



ABOUT YOUR VEHICLE DAMAGE CLAIM

QUESTIONS & ANSWERS



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SECTION I: INTRODUCTION

When injured in an automobile accident and the other driver is at fault, your personal injury claim is handled separately from your vehicle damage claim. While your personal injury claim can take months to resolve and requires the expertise of an attorney, you can usually resolve your vehicle damage claim in a short time. Dealing with an insurance company can seem intimidating, but insurance companies usually want to quickly dispose of vehicle damage claims when possible.

You know your car better than anyone. That's why, usually, with the following information, you can quickly and fairly settle your vehicle damage claim on your own. This booklet answers the most commonly asked questions about vehicle damage claims. You won't be completely alone. You'll be guided by the advice of your lawyer throughout your case.

BE AWARE YOU HAVE RIGHTS!

THE CALIFORNIA AUTO BODY REPAIR CONSUMER BILL OF RIGHTS

YOU ARE ENTITLED TO:

1. Select the auto body repair shop to repair auto body damage covered by the insurance company. An insurance company shall not require the repairs to be done at a specific auto body repair shop.
2. An itemized written estimate for auto body repairs upon completion of repairs and a detailed invoice. The estimate and the invoice must include an itemized list of parts and labor along with the total price for the work performed. The estimate and invoice must also identify all parts as new, used, aftermarket, reconditioned or rebuilt.
3. Be informed about coverage for towing and storage services.
4. Be informed about the extent of coverage if any, for a replacement rental vehicle while a damaged vehicle is being repaired.
5. Be informed of where to report suspected fraud or other complaints and concerns about auto body repairs.
6. Seek and obtain an independent repair estimate directly from a registered auto body repair shop for repair of a damaged vehicle, even when pursuing an insurance claim for repairing the vehicle.

SECTION II: DEALING WITH INSURANCE COMPANIES



Q: Must I wait until my personal injury claim is settled to resolve my vehicle damage claim?

A: No, usually the vehicle damage claim is settled within a few weeks of the accident.

Q: Is there any reason to delay settling my vehicle damage claim?

A: Usually not. Delaying settlement can cause unnecessary storage fees, depreciating car values, increasing repair costs, and the possibility of additional damage unrelated to the accident which may give the insurance company an excuse not to pay you. It's also your duty to mitigate, or minimize your loss. Just because your car is damaged doesn't mean you can stay home from work and claim lost earnings. You must take the initiative to resolve the vehicle damage claim.

Q: What Is collision coverage and what if I don't have collision coverage?

A: **Collision Coverage** is insurance that covers your car damage from an accident, like when you hit another car or a tree. **Comprehensive Coverage** pays to repair your car if something happened other than an accident, like damage from a tree falling on your car. Comprehensive also covers fire and theft. If you're not at fault for the accident, the responsible driver's liability insurance coverage should pay for your vehicle damage. You're still obligated to report the details of the accident to your insurance company.

Q: Should I use my own collision coverage?

A: Yes, your insurance company has a duty to deal with you fairly and in good faith. Your collision coverage is a quick way of getting your car repaired. You'll pay the deductible, but your insurance company will pursue the responsible driver's insurance company to recover the collision coverage payment for itself and the deductible for you.

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Q: How does the deductible work?

A: The deductible is the amount you pay toward the cost of repairs - the higher the deductible, the lower your collision insurance premiums.

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Q: Won't my rates go up if I use my own insurance coverage?

A: No, under most state laws your insurance company cannot raise your rates, or cancel your coverage for making a claim from an accident that's not your fault.

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Q: Can I settle with both my insurance company and the other driver's insurance company for the same vehicle damage?

A: No, there's no double recovery. If the other driver's insurance company pays you for your vehicle damage after your own company has paid you, you must return the insurance money to your insurer.

Q: Who will I be dealing with?

A: A property damage adjuster, appraiser from the claims office of either your insurance company, or the insurance company of the responsible driver. You'll be given a claim number and instructions for the inspection of your vehicle.

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Q: Should I give the insurance company a recorded or written statement of the facts of the accident?

A: No, if you're dealing with the other driver's insurance company. If you're dealing with your own insurance company, you may be obligated under your policy to give a statement, but request a copy of any statement given. You may also want to wait and get a copy of the traffic collision report before making a statement, and contact your attorney before doing so. In either situation, don't discuss the details of your personal injuries. Advise the insurance company your attorneys are handling that portion of your claim and refer questions regarding your injuries and treatment to your counsel.

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Q: What if the responsible driver is uninsured and I don't have collision coverage?

A: Contact your state's department of motor vehicles. Some states have laws providing for the suspension of the uninsured at-fault party's driving privileges until your vehicle damage claim is paid.

