



COMMON QUESTIONS

Property Damage Claims

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Thank you for reading

This pamphlet answers common questions about your rights and what you can expect from the auto insurance company.

After you report the loss to the auto insurance company of the driver responsible for the accident, that insurance company will begin the process to either repair or replace your car.



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Car Rental

WHO PAYS FOR THE RENTAL WHILE MY CAR IS BEING REPAIRED?

The insurance company of the person responsible for the damage is required to provide you with a rental car. If you caused the accident or there is not another person to blame, you must look to your insurance policy to determine if rental coverage is available. Many insurance contracts don't provide rental coverage for their own costumers.

DO I HAVE TO PURCHASE ANY EXTRA INSURANCE ON THE RENTAL CAR?

The insurance company will not pay for extra insurance from the car rental company. Your own insurance carrier should cover you while driving the rental car. Call your insurance agent to be sure you are covered.

WHO CAN DRIVE THE RENTAL CAR?

Normally, the rental car agreement only covers one driver. You will have to pay extra charges for having other drivers on the rental car while your car is being repaired.

WHERE SHOULD I RENT A CAR?

Insurance companies typically have exclusive relationships with certain rental car companies. Ask the insurance adjuster handling your claim where you should obtain your rental car. The responsible insurance company is required to pay the cost for the "reasonable incurred rental cost of a substitute vehicle". Using the car company that the insurance company partners with will help save you money, so be sure to check with the adjuster on this detail. Sometimes, you are required to pay the rental car bill first and submit for reimbursement later from the insurance company.



Getting your car fixed



CAN I DEMAND THAT MY CAR GET REPAIRED?

The insurance company has the option to either repair or replace your car. It is usually a question of cost. If it costs less to replace your car than to repair it, the insurance company will declare your car a “total loss” and take action to replace your car.



CAN I CHOOSE MY OWN REPAIR SHOP?

Should the insurance company choose to repair your car, you have the right to decide who will repair it. Many insurance companies will evaluate the cost of repairing your car separately and independently from any repair shop. They will then work with the repair shop of your choice to get your car repaired.



HOW DO I PROVE THAT DAMAGE WAS CAUSED BY THE ACCIDENT?


Sometimes, the insurance company will claim that some damage to your car existed prior to the accident. Accidents also often generate mechanical malfunctions. It can be hard to know if a mechanical problem was caused by

the wreck or by normal wear and tear. Therefore, it is important that you can show a clear connection between the accident and the damage. Mechanics can often help you determine the age of body damage and diagnose the cause of mechanical failure. They can also be helpful to you in convincing the insurance adjuster that the auto accident caused the damage.



CAN I DEMAND ORIGINAL MANUFACTURER PARTS?

The insurance company must return your car to the condition it was in before the accident. Because your car was probably not brand new, the mechanic may use refurbished or reconditioned parts. However, you have the right to demand original manufacturer parts so that if your car is a Ford, for example, your car should only be repaired with genuine Ford parts.



What if my car is declared a Total Loss?

WHAT IS A TOTAL LOSS?

A “total loss” occurs when the insurance company considers it more expensive to repair your car than to replace it. If your car ends up being declared a “total loss”, the insurance company will buy your car for its market value. A rental car will be provided until the adjuster can make a reasonable offer. The difficulty is determining that market value price. Sometimes it takes a week or two before an offer is made. The insurance company has 30 days to process your claim.

WHO PAYS FOR TOWING AND STORAGE COSTS?

Normally, the insurance for the driver who caused the accident will pay the towing and storage costs for your car. They will continue to pay these costs while determining whether your car is a “total loss”. If the insurance company declares the car a “total loss”, they will move the car from the repair shop to a wrecking yard or a free storage area. You should be called before your car is moved. If you refuse to allow the insurance company to move your car, you will have to pay the storage costs from that day forward. If you want to keep your car, you can pay to have it towed to your home.



≡ HOW IS THE VALUE OF MY CAR DETERMINED?

You are entitled to the “fair market value” or the “actual cash value” of your vehicle when your car is declared a total loss. Insurance companies usually determine fair market value by referring to Kelley Blue Book or a similar publication. The insurance company is trying to determine what your car was worth immediately before the accident. Once they make an offer, it is up to you to either accept their offer or show them why your car is worth more.

If you think your car is worth more than the amount offered, appraise the price of your current vehicle at www.kbb.com, www.edmunds.com, or check the newspaper and the AutoTrader for the sale price of cars the same make and model as yours. This will help give you an idea of what your car is worth on the open market.

