



Liability Claims User Guide

Administration and Best Practices for
County of Los Angeles Liability Claims



Claims against the County of Los Angeles take many shapes and forms.

This basic user guide was developed to provide information for departments whose roles are vital to assist the County defend, conclude, and recover from those claims. The guide provides links to more details, training, and policy that directly relates to the subject matter.

A special thank you to the Office of the County Counsel's General Litigation Division, the Chief Executive Office – Risk Management's Liability Claims and Recovery Unit, and the Legal Exposure Reduction Committee members who participated in formulating this guide.

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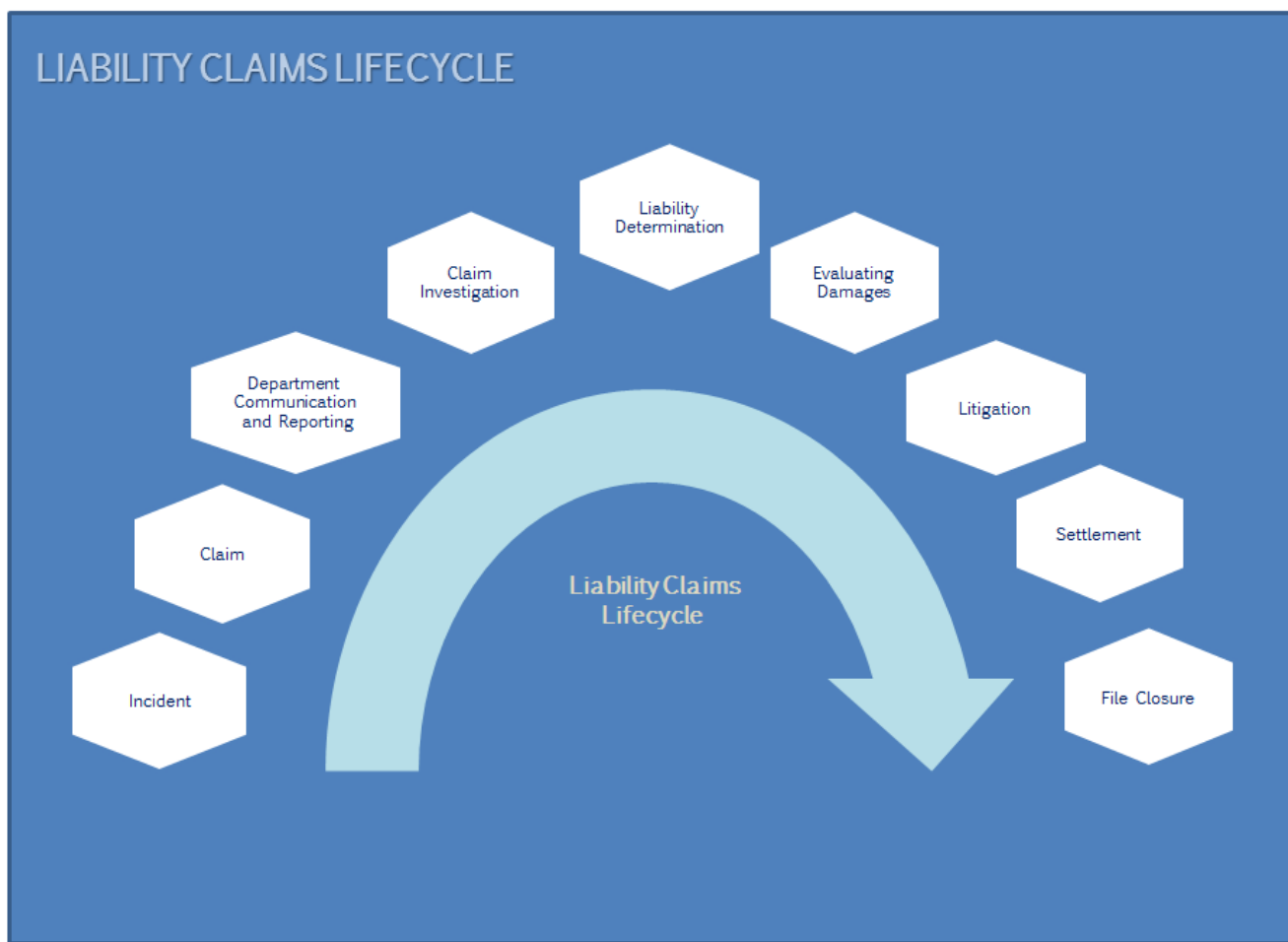
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LIABILITY CLAIMS LIFE CYCLE

