

The Newsletter[®]

A newsletter by the **Law Offices of J. Michael Hayes**, devoted to relevant issues of negligence and liability.
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STEPS REQUIRED TO MAKE A CLAIM AGAINST A MUNICIPALITY

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WHO IS LIABLE FOR AN UNEVEN SIDEWALK?

If a tree root has raised a public sidewalk, before a claim may be sustained, the injured party **must prove** that "prior written notice" was given the appropriate official.

Prior Written Notice

Prior written notice is required for the class of accidents involving dangerous, defective and/or negligently maintained sidewalks, highways, bridges and other such travel ways including claims for snow and ice thereon. For example, as to Villages, Towns, Cities and Counties, **prior written notice** must have been "actually given" to the Village Clerk (Village Law §6-628); the Town Clerk (Town law §65-a); the Buffalo City Clerk (Buffalo City Code §21-2); the County Clerk or County Highway Superintendent [Highway Law §139(2)]. The statutes require "written" notice.

Practical Tip: Send your "written notice" of a defective or dangerous condition, including snow and ice on highways or sidewalks, to the appropriate Clerk via e-mail. That method permits immediate notice without the delays occasioned by the post office.

The Municipal officer is then required to remove the snow or ice or otherwise "make the area reasonably safe within a reasonable time after the receipt of such notice."

Notice of Claim

Prior written notice alone is insufficient. Several more filings are required before a claim may be sustained. As to each governmental entity, for any claim of negligence, a "Notice of Claim" or "Notice of the Intention to Make a Claim" **must** be filed with the appropriate representative within ninety days of the accident. [General Municipal Law §50-e; Public Authorities Law 1299-p(2); Court of Claims Act §10-3; CPLR 9801(1)]. The failure to file this notice within ninety days **may** be excused by the court upon presenting evidence of, among other things, a justifiable excuse for the failure to timely file and evidence of meritorious claim (General Municipal Law §50-e; Court of Claims Act §10-6).

Pre-Suit Examination Under Oath and Physical Examination

Also before the actual claim may be served, certain public organizations must be afforded the opportunity to take a statement under oath from the injured claimant. [General Municipal Law §50-h; Public Authorities Law §1299-p(4)]. Also, there is an entitlement to conduct a defense medical examination by a physician of their choosing (General Municipal Law §50-h). Should the Complaint be filed before the governmental organization has such an opportunity, the Complaint will be considered a nullity.

Statute of Limitations

The statute of limitations against Public Authorities, such as the NFTA or the Thruway Authority, is one year. [Public Authorities Law §1299-p(2)] The statute of limitations for most claims against a Municipality, a Town or County is one year and ninety days. (General Municipal Law §50-e) Finally, the statute of limitations as to the State of New York is two years. (Court of Claims Act §10-3). These intentionally short statutes are contrasted by the three year statute of limitations for a general negligence action against a private individual or corporation. (CPLR 214)

CAN YOU SUE THE SHERIFF?

The Sheriff is a distinct entity, neither a municipality nor a Public Authority. There is no specific Notice of Claim requirement as to the sheriff himself. However, there may be an implicit requirement as to his deputies. Many counties have passed local laws accepting responsibility for negligent acts of the deputies of the Sheriff. (See: *New York Constitution*, Article XIII, §13(a); *Barr v. County of Albany* 50 NY2d 247, 428 NYS2d 655 (1980).

Since it is difficult to quickly assess which county has accepted such responsibilities, the prudent course is to serve a Notice of Claim pursuant to §50-e of the General Municipal Law on both the County and the Sheriff. See: *Marachian v. County of Oneida*, 214 AD2d 1034, 626 NYS2d 646 (Fourth Department, 1995). Also, the statute of limitations as against the Sheriff is one year [CPLR 215(1)].

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact J. Michael Hayes, Esq. at 69 Delaware Avenue, suite 1111, Buffalo, NY 14202, telephone (716) 852-2707 or e-mail jmh@jmichaelhayes.com.
Newsletter available by e-mail if you so request.

