

After a Car Accident

Your Post-Crash Handbook



When your vehicle is damaged and it's someone else's fault, you have certain rights under North Carolina law and the rules and regulations of the North Carolina Department of Insurance.

As it is rarely cost-effective for you to hire an attorney to handle your property damage claim, the attorneys at Ward Black Law have a few helpful tips to assist you in handling your claim yourself.



www.wardblacklaw.com

Where to Begin

Are you injured?

If so, seek medical attention and document all subsequent treatments. If you need help navigating the process of filing an injury claim as a result of a car accident, you can contact an attorney for assistance. Your attorney can help you review any document that the insurance company asks you to sign before you sign it and can provide additional legal expertise about your rights to a settlement.

Is your car damaged?

Contact the other driver's car insurance company IMMEDIATELY. The name of the driver's insurance company will be on the "exchange slip" provided to you by the investigating officer at the scene. Contact the insurance company by phone and then follow up with a written notice of your claim. Include the time and place of the collision along with a description of your vehicle. If you send a written notice to the other driver's insurance company, then you can expect a written denial or acceptance of the claim in response.

If you were injured, keep in mind that the other driver's insurance company is prohibited from forcing you to settle your personal injury claim at the same time you settle the property damage claim.

What to Expect

You can expect one of two initial responses from the other driver's insurance company:

DENIAL

If the insurance company (a.k.a. the adjuster) denies your claim (meaning the insurance company says their driver isn't at fault or otherwise refuses to pay) ask for a denial in writing. The other driver's insurance company is obligated to state the specific reason for the denial.

OR

ACCEPTANCE

If your property claim is accepted (meaning the insurance company is willing to pay, but the question is how much) then you should negotiate with the adjuster. If you are satisfied with the offer, you should settle the property 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 specific documentation or policy provisions the adjuster is relying on to justify the offer.

If you have trouble getting the other insurance company to settle, contact your own insurance company. If you have collision insurance, simply make a claim under that policy. Your insurance company may then seek to get reimbursement (from the other insurance company) for what it pays you to repair or replace your vehicle and get your deductible back. Oftentimes your own insurance agent will work harder to treat you fairly than will the other driver's insurance company.

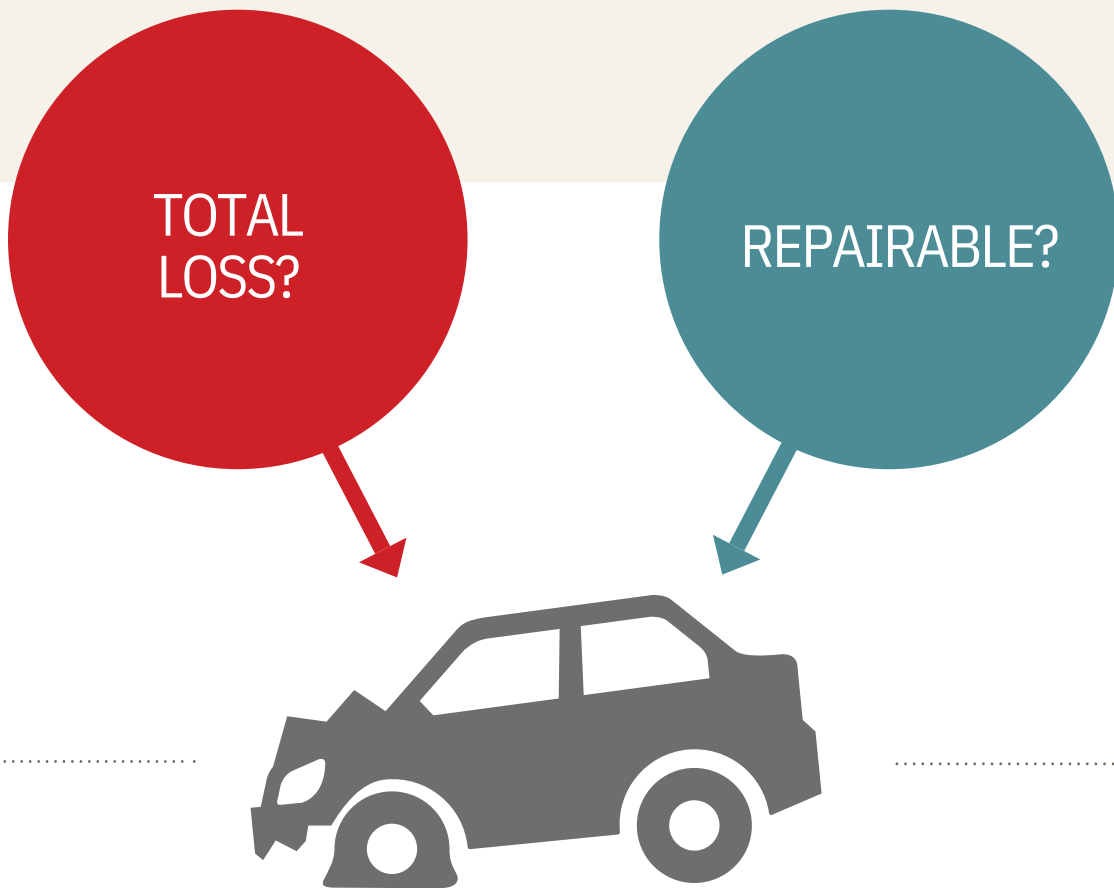
What if . . . I'm injured by the accident?