A [tort liability claim](#) is a legal document filed by a party who is subjected to a wrongful act. Tort liability claims are filed against the County of Los Angeles (County) in response to an action, harm, or loss. A government claim is a legal document filed by a party against the County in accordance with the Government Claims Act, which deems that a claim must be filed against the County prior to filing a lawsuit. This Guide will focus on tort claims; therefore, we will refer to the aforementioned legal document filings as “claims.”

A claim has a defined life cycle, beginning with an incident and the subsequent filing of a claim, and ending when the claim has been settled, litigated, or closed. The chart below illustrates the tort liability claims life cycle that is most common within the County.



[Flow Chart](#)

INCIDENTS

All claims arise from incidents. An incident is described as a set of facts and circumstances that cause an injury to one or more parties, resulting in injuries to persons and/or property for which the County may be legally responsible.

It is vital that departments require its employees who are involved in an incident or are witnesses to an incident to accurately and thoroughly report all incidents in a timely manner. Once a department has been notified of an incident involving property damage, bodily injury, or death, an Incident Report must be completed and forwarded to the County's Third Party Administrators (TPAs). Incident Report forms ([Non-Employee Injury Report](#); [Report of Vehicle Collision or Incident](#)) and contact information for the [current TPAs](#) can be found on the County's Chief Executive Office (CEO) Risk Management intranet site.

Incident Report Criteria

Departments should prepare an Incident Report to document significant events involving individuals who are not County employees. This report should be completed immediately following an incident and submitted within ten (10) calendar days of the incident date. Reports should not be delayed for lack of sufficient information, as a follow-up report may be submitted at a later time when the information becomes available. In the event of a serious injury or death, contact the TPA immediately by telephone.

Incident Reporting Information

Determine what happened by identifying who, what, where, when, why, and how the incident occurred. Identify witnesses by their full name and secure their complete address and telephone number, including area code, in order to contact them to obtain their version of events. Identify the location for scene investigation. Confirm the date and time that the incident occurred and indicate whether the department had prior notice. Conduct a site investigation in order to examine the equipment, material, and environment related to the incident. Take photographs of the scene and all pertinent equipment, materials, and persons related to the potential loss. Obtain and examine any existing records, such as training records, equipment work orders, maintenance logs, and operating manuals. Describe, in detail, how the incident occurred.

Types of Evidence to Preserve

All evidence related to an incident must be preserved by departments. Any equipment that may have malfunctioned should be taken out of service and stored properly until further notice. Examples of evidence to preserve are:

- Photographs
- Machinery
- Video Tapes
- Monitors
- Tools
- Loose/Broken Tiles
- Broken Windows
- Damaged Vehicles
- Electronically Stored Information
- Documents

[Click here for additional information](#)

CLAIMS

Claim Process Overview

There are five basic steps of the claim adjusting process.

1. **Claim Presented:** Claims are received by the Executive Office of the Board of Supervisors (Board), entered into the County's Risk Management Information System (RMIS), and forwarded to the Office of the County Counsel (County Counsel) for assignment.
2. **Verifying Jurisdiction:** The validity of the claim needs to be evaluated to determine if the County is correctly named in the claim (i.e., non-jurisdictional, etc.).
3. **Investigating the Claim:** The purpose of the investigation is to gather evidence so that the claim can be evaluated, settled, denied, or defended in litigation. The adjuster will contact the department and claimant(s) to establish clarification and secure the basic facts of the claim. The department may be required to assist with the investigation. Investigation is the process of gathering information to determine the following:
 - Accident or other event causing the damage or injury (harm);
 - Resulting damage or injury;
 - Possible legal liability of any party for having caused that damage or injury; and
 - Potential sources of recovery for payments owed to or collectible from others.
4. **Determining the Cause of the Loss and the Amount of Damage:** The claim representative (or attorney) will determine, through a thorough investigation, if the County is responsible for the loss.
5. **Claim Resolution:** There are numerous methods to resolve a claim. Each of the methods must be understood and the claims should be thoroughly evaluated to determine which methods are viable solutions to resolve the claim in the most effective manner. The methods include the following options:
 - Denial/Acceptance
 - Settlement
 - Transfer to a Third Party

