

Notice of Claim Form

Instructions, Transmittal Letter, and Claim Form

Joint Insurance Funds throughout the state have established certain uniform procedures for the members to handle claims filed against them. The purpose of this uniform procedure is to ensure that each member takes appropriate action to preserve any defenses that may be available.

Therefore, the purpose of this exhibit is to review the procedures applicable to liability claims (as distinguished from workers' compensation claims), so that all of claims are handled promptly and efficiently.

There currently exist defenses available to the member because of the failure of claimants to comply with a properly established procedure in accordance with the New Jersey Tort Claims Act. In those instances, public entities must be able to prove that the claimants were given notice of the procedure.

It is the Fund's recommendation that your governing body or commission adopt a "Notice of Claim" form by Resolution, so that there will be a record that the form has been adopted as the official Notice of Claim Form for your public entity. The authority for the adoption of the form is found in the New Jersey Tort Claims Act, N.J.S.A. 59:8-6. **If there is no record of a formal adoption of the Notice of Tort Claim form, then a plaintiff's attorney might argue that the public entity did not adopt the form and that the failure to complete it was not fatal to the assertion of the claim.**

Under the law, public entities are entitled to require the disclosure of information related to the claim, including information that will enable the Fund to evaluate both liability and damages. The failure of a claimant to provide the requested information in a timely manner can protect the member against the claim by resulting in the dismissal of the claim.

It is not suggested that the use of the official form will win every case, but it will give members an additional basis for defending litigation if the claimants have not filed the claim properly, and if they have not provided the information required by the official form once they have been notified about the form.

It is suggested that the following instructions be followed:

- 1) Whenever a Notice of Tort Claim or a letter asserting a claim against the member or against a members' employee is received by the member, it should be date stamped to show the date on which it was received.
- 2) A copy of that notice should be sent both to your designated Claims Administrator Company for the Joint Insurance Fund (see **Section II of the Claims Manual**, and to the Fund Attorney for the Joint Insurance Fund (see **Exhibit One on preceding pages**).
- 3) At the same time, provide each of them with whatever information you may have on the incident giving rise to the claim, i.e., police reports, copies of documents, etc., as that will enable them to get a handle on the claim quickly.
- 4) In most instances, the first contact that you will have will be a letter from an attorney asserting a claim against the member, or against a member's employee(s). That initial contact rarely will provide sufficient information on the nature of the claim and rarely will it be provided on the "official" claim form adopted by each member.
- 5) When the initial contact is received, the member should notify the claimant or the attorney for the claimant, **by certified mail, return receipt requested**, that the claim must be filed on a specific form

adopted by the member for that purpose. A format for a responsive letter is attached for your use. A copy of the officially adopted Tort Claim Form should be enclosed with the response letter.

It is strongly recommended that there be no exceptions to the procedure. Just because you may believe that there is no basis for the claim, because it happened on school property, or because it happened on a State highway, or for any other reason, does not mean that the procedure should not be followed. The member may still be named in the resulting litigation filed by the claimant and it is then too late to:

- Gather the necessary information that might have protected the member early in the claim process; or
- Raise defenses based on the failure of the claimant to comply with the New Jersey Tort Claims Act.

A sample Notice of Claim Form and a sample cover letter than can be used to respond to the initial contact are attached for your use.

The Notice of Claim Form should be officially adopted by Resolution of your Governing Body. A certified copy of that Resolution should be provided to:

- The Executive Director and Administrator for the Joint Insurance Fund.
- The Fund Attorney for the Joint Insurance Fund.
- The Claims Administration Company for the Joint Insurance Fund.

Once the return receipt is returned, you should retain it in your records, in case it is needed at some future time to prove that the claimant was given notice.

Additionally, whenever there is a difference of more than a few days between the postmark on the envelope conveying the initial notice or the official notice to you, and the date that is shown on the Notice or the cover letter, it would be useful to keep the envelope and to provide the JIF Attorney with a photocopy of it. It has been found useful on several occasions where a Notice is dated on one date, and received several weeks later. In that instance, it is very useful to have the envelope showing the date mailed, so that a claimant cannot backdate a Notice to imply compliance with statutory deadlines.

