

## **ARIZONA TORT CLAIMS ACT & IMMUNITIES**

### **I.**

#### **INTRODUCTION**

Claims against public entities and public employees require special attention. Public entities and public employees are protected from certain liabilities in Arizona by statutory immunities that do not provide protection to other defendants. Certain procedural requirements apply to claims against public entities and public employees that do not apply to claims against other defendants. The failure to consider the applicable immunities may result in unnecessarily incurring costs by pursuing claims for which recovery must be denied. Failure to consider the applicable procedural requirements may result in the loss of a claim for which recovery should have been made.

Arizona Revised Statutes §12-820 through §12-826 describe immunities that protect Arizona public entities and employees from tort liabilities. The Statutes also describe procedural requirements that must be followed to pursue claims against governmental entities or employees. The Statutes include a statute of limitation specifically requiring that all actions against public entities or employees be brought within one year of the accrual of the cause of action.

### **II.**

#### **PROCEDURAL NOTICE REQUIREMENTS AND STATUTE OF LIMITATIONS**

Injured parties seeking to obtain recoveries from public entities must be aware of procedural requirements for filing such claims and limitation periods specific to claims against public entities. A party may not merely file suit against a public entity within the time period for filing such claims against other defendants. Claims against public entities that fail to comply

with the procedural requirements for such claims or which ignore the statute of limitation applicable to such claims will be barred.

A.R.S. §12-821.01 describes the procedures a claimant must follow before suit can be filed against a public entity. The statute requires that claims against a public entity must be filed within 180 days after the cause of action accrues. The statute includes specific requirements for the information that must be stated on the notice of claim. The claim must contain facts sufficient for the public entity to understand the basis for its liability, state a specific demand, and information or documentation supporting the damages claimed. Most public entities have forms for submittal of claims. Claims are deemed denied if the public entity makes no response to the demand within 60 days of filing.

Claimants must be aware of the statute of limitation specific to claims against public entities. A.R.S. §12-821 states that all actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward. The statute applies to all claims against public entities whether the claim seeks recovery for personal injury, property damage, or other damage. The statute creates a much shorter time for filing property damage claims against public entities than the two year period within which property damage claims can be filed against other defendants.

### **III.**

#### **STATUTORY IMMUNITIES**

##### **A. Background**

The immunities codified by the statutes protect governmental entities and employees from liability arising from acts or omissions occurring during the exercise of (1) legislative

functions or (2) administrative functions involving the determination of fundamental governmental policy. (A.R.S. §12-820.01). The Statutes also provide qualified immunities against liabilities arising from acts or omissions of government employees performing certain administrative tasks unless the employee was grossly negligent or intended to cause the injury that occurred. (A.R.S. §12-820.02).

Arizona public entities and employee were historically protected against tort liabilities, as they were in other jurisdictions, by common law governmental and sovereign immunities. However, in 1963, the Arizona Supreme Court rejected the governmental immunity doctrine. Stone v. Arizona Highway Commission, (1963) 93 Ariz. 384, 381 P.2d 107. Subsequent decisions by lower courts then restored governmental immunities in limited contexts (e.g., Massengil v. Yuma City, (1969) 104 Ariz. 308, 656 P.2d 597. In Ryan v. State, (1982) 134 Ariz. 308, 656 P.2d 597, the Arizona Supreme Court reasserted its position that governmental immunities should be limited. In Ryan, the Court stated:

“Employing the spirit of the Stone decision, we propose to endorse the use of governmental immunity as a defense only when its application is necessary to avoid a severe hampering of a governmental function or thwarting of established public policy. Otherwise, the state and its agents will be subject to the same tort law as private citizens.” Id. at 311.

The Court recognized that, unfortunately, the immunity could be eroded by future decisions on a case-by-case basis and invited legislature intervention on the issue. The legislature responded to the Supreme Court’s invitation for legislative intervention and enacted the “Actions Against Public Entities or Public Employees” statute. A.R.S. §§12-820 through 826.

**B. Absolute Immunity**

The purpose behind the absolute immunity for legislative acts or administrative acts determining fundamental governmental policy provided by A.R.S. §12-820.01 is to allow governmental entities to govern without being hampered by the threat of liability for legislative or governmental decisions. Public entities cannot be liable for damages caused by acts or omissions allegedly arising out of the exercise of a legislative function or an administrative function that involves the determination of a fundamental governmental policy.

Most litigation regarding the absolute immunity provided by A.R.S. §12-820.01 concerns the question of whether an administrative function involves the determination of a fundamental governmental policy. The general rule is that the immunity applies to policy related duties but does not apply to duties that merely implement legislative policies. Pima County v. State, (Ct. App. 1992) 174 Ariz. 402, 850 P.2d 115. There is no easy test for determining whether an administrative function is immune. The legislature attempted to assist the courts in the determination by stating that the determination of a fundamental governmental policy involves the exercise of discretion. A.R.S. §12-820.01 B.

A decision of whether or not to undertake a project involves the exercise of discretion and is shielded by the immunity doctrine while the duties of implementing the policy once adopted are not discretionary and should not be protected by the immunity statute. For example, the decision to build a playground should be protected by immunity while those involved in the design and construction of the playground must observe a standard of care and the statute does not protect them from liability arising from their work. The legislature has preempted the courts from defining the issue in certain contexts by describing the following actions, among others, as

actions involving the determination of fundamental governmental policy: a determination of whether to seek or whether to provide resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel, or the provision of governmental services; or a determination of whether and how to spend existing resources, including those allocated for equipment, facilities, and personnel.

**C. Qualified Immunity**

The legislature decided that certain activities of public entities should be protected with immunity even though they did not involve the determination of a fundamental governmental policy or the exercise of discretion. Consequently, the legislature enacted the qualified immunities of A.R.S. §12-820.02. The qualified immunity protects a public entity from liability arising from any failure to discover violations of any provision of law during the inspection of property other than property owned by the public entity. The qualified immunity also protects public entities from liability arising from the issuance of, or the failure to revoke or suspend, any permit, license, or certificate. The qualified immunity also protects public entities from liability arising from any failure to make an arrest, any failure to return an arrested person to custody, or injuries caused by released prisoners or persons on probation.

The qualified immunities do not protect contractors hired by public entities to perform duties protected by the qualified immunities. The qualified immunity statute protects only public entities and their employees. Consequently, claims may be brought against the contractor for a public entity even though a claim against the public entity would have been barred if the work had been done by public entity employees.

The public entity remains protected by the immunity even if the work was done by a contractor. For example, a city may retain a contractor to inspect and approve residential construction for occupancy. The contracted inspector may fail to discover violations of law (code violations) that result in damage. The contractor would not be immune from liability for such negligence. A public entity, on the other hand, could not be liable for such negligence by its own employees and is not vicariously liable for such negligence by its contractors.

### **III.**

#### **CONCLUSION**

Claims against public entities are subject to a number of rules that are different from those rules applicable to claims against other types of parties. Public entities are protected by immunities that do not protect other parties. Claims against public entities are subject to procedural requirements that do not apply to claims against other parties. The statute of limitation period applicable to claims against public entities may be much shorter than the statute of limitation period applicable to claims for similar damages against other types of defendants. A party seeking to recover damages from a public entity must be aware of these rules to protect its claim and while determining the value of its claim.