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SECTION III: REPAIRABLE DAMAGE

Q: How much will the insurance company pay?

A: Usually, the insurance company's limit of liability for damage to a vehicle will be the lesser of the actual cash value ("A.C.V.") of the car or the amount necessary to repair it.

Q: Can I have my car repaired first and then request payment from the insurance company?

A: No, don't have your car fixed without first giving the insurance company an opportunity to assess the damage, take photos and authorize the repairs.

Q: How do I obtain a repair estimate?

A: If your car is drivable, many insurance companies have drive-through facilities to appraise the damage while you wait. The insurance company representative will advise you where to take your car for a repair estimate.

Q: What if my car is not drivable?

A: If your vehicle was towed from the scene, the appraisal can be done at the tow yard, body shop, or home.

Q: How long will it take for the insurance company to have my car appraised?

A: From a few days to a few weeks depending on the insurance company, when the accident is reported, and whether liability has been accepted.

Q: Will new parts be used to repair my vehicle?

A: You're entitled to have your car repaired to a condition as good as it was just before the accident. Remember, unless your car is brand new, it's full of used parts. This means that used, "like, kind and quality" ("L.K.Q.") parts may be installed

Q: Can I make the insurance company paint my whole car?

A: No, if only part of your car was damaged, you're not owed an entire paint job. Most body shops can match the color of your car accurately, even if it has faded. The body shop will try for a better match by polishing your old paint, but sometimes old and new paint cannot be made to shine the same. You may have to live with it or pay for the rest of the paint job yourself.

Q: Will the new paint meet factory standards?

A: Body shop paint cannot be applied as factory paint so it may not be as durable. Still, regular care with a high-quality wax or polish can keep paint looking good for years.

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Q: How will I be paid for my car repairs?

A: The insurance company will issue a check payable to you and the body shop.

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Q: Should I have minor damage repaired?

A: Yes, letting your car go unrepaired can cost you in the long run. Dents and rust spots deduct from the resale or trade-in value of your car.

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Q: The repair estimate from the insurance company has amounts deducted labeled “betterment” or “condition adjustment.” What does this mean?

A: These are different terms for “depreciation.” The insurance company only owes you for items of the same condition as the ones damaged in the accident. If your tires, brakes, or other worn items must be replaced with new items, the insurance company is entitled to withhold the difference in value between new and worn items.

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Q: What about damaged or destroyed personal items in my car?

A: If any of your personal property was damaged or destroyed as a result of an automobile accident, you have a claim against the insurance company for compensation. This claim should be handled at the same time as the claim for damage to your automobile. Make a list of the damaged or destroyed items and submit the list to the insurance company before you resolve your Property Damage Claim. You may be asked to provide photographs and/or receipts of your personal property, so if you have them, gather them while you are creating your list. Personal property may include, but is not limited to, child car seats and electronic devices inside your vehicle at the time of the accident.

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Q: Does the insurance company owe me for the whole repair even though part of the car was damaged before the accident?

A: Probably not, insurance appraisers get special training in detecting pre-existing damage. The insurance company may have the right to deduct the estimated cost of repairing prior damage.

Q: Can I choose where my car will be repaired?

A: Yes, but make sure the body shop is reputable and agrees with the insurance company's estimate. There may be advantages to having your car repaired at a body shop recommended by the insurance company; i.e. supplemental repairs for hidden damage are usually approved quickly.

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Q: What happens if hidden damage is later discovered?

A: If the body shop finds additional damage that may be from the accident, the repairer should contact the insurance company for approval. After the appraiser approves the changes from the original estimate, a supplemental check will be issued. The insurance company can't be expected to pay for damage that existed before the accident.

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Q: What about mechanical damage?

A: In some situations, it's difficult to know the real cause of mechanical problems until the unit is disassembled. It's usually your responsibility to initially pay for this. If the mechanical damage is accident-related, the insurance company should pay for it and reimburse you for the disassembly.

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Q: What if I'm not satisfied with the repairs?

A: You have the right to have the details attended to. Don't endorse the settlement check or sign a property damage release until the repairs are done to your complete satisfaction.

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Q: What about diminished value?

A: You're owed a repair that returns your non-totaled car to its pre-accident condition. Modern body repair technology is usually equal to the task. Diminished value occurs when a newer vehicle is involved in an accident and in spite of repairs, is still worth less money than before the accident. Because every vehicle is different, the diminished value varies and cannot be systematically calculated. A diminished value claims expert is needed to accurately appraise a vehicle and calculate its diminished value following an accident.



SECTION IV: TOTAL LOSS

Q: Can I force the insurance company to replace my car?

