

Notice & Disallowance of Claims under Wisconsin Statute § 893.80

CLAIMANT RESPONSIBILITY

TWO REQUIREMENTS. Section 893.80 includes a two-part procedural notice requirement: (a) timely notice of the event giving rise to the claim, and (b) a written itemization of the claim. Each must be provided if the claimant pursues a governmental entity, a division or agency (including Fire Departments and Police Departments), or their officers, officials, agents or employees in a lawsuit. Failure to comply with these provisions can result in the claim being barred.

§ 893.80(1)(a): NOTICE OF INJURY. Section 893.80(1)(a) mandates that notice of the injury must be given to the municipal entity and the employee involved. The notice must identify the circumstances and must be presented within 120 days of the injury.

FULFILLING THE NOTICE REQUIREMENT. There are two ways to fulfill the notice requirement:

Written Notice. If written notice is served within 120 days after the event causing injury, the statutory requirements are fulfilled. Written notice should include the time, place and circumstances of the injury and have the name and address of the claimant. When the municipality receives such a notice, the circumstances of how it was “served” should be noted and it should be forwarded to the municipality’s insurer at the earliest opportunity.

Actual Notice. Actual notice is the equivalent of actual knowledge; it is a “constructive” notice provision. Actual notice of the claim and the claimant is required. When a municipality learns of circumstances that can lead to a claim, this information should be collected and forwarded to the municipality’s insurer as soon as practical.

SPECIAL REQUIREMENTS UNDER § 893.80. For claims of negligent inspection, the notice of injury must be within one year of the date the negligent act was discovered or reasonably should have been discovered.

§ 893.80(1)(b): WRITTEN CLAIM. Section 893.80(1)(b) requires that before a lawsuit can be filed a claim must be presented, considered and disallowed. All damages must be itemized in the written claim and the claim must be properly presented to the clerk.

City/Village. If a city or village is presented with a claim, it is to be filed with the clerk and delivered to the comptroller for an examination within 30 days. The claim is then heard before the council or board.

Any claim against a municipality must list a specific dollar amount; vague statements such as “damages not to exceed x amount,” “damages up to x amount,” or “damages are in excess of x amount” do not fulfill the requirement. A claim must identify the claimant and the nature of the claim that is being asserted.

CITY/VILLAGE RESPONSIBILITY

DISALLOWANCE. Before a lawsuit can be properly brought, a written claim must be considered and disallowed. There are two ways a claim can be disallowed:

Actual Disallowance. This is a formal written denial of the claim. After the claim has been presented, a municipality has 120 days to disallow the claim. Following consideration and denial by the council or board, a letter is prepared and sent to the claimant advising that the matter has been considered and denied. The letter should be sent by certified mail and also advise that, by law, the claimant will be barred from filing a suit over the claim if it is not brought within 6 months of the date the disallowance letter is received.

Statutory Disallowance. If a municipality fails to disallow the claim within the 120 day period, the claim is deemed disallowed by virtue of § 893.80(1)(g). A lawsuit may then be filed. The municipality may not attempt to disallow the claim after the 120 day period

has lapsed since the statute has already effectively disallowed the claim. Where actual, written disallowance has not occurred, the six month statute of limitations is not applicable, and the regular statute of limitations will apply to any claim.

§ 893.80 EXEMPTIONS. Section 893.80 notice is not required for several types of claims, including:

- appeal of condemnation awards under § 32.05;
- actions where federal law preempts, particularly 42 U.S.C. § 1983, which allows a citizen to enforce federal civil rights;
- workers compensation claims under § 102.21;
- claims arising under the Wisconsin Fair Employment Act;
- actions under the Public Records Law, § 19.37(1n);
- actions under the Open Meetings Law, § 19.97(5);
- replevin claims for possession of property;
- appeals from property tax determinations under § 70.47;
- appeals from special assessments under § 66.0703;
- objections to annexation under § 66.0217;
- certiorari review of zoning decisions;
- claims for obstruction of natural drainage per § 88.87(2)(d).

IMPORTANT

**DO NOT AUTOMATICALLY DENY THE CLAIM
AND THEN SEND THE CLAIM TO THE INSURER.
LET THE INSURER REVIEW AND ADVISE.**