

After The Wreck: Handling Your Property Damage Claim Without a Lawyer



You 've just been in a wreck. You were shaken up, but not hurt. However, your car was damaged and the other driver was at-fault.

Is hiring a lawyer worth the cost? Maybe not.

This E-Guide provides useful information if you decide to handle your auto damage claim on your own.



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Where to Begin

Begin with an assessment.

Step One: Check yourself for any injuries

If you are injured, seek medical attention immediately, and contact a trusted personal injury attorney as soon as possible.

Step Two: Call Law Enforcement

Even damage that appears minor, such as a "fender bender," can cost much more than you expect, and may involve damage to your vehicle's frame. Calling law enforcement will ensure that the circumstances of the wreck and damage to your vehicle are documented and the at-fault driver may be ticketed.

Obtain all available information from the investigating officer, including the "exchange slip" that has the at-fault driver's insurance information.

Step Three: Check damage to your vehicle

IF YOU CAN DO SO SAFELY, examine your vehicle for damage and take pictures of the damage to your car at the scene of the collision. If you cannot safely photograph your car at the scene, take pictures of the damage as soon as possible. If possible use a time/date stamp photo feature.

With this information in hand, you are ready to contact the at-fault driver's insurance company to begin the claims process.



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What's Next?

Contact the At-Fault Driver's Insurance Company as Soon as Possible

When you can safely do so, call the other driver's insurance company to initiate your claim. After the insurance adjuster has enough information to "open" your property damage claim, you should ask a few questions so that you can follow up on the claim in writing.

Questions to Ask:

- ▶ What is the name of the adjuster who will handle the claim?
- ▶ What is the claim number?
- ▶ To what address should you send your follow-up letter?

Next, send a follow-up letter to the at-fault driver's insurance company.

What to Include in Your Follow-up Letter:

- ▶ Your name, the insurance adjuster's name, the claim number, the at-fault driver's name and policy number.
- ▶ In the body of your letter, state the time and place of the collision, along with a description of the damage to your vehicle.



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Denial vs. Acceptance

After the insurance company receives and evaluates your information, you should receive either a written denial or acceptance of your claim.

If the insurance company DENIES your claim:

Make sure you get the denial in writing. The insurance company must state the specific reason for the denial. Then, call your own insurance company and ask for help. If you have collision coverage, you may file a claim with your company. Your insurance company may be willing to pay for the damage to your vehicle and seek reimbursement from the at-fault driver's insurer. This should not affect your own insurance rates. You may also ask the North Carolina Department of Insurance for help. (See page 8).

If the insurance company ACCEPTS your claim:

If your claim is accepted, the next step is determining how much the insurance company should pay. The insurance company will assess your vehicle as either a "total loss" or "repairable."

TOTAL LOSS

A car is a **total loss** if the cost of repairs exceeds 75% of the fair market value of the car before the collision.

If your car is a total loss, the insurance company should pay you the fair market value of the car before the accident, plus the cost of taxes and tags.

REPAIRABLE

A vehicle is **repairable** if the cost of repairs is less than 75% of the pre-accident fair market value of the vehicle.

The amount of money you will receive in this scenario is based on the costs of repairing your vehicle.



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Total Loss



What to do if your car is a "total loss"

A vehicle is a "total loss" if the cost of repairs (and other expected costs, such as rental car costs during the repair period) equals or exceeds 75% of the pre-collision fair market value of the vehicle. If your car is a total loss, the insurance company should pay you the fair market value of your car before the collision, plus the cost of taxes and tags. Most insurance companies use a publication of the National Automobile Dealers Association (NADA) called the "Official Used Car Guide" to determine fair market value. This information is available online at www.nada.com.

If you don't think the insurance company's offer is fair, negotiate. Did your vehicle have accessories such as a "sports package" or power adjustable seats that the insurance company didn't consider when it evaluated its fair market value? Ask the adjuster whether he considered these accessories and the value he placed on them.