Even if you were injured as a result of the accident, it is generally safe to settle your car's property damage claim. Carefully review the release the insurance company sends you to sign to make sure you are only settling the property damage claim.

If you have an attorney, you should ask your attorney to review any document that the insurance company asks you to sign before you sign it. The other driver's insurance company is prohibited from forcing you to settle your personal injury claim at the same time you settle the property damage claim.

What Happens Next?

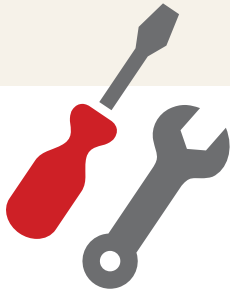
Once your property damage claim is accepted, your car will be classified as either a “total loss” or “repairable.”



SCENARIO 1

Your Car is Considered a “Total Loss”

A motor vehicle is considered a total loss if the cost of repairs equals or exceeds 75% of the pre-accident cash value. The pre-accident cash value is called the Fair Market Value (FMV).



Cost of Repairs

is EQUAL TO or
GREATER THAN



Pre-Accident Crash Value
(FAIR MARKET VALUE)

Fair Market Value (FMV)

Generally speaking, the other driver's insurance carrier is required to pay the fair market value (FMV) (pre-accident cash value) of the vehicle, plus the taxes and tags. Taxes and tags represent the taxes that would be assessed on the value of the vehicle and the cost of getting the vehicle titled (\$55.00). In simple terms, the FMV is the value a seller, not forced to sell, and a buyer, not forced to buy, would agree upon for the vehicle immediately before the collision.

How FMV is Determined

Adjusters generally have a book value (BV) they use to arrive at FMV, but they have some wiggle room based on the condition of the vehicle. BV is supposedly FMV, but this gives both sides some leeway to negotiate.

Many insurance companies use the National Automobile Dealers Association (NADA) publication entitled “Official Used Car Guide” which is published monthly and available online. You will find it at www.nada.com. Your finance company or bank should have a current copy to which you can refer. Some insurance companies have their own valuations. No publication is completely accurate and they are indeed only ‘guides,’ so there is some basis to negotiate in every case.

Remember, you can always require that the adjuster (or insurance company) provide a written statement with their offer to pay you for the value of the total loss of your vehicle. That statement should always include estimates, evaluations and deductions used in calculating the payment as well as the source of these values.

Example of a “Total Loss”

If the vehicle's pre-accident FMV is \$8,000 and the estimates for cost of repairs are less than \$6,000, then the other driver's insurance company is obligated to only pay for the cost of repairs. However, if the estimated cost of repairs is \$6,000 or more, the other driver's insurance company has to pay the pre-accident FMV of \$8,000 and no more.



Problems frequently arise when claimants fail to understand that the law does not require insurers to pay more than the fair market value. If FMV is \$8,000 and the cost of repairs is \$9,000, then you will only recover \$8,000. In other words, you can't recover more than the FMV even when the cost of repairs exceeds the FMV.

Arguing Fair Market Value

If you and the adjuster are initially unable to reach an agreement as to fair market value (FMV), then the adjuster is required to base any further settlement offer not only on published regional average values of similar vehicles but also on the value of the vehicle in the local market.

