

INSTRUCTIONS FOR FILING A CLAIM AGAINST THE TOWN OF AMHERST

To make a claim for damage (including for personal injuries and/or property damage) against the Town of Amherst, New York, one must first file in Incident Form with the correlating department that the claimant is alleging caused their issue. That is - if a claimant is alleging a claim for damages caused by a pothole, the respective Town department would be the Highway Department. If a claimant is alleging a claim for damages caused by a sewer/water backup, the respective Town department would be the Engineering Department and so on and so forth. After filing an incident report with the respective department of the Town of Amherst, State Law (General Municipal Law § 50-e) requires you to take the following steps:

- 1) Within 90 days of the event that caused the damage, you must serve a notarized letter or Notice of Claim upon the Town of Amherst. In most cases, state law prohibits the Town from paying a claim served after 90 days. Your claim must be in English or accompanied by an English translation and affidavit of translator stating his/her qualifications and that the translation is accurate (CPLR 2101 b).
- 2) Your letter/Notice of Claim must contain:
 - a. Your name and address and your attorney's name and address (if you are being represented by an attorney at this time);
 - b. Time, date and place of the event. BE SPECIFIC: e.g., "broken sidewalk in front of 5583 Main Street" or "northwest corner of Harlem and Main." Just stating "Harlem Road" is too general.
 - c. A description of the damage or injury, and tell how the injury happened. If the property damage is involved, describe the property; give license plate number and State registration for cars and other vehicles.
- 3) Your signature on the letter/Notice of Claim must be witnessed by Notary Public or Commissioner of Deeds (most banks provide Notary Public services).
- 4) Your letter/Notice of Claim must either be serve in person, upon by certified or registered mail, to the Town Clerk at 5583 Main Street, Amherst, New York 14221.

Although not required, it would help us handle your claim if you also included as much of the following as possible:

- Your telephone number at home and at work.
- Itemized repair bills, or itemized estimates; medical and hospital bills; and other evidence that supports the amount of your damage. Send any documents you have within 90 days. Do not wait beyond 90 days to send in your claim, even if you do not have all your bills.
- Names and addresses of any witnesses.
- Any other information about the event that you can recall.
- Dates, names of Court, Judge and disposition of any court appearance related to the claim.

Please remember that New York law allows the Town to pay only damages caused by Town operations. Also, the Town can pay only to repair or replace damaged property with comparable materials. For these reasons, accurate and honest estimates or repair bills are essential and you should get them from a qualified person with a good reputation. Please note that the Town is not required to pay for damages resulting from a defect in a street or sidewalk (such as a pothole or crack) unless the Town Clerk was notified of the defect, in writing, before the damage occurred and the Town had a reasonable time to fix it.

COMMON QUESTIONS ABOUT FILING CLAIMS AGAINST THE TOWN OF AMHERST

• HOW WILL MY CLAIM BE HANDLED?

The Town of Amherst Attorney's office will log your claim and when necessary, refer your claim to the Town's self-insurance adjuster. The Town Attorney's Office, in conjunction with the Town's self-insurance adjuster will then gather information about your event from various sources. You may contact the Town's self-insurance adjuster at 716-314-2105 if you learn any new information important to your claim. The claim and any information obtained regarding your claim will then be evaluated by the Town Attorney. A decision as to payment or disclaimer; further investigation; referral to the Town's self-insurance carrier; to a contractor; or assignment to an attorney will be made. If the claim is assigned to an attorney, you may be required to answer questions under oath and, in an appropriate case, to be examined by a physician selected by the Town.

• CAN I DO ANYTHING TO SPEED THE REVIEW OF MY CLAIM?

We can review claims more quickly if your claim is accurate and detailed. It is important that the exact location of an incident or defect be given, and you should identify any witness and/or Town employee at the scene, if possible. Please remember that the Town can pay only to repair or replace damaged property with comparable materials. For these reasons, an accurate and honest estimate or repair bills is essential, and should be obtained from qualified business with a good reputation.

• WHY MIGHT MY CLAIM BE DENIED?

The Town takes claims very seriously and only denies claims for valid reasons. The most common reasons are:

- The existence of a defense under law which prevents liability.
- Failure to file the claim on time – within 90 days from the event.
- The event was caused by someone or something other than the Town. The Town contains hundreds of miles of streets and sidewalks. Because of that, the law states that the Town is not required to pay for any damage or injury resulting from a street or sidewalk condition (such as potholes, cracks, snow and ice), unless the Town clerk was notified in writing before the damage occurred and had reasonable time to fix it. We will notify you if we find that the Town did not have prior written notice.

The Town does not work alone when working in and under its streets. Utility companies, the Erie County Water Authority, contractors serving private property owners and contractors working for the Town of Amherst all have occasion to work in the streets. If a Town contractor is involved, your claim will be sent to the contractor and its insurer. If we learn that the events involved some other entity other than the Town, or its contractor, you will be notified by the Town's self-insurance adjuster. Similarly, the Town's self-insurance adjuster will notify you if we find that the event occurred outside of the Town, or occurred on property controlled by someone other than the Town.

• ACKNOWLEDGEMENT OF RESPONSIBILITY AND PAYMENT OF CLAIM

It should be noted that investigation of claims, determination of responsibility for said claims and payment related to claims that the Town is responsible for can take *at least* 6-8 weeks from inception. There are instances where this process can take longer. If the Town determines that your claim will be paid, the Claimant will be expected to sign a Release of All Claims and complete a W9 prior to the issuance of a settlement check.

- **WHO CAN I CALL FOR INFORMATION ABOUT MY CLAIM?**

The self-insurance adjuster for the Town of Amherst, in conjunction with Town Attorney's Office, has the duty of investigating and acting upon your claim and will be in the best position to discuss your question. Please contact the Town's self-insurance adjuster directly at (716) 314-2105.