You also can request a written statement of the offer. The offer should include all estimates and calculations the company used to arrive at what it believes is the fair market value. If you dispute the fair market value, the adjuster is required to consider local fair market value alongside national or regional fair market value estimates. This value should be based on the local market price of a comparable vehicle or, if one is not available, a quote from at least two qualified car dealers in the local market. If your vehicle was in better than average condition before the wreck, the adjuster is also required to take that into account.

Once you and the adjuster agree on a fair market price for the insurance company to pay for your car, you must hand over the car and title to the insurance company in exchange for payment, unless you reach an agreement about the vehicle's salvage value.



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Total Loss

What is salvage value?

Since the insurance company is agreeing to pay you the fair market value of your vehicle, the company is entitled to keep it and sell it for salvage value. Salvage value is the "leftover" value a vehicle has even though it is considered to be a total loss. Insurance companies often sell such vehicles to junkyards so they can be stripped for spare parts.

If you want to keep your vehicle, you have to pay the insurance company the salvage value. Typically, the insurance company will write you a check for the fair market value of the vehicle, minus the salvage value.

What should you do if you think the insurance company's evaluation of the vehicle's salvage value is too high? Before you settle the property damage claim, you have a right to ask the 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.



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Total Loss

What if you are still making car payments at the time of the wreck?

If you owe money to a lender for your car at the time of the wreck, the insurance company may make the "total loss" check payable to the lender for the balance you owe, then pay you the remaining amount of the fair market value. Or, the insurance company may write the check to you and the finance company jointly. In this case, you should endorse the check and turn it over to the lender, which will pay off the balance you owe and write a check to you for the remaining value of your car. If you owe the lender more than the fair market value of your car, the lender be entitled to the entire check. You will still owe any remaining balance on the vehicle, unless you previously purchased "gap" insurance that covers this scenario.

Right to a Rental Vehicle

You are entitled to a comparable rental vehicle if your vehicle is disabled, whether it is a total loss or repairable, from the time of the collision until the at-fault driver's insurance company makes an offer. You should consult with the insurance company first about acquiring a rental vehicle. Although you have the option of independently renting a car at a reasonable market price and seeking reimbursement, the safer bet is to reach an agreement with the insurance company about the rental vehicle before you drive it off the lot.

Make sure you keep the at-fault driver's insurer up to date with your rental car decision. Remember: any additional required or optional insurance coverage on the rental vehicle will not be covered by the insurance company.



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Repairable



Getting the Right Repair Estimate

To negotiate your settlement, you need to obtain an estimate of the cost of repairing your vehicle. Some insurance companies offer a drive-in appraisal service operated by the insurance company. You may use this option and still seek an independent appraisal.

You should get at least one appraisal from an independent, reputable repair shop. The insurance adjuster may ask you to obtain a second appraisal, but if the insurance company asks for more than two appraisals, they must cover the cost of those additional estimates.

Once you have an estimate, the insurance adjuster may make an offer for the cost of repairs over the phone. If you do not agree with the offer, you may demand that the adjuster or the insurance company's appraiser personally inspect the damage to the vehicle if they have not seen the car before. If you still can't reach an agreement after your vehicle has been personally inspected, you may want to take measures to negotiate with the adjuster as discussed on page 5.

If the adjuster agrees to pay for the repairs and advises you to have your vehicle repaired, make sure to get that agreement in writing. While the insurance company may suggest a repair service, you can use any repair service you choose to complete the repairs.

The insurance company does not have to authorize the use of new parts for the repair if your vehicle is more than a year old. In this case, the repair estimate may be based on the use of parts that are of similar kind and quality as the parts that are on your vehicle. However, new parts may be required if the similar parts void the warranty and/or do not keep proper form and function.



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Repairable

Compensation for Diminished Value

A car that has been damaged and repaired is worth less than a car that was never damaged. The more severe the damage, the more the value will be diminished, even after repair. If your car is five model years old or newer and the damage is greater than 25% of its fair market value, you will have to disclose the damage on a DMV form if you sell your car in the future. **Tell the insurance company know early on that you expect to be paid for this diminished value, in addition to the repair cost.**

The typical measure of these damages is based on the difference in the retail value of your vehicle before the collision and the wholesale value after the collision.