Local FMV must be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified car dealers within the local market area. If your vehicle was in better-than-average condition prior to the collision, the adjuster is required to consider that in arriving at a value.

Salvage Value vs. Fair Market Value

If the vehicle is a total loss and if you and the adjuster agree on the vehicle's pre-accident FMV and the adjuster is willing to pay the FMV, then the other driver's insurance company gets the car. In other words, the insurance company is not going to pay you FMV and let you keep the car. This is because there is usually some residual or leftover value in totally damaged vehicles. At the very least, the vehicle can be stripped and some of the parts sold.

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. If you wish to keep the 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. If you wish to keep the vehicle, then you have the right to ask the other driver's insurance company (prior to your agreeing to settlement) to give you in writing the name and address of the salvage dealer who will purchase the salvage for the amount claimed as salvage value by the adjuster.

The "Total Loss" Check

If your vehicle is financed, the other driver's insurance carrier may determine the pay-off to the finance company and 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 be made payable to you and the finance company. 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 had purchased "gap" insurance. (Gap insurance is insurance you purchase. It is sometimes required by lessors for leased vehicles and sometimes provided in financed new car purchases.) Another kind of optional insurance you might have purchased is "repair or replacement" coverage. "Repair or replacement" coverage provides that if your vehicle is damaged, your automobile insurance company will pay either the reasonable cost of repairs or the cost of a new auto (whichever is less). If your vehicle is not financed, then the insurance company will write you the check.

The Right to a Rental Car

You are entitled to a rental vehicle from the time of the collision if the vehicle is disabled until you receive an offer from the other driver's insurance company. The moment the offer is made (assuming the offer is reasonable) the other driver's insurance company is not responsible for a rental vehicle. Sometimes the other driver's insurance company will allow you a few more days if you have had trouble buying a replacement vehicle, but if that occurs, it is voluntary on the insurance company's part.



Generally, you should be provided with a rental vehicle comparable to the vehicle that was damaged. Thus, if you were driving a compact car you should

be able to rent another compact car. If you were driving a four-door sedan then you should have a comparable four-door sedan.

Most insurance companies have arrangements with automobile rental companies whereby a call from the other driver's company to the rental company will produce a vehicle to you at fairly modest cost for which the other driver's insurance company will pay. These arrangements with rental agencies are the reason why you should contact the other driver's insurance company as soon as possible.

However, some insurance companies will not honor a claim called in by you because they have internal policies that provide that no claim is recognized until its insured (the "at fault" driver or that car's owner) calls and reports the claim. In those instances when an insurance company will not provide a vehicle because the insured has not reported the claim, you may rent a vehicle at prevailing market prices and then when the other driver's company adjuster contacts you, ask what to do about continuing with the rental. Most likely, you will be told to turn the rental in and rent a vehicle from the contract rental agencies. In such a case, the other driver's insurance company should be liable for the initial rental cost at the prevailing rates until you are placed in a lower rate vehicle.

Note: Mileage and gas are not paid for by the other driver's insurance company, just the daily rental cost of the vehicle.

Insuring Your Rental Car

The other driver's insurance company does not have to pay for additional insurance on the rental. If you have comprehensive and collision coverage on your own automobile policy, it will normally transfer to the rental vehicle. If you do not, the rental company may require you to purchase the additional coverage. This is an expense that will not be reimbursed by the other driver's insurance company. Some rental companies will still rent you a vehicle without additional coverage, but will have you sign a form stating you will be held responsible for any and all occurring damage while the vehicle is in your care.

SCENARIO 2

Your Car is “Repairable”

A motor vehicle is repairable if the cost of repairs is less than 75% of the pre-accident cash value (FMV).



Cost of Repairs

is LESS THAN

75%
OF



Pre-Accident Crash Value
(FAIR MARKET VALUE)

Generally, the insurance company does not have to approve new parts for your car. An insurer will only put new parts back on a vehicle that is new. If a vehicle is at least one year old, an insurer may put LKQ (like kind and quality) parts back on a vehicle. These parts must not void the warranty and must keep proper form, fit and function. If they do not, the owner can request new parts.

“Drive-in” Claims

Many insurance companies have ‘drive-in’ claim service facilities. However, no insurance company can require you to use a drive-in claim service operated by it. If you voluntarily utilize the drive-in claim service this will not prejudice your right to obtain independent appraisals and negotiate settlement on the basis of those appraisals.