Claim Administration Overview

Claim administration within the County is handled by TPAs, County Counsel, and CEO. County Counsel assigns claims to each TPA and the CEO Risk Management. County Counsel also decides which claims to handle in-house. The following provides the most common types of claims handled by TPAs, County Counsel, and CEO, which at times may overlap:

1. **Third Party Administrators**

The TPAs handle the following types of claims:

- General Liability.
- Employment Practices.
- Automobile Third-Party Liability.
- Medical Malpractice.

2. **CEO Risk Management**

CEO has a dedicated in-house claims unit that handles the following types of claims:

- Inmate property taken into safekeeping.
- Patient property.
- [Selected first-party claims](#) (i.e., damage to County property).
- [Selected permittee driver claims](#).
- Miscellaneous claims.
- Coordinates Countywide subrogation activity (vehicle and real property).
- Insurance-covered claims.

In addition to the above claims, CEO also represents the County as plaintiff and/or defendant for claims presented in Small Claims Court.

3. **County Counsel's Claims Unit**

County Counsel has a dedicated in-house unit that handles the following types of claims:

- Most claims filed against the Sheriff's Department, except for those designated to be handled by a TPA (i.e., automobile and inmate medical liability).
- Discrimination, harassment, or defamation.
- Civil Rights.
- Indemnification.

CLAIMS (Continued)

Types of Claims

There are many different types of incidents that can result in the filing of a claim for damages against the County. These include tort liability claims which involve an action, harm, or loss suffered by a claimant. They are typically classified as General Liability, Automobile Liability, or Medical Malpractice. The table below outlines the types of claims, a brief description of the type of loss that may be classified within each area, and who may be responsible for adjusting the claim type.

Type of Claim	Description	Responsible Adjusting Group
General Liability	Slips and Falls	TPA
	Dangerous Conditions	TPA or County Counsel
	Employment Practices	TPA or County Counsel
	Civil Rights	County Counsel
	Small Claims Court	CEO Liability Claims Unit
	Property Damage	TPA, County Counsel, or CEO Liability Claims Unit
	Breach of Contract	TPA or County Counsel
	Professional Liability	TPA or County Counsel
	Errors and Omissions	TPA or County Counsel
	Inverse Condemnation	TPA or County Counsel
	Hospital Liability	TPA
	Child/Elder Abuse	TPA or County Counsel
Automobile Liability	Third Party Claims	TPA or County Counsel
	Permittee Driver Claims	Department
	First Party Claims	CEO Liability Claims Unit or Department
Medical Malpractice	All Medical Malpractice (Coroner, Fire, Health Services, Mental Health, Public Health, Sheriff)	TPA

Accelerated Claim Settlement Program

There are circumstances when the County prefers to accelerate the claim process in order to facilitate a positive financial outcome for the department involved. The early resolution of claims should be considered when it is legally and financially advantageous to the County. These guidelines apply only to those incidents and claims that have been identified and targeted for early intervention and resolution, and which are administered by the TPA or County Counsel for selected Sheriff claims.

The Accelerated Claim Settlement Program promotes expedient investigation by the County department personnel and TPA, to identify incidents and develop claim information in a more proactive manner.

Incidents and claims targeted for early resolution will be based on determination by the County Risk Manager, County Counsel, County department, and TPA, when a strategic advantage exists and where early resolution would resolve future costs associated with the incident and/or claim. In these events, the department must complete the following:

- Commence immediate field investigation of the incident or claim to determine the County's liability, and provide the TPA with a recommendation for resolution. County department personnel will contact the TPA that has been assigned to exclusively review, process, and expediently resolve the matter through the County's Accelerated Claims Settlement Program.
- Maintain and provide a listing that includes the address and telephone number of designated department staff liaison(s).
- Send completed Incident Reports to the TPA via email.
- Follow-up or provide additional information if necessary.

