



Guide to Accident Related Property Damage Claims

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INTRODUCTION

This informational booklet has been written to help people who have been in an auto accident. If you have been hurt in a collision, or if you have had a family member or friend in an accident then please share this material with them. At Solomon Law Group, we have helped thousands of injured victims. We handle auto accidents, commercial vehicle accidents, defective drugs, product liability, workers' compensation, wrongful death, and many other circumstances involving injury.

In many instances, particularly if it is your vehicle that has been damaged, there are two aspects to the claim: property damage and personal injury. You will almost always deal with the other person's insurance company through its adjuster. An adjuster is the person the insurance company has hired to determine the value of your overall claim. They may often focus on the bodily injury portion of the claim and may rely on an appraiser to determine the damage to your vehicle. Both the adjuster and the appraiser are professionals employed by the insurance company. The purpose of this booklet is to give you the information you need to help make sure you potentially receive a reasonable and appropriate sum for the damage to your vehicle.



I. STARTING THE PROCESS

I'VE BEEN IN A COLLISION, IT WASN'T MY FAULT, WHERE DO I BEGIN?

1. Report to Their Insurance: Contact the other person's liability insurance right away to let them know about the crash. Also, inform your own insurance because there might be additional insurance coverages that apply. The other driver's insurance info can be found in the police report or from the officer at the scene.

2. Police Report Details: The investigating officer will give you a document called the FR-10. This document will have preliminary information about the collision. A few days after the collision, you will be able to obtain the actual police report called the TR-310. These police reports will have your information, as well as personal and insurance information about everyone involved. The TR-310 can be obtained from the department that responded to your collision (Highway Patrol, County Deputy, or City Police).

3. Contacting Their Insurance: When you contact the at-fault driver's insurance company (known as the "liability carrier"), you should call them and then send them a written notice describing when and where the collision happened, along with details about your vehicle. Expect a written response if you notify them in writing. The person you communicate with at the liability carrier's office is called an "Adjuster". Make sure to obtain their name, contact information, and your claim number (the number you will reference when communicating with them about your property damage).

4. Talking to the Adjuster: It's generally okay to talk to the adjuster, but make sure that your conversation is only about property damage. If they want a "recorded statement" about your injuries, politely decline and consult with an attorney promptly. If you're injured, don't discuss your injury claim with the adjuster without talking to an attorney first.

5. Denial of Property Damage Claim: If the insurance company denies your property damage claim, ask for the denial in writing and talk to your own insurance company about it.

CAN I HANDLE THE PROPERTY DAMAGE MYSELF?

Yes, and in most cases we think people should. The reasons for this are two-fold.

- 1 The first, and probably most important reason, is that we do not want to unnecessarily delay the property damage aspect of your claim.
- 2 Secondly, it is rarely cost effective for you to hire an attorney to pursue your property damage claim - you can save time and money by doing it yourself. If you were not injured in the accident, you would not want to pay an attorney fee on top of the settlement offer you receive from the liability carrier for your vehicle damage. If we represent you on a bodily injury claim related to the accident we will assist you with your property damage claim at no additional charge.

If the at-fault insurance company accepts responsibility for your property claim and makes an offer, you should negotiate that amount with the adjuster. If you are satisfied with the offer then you should settle the property claim. Even if you are injured, it is completely safe to settle the property claim and leave open the personal injury claim for later settlement.



**Do not speak with the adjuster about your personal injury claim.
Speak with the adjuster about the property damage only.**

The liability insurance company is prohibited from forcing you to settle your personal injury claim at the same time you settle the property damage claim.

If you do not agree with the settlement offered by the adjuster, you have the right to request that the adjuster send to you, in writing, the amount of the offer along with the legal basis the adjuster is relying on to support the offer.



II. VEHICLES DAMAGED BEYOND REPAIR

The value of your vehicle just before a collision is called the “Fair Market Value” or “FMV”. Fair market value is the amount at which the property would be sold between a willing buyer and a willing seller, both having reasonable knowledge of the relevant facts, and neither feeling pressured to buy or sell (as per I.R.S. Revenue Ruling 59-60).

A motor vehicle is considered a “total loss” if the cost of repairs (and supplemental claims such as projected rental vehicle costs during the repair period) equals or exceeds 75% of the Fair Market Value. When the cost to repair the vehicle exceeds 75% of the “Fair Market Value,” the liability insurance company is not allowed to fix your vehicle and, instead, must pay the “Fair Market Value” for your vehicle.

