

Wayne Howell, PLLC

Basic Property Damage Information

A motor vehicle accident results in two separate and distinct claims – the bodily injury claim, for which you generally engage an attorney, and the property damage claim, which you generally handle on your own.

The purpose of this document is to help answer some of the common questions regarding the property damage claim. Even though your attorneys do not formally represent you for this claim resulting from your accident, we are happy to provide information and courtesy services to facilitate your handling of this matter. If you prefer, we can provide you with information on reputable companies who will handle your property damage claim for free in exchange for the opportunity to do the repair work or to obtain the salvage.

The first and most important task for you to address is to obtain photos of your damaged vehicle, before its condition and/or location changes. In the event the property damage claim does become the subject of litigation, you will need this evidence. Your attorneys need the photos because the first rule of motor vehicle accident claims is "the person is hurt only as badly as the vehicle". Photographs of and repair estimates for the damaged vehicle aid your attorney in negotiating and/or litigating your bodily injury claim, because they support the other evidence regarding the severity of your injuries.

Once you have acted to preserve this important evidence, you can proceed with the process of resolving your property damage claim.

Set Up the Claim

You will need to set up the property damage claim with either the at-fault driver's insurance carrier or your own insurance carrier, or both. If the at-fault driver's insurance company has accepted liability, the property damage claim can be set up through them. However, if the at-fault driver's insurance company is not cooperating, or if it appears there may be an issue regarding liability or whether coverage exists, or if there is any question that the at-fault party may not have sufficient coverage to resolve all of the property damage, you will want to handle the claim through your own company. Your deductible will apply, but your insurance company will attempt to recover both what they paid and your deductible from the responsible party.

Mitigation of Damages

Under Arizona law, a person has an affirmative duty to mitigate all damages. This means that you are expected to do whatever a reasonable person would to limit the amount of the damages. The two typical areas involving your duty to mitigate your damages are the timely removal of your vehicle from the towyard or other storage facility that charges a fee, as well as the return of any rental vehicle in a timely manner. Any failure on your part to mitigate your damages may result in you having to pay for those expenses.



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Towing/Storage Fees

If your vehicle was towed from the scene of the accident, it was mostly likely towed to a private fee-charging storage lot. These private storage lots charge a daily storage fee that can add up very quickly and subject you to out-of-pocket expenses.

The at-fault driver's insurance company or your own insurance company, if you have collision coverage, will pay reasonable towing and storage fees. Keep all receipts and submit them to the appropriate insurance company for reimbursement.

If the at-fault driver is uninsured or the at-fault driver's insurance company is not accepting liability, and you do not have collision coverage, you are still responsible to pay the applicable fees and remove your vehicle from the storage lot. This holds true even if you feel that you are not at fault for the accident, since you have a duty to mitigate (lessen) your damages under Arizona law. If your vehicle remains in a fee storage lot for an unreasonable time, it may be impossible to recover those storage fees from any insurance company. In fact, if your vehicle remains unclaimed for more than thirty days, it could be declared abandoned – which could result in your being unable to recover anything on your property damage claim.

Rental Vehicle

You can obtain a rental vehicle through the at-fault person's carrier, if liability is not contested, or through your own carrier if you carry rental coverage on your own policy, while your vehicle is being repaired or while the fair market value (FMV) for the total loss of the vehicle is being determined.

The insurance company will not usually pay for any extra insurance associated with the rental vehicle. Your insurance should cover you while driving the rental vehicle. Be sure to call your insurance carrier to confirm your coverages. If you do not have collision coverage, you probably will be required to pay for additional insurance coverage [Collision Damage Waiver (CDW) or Liability Damage Waiver (LDW)] on the rental vehicle, usually between \$8 - \$12 per day. The insurance company is only required to put you back to where you were before the accident and if you did not have collision coverage before the accident, the insurance company is not required by law to provide it for you on the rental vehicle via the CDW or LDW.

The method of payment for the rental vehicle will vary depending on the insurance company's policy. Some will use the direct bill method, while other insurance companies will operate on a reimbursement policy. When the insurance company pays for the rental vehicle directly to the rental car company, this is the direct bill method. The reimbursement method means that you pay for the rental vehicle and then the insurance company reimburses you for the cost. The rental car company will usually require a credit card to ensure payment for the rental vehicle. Insurance companies often receive discounts with car rental companies, so ask the adjuster handling your property damage claim where you should obtain the rental vehicle.

The rental vehicle needs to be returned in accordance with the insurance company's instructions. Failure to timely return the rental vehicle may result in non-reimbursable

out-of-pocket rental expenses.

If there is a delay in obtaining a rental vehicle or a rental vehicle is not used, you may be entitled to compensation for the "loss of use" of your vehicle for each day you have been deprived of its use. Conceptually, "loss of use" represents the at-fault driver's insurance carrier paying you what they would have paid for a rental car. In reality, your actual recovery may be a token amount of as little as \$15.00 per day for some of the days you experienced "loss of use". This is a frequent source of aggravation, as the small amounts of money concerned make it impractical to engage in anything more than a cursory argument over the issue. The more enlightened outlook is to consider "loss of use" money as a bonus that you would not have received except that you knew to ask for it.