Liability Claims Settlement

There are a number of methods that can be used to settle a claim; the most common is a negotiated settlement agreement, which is a mutually accepted agreement. A negotiated agreement is not always possible; therefore, the County may choose to use other methods. These methods include:

1. Mediation (settlement conference with a mediator that is either binding or non-binding); and
2. Arbitration (a form of resolution where an arbitrator makes a decision that is either binding or non-binding).

If a resolution cannot be reached, County Counsel will select legal counsel, upon department concurrence, from the County approved panel list, to defend and represent the County.

The following are examples of why settlements should be attempted:

- The legal liability of the County or its employees.
- The availability of funding sources other than the County.
- Policy interest of the County.
- Risks of proceeding to trial.
- The cost of litigation.

CLAIMS (Continued)

Confidentiality

Attorney-Client Privilege

Communications between clients and counsel made in the course of the attorney-client relationship, and in confidence, are protected from disclosure pursuant to the attorney-client privilege. Protected communications include written and electronic correspondence and oral statements that pertain to pending litigation, are made in anticipation of litigation, constitute legal advice or opinions, or are made for any other legal purpose. Counsel has a duty to maintain client confidentialities, but it is the client who holds the right to refuse and prevent disclosure of confidential communications, subject to certain exceptions.

Work Product Protection

Documents or tangible items prepared by an attorney or at his/her direction, which reflect the attorney's impressions, conclusions, opinions, legal research, or theories, are protected from disclosure by the work product doctrine. General work product prepared by an attorney, or at an attorney's direction, may also be entitled to this protection. This doctrine applies to materials prepared for pending litigation and in anticipation of litigation, but also to materials prepared in a non-litigation capacity. The right to invoke the protection is held by the attorney, so it is important to involve County Counsel in all sensitive matters and any questions regarding the applicability of this protection should be directed to County Counsel.

LITIGATION

The litigation process is coordinated under the direction and supervision of County Counsel. It is not the intent of this Guide to explain complex legal terms and concepts. The department's designated County Counsel attorney can provide clarification and additional information related to the litigation process.

Many factors are considered during all phases of a lawsuit to determine if the lawsuit should proceed to the next phase, or if it can be resolved by the methods described below. Some of the factors that are considered include, but are not limited to, the legal liability of the County or its employees, the monetary damages or other relief sought by the plaintiff, and the [comparative fault](#) of others. Consideration is also given to the availability of funding sources other than the County, policy interests of the County, risks of proceeding to trial, and costs of litigation. The department involved, CEO Risk Management, TPAs, and County Counsel are all involved in the dynamic, ongoing, and continuous assessment of these and other factors during the pendency of a lawsuit.

Litigation typically begins when a lawsuit is served on the County. In some cases, the County's first notice of an incident or legal dispute is service of the lawsuit (e.g., claimant failed to present a claim, or a claim is not required).

Lawsuits filed against the County or its employees will be handled by the following:

1. County Counsel staff attorneys.
2. [Panel attorneys](#) under direction and supervision by County Counsel attorneys, many of which will be supervised by a TPA.

Litigation has several phases, beginning with the filing of a lawsuit ([summons](#) and [complaint](#)). Other phases may include [discovery](#), [motions](#), and trial. Any of these phases can result in the resolution of the case by way of dismissal or settlement.

LITIGATION (Continued)

There are a number of potential methods for resolving the lawsuit, including, but not limited to:

1. Pre-trial motions, such as a [Motion for Summary Judgment \(MSJ\)](#), a [motion to dismiss](#), etc.;
2. Voluntary dismissal by plaintiffs;
3. Settlement;
4. Alternative Dispute Resolution, such as [mediation](#) or [arbitration](#); and
5. A verdict after trial, as determined by a jury, Judge, or other administrative proceeding.