When the completed Notice of Tort Claim has been returned, it should be date stamped to show the date that it was received, and copies should be sent to Claims Administrator and Fund Attorney, so that their information will be as complete as possible regarding the claim.

When a Summons and Complaint is received or when a Notice of Motion is received, or any document that appears to involve a court proceeding, most likely in the New Jersey Superior Court, or the United States District Court, that document should be transmitted **immediately** to the Claims Administrator and Fund Attorney as it may require immediate action and the assignment of defense counsel. The receipt of court documents certainly justifies the use of TeleFax to get those items to the claims administrator and Fund Attorney.

When a Summons and Complain is received, that is **not** the time to send out the form letter on the Notice of Claim procedures. A Summons and Complaint requires a response in Court, and sending out the form letter only communicates to the attorney for the Plaintiff that you may not know what you are doing.

It is important that as soon as a claim is received, that members make an effort to determine just what happened, and that the Fund professionals can collect the reports that may have been made by member's employees, including police reports, on the incident giving rise to the claim.

For your convenience, a form letter has been prepared to serve as a "check off" in sending claim documents to the Claims Administrator and Fund Attorney. Simply check off that you are sending the information to either party and complete the form. Then photocopy the form and send the copies and the information out.

You may certainly use some other format, but you should be certain that the documents are sent out and are sent both to the Claims Administrator and Fund Attorney at the same time.

Once litigation has begun, whether in the New Jersey Superior Court or in the United States District Court, a defense attorney will be assigned to the case. The Fund Attorney is responsible for the assignment. You should cooperate fully with that attorney.

You should not respond to requests for information from the Plaintiff's attorney without first checking with the assigned defense attorney, or with JIF Attorney, or with your Municipal/Utility Attorney, where litigation has not yet commenced and no defense attorney has been assigned. Please make certain that your various departments (police, public works, code enforcement, sewer, etc.) are aware of the litigation, and that they should not respond to information requests on a routine basis.

There may be occasions when the Funds have found it necessary to assign more than one defense attorney to the case, where there is a real conflict between the position of the member, and the defense of an individual public entity employee. In that instance, you will be advised to discuss the case only with the attorney who is defending the municipality/utility.

Regarding punitive damages, these claims arise from allegation that a member's employee intentionally or willfully caused the injury to the claimant. ***The coverage through the Joint Insurance Fund does not cover awards of punitive damages*** for the very reason that to provide coverage would encourage wrongful acts by public employees. The defense of the case, including the punitive damage claims, will in most cases be handled by the assigned defense attorney.

If an employee, who is alleged to have caused injuries sufficient to justify a punitive damage award, wishes to consult with a private attorney with respect to their individual exposure, they have every right do so. They also have a right to have private counsel represent them with respect to the punitive damage claims. That consultation and any representation, however, is on their own determination, and at their own expense. The defense of the claims will be handled by the attorney or attorneys assigned by the Joint Insurance Fund. **Members of the Bergen Joint Insurance Fund should refer to Section III for additional information in this area.**

Sample Resolution to Adopt Notice of Tort Claim Form

A RESOLUTION OF THE _____ OF THE _____ ADOPTING A FORM REQUIRED TO BE USED FOR THE FILING OF NOTICES OF TORT CLAIMS AGAINST THE _____ IN ACCORDANCE THE PROVISIONS OF THE NEW JERSEY TORT CLAIMS ACT, N.J.S.A. 59:8-6.

WHEREAS, the New Jersey Tort Claims Act, N.J.S.A.. 59:8-6, provides that a public entity may adopt a form to be completed by claimants seeking to file a Notice of Tort Claim against the public entity; and

WHEREAS, the _____ is a public entity covered by the provisions of the New Jersey Tort Claims Act; and,

WHEREAS, the _____ deems it advisable, necessary and in the public interests to adopt a Notice of Tort Claim form in the form attached hereto and made a part hereof.