Repairs

The insurance company normally has the sole option to either repair or determine that a vehicle is a total loss. If the cost of repairs is less than a certain percentage of the Fair Market Value (FMV) of the vehicle, the vehicle will be considered repairable.

It is always your choice where to have your vehicle repaired, and it is important that you exercise this choice. First, if you have any problem with how the repairs were performed, this is a warranty issue between you and the shop – it has nothing to do with your injury claim or with the insurance companies involved. Therefore you want the repairs done at a shop you know and trust, or at least one you have heard of and that has a good reputation and is not run by your insurance company. Second, you always want to obtain a repair estimate that is independent of the estimate done by the adjuster employed by the insurance company. The insurance companies' estimates always tend to be lower than independent estimates, because lower property damage estimates favor the insurance companies, not you. Third, the best independent shops frequently argue with the insurance companies over authorization for parts or procedures to achieve the highest quality, as opposed to lowest cost, repair.

Often the full extent of the needed repairs will only become apparent once your vehicle has been disassembled. In this case, the repair facility will need to supplement the cost of the additional repairs to the insurance company for approval and authority. In most cases the repair facility will deal directly with the insurance company for supplemental repairs and it will not require your intervention. However, you do want to be sure to obtain any supplemental estimates as they may be relevant to your injury claim.

Unless your vehicle is new or nearly new, it is generally not required that brand new parts be used for the repair. The insurance company is required only to restore your vehicle to its pre-accident condition, not make improvements. Most body shops are usually able to find used parts of like kind and quality that are in the same condition as the parts on the vehicle prior to the accident. However, the insurance company cannot make you accept any used part that is substantially inferior to the pre-loss condition of the part being replaced.

If the insurance company claims that some damage to your car pre-existed the accident, or if you claim that the accident caused mechanical malfunctions, the burden is on you to prove the connection between the accident and the damage. You will need the professional mechanics and body repair persons at your repair facility to help you determine the cause of a mechanical failure or the age of body damage. This is yet another reason for you to

choose your own repair facility.

Be sure to carefully inspect your vehicle upon the completion of the repairs. If you have any problem with the quality of the work, this is the best and perhaps only time to raise any issues.

Diminished Resale Value

Assuming your vehicle has been repaired to industry standards by a competent repair shop, it still is different than it was before the crash. The seal of the undercoating has been interrupted and the finish is slightly different than the original. If you look closely, you may be able to identify that the vehicle has been damaged. If you were considering purchasing this damaged and repaired vehicle, or the identical vehicle that had not been in a crash, you would not purchase the damaged and repaired vehicle unless the price were reduced by an amount sufficient to offset your hesitation. The amount that the vehicle's price would have to be reduced to make you want to buy it is the *inherent* diminished resale value. The resale value is diminished *just because* the vehicle was in an accident, regardless that the repairs were properly performed. This is a different concept than the resale value being reduced because the repairs were not of sufficient quality.

Inherent Diminished Resale Value is a component of your property damage claim and may be compensable by the at-fault party's insurer. As with anything, each side has its own argument. The other side may claim that you have not realized a loss, because you still own the vehicle. Arizona caselaw provides the argument that the loss is sustained at the moment of impact. If you do sell or trade in your damaged and repaired vehicle and claim your loss on that basis, the other side may argue that you simply made a bad deal.

In order to make a Diminished Value(DV) claim, you would generally want to have an expert in the field prepare a report as to the loss in value. Many Insurance carriers refuse to consider Diminished Value claims or dramatically undervalue them. For this reason you may have to file a lawsuit, either once your personal injury claim has been settled or in conjunction with the lawsuit on your personal injury claim, in order to realize a recovery. The costs for this type of litigation include the Diminished Value report, court filing fees and costs to effect service, the cost to have the expert come to court and testify, as well as legal fees.

There are some general parameters that help you determine whether you have a viable Diminished Value claim. You are generally starting with a vehicle that is worth at least \$15,000 to \$20,000 at the time of the accident, with less than 100,000 miles, and the damage must be either structural or such that welded body panels are required to be cut out and rewelded. This type of damage prevents the vehicle from being sold as a Certified Used Vehicle and results in a significant loss in value.

Beware if you are requested to sign a property damage release, or if the release you are asked to sign at the conclusion of your injury claim is a General Release as opposed to a Bodily Injury release. Once you release the defendant for your property damage or for all claims, you have given up your right to make a Diminished Value claim.