Due to the cost associated with trial preparation and presentation of a case to a jury/Judge, County attorneys will attempt to resolve lawsuits by other means and go to trial with the department's concurrence, only once all other options have been considered and/or exercised.

Department Role in Litigation

The involved County department's continuing cooperation and coordination with panel counsel and/or County Counsel is crucial during litigation. Counsel relies on the department throughout litigation. Specific tasks for which counsel will need assistance include:

- **Identify Potential Basis for Indemnification** – At the outset of litigation, and as early as possible, the department should identify any and all contracts, agreements, memorandums of understanding, etc., and their related insurance policies that may entitle the County to [tender its defense](#) and/or seek [indemnification](#) from another entity.
- **Retention of Evidence** – Departments must ensure proper preservation of records, physical evidence, electronic data, and items, to be accessible to counsel throughout litigation. The evidence may need to be disclosed in response to other parties' discovery requests or used as evidence at trial.
- **Assist with Written Discovery Responses** – During the discovery process, parties may ask the County or its employees to turn over information and evidence. This is called written discovery such as [interrogatories](#), [requests for production of documents](#), and [requests for admission](#). The department will identify and provide all potentially relevant documents and items so that counsel can determine whether they need to be disclosed. If a document or item is not disclosed in discovery, counsel may be precluded from using it at trial. A representative from the department will need to sign a verification confirming that the responses are complete and accurate.
- **Persons Most Qualified (PMQ) for Depositions** – During the discovery process, parties may ask for the deposition of persons, within the department, that have the most knowledge on a certain topic, policy, or incident. The department will need to identify such person. A PMQ may also be called as a witness at trial.
- **Employees for Depositions** – During the discovery process, parties may ask for the deposition of employees, within the department, who have first-hand knowledge of the incident that gave rise to the lawsuit. The department should facilitate coordination between counsel and the employee. These employees may also be called as witnesses at trial.
- **Declarations in Support of Motions** – Counsel may need to draft motions that require factual support for their legal arguments. The department will need to identify an appropriate individual with relevant knowledge to assist counsel in drafting the declaration and sign it under [penalty of perjury](#).

LITIGATION (Continued)

- **Inspections** – Counsel may wish to view the location of the underlying incident and/or view physical evidence. Additionally, counsel may need [expert witnesses](#) to conduct inspections. The department should facilitate these meetings.
- **Department Representative at Trial** – Counsel and the department may determine that it would be beneficial to have a representative attend the trial.
- **Settlement Authority** – The department should analyze each case to help assess exposure and determine whether a settlement is appropriate. Department representatives may need to attend mediations and settlement conferences with counsel.

After litigation commences, the following privilege and protection continues to apply:

Attorney-Client Privilege

Communications between clients and counsel made in the course of the attorney-client relationship, and in confidence, are protected from disclosure pursuant to the attorney-client privilege. Protected communications include written and electronic correspondence and oral statements that pertain to pending litigation, are made in anticipation of litigation, constitute legal advice or opinions, or are made for any other legal purpose. Counsel has a duty to maintain client confidentialities, but it is the client who holds the right to refuse and prevent disclosure of confidential communications, subject to certain exceptions.

Work Product Protection

Documents or tangible items prepared by an attorney or at his/her direction, which reflect the attorney's impressions, conclusions, opinions, legal research, or theories, are protected from disclosure by the work product doctrine. General work product prepared by an attorney, or at an attorney's direction, may also be entitled to this protection. This doctrine applies to materials prepared for pending litigation and in anticipation of litigation, but also to materials prepared in a non-litigation capacity. The right to invoke the protection is held by the attorney, so it is important to involve County Counsel in all sensitive matters and any questions regarding the applicability of this protection should be directed to County Counsel.

Roundtable Meetings

A roundtable is a meeting chaired by County Counsel that is intended to discuss specific issues related to ongoing litigation. Attendees may include departmental representatives, CEO Risk Management, TPA representatives, and the Litigation Cost Manager or designee. Documents created for the meeting, the attendance list, and matters discussed during the meeting are protected by the attorney-client privilege and attorney work product privilege. Information related to the legal strategy of the case is discussed, brainstormed, and/or communicated with departmental representatives. The department representative attending should be familiar with the facts and issues of the case, and share his/her expertise and intuitional knowledge. Additionally, the representative should be prepared to analyze the case to help assess liability exposure and determine whether a settlement is appropriate.