How is “Fair Market Value” determined? Adjusters usually use a book value (BV) to determine fair market value, but they have some flexibility based on the vehicle's condition. While book value is supposed to be fair market value, it's not always exact, allowing room for negotiation. Many insurance companies refer to the National Automobile Dealers Association (NADA) publication "Official Used Car Guide," which is updated monthly and can be found online at www.nadaguides.com. Another good option is the “Trade-In Value of your vehicle at Kelly Blue Book online at www.kbb.com.

Some insurance companies use their own methods for valuations. It's essential to note that no publication is entirely accurate; they are guides. This means there's room for negotiation in determining the value of your property damage claim in each case.

WHAT HAPPENS IF WE CAN'T AGREE ON A VALUATION?

This happens, and it's okay. If you and the adjuster can't agree on the Fair Market Value (FMV) initially, the adjuster must base any future settlement offer not just on published average values of similar vehicles in the region but also on the value of similar vehicles in the local market. To figure out the local FMV, the adjuster can use either the local market price of a similar vehicle or, if none can be found, quotes from at least two qualified dealers in the local market area. Local listings for similar vehicles can be found at a number of places including www.cars.com; www.autotrader.com; www.carmax.com; and www.cargurus.com. This is not an exhaustive list, but should give you an idea of where to find vehicles like yours, in similar condition, with similar miles, for sale in your market.

The adjuster must take into account, good or bad, the condition of your car at the time of the collision. For example, if your car was in better-than-average condition before the accident, the adjuster has to take that into account when determining its value.

You should ask the adjuster for a written statement of the basis for their valuation of your vehicle. This statement should include the estimates, evaluations, and deductions used to calculate the payment, as well as where these values came from.

MY CAR IS A TOTAL LOSS, BUT I WANT TO KEEP IT, WHAT DO I DO THEN?

If the vehicle is a total loss, and if you and the adjuster agree on the vehicle's pre-accident Fair Market Value and the adjuster is willing to pay the FMV, then the liability insurance company gets the car. In other words, the insurance company is going to buy your car from you for the FMV just before the collision. But because they are buying your vehicle, they will get to keep your vehicle. This is known as the "Salvage Vehicle". The value of what is left of the "total loss" vehicle is referred to as the "salvage value". When the adjuster pays the FMV, then you must sign over the title to the vehicle and turn over possession of it to the insurance company.

However, if you wish to keep your vehicle, then you must pay the insurance company the salvage value. You pay the salvage value by accepting a check from the insurance company for the FMV less the salvage value. The salvage value is based on the amount of money the insurance company believes it can get by selling your wrecked vehicle (for parts or for someone else to repair and sell as a salvage title vehicle). Prior to settling the property damage claim and accepting the FMV and the salvage value, you have the right to ask the liability insurance company to provide, in writing, the names and addresses of the salvage dealers who will purchase the vehicle for the amount claimed as salvage value by the adjuster.

Keep in mind, if the insurance company has declared your vehicle a "total loss" they must report that your vehicle is a salvage vehicle to the Department of Motor Vehicles. This prevents buyers in the future from buying a repaired vehicle that was more than 75% damaged, but still repaired without realizing it.

WHO GETS THE TOTAL LOSS CHECK?

If your vehicle is financed, the liability insurance carrier may determine the pay-off to the finance company, write a check to the finance company for the pay-off, and write you a check for the difference. Sometimes the check from the insurance company may have your name and the name of the finance company on the check.

You would then endorse the check and turn it over to the finance company. The finance company will pay off the loan and refund the difference to you as your equity in the vehicle.

If the pay-off on the loan is greater than the check from the insurance company then the finance company gets the entire check and you will still owe the finance company the difference unless you have purchased “gap insurance.” Gap insurance is insurance you purchase, generally when you first purchase the vehicle, to cover the “gap” between the amount financed and the vehicle’s value. Sometimes, it is required by lessors for leased vehicles or provided in financed purchases. Another kind of optional insurance you might have purchased is “repair or replacement” coverage. Repair or replacement coverage obligates your automobile insurance company to pay either the reasonable cost of repairs or the cost of a replacement vehicle, whichever is less. If your vehicle is not financed, then the insurance company will write you the check.

WHO PAYS FOR TOWING & THE STORAGE CHARGES?

The liability insurance company is responsible for all reasonable towing and storage charges until three days after you and the storage facility are notified in writing that the insurance company will no longer reimburse the owner or storage facility for storage charges. The written notification must contain the name, address and phone number of the facility storing the vehicle.

