Every person who claims damages from the state or any local public body under the Tort Claims Act shall cause to be presented to the risk management division for claims against the state, the mayor of the municipality for claims against the municipality, the superintendent of the school district for claims against the school district, the county clerk of a county for claims against the county, or to the administrative head of any other local public body for claims against such local public body, within ninety days after an occurrence giving rise to a claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place and circumstances of the loss or injury."

It is important that you strictly follow the dictates of the Act. Failure to provide notice to the appropriate authority will bar your claim no matter how well-intentioned you were in delivering the notices to the wrong parties.

The Notice should be sent by certified mail return receipt requested so that you can verify that the Notice was sent and received. This is particularly important when the deadline is looming and any error or failed delivery could be fatal. Keep in mind also that certified mail takes significantly longer to deliver. If the deadline is immediate, like right now, then send the notice by email and fax and pony express if necessary to get the notice there by the close of business on the deadline date.

DISCLAIMER

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