Total Loss

If the cost of repair is greater than a certain percentage of the fair market value of the vehicle, the insurance company will declare the vehicle a total loss and offer you the Fair Market Value (FMV) [also called the Actual Cash Value (ACV)] for the vehicle. In most cases this total loss threshold is in the 60% to 70% range

In determining the FMV, most insurance companies use computerized searches, which take into account vehicles similar to yours that are advertised in local newspapers by private owners and evaluations done by local dealerships. Generally, the insurance company is trying to determine what your car was worth immediately before the accident. Once the insurance company makes a total loss offer, it is up to you to either accept the offer, or provide your own evidence as to why the vehicle is worth more. As the insurance company has engaged in what appears to be a scientific process to determine what is arguably a fair and objective Actual Cash Value, you must be prepared to offer your own equally scientific and objective valuation if you wish to dispute theirs. Merely objecting to their value based on the "Blue Book" value you obtained from the internet is not sufficient for this purpose. In addition to the Actual Cash Value, you are also entitled to recover prorated licensing fees on the balance remaining on the annual license and sales tax on the total loss value.

When an older vehicle is involved in an accident, it is difficult, if not impossible to recover the cost of recent repairs. Normally, new tires or a new engine only slightly increases the value of a vehicle. In the total loss area, you will encounter the reasoning that "A car must have tires, transmission and engine"; therefore you should not expect additional money just because those components were in good condition. If you have receipts for any improvements in the way of nonstandard components added to the vehicle, be sure to give copies to the insurance company. A brushguard or a trailer hitch is an item added to the vehicle which may increase its value. If you added custom rims and tires, you may be able to replace them with the originals and retain the upgraded items to sell or to put on your replacement vehicle. Scheduled maintenance and common repairs will not normally increase the value of your vehicle.

The FMV does not increase if you are "upside down" on your vehicle loan. You are "upside down" on the loan for your car when you owe more money than its fair market value or what the vehicle is actually worth. You become upside down when you pay too much for your vehicle, do not involve a trade-in vehicle or down payment in the purchase, and/or your payments do not contain a sufficient payment against principal to account for your vehicle's decreasing value. When you know you are buying a vehicle that you cannot really afford, or the terms of your purchase are derived from the salesperson's question "how much do you want your payments to be?", you are headed for being upside down in the event your vehicle becomes a total loss. If you buy a used vehicle from a dealer, especially a "buy here, pay here" type of dealer, you need to look into purchasing gap insurance to protect yourself.

The insurance company only needs to pay the FMV of your vehicle. If you owe more than the FMV, you will be responsible for the difference. If this is the case, you may want to ask your finance company (or "buy here, pay here" dealer) if they might be willing to "roll over" the balance into a new loan for a new vehicle. An insurance company is not responsible for an outstanding loan or lease balance in excess of the fair market value. So, if you bought a vehicle and were making monthly payments, you may unfortunately owe more than what the

vehicle is actually worth. You will not be entitled to recover compensation for the loan balance if the vehicle is worth less.

When you are offered a "total loss" settlement, the insurance company buys your vehicle. If you wish to keep the wrecked vehicle, you may purchase it back from the insurance company for its salvage value. The adjuster can deduct the salvage value from the total loss settlement and you can keep the vehicle. In other words, they will pay you the FMV of the vehicle minus the salvage value.

If the registered owner wishes to retain the vehicle, a Salvage Title (for an inoperable vehicle) or both a Salvage Title and a Restored Salvage Title (for an operable vehicle, or a vehicle which has been restored to an operable condition) must be obtained and sent to the adjuster before the insurance company will settle the total loss claim or the vehicle can be disposed of. These documents are issued by the Department of Motor Vehicles, and ensure that any future buyers of the vehicle are made aware that the vehicle was once declared a total loss.

To obtain a Salvage Title on a vehicle that is not operable or not going to be driven, the registered owner takes the following items to the Department of Motor Vehicles:

1. The vehicle's title (properly endorsed);
2. A lien release from the lien holder listed on the title, if applicable;
3. The vehicle's registration certificate or card, if applicable;
4. Photo identification;
5. The vehicle's license plates. If there are no plates, the owner must supply a notarized statement stating that the plates were lost or stolen; and
6. The appropriate fee.

If the vehicle can be driven or you wish to repair it to an operable condition, then a Restored Salvage Title must be obtained once the vehicle has been repaired. To obtain a Restored Salvage Title, you must also present:

1. The vehicle, for a physical inspection to confirm its roadworthiness and
2. The appropriate fee.

Once the vehicle is restored to an operable condition, the registered owner obtains a temporary operating permit. This allows you to operate the vehicle and bring it to the Department of Motor Vehicles. The vehicle will then be physically inspected to confirm it is roadworthy before the actual Restored Salvage Title is issued.

Obviously, not all property damage questions or problems could be addressed in this document. We advise you to consult with your attorney should you have questions or problems not directly covered in this document.

Disclaimer: This document is intended for informational purposes only and does not constitute legal advice, which may only be obtained through formal representation by a licensed attorney.