WARNING: As soon as the liability insurance company is no longer responsible for storage charges, YOU become responsible. These are often daily fees and they can add up quickly. The storage facility will not release your car until the storage fees are paid, so avoid unnecessary delay.

AM I ENTITLED TO A RENTAL VEHICLE WHEN I HAVE A TOTAL LOSS?

If your car is declared a total loss after a crash, you have the right to a rental car from the time of the accident until the liability insurance company makes you a reasonable offer. Once they make that offer, they're no longer responsible for your rental. Sometimes, they might extend the rental period a bit if you're having trouble finding a replacement car, but it's up to their discretion.

Typically, the insurance carrier will provide you with a rental vehicle that is similar to your damaged car. If you had a compact car, you will likely get another compact car. If you drive a four-door sedan, you should get a similar sedan. Many insurance companies have partnerships with rental companies, making it easy for them to arrange a car for you at a reasonable cost, which they'll cover. The insurance company will cover the daily rental fee but won't include additional insurance, mileage, or gas (anything that would normally be your responsibility anyway). This might be an issue since rental companies typically require your debit/credit card information.

It is crucial to contact the insurance company promptly so that you are not without a vehicle any longer than necessary. However, some insurance companies won't honor your claim unless their insured (the at-fault driver) reports it first. If they won't provide a rental, you might have to rent a car at the regular market rate. Make sure to keep your receipts for reimbursement. When the insurance adjuster contacts you, ask what to do about continuing with the rental. You might be instructed to return the rental and get one from the company they usually work with. In this case, the insurance company should cover the initial rental cost until you're in a more affordable car.

If the insurance company won't provide a rental car and you can't afford a rental car, keep a log of how you had to be transported (taxi, Lyft, or Uber) and if other people transported you and whether you had to pay them. However, the insurance company only has to pay you what is reasonable and necessary as a result of the collision.



III. REPAIRING A VEHICLE

WHAT IF MY VEHICLE CAN BE REPAIRED?

A motor vehicle is repairable if the cost of repairs and supplemental claims are less than 75% of the pre-accident fair market value.

MUST I USE THE DRIVE-IN FACILITY OF THE INSURANCE COMPANY?

Many insurance companies have “drive-in” claim service facilities. However, they cannot require you to use their facilities. If you voluntarily utilize their drive-in claim service this will not prejudice your right to obtain independent appraisals and negotiate settlement on the basis of such appraisals.

HOW MANY ESTIMATES SHOULD I GET?

You should get two repair estimates. If the adjuster insists that you obtain more than two, then the insurance company must pay for the others.

Sometimes adjusters will have you obtain estimates and then make an offer over the phone. If you do not agree with the phone offer, and if the adjuster has never seen the damaged vehicle, you can require that the adjuster or the insurance company’s appraiser personally inspect the damaged vehicle.

If the adjuster accepts liability and advises you to have your vehicle repaired with the understanding that the insurance company will reimburse you, then you should request from the adjuster a statement in writing to that effect along with any and all other verbal agreements you and the adjuster have agreed on.

AM I ENTITLED TO DEPRECIATION IN VALUE OF MY VEHICLE?

Everyone would agree that a wrecked and repaired vehicle is worth more than the same vehicle if it had not been wrecked and repaired. The difference between these two situations is called Depreciation or Diminished Value. Depreciation value is the amount of money that considers the reduction in your car's fair market value caused by it being damaged in a collision, even if it's fixable or has been repaired. It reflects the lower value of a repaired car compared to a similar one that hasn't been damaged. In simple terms, it's the loss in value on top of the repair costs.

Depreciation is a bit tricky and not straightforward. The extent of depreciation depends on how severe the damage is. Minor damage might not result in depreciation, but the more serious the damage, the more likely there will be depreciation. When talking with the adjuster, it's important to insist on getting depreciation accounted for. The truth is, a car's value can drop significantly just because it was in a crash. Most adjusters won't bring up depreciation on their own, so it's something you should bring to their attention.

In determining the Depreciation Value of your vehicle, it may be helpful to ask a local dealer to give you an opinion, or use an online car buying service that gives an "instant quote" and change the information you input by submitting the vehicle once as having no damage, and a second time as having been in a collision but repaired. But remember, there's no fixed formula for calculating depreciation, but it typically runs between 10% to 20% of the repair bill.

Here's something to be aware of: if your car is less than five years old and the damage exceeds 25% of its fair market value, you will be required to disclose this to any future buyer. This disclosure will likely affect how much someone would be willing to pay or offer as a trade-in value for the car, so make sure that the insurance company pays you for depreciation in value.

