

## **NEVADA TORT CLAIMS ACT & IMMUNITIES**

### **I.**

#### **INTRODUCTION**

Any claim against the State, its agencies, or employees resulting from some official act can only be maintained in the absence of protective governmental immunity. The legislature has exposed the State of Nevada to liability by conditionally waiving in certain instances governmental immunity from suit. NRS §41.031, et seq.

### **II.**

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

Pursuant to Nevada Statutes Revised §41.036, a claim must be filed with the Attorney General's office within two (2) years after the cause of action accrues. However, unlike some states, filing a claim is not a condition precedent to filing a lawsuit. The claim form must be signed by the party claiming damages and notarized.

### **III.**

#### **IMMUNITIES**

Nevada Revised Statutes §41.031 contains a waiver of immunity for claims against the State of Nevada and all political subdivisions of the State. Nevada's waiver of sovereign immunity, however, is expressly limited by several other statutes containing specific defenses.

##### **A. Discretionary Immunity**

NRS §41.032 provides that no action may be brought under the limited waiver of immunity statute or against any officer or employee of the State or any of its agencies or political subdivisions which is based upon the following:

- a. An act or omission of an officer or employee, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulations is valid if the statute or regulation has not been declared invalid by a court of competent jurisdiction; or
- b. Based upon the exercise of performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or any officer or employee of any of these, whether or not the discretion involved is abused.

The Nevada Supreme Court has analyzed discretionary immunity in terms of the type of functions the governmental entity is performing at the time. The “discretionary” function is the initial decision to act. The “discretionary” function can be categorized as its decision to build a freeway. Once the “discretionary” decision to act has been made, then the governmental entity shifts into the “operational” function which usually involves construction and design. The governmental entity is obligated to use due care when acting in the “operational” function area.

**B. Failure to Inspect**

NRS §41.033 provides that an action may not be brought against the State under the waiver of sovereign of immunity or against an officer or an employee of the State based upon the following:

- a. Failure to inspect any building, structure or vehicle, or to inspect the construction of any street, public highway or other public work to determine any hazards, deficiencies or other matters, whether or not there is a duty to inspect; and

b. Failure to discover such hazard, deficiency or other matter, whether or not an inspection is made.

The protection provided by this statute can only be obtained if the government entity does not have actual notice of a hazard or dangerous condition. In Butler v. Bogdanovich, (1958) 101 Nev. 499, a person built a home that was inspected and approved by the County. Several years later, the plaintiffs purchased the home and found approximately 25 substantial building code violations and sued the County. The Nevada Supreme Court held that if the County had knowledge of the defects, the County owed a duty to the plaintiffs to take action as a result of the discovery of the deficiencies.

**C. Acts or Omissions of Fireman or Law Enforcement Officers**

NRS §41.0336 provides that a fire department or law enforcement agency is not liable for the negligent acts or omissions of its firemen or officers or any other persons called to assist it, nor are the individual officers, employees, or volunteers thereof, unless:

1. The fireman, officer, or other person made a specific promise or representation to a natural person who relied upon the promise or representation to his detriment; or
2. The conduct of the fireman, officer, or other person affirmatively caused the harm.

The phrase “affirmatively caused the harm” means that the fire department or officer must have actively created the situation which leads directly to the damage. Coty v. Washoe County, (1992) 108 Nev. 757.

## IV.

### **LIMITATION OF LIABILITY**

Although a government entity may be sued, recovery against a government entity is limited. NRS §41.035 limits a persons recovery in tort against a governmental entity to a maximum of \$50,000.00, exclusive of interest computed from the date of judgment. An award may not include any amount as exemplary or punitive damages.