What happens if there is a problem after the repairs are complete?

Once repairs are completed, you should *thoroughly inspect your car before signing a release*. What if you realize, after you sign the release, that there is additional damage you weren't aware of when the repairs were made? Even if you sign a release involving repair work, you may still assert a claim for damage that was unknown to you or the adjuster when you signed the release - as long as that damage was caused by the collision and could not have been determined or known until after the attempted repair. You have 30 days after repairs are completed to assert a claim for additional damages. However, once repairs are complete and a release has been signed, it will be much harder to negotiate additional repairs or compensation for diminished value.

Right to a Rental Vehicle

You are entitled to a rental car if your car is considered repairable. The same information in the "Right to a Rental Vehicle" section on page 7 applies in this situation.



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If You Cannot Reach An Agreement, Call the North Carolina Department of Insurance

If you believe the insurance company is not handling your property damage claim fairly, you can call the North Carolina Department of Insurance for help.

Here's what to expect:

- (1) A department analyst will request information from you and then ask for an explanation from the insurance company, agent or adjuster;
- (2) If the analyst determines your claim has been improperly handled, he will recommend a fair resolution;
- (3) If the issue still cannot be resolved, the Deputy Commissioner of Insurance may arrange a conference with the insurance company representatives to resolve it;
- (4) If a conference does not resolve a disputed issue, the deputy commissioner may recommend to the Insurance Commissioner that appropriate legal action be taken. This may include a public hearing or filing a lawsuit.



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A Final Note From Isaac Thorp

I have never been able to stand by and watch people with power take advantage of people who are vulnerable. That's why I became a lawyer.

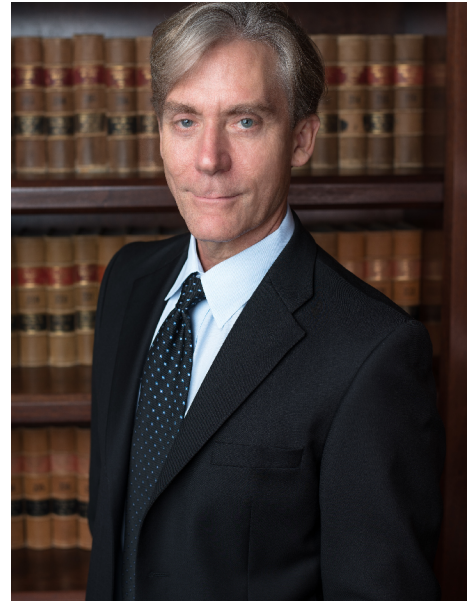
Insurance companies know the ropes. They handle thousands of property damage claims every day. Insurance adjusters know that it's rarely cost-effective for you to hire an attorney to handle an automobile property damage claim. They also know that you may be confused about what your rights are.

I wrote this Property Damage E-Guide to assist you in handling a property damage claim yourself. Knowledge is power. When you know your rights, you are more likely to be treated fairly.

A word of caution: If you have been injured, you should consult a qualified personal injury attorney for guidance. Personal injury claims are far more complicated than property damage claims. Remember that insurance companies can't force you to settle your personal injury claim in exchange for a property damage settlement. Finally, while it is probably necessary to talk with the adjuster about how the wreck – and the property damage – occurred, you should not discuss your injuries without first consulting with an experienced personal injury attorney.

Thorp Law offers free consultations. Our attorneys work on a contingency fee basis. This means we get paid an attorney fee only *after* we get our clients a recovery. Since 1990, I have helped recover more than \$60,000,000.00 for my clients in claims involving 18 wheeler truck wrecks, defective products, brain injuries, spinal cord and burn injuries, and many other types of injuries. Not one of them paid me a penny in attorney fees until *after* I put money in their pockets through a just verdict or settlement.

If you decide to handle your property damage claim without an attorney, I hope this Property Damage E-Guide is helpful. If you have questions, need help, or you have been injured please give us a call at **(919) 833-6408**.



A handwritten signature in black ink that reads "Isaac Thorp". The signature is written in a cursive, slightly stylized font.