NOW THEREFORE BE IT RESOLVED, by the _____ of the _____ assembled in public session the _____ day of _____, 199X, that the attached Notice of Tort Claim form be and hereby is adopted as the official Notice of Tort Claim form for the _____; and,

BE IT FURTHER RESOLVED, that all persons making claims against the _____, pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, et. seq., be required to complete the form herein adopted as a condition of compliance with the notice requirement of the New Jersey Tort Claims Act.

Sample Transmittal Letter to Fund Attorney and Claims Administrator

Date:

To: <Insert Name of Your Claims Administrator>
 <Insert Fund Attorney>

Re: **Notice of Claim of** _____

Enclosed you will find the following:

- Initial Notice of Tort Claim received <enter date received>.
- Copy of Response sent on <enter date> by certified mail, return receipt request, with the official Notice of Tort Claim Form.
- Reports by employees on the incident given rise to the claim.
- Official Notice of Tort Claim form received on <enter date>.
- Summons and Complaint received on <enter date>.
- Other <List, if any>

Very truly yours,

cc: Risk Management Consultant

Sample Notice of Tort Claim Form Transmittal Letter to Claimant

Dear Claimant:

Your recent communication in which you indicated an intention to assert a claim against _____ or against an official, employee or Department of the _____ has been received.

In accordance with the provisions of the New Jersey Tort Claims Act, the _____ has adopted an official form to be completed by any individual seeking to assert a claim against the _____ or against any official, employee or Department of the _____.

A copy of the Claim Form is enclosed and includes a form authorizing us to obtain reports with respect to your injury.

Your claim will not be considered as filed and cannot be evaluated until you return the completed form and provide the information required.

You should be aware of the fact that the New Jersey Tort Claims Act included limitations on claims against public bodies and established time limits for the filing of those claims.

Notice of the claim against the public body generally must be filed within 90 days after the incident giving rise to the claim. No Notice of Tort Claim may be filed after the 90 day period unless there is an Order from the New Jersey Superior Court allowing the late filing of the Notice of Tort Claim. Such an Order can be granted only within one year from the date of the incident and only where the Court determined that good cause exists to permit the late filing.

Very truly yours:

Sample Notice of Tort Claims Form

TOWNSHIP/BOROUGH OF <Enter Your Address>

CLAIMANT INFORMATION

Name: _____

Telephone: _____

Address: _____

Date of Birth: _____

ATTORNEY INFORMATION (If Applicable)

Name: _____

Telephone: _____

Address: _____

Fax: _____

File No.: _____

Send Notices to: Claimant

Attorney

GENERAL INSTRUCTIONS: Pursuant to the provisions of the New Jersey Tort Claims Act, this Notice of Tort Claim form has been adopted as the official form for the filing of claims against the Township of _____.

The questions are to be answered to the extent of all information available to the Claimant or to his or her attorneys, agents, servants, and employees, under oath. The fully completed Claim Form and the documents requested shall be returned to the:

Administrator
Township of _____
(your address)

NOTE CAREFULLY: Your claim will not be considered filed as required under the New Jersey Tort Claims Act until this completed form has been filed with the Township of _____. Failure to provide the information requested, including such responses as “to Be Provided” or “Under Investigation” will result in the claim being treated as not being properly filed.

Timely Notices of Claim must be filed within 90 days after the incident giving rise to the claim.

This form is designed as a general form for use with respect to all claims. Some of the questions may not be applicable to your particular claim. For example, if your claim does not arise out of an automobile accident, questions regarding road conditions might not be applicable. In that event, please indicate “Not Applicable.”

If you are unable to answer any questions because of a lack of information available to you, specify the reason the information is not available to you. If a question asks that you identify a document, it will be sufficient to furnish true and legible copies. Where a question asks that you “identify all persons,” provide the name, address and telephone number of the person.

If you need more space to provide a full answer, attach supplementary pages, identifying the continuation of the answer with the number of the applicable question.