There are a number of times during litigation that roundtables are conducted, and there are different types of roundtable meetings, which include:

- Initial roundtables (4 or 6 months after counsel is assigned to the litigation);
- Periodic roundtables following the initial roundtable;
- Pre-mediation and pre-trial roundtables; and
- Miscellaneous roundtables.

[Click here for additional information](#)

LITIGATION (Continued)

Approval of Settlements

Any time a settlement is reached, it is subject to the County's approval process based on assigned authority levels that have been developed and approved by the Board. Depending on the amount, a settlement may need to be approved by the County Claims Board and/or the Board.

[Click here for additional information](#)

Additionally, please note that depending on the settlement amount, a [Summary Corrective Action Plan \(SCAP\) and Correction Action Plan \(CAP\)](#) may be required in order for the settlement to be approved.

RECOVERIES

Indemnification

[Indemnification agreements](#) are used to protect the County through a contractual agreement to repay the County for future losses or damage.

All contracts between the County and vendors/contractors should include a provision requiring them to indemnify, defend, and hold harmless the County from and against any and all liability arising from the contract. The vendor/contractor must also provide a policy of insurance naming the County as an additional insured.

The types of contracts, which require indemnification provisions, include, but are not limited to:

- Service agreements;
- Purchase orders;
- Equipment leases;
- Property leases;
- Construction contracts; and
- Some permits issued by the County.

Departments are asked to identify any and all contracts or agreements from the involved vendor/contractor at the time the incident is reported or at receipt of the claim. Departments must also secure and send copies of the contract or agreement along with any insurance policies to the TPAs, County Counsel, or CEO Risk Management for review.

Upon receipt of the relevant contract and policy of insurance, County Counsel, the TPAs, or CEO Risk Management will tender the County's defense to, and request indemnity from the vendor/contractor or its insurance carrier. If the tender is accepted, the vendor/contractor or its insurance carrier will either hire outside counsel to defend the County's interests or reimburse the County for in-house counsel legal fees. The County may also seek reimbursement for all legal fees and costs incurred from the date of its initial tender request. Therefore, it is imperative that the department notify County Counsel, the TPA, or CEO Risk Management, of any potential sources of indemnity or insurance, as quickly as possible.

If the County's tender is rejected or a timely response is not received, County Counsel will consider initiating litigation against the vendor/contractor.

[Click here for additional information](#)

RECOVERIES (Continued)

Recovery Efforts

[Subrogation](#) is a process by which the County recovers payment from a third party who caused a property loss.

CEO Risk Management or TPAs are tasked with the responsibility of pursuing subrogation efforts on the County's behalf. They seek to recover monies paid to repair or replace County-owned vehicles and property.

Departments must identify incidents with subrogation potential and refer them to the TPA or CEO. Claims for damaged property include:

- County-owned vehicles.
- County-owned property (i.e., signs, traffic signals, gates, fences).
- County-owned buildings.
- Permittee driver vehicles.

Departments also need to provide the TPA or CEO with the following supporting information:

- Repair estimate or invoice.
- Police report.
- Photographs of the damaged property.
- Witness information.
- Photographs of the scene of the accident.
- Insurance information.

Recovery Process Overview

Upon notification of an incident involving damage to County property, the TPA or CEO must first confirm that a third party was at fault for the incident. Once confirmed, a file will be established and a letter requesting reimbursement, known as a demand letter, containing the above supporting documents, will be sent to the third party or their insurance company.

In most cases, the County is successful in securing a full reimbursement from the third party insurance company. However, in some cases, the County is offered a percentage of the requested amount due to comparative liability or minimum policy limits. Reduced offers will be accepted with department concurrence.

If the County's subrogation claim is rejected, the County will consider filing a lawsuit against the third party and/or their insurance carrier.

The extent of the subrogation effort will be determined based on the amount of costs to be recovered, third parties' financial status/resources, and facts of the incident.

[Click here for additional information](#)