Repair Estimates

You should get at least one estimate of repair costs from a reputable dealership. Some adjusters may ask for an additional estimate which, if asked for, you should arrange. If the adjuster insists that more than two estimates be obtained, then the insurance company must pay for those estimates.



Sometimes adjusters will have you obtain an estimate 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 and to include in writing any and all other oral agreements you and the adjuster have agreed upon.

Diminished Value

Diminished value is that sum of money that accounts for the decrease in the fair market value of your motor vehicle as the direct result of having been damaged in a collision, even taking into consideration that your vehicle is repairable or is repaired. It is a recognition that a vehicle which has been in a collision and is repaired is of less value than a similar vehicle which has never been damaged. In other words, it is a value of loss over and above the repair costs. The amount of diminished value will also depend on the severity of the damage. If there is minor damage there probably is no diminished value, meaning the car repaired is worth the same as the car before the wreck. On the other hand, the more severe the damage, the more likely diminished value is present.

When negotiating with the adjuster you should demand that you be paid diminished value, especially if your vehicle is five model years old or newer AND was damaged more than 25% of its value. If these factors apply, you will have to disclose these damages on a DMV form when you sell your car in the future. This means the value of your car will be significantly reduced after repair. Tell the adjuster before the repairs begin, that you intend to claim diminished value. The amount of diminished value typically is the difference between the vehicle's retail value before the accident and its wholesale value after the accident. You may want to seek the help of an expert appraiser to make this valuation, as there is no computer formula that calculates diminished value.



Getting Your Car Repaired

Often adjusters will recommend that you use a particular repair service. However, the adjuster is obligated to tell you that you do not have to use the repair service recommended and you may use the repair service of your choice.

The “Repairs” Check

If your car is financed, the insurance company will likely write the check in your name and the name of the finance company, though it may choose to write the check to the repair company as well. This is because the damage to the vehicle may reduce the value of the car which means the finance company's lien rights are also diminished. Therefore, the finance company will almost 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 repair check.

What if . . . something goes wrong after the repairs are made?



When you pick up your car you should test drive it and thoroughly inspect the repairs before you sign a release. 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, but only if the discovered damage was caused by the collision and could not be determined or known until after the attempted repair.

You have thirty days after the repair to assert the claim for additional damages. If you sign a release involving a repair to your vehicle, that release does not bar you from later asserting a claim for diminished value of your vehicle.

You have up to 30 days after the repair to make a claim for diminished value. However, you should know that from a practical standpoint, it will be much harder to persuade the insurer to pay for additional repairs or diminished value after you have signed your release, so it is important to inspect the vehicle's repairs closely and discuss any diminished value you wish to claim with the insurer before you sign any release.

The Right to a Rental Car

You are entitled to a rental vehicle from the time of the collision – if the vehicle is disabled – until the repairs are finished. If your vehicle is not disabled, you are entitled to a rental vehicle from the time your vehicle goes into the repair shop until the time it is repaired.

Generally, you should be provided with a vehicle comparable to the vehicle that was damaged. Thus, if you were driving a compact car you should be able to rent another compact car. If you were driving a four-door sedan then you should have a comparable four-door sedan.

Most insurance companies have arrangements with automobile rental companies whereby a call from the liability company to the rental company will produce a vehicle to you at fairly modest cost for which the other driver's insurance company will pay. These arrangements with rental agencies are another reason why you should contact the other driver's insurance company right away.

However, some liability insurance companies will not honor a call in from you because they have internal policies that provide that no claim is recognized until its insured calls and reports the claim. In those instances when an insurance company will not provide a vehicle because the insured has not reported the claim, you should rent a vehicle at prevailing market prices and then when the liability company adjuster contacts you ask them what to do about continuing with the rental. Most likely, you will be told to turn the rental in and rent a vehicle from the contract rental agencies. In such a case the other driver's insurance company should be liable for the initial rental cost at the higher rates until placed in a lower cost vehicle. As we mentioned earlier, mileage and gas are not paid for by the other driver's insurance company, just the daily rental cost of the vehicle.

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Injured? Need an Advocate?

Does your car accident claim seem like more than you can handle?

The experienced attorneys at Ward Black Law in Greensboro, N.C. have years of experience representing people injured in accidents. Our legal team is available to answer your questions and conduct a free case review. Call Ward Black Law today at 336-333-2244, or toll-free at 1-877-256-1214.



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