DEFINITIONS:

“**Claimant**” shall refer to the person or persons on whose behalf the Notice of Claim has been filed with the Township.

“**Documents**” shall refer to any written, photographic, or electronic representation, and any copy thereof, including, but not limited to, computer tapes and/or disks, videotapes and other material relating to the subject matter of the claim.

“**Person**” shall include in its meaning a partnership, joint venture, corporation, association, trust or any other kind of entity, as well as a natural person.

“**Public Entity**” shall refer to the Township of _____ along with any agent, official, or employee of the Township of _____ against whom a claim is asserted by the Claimant.

NOTE: That the questions are divided into sections relating to the claimant, the claim, property damage, personal injury and the basis for the claim against the public entity or public employee.

If the claims involves only property damage, the portion on personal injuries need not be answered. If the claim involves no property damage, then the portion on property damage need not be answered.

INFORMATION ON THE CLAIMANT

1. Provide the following information with respect to the Claimant:
 - Any other name by which the claimant is known.

 - Address at the time of the incident giving rise to the claim.

 - Marital Status (at the time of the incident and current).

 - Identify each person residing with the claimant and the relationship, if any, of the person to the Claimant.

2. Provide all addresses of the Claimant for the last 10 years, the dates of the residence, the persons residing at the addresses at the same time as the Claimant resided at the address and the relation, of any of the persons to the Claimant.

INFORMATION ON ALL CLAIMS

3. Provide the exact date, time and place of the incident forming the basis of the claim and the weather conditions prevailing at the time.

4. Provide the Claimant's complete version of the events the form the basis of the claim.

5. List any and all individuals who were witnesses to or who have knowledge of the facts of the incident which gave rise to the claim. Provide the full name and address of each individual.

6. Identify all public entities or public employees (by name and position) alleged to have caused the injury or property damage and specify as to each public entity or employee the exact nature of the act or omission alleged to have caused the injury or property damage.

7. If you claim that the injury or property damage was caused by a dangerous condition of property under the control of the public entity, specify the nature of the alleged dangerous condition, and the manner in which you claim the condition caused the injury.

8. If you allege a dangerous condition of public property, state the specific basis on which you claim that the public entity was responsible for the condition and the specific basis and date on which you claim that the public entity was given notice of the alleged dangerous condition. **Statements such as “should have known” and “common knowledge” are insufficient.**

9. If you or any other party or witness consume any alcoholic beverages, drugs or medications within twelve hours before the incident forming the basis of the Claim, identify the person consuming the same and for each person (a) what was consumed, (b) the quantity thereof, (c) where consumed, (d) the names and addresses of all persons present.

10. If you have received any money or thing of value for your injuries or damages from any person, firm or corporation, state the amounts received, the dates, names and addresses of the payers. Specifically list any policies of insurance, including policy number and claim number, from which benefits have been paid to you or to any person of your behalf, including doctors, hospitals or any person repairing damage to property.

11. If any photographs, sketches, charts, or maps were made with respect to anything which is the subject matter of the Claim, state the date thereof, the names and addresses of the persons making the maps and of the persons who have present possession thereof. Attach copies of any photographs, sketched, charts or maps.

12. If you or any of the parties to this action or any of the witnesses made any statements or admissions, set forth what was said; by whom said; the date and place where said; and in whose presence, giving names and addresses of any persons having knowledge thereof.

13. State the total amount of your claim and the basis on which you calculated the amount claimed.

14. Provide copies of all documents, memoranda, correspondence, reports (including police reports), etc. Which discuss, mention or pertain to the subject matter of this claim.

15. Provide the names and addresses of all persons or entities against whom claims have been made for injuries or damages arising out of the incident forming the basis of this claim and give the basis for the claim against each.

PROPERTY DAMAGE CLAIM

16. If your claim is for property damage, attach a description of the property and an estimate of the cost of repair. If your claim does not involve any claim for property damage, enter "None."

Note: If your claim is for property damage only, initial here and proceed directly to the certification section on the next to last page of this form.