DO I HAVE A CHOICE OF REPAIR FACILITIES?

Often adjusters will recommend that you use a particular repair service. You are not obligated to use the insurance company's recommended repair services, and the adjuster is obligated to tell you that. You may use any repair service you choose. However, it is a good idea to make sure the repair service you choose is aware that an insurance company is paying the repair bill in case there is a disagreement on the scope or cost of repairs necessary.

SUPPOSE SOMETHING GOES WRONG AFTER REPAIRS ARE MADE?

If you sign a release involving a repair to your vehicle, that release does not bar you from later asserting a claim for damage to the vehicle that was unknown to you or the adjuster at the time you signed the release. As long as the discovered damage was caused by the collision, and this damage could not be determined or known by you or your adjuster until the repair or attempted repair of your vehicle, you may file a claim for additional damage. You will typically have 30 days after the repairs to assert the claim for additional damage. If you discover additional damage to your vehicle after it has been repaired, return to the repair service to advise them of your discovery and they will likely resolve the issue with the insurance company for you.

If you sign a release involving a repair to your vehicle, that release may bar you from later asserting a claim for diminished value (depreciation). Make sure that whatever you sign excludes claims for damages outside of the cost of repair (such as rental reimbursement and depreciation value caused by the collision).

WHO GETS THE REPAIR CHECK?

If your car is financed, the insurance company will write the check in your name and the name of the repair facility. This is because the damage to the vehicle reduces the value of the car, which means the finance company's lien rights are also diminished.

Therefore, the finance company will always require that the damaged vehicle be repaired so its interest in the vehicle remains protected. If your vehicle is not financed you get the entire check, and the decision of whether to actually repair your vehicle is entirely up to you (although your vehicle must be safe to drive on the public roads if you do not get it repaired).

AM I ENTITLED TO A RENTAL VEHICLE DURING REPAIRS?

If your car is inoperable after a crash, you have the right to a rental car from the time of the accident until the vehicle is repaired. Once your vehicle is repaired, the insurance company is no longer responsible for your rental.

Typically, the insurance carrier will provide you with a rental vehicle that is similar to your damaged car. If you had a compact car, you will likely get another compact car. If you drive a four-door sedan, you should get a similar sedan. Many insurance companies have partnerships with rental companies, making it easy for them to arrange a car for you at a reasonable cost, which they'll cover. The insurance company will cover the daily rental fee but won't include additional insurance, mileage, or gas (anything that would normally be your responsibility anyway). This might be an issue since rental companies typically require your debit/credit card information as collateral for you renting the vehicle.

It is crucial to contact the insurance company promptly so that you are not without a vehicle any longer than necessary. However, some insurance companies won't honor your claim unless their insured (the at-fault driver) reports it first. If they won't provide a rental, you might have to rent a car at the regular market rate. Make sure to keep your receipts for reimbursement. When the insurance adjuster contacts you, ask what to do about continuing with the rental. You might be instructed to return the rental and get one from the company they usually work with. In this case, the insurance company should cover the initial rental cost until you're in a more affordable car.

If the insurance company won't provide a rental car and you can't afford a rental car, keep a log of how you had to be transported (taxi, Lyft, or Uber) and if other people transported you and whether you had to pay them. However, the insurance company only has to pay you what is reasonable and necessary as a result of the collision and until your vehicle is repaired and operable.



IV. PROPERTY DAMAGE DISPUTE OVER FAULT, VALUE, OR DEPRECIATION

Occasionally, you and the liability insurance company will just not agree on some aspect of your claim. You may believe your vehicle was worth more than is being offered, or you may believe that your vehicle will depreciate more than is being offered. In South Carolina, there is a simplified process within which you can make a claim for your property damage. You can learn more about that process by visiting <https://www.doi.sc.gov/DocumentCenter/View/2392/Auto-Arbitration-Brochure>

Or by visiting your local Clerk of Court.

V. INSURANCE DISPUTE

If you have a complaint about an insurance company and the way in which it is handling your claim you may call or write the Department of Insurance for your state.

This process is not intended for simple disagreements, but is intended if you believe you are being treated unfairly, being discriminated against, or being taken advantage of.

CONCLUSION

VI. CONCLUSION & CONTACT

We hope this booklet has been helpful. Please feel free to share it with others. We want to make sure you are armed with enough information to make the best decisions in your accident claim. Please let us know how we can help.

If you have been injured, you can call us 24/7.
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