

May 26, 1998

Bits & Pieces

1. Damage Claims Against Government — Generally, if you have a gripe against government regarding money damages, you will need to file a damage claim (also known as a tort claim) prior to a lawsuit. This requirement generally applies to government at any level: local, state, or federal. The requirement only applies to tort claims and not to contract actions or civil rights claims. A tort generally means that the other party (here the other party would be government) owes you some sort of duty, which the government breached, causing you damages.

Examples of torts by governments can be from the small and mundane, such as the government cut one of your trees down, a minor fender bender caused by a government employee on government work in a government car, etc.

More substantial damage claims against government might be for failure to issue a building permit when you had a right to one, failure to process subdivision application within a statutory time period, takings, inverse condemnations, etc.

On the other hand if you have contracted with government and government breaches the contract, that would be a contract action and not a tort action, and you need not file a damage claim prior to a lawsuit.

The important point to remember is that failure to file the damage claim can cause dismissal of your lawsuit. You can always dismiss your lawsuit, file the damage claim, wait the requisite 60 days, and then refile your lawsuit. But you may have missed the statute of limitations period by that time.

Forewarned is forearmed.

2. Final approval does not code compliance equal — Many people, both contractors and their customers, feel that if local government approved the construction project, then the project must comply with code. Not true.

Case law is full of examples to the contrary. Government approval is only one piece of evidence that can be rebutted by other evidence that the construction failed code. Generally you will need an expert (someone with expertise in the particular area) to inspect the project and determine whether it complied with code.

Pursuant to the Public Duty Doctrine, government is not the insurer of code compliance. If a building inspector or other government employee approves a project, generally the government will be exempt from liability anyway. The courts require the private parties to assume the risk of code compliance and standards of workmanship. Do not rely on government inspectors to determine code compliance and liability regarding standards of workmanship.