☐Initials: _____

PERSONAL INJURY CLAIMS

17. Was any complaint made to the public entity or to any official or employee of the public entity. State the time and place of the complaint and the person or persons to whom the complaint was made.
18. Describe in detail the nature, extent and duration of any and all injuries.
19. Describe in detail any injury or condition claimed to be permanent.
20. If confined to any hospital, state name and address of each and the dates of admissions and discharge. Include all hospital admissions prior to and subsequent to the alleged injury and give the reason for each admission.
21. If x-rays were taken, state (a) the address of the place where each was taken, (b) the name and address of the person who took them, (c) the date when each was taken, (d) what each disclosed, (e) where and in whose possession they now are. Include all x-rays, whether prior to or subsequent to the alleged injury forming the basis of the claim.
22. If treated by doctors, including psychiatrist or psychologist, state (a) the name and present address of each doctor, (b) the dates and places where treatments were treatments are continuing, the schedule of continuing treatments. Provide true copies of all written reports rendered to you or about you by any doctor whom you propose to have testify on your behalf.
23. If you have any physical impairment which you allege is caused by the injury forming the basis of your claim and which is affecting your ordinary movement, hearing or sight, state in detail, the nature and extent of the impairment and what corrective appliances, support or device you use to overcome or alleviate the impairment.
24. If you claim that a previous injury has been aggravated or exacerbated, describe the injury and give the name and present address of each doctor who treated you for the condition, the period during which treatment was received and the cause of the previous injury. Specifically list any impairment,

including use of eyeglasses, hearing aid or similar device, which existed at the time of the injury forming the basis of the claim.

25. If any treatments, operations, or other form of surgery in the future has been recommended to alleviate any injury or condition resulting from the incident which forms the basis of the claim, state in detail (a) the nature and extent of the treatment, operation, or surgery, (b) the purpose thereof and the results anticipated or expected, (c) the name and address of the doctor who recommended the treatments operations or surgery, (d) the name and address of doctor who will administer or perform the same, (e) the estimated medical expenses to be incurred, (f) the estimated length of time of treatments, operation or surgery, period of hospitalization and period of convalescence, (g) all other losses or expenditure anticipated as a result of the treatment, operations or surgery, (h) further if it is your intention to undergo the treatments, operation or surgery, please give an approximate date.
26. Itemize any and all expense incurred for hospital, doctors, nurses, x-rays, medicines, care and appliances and indicate which expenses were paid by any insurance coverage.
27. If employed at the time of the alleged injury forming the basis of the claim state (a) the name and address of the employer, (b) position held and the nature of the work performed, (c) average weekly wages for the year prior to the injury, (d) period of time lost form employment, giving dated, (e) amount of wages lost, if any. List any sources of income continuation or replacement, including, but not limited to, workers' compensation, disability income, social security and income continuation insurance.
28. If other loss of income, profit or earnings is claimed, state (a) total amount of loss, (b) give a complete detailed computation of the loss, (c) the nature and dates of the loss.
29. If you are claiming lost wages state (a) the date that the employment began, (b) the name and address of the employer, (c) the position held and the nature of the work performed, (d) the average weekly wages. Attach copies of pay stubs or other complete payroll record for all wages received during the year.

DOCUMENT REQUEST: Provide all documents identified in your answers to the above questions.

CERTIFICATION: I hereby certify that the information provided is the truth and is the full and complete response to the questions, to the best of my knowledge.

Signature of Claimant: _____

Authorization for Release of Medical and Hospital Records

Date: _____

To: _____

Re: _____
Patient's Name

Address

Social Security Number

Claim Number

You are hereby authorized and requested to disclose, make available and furnish to:

all information, records, x-rays, reports or copies thereof relating to my examination, consultation, confinement or treatment and to permit him or her to inspect and make copies or abstracts thereof.

Approximate date of admission to hospital, first examination, treatment of consultation:

A photocopy of this release form, bearing a photocopy of my signature shall constitute your authorization for the release of the information in accordance with the request made to you.

Signature: _____

Date: _____