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## **How To File a Claim Under the SC Tort Claims Act**

Car accidents can happen in an instant. Drivers may encounter negligent roadwork, a faulty stoplight, or any number of dangerous circumstances with little or no warning. When the party at fault in an accident is another driver, the resulting legal proceedings to recover money damages are relatively straightforward: an action is filed against the other driver (or, in many cases, against his or her insurance company), a judge or jury looks at the facts, and the case is decided. However, when responsibility for an incident falls at the feet of a government agency, many victims are unsure even where to start.

In South Carolina, the state Department of Transportation may be sued under the South Carolina Tort Claims Act. For the average driver, navigating this complex statute that governs such legal actions can be a challenge to say the least. Yet, with the help of an experienced attorney, the fog of confusion surrounding the South Carolina Tort Claims Act can be dissipated and you can be on the road to the recovery you deserve.

### **Basics of the South Carolina Tort Claims Act**

To the average person seeking to file a claim against a government agency like the South Carolina Department of Transportation ("SCDOT"), it may be unclear why these actions must be filed under a special statute instead of the traditional tort scheme. The reason the South Carolina Tort Claims Act and laws like it are required for this type of action is a doctrine known as sovereign immunity. Sovereign immunity traces its origins from early English law, and it means that generally a state, as a creator of laws, cannot commit a legal wrong and is thus immune from civil or criminal liability. In modern times, many states have waived this immunity to allow for lawsuits. The South Carolina Tort Claims Act constitutes such a waiver, and makes it possible for individuals to file claims against state agencies.

However, there is much more to the South Carolina Tort Claims Act than simply a waiver of sovereign immunity. For one thing, it represents only a limited waiver of liability. While under the Tort Claims Act "a government entity [is] liable for...torts in the same manner and to the same extent as a private individual under like circumstances," this liability is "subject to the limitations upon liability and damages, and exemptions from liability and damages" contained in the Act. Some of the limitations on liability seem relatively obvious.

For example, a government entity is not liable for a loss resulting from legislative or judicial action, enforcement of any law, or the collection of taxes. Others are less clear cut: just to name a few, the state cannot be held responsible for losses due to natural snow or ice conditions on any public way, failure "to provide the method of

providing police or fire protection," or the "absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier" unless the problem is not corrected by the government entity responsible for its maintenance "within a reasonable time after actual or constructive notice."

There are 40 exceptions to the state's waiver of immunity listed in the Tort Claims Act. Of course, whether a given situation falls within an exception is often widely open for interpretation, and a lawyer can develop arguments to help ensure the state does not receive immunity when their agents are at fault for a loss.

Another basic proposition is key to understanding the South Carolina Tort Claims Act: the limitations on liability. Limits on monetary damages vary somewhat based on the subject of the legal claim. For the purposes of a claim against SCDOT, there is generally a limit on recovery for a single person for a single occurrence of \$300,000. Still, certain claims are not considered derivative claims in a single occurrence and may have a separate, additional damages cap. An attorney can tell you whether your claim will be likely contain such additional separate claims.

### **The Mechanics of Filing a Claim Against SCDOT**

At the basest level, an individual may file a claim against the Department of Transportation by filling out a Damage Claim Form (Form 2062), and submitting it along with two repair estimates or a paid invoice to the Department of Transportation Maintenance Office in the county where the incident occurred. This form must be filed within one year from the date of the incident. If the claim is for damage to a registered vehicle, the registered owner must be the one making the claim and a copy of the vehicle registration must also be included. Then, the agency or its insurer has 180 days to decide whether to pay or deny the claim.

The best way to seek full compensation for damage is to contact an attorney. An attorney can be extremely helpful in filing your claim properly, and in pursuing recovery even if SCDOT initially denies responsibility. Furthermore, an attorney will aid in negotiating higher claim settlements and ensuring you receive a satisfactory resolution of your complaint. The South Carolina Tort Claims Act can be a tricky piece of legislation, and making a claim against SCDOT is often a multi-layered operation. But, with the proper help, you can be on your way to a speedy and just recovery.

### ***Source: "How To File a Claim Under the SC Tort Claims Act"***

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