Sometimes car owners are upside down on their car loan. This means that you owe more money than its fair market value. There are many reasons why people are “upside down” on the loans for their car. This can happen if

they purchased an extended warranty and roll it into the loan. Luckily, an extended warranty can almost always be canceled and the owner is entitled to a refund. For example, if you purchase a five-year warranty and your vehicle is declared a total loss in the second year, you are entitled to a refund of 3/5th's of the purchase price of the warranty.

Unfortunately, the adjuster will not pay more money to you simply because you are “upside down” on your car loan. They are only obligated to pay you “fair market value”.

≡ CAN I RECOVER FOR RECENT REPAIRS OR MAINTENANCE TO MY CAR?

When an older car is involved in an accident, it is hard to recover the cost of recent repairs. New tires or a new engine only slightly increases the value of a vehicle. If you have receipts for the new motor or transmission, show them to the adjuster.



☰ THE INSURANCE COMPANY TOLD ME I COULD KEEP MY CAR IF I PAY THE “SALVAGE VALUE”. WHAT IS “SALVAGE VALUE”?

When you are offered a “total loss” settlement, the insurance company buys your car. If you wish to keep the wrecked car, you may purchase it back from the insurance company for its salvage value. The adjuster can deduct the salvage value from the settlement and you can keep the car.

☰ ARE THERE ANY OTHER DAMAGES FOR WHICH I CAN EXPECT THE ADJUSTER TO PAY?

Besides the cost of the vehicle, you also had to pay sales tax, a tag fee, and registration fees. You are entitled to be reimbursed for the

prorated amount of these costs. The insurance company should reimburse you for:

- 1-** Applicable sales tax on the actual cash value of the car,
- 2-** The cost of the tag transfer fee,
- 3-** The prorated amount of your yearly car tax and registration fees.

For example, if your car was wrecked on June 1 and you had just licensed and registered your vehicle on May 1, at a cost of \$120, you are entitled a return of \$110 (\$110 would be the taxes and registration fee for 11/12th’s of the year)



What if the insurance adjuster says the accident was 50% my fault?

The insurance company for the other driver is only responsible for the repair/replacement of your vehicle if liability against the other driver is “reasonably clear”. Sometimes they may claim you contributed to the accident. In that case, they will reduce what is owed to you by the amount of the comparable fault. Thus, if the insurance company believes that you were 20% at fault for the accident, the cost of repair or replacement of your vehicle would be reduced by 20%. If you were equally at fault as the other driver (50/50), the other driver’s insurance would not be responsible for paying anything. That is, you must show that the other driver was at least 51% or more at fault before the other driver’s insurance would be responsible for payment of your loss.

You may disagree with the other driver’s insurance decision for who was at fault. If so, you can look to your own carrier for compensation if you had collision coverage as part of your policy. However, you will have to pay the deductible provided for in your policy. Your company then may make a claim against the other driver’s insurance carrier. If your company is successful in being repaid for your damages, your deductible will then be reimbursed to you.

≡ CAN I SUE IN SMALL CLAIMS COURT?

If you are unable to agree with the insurance company or other driver, and you do not have collision coverage, you can sometimes take your case through the Small Claims Court system. However, this may be a complicated issue

≡ DO I NEED AN ATTORNEY TO FILE IN SMALL CLAIM COURTS?

Small claims courts are designed to allow people to handle disputes on their own, without an attorney. However as noted above, you may unintentionally silence other potential legal claims by pursuing your vehicle property claim separately from your personal injury claim. Therefore, the Small Claims Court process should not be used without first consulting with a lawyer about your case. At Benzion Law Group, we will be glad to talk with you about your case without obligation and free of charge.

A close-up photograph of a person's hands writing on a clipboard. The person is wearing a light-colored, checkered button-down shirt. The clipboard is held in their left hand, and they are using a white pen in their right hand to write on a document. The background is a dark, reflective surface, likely the side of a car, which shows some reflections and a white wheel. The overall scene suggests a professional or legal inspection or documentation process.

HOW DO I PURSUE THE OTHER DRIVER THROUGH SMALL CLAIMS COURT?


Court forms needed to pursue a Small Claims Court action (Justice Court action) are found online.

- Once the court receives confirmation that the other driver has been served with a copy of your Small Claims Affidavit, a trial date will be set. At the trial, bring both documentation and witnesses that can support your claim.



Conclusion

Many people find the property damage portion of their claim very frustrating. They may be “upside down” or believe their car is worth more than the insurance company believes it is worth. It is an extremely frustrating time as you are not only in physical pain, but your ability to get around has also been limited. However, it does no good to get upset with the adjuster. The best way to get a better offer is by showing the adjuster additional information proving your car is worth more than offered.



We hope you find this information helpful, and that you can resolve your property damage claim quickly and fairly. If you have additional questions, please feel free to call us at:

(801) 970-9913 (Utah)

(208) 274-4589 (Idaho)

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