

Filing a Claim Under the Federal Tort Claims Act (FTCA)

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Having devoted my legal career to representing Veterans, servicemembers, and their families in cases under the Federal Tort Claims Act it has been my observation that most major errors by non-attorneys occur at the level of creating and presenting the claim. There are numerous pitfalls and it is wise to seek a Federal Tort Claim attorney's assistance.

A claim under the Federal Tort Claims Act should:

- 1) be in writing;
- 2) state the name and address of the claimant;
- 3) state the name and address of the offending government agency;
- 4) state the basis of the claim being made in sufficient detail so that the agency may investigate the claim;
- 5) state a sum certain amount of damages in dollars and cents;
- 6) be signed and dated by the claimant or someone legally authorized to act on behalf of the claimant with proof of authorization attached to the claim; and
- 7) be presented to the offending U.S. government agency (i.e. received by the agency) within two years of the date that the claim accrues

The simplest way to do 1-6 above is to use the form the U.S. government provides for this purpose, called a Standard Form 95 often referred to as a Form 95 or SF95. A fillable Standard Form 95 may be found at <http://www.form95.com>

IMPORTANT:

A separate form should be sent for EACH claimant. Very frequently, there is more than one claimant even though only one person sustained the actual injury. The reason for this is that even though only one person is actually injured, others persons recognized under the law may have sustained damages as well.

In a severe injury case involving injury to a competent adult, the injured competent adult should file a claim. Also consider filing separate claims on behalf of the spouse, parents, and all natural and adopted children of the injured person.

In a case involving injury to a minor, one or both parents or legal guardian should sign the Form 95 "on behalf of" or as "next friend of" a minor. A legal guardian should attach proof of guardianship to the Form 95. If there is no parent or legal guardian and no time before the expiration of the statute of limitations (two years from the date the claim accrues) to obtain a legal guardian, the next best thing to do is have the next of kin sign "on behalf of" the minor. Often, but not always, the agency will accept proof of guardianship provided at a later date. Unless the circumstances are unusual, in the case of injury to a minor, both parents should file individual claims as well as a separate claim on behalf of the minor signed by one or both parents.

In a death case the estate of the deceased person is a separate claimant and is typically named on the Form 95 as The Estate of _____, Deceased. Ideally, the Court appointed Administrator of the Estate should sign on behalf of the Estate and attach a copy of the Court Appointment of the Administrator to the Form 95. If there is no Administrator of the Estate and no time before the expiration of the statute of limitations (two years from the date the claim accrues) to obtain an Administrator of the Estate, the next best thing to do is have the next of kin sign "on Behalf of The Estate of _____, Deceased." Often, but not always, the agency will accept proof that the person signing is Administrator of the Estate provided at a later date. Unless the circumstances are unusual, in a death case, the Administrator on Behalf of The Estate of _____, Deceased, the spouse, all natural and adopted children, and the parents (in many instances), should each file a separate claim.

In a case involving injury to a non-minor incompetent person, ideally the legal guardian should sign the Form 95 on behalf of the non-minor incompetent person and attach proof of guardianship. If there is no legal guardian and no time before the expiration of the statute of limitations (two years from the date the claim accrues) to obtain a legal guardian, the next best thing to do is have the next of kin sign "on behalf of" the incompetent person. Often, but not always, the agency will accept proof of guardianship provided at a later date. Also consider filing separate claims on behalf of the spouse, parents, and all natural and adopted children of the injured person.

The above does not constitute legal advice and you are strongly urged to seek the services of an attorney experienced in handling cases under the Federal Tort Claims Act.

Please send requests for reprints to

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