A: No, the insurance company determines whether the car is “totaled.” However, if you strongly disagree with the assessment you may be able to get a second assessment from an independent autobody shop for the damages to your car.

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Q: How does the insurance company determine a total loss?

A: The insurance company considers the vehicle's actual cash value, the expense of repairing visible damage, the likelihood of hidden damage and the cost of providing a temporary rental car. Most companies will declare the vehicle a total loss when the initial repair estimate is about 75 percent of the actual cash value of the car. They usually prefer to pay the claim in one quick stroke than to risk ongoing or unexpected expenses which may exceed the actual cash value of the vehicle.

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Q: If my car is “totaled” am I entitled to the price of a new car?

A: No, you're entitled to the actual cash value of your car just prior to the collision. Some insurance companies offer “replacement” or “repair cost” collision coverage which will replace your car with a brand new one, or repair your car even if the cost exceeds the actual cash value.

Q: How is actual cash value determined?

A: Insurance companies use proprietary software to determine actual cash value from comparable sales of vehicles similar to yours (same year, make, model, options, condition, and mileage). Once you've checked (1) free online car valuation sites like Kelly Blue Book at www.kbb.com; (2) your bank or credit union; (3) car dealers; (4) classified ads in newspapers and auto trader type magazines, you have a good idea of the value of your car. The amount you settle for is negotiable.

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Q: My car is not just old; it's a genuine restored classic. Now what?

A: You may have to pay an independent certified appraiser to evaluate your car. The insurance company should honor the appraisal and pay you.

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Q: My car had a lot of sentimental value. Doesn't that count for something?

A: Insurance companies know from handling thousands of claims that people get attached to their vehicles. They cannot pay for memories and other intangibles. The actual cash value of a car can only be based on sales of similar vehicles.

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Q: How will I be paid for my car if it is deemed a "total loss"?

A: The insurance company will issue a check payable to you and the lienholder (i.e., bank). You'll need to sign the title of your car over to the insurance company.

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Q: Is my car worth more because I just replaced the tires or had it painted?

A: Maybe. Upkeep of your vehicle usually only helps to maintain its value, not increase it. But advise the insurance representative of any recent major expenses.

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Q: Must I make my car payment and my insurance payment if my car has been "totaled"?

A: Probably not, but make sure you advise your bank and insurance company of the situation. If you're in a temporary rental car you'll need to continue making your insurance payment.

Q: If my car is "totaled," am I entitled to sales tax and registration fees in addition to actual cash value?

A: Yes.

Q: My car is “totaled,” but I want to keep it. Can I?

A: Yes, but you’ll be paid actual cash value less salvage value.

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Q: What is salvage value?

A: The amount a salvage yard is willing to pay the insurance company for your wrecked vehicle.

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Q: What if I owe more than the actual cash value of my car?

A: This unfortunate circumstance is called “upside down” and happens on older used vehicles purchased on a finance plan. Often, as a trade-off for being allowed to make payments, the customer paid more than the car is worth. The insurance company is not obligated to pay more than the actual cash value of the car in spite of the amount owed the finance company. You may want to see if you have Gap Insurance.

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Q: What if I have Gap Insurance?

A: If your insured car is totaled in an accident, or stolen and unrecovered, your auto insurance may give you a settlement based on the car’s actual cash value (ACV), not what you paid for it. Since cars depreciate quickly, your settlement may not cover what you still owe on your auto loan or lease. That could leave you with no car and a big bill to pay. Gap insurance is an optional, add-on car insurance coverage that can help certain drivers cover the “gap” between the amount they owe on their car and the car’s actual cash value (ACV) in the event of an accident. A car’s actual cash value is the car’s monetary value at the time of the accident, not the car’s original price.

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Q: Is it possible to avoid owing money to the bank on my “totaled” car when I’m upside down?

A: Sometimes lenders will allow a “substitution of collateral,” and some body shops will agree to repair a “totaled” vehicle for the amount paid by the insurance company. Contact your lender for options.

Q: What is “substitution of collateral?”

A: Some lenders will accept an essentially comparable vehicle as collateral on your existing loan and let you finish paying off the loan. This arrangement requires close cooperation among the lender, dealership, insurance company and you. It’s up to you to propose this solution to your lender and to find a replacement car which matches the one “totaled.”

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Q: How can I get my “totaled” vehicle fixed if I owe more than it’s worth?

A: The insurance company won’t pay for repairs on a “totaled” vehicle even though the damage may be 100-percent repairable. In such a case, some body shops will repair the vehicle for the available insurance money. Since the lender’s name will also be on the check, its representative may need to inspect and approve the repairs before signing the check over to the shop. The insurance company is not responsible for hidden damage or a rental while the car is being repaired since it is technically paying off a “total loss.” Remember, this option comes with no guarantees and is undertaken at your own risk.

**SECTION V:
TOWING AND RENTAL**

Q: What about charges for towing and reasonable storage?

A: The insurance company should reimburse you for these expenses. Remember to keep receipts and proof of payment.

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Q: My car was towed after the accident. How do I retrieve my personal items?

A: Most states regulate the towing industry and have rules regarding your right to access your car to remove personal property. Contact the tow yard right away and find out what the rules are. Bring your identification and something proving you’re the registered owner to the tow yard during regular business hours to remove your personal items. Additional visits or after-hours visits may cost you, so it’s best to do it all at once. Also, try and take as many pictures of the damage to your car as possible, and include pictures showing your Vehicle Identification Number (“VIN”) as well.



Q: When am I entitled to a rental car?

A: If your car is not drivable, or when your vehicle goes into the shop for repairs, you can request a rental car from your insurance company if you have rental reimbursement coverage, or from the insurance company of the responsible driver. You must promptly return the rental car when the insurance company makes a reasonable offer for your total loss, or when the repairs to your damaged vehicle have been completed. You're usually not entitled to a rental car during disputes with the insurance company regarding accident-related repairs or actual cash value, but may recoup rental car expenses if you prevail on the disputed issue. Even if you don't rent a car, you may be entitled to loss-of-use damages, usually measured by the reasonable rental cost of a substitute vehicle.

Q: What kind of rental car am I entitled to?

A: Basic transportation, nothing fancy. There are rental car companies catering to the insurance market and offer low daily rates with unlimited mileage. You may be entitled to a specific type of rental car to accommodate your physical disabilities or unique job requirements.

Q: Must I purchase the extra insurance coverage suggested by the rental car company?

A: It depends on your insurance coverage. If you have full coverage including "rental car coverage," in force on your own car, don't purchase the additional coverage from the rental car company. If you don't have full coverage on your own vehicle you'll need to pay for similar coverage on the rental car. You may not be reimbursed for this expense, so check with your insurance company first.

Q: What if the insurance company or responsible driver wants me to sign a release?

A: Most vehicle damage claims are settled without a release. Don't finalize your property damage claim until all bills for towing, storage, rental, repair, or total loss have been paid. Any proposed release should refer to property damage only, containing no language releasing "all claims" or your "personal injury claim." Let your attorney review any documents before you sign them.

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Q: What if I have problems, or additional questions regarding my property damage?

A: Read your insurance policy. Some policies have mandatory arbitration provisions if you and the insurance company still disagree. There may also be state laws governing arbitration of vehicle damage disputes. Your attorney can answer questions not covered here.

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Q: What is a Traffic Accident Report SR 1

A: If you are involved in a vehicle accident that occurred in California, you must report it to DMV if:

- (1) There was property damage of more than \$1,000 (\$750 for accidents prior to January 1, 2017) or;
- (2) Anyone was injured (no matter how minor); or
- Anyone was killed. Each driver must make a report to DMV **within 10 days**, whether you caused the accident or not and even if the accident occurred on private property.

www.dmv.ca.gov/portal/dmv/detail/forms/sr/sr1

SECTION VI: CHECKLIST

- ☐ Take as many photos as you can.
(i.e. of the scene, and the property damage)
- ☐ Report the accident to your insurance company.
- ☐ Remove any personal items from towed vehicle.
- ☐ Review your own policy regarding deductible and rental coverage.
- ☐ Determine whether to use your own coverage.
- ☐ Contact the other driver's insurance company.
- ☐ Note the adjuster's name and claim number.
- ☐ Make an appointment for an appraisal.
- ☐ If your car is not drivable, request a rental*.
*(If applicable)
- ☐ Select a body shop for repairs.
- ☐ Return the rental car when repairs are complete.
- ☐ If your car is totaled, determine actual cash value.
- ☐ If your car is totaled obtain title to sign over.
- ☐ When a reasonable offer is made for your totaled car, return the rental car.
- ☐ Have your attorney review all proposed releases.
- ☐ Report the accident to the DMV within 10 days.

SECTION VII: INSURANCE INFORMATION

My Insurance Company

Policy number

Adjuster's name

Phone/extension

Address

Claim number

Collision deductible

Rental coverage?

Other insurance company

Policy number

Adjuster's name

Phone/extension

Address

Claim number

SECTION VIII: NOTES



EXPERIENCE IS THE DIFFERENCE



Auto Accidents
Aviation Accidents
Bus Accidents
Boat Accidents
Motorcycle Accidents

Personal Injury
Truck Accidents
Dangerous Drugs
Wrongful Death
Workers Comp



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