

GUIDE TO PROPERTY DAMAGE CLAIMS

THE 10 MOST FREQUENTLY ASKED QUESTIONS ABOUT PROPERTY DAMAGE

1. ***If the other driver was charged by the officer, why won't they immediately pay for the damage to my car?***

North Carolina requires proof that the other driver negligently caused the wreck. If you were partially "at fault," you cannot recover anything under North Carolina law. This terrible rule is called *contributory negligence* and is often used by insurance companies as a basis for denying claims. Being charged by the police does not mean the other driver must pay. However, if he pleads guilty to the charge, that guilty plea may be used in your favor to help prove fault.

2. ***How long does it take to settle my claim for damages?***

It usually takes at least one to two weeks to settle your claim; however, it should not normally take more than thirty (30) days. You can call the adjuster every day, if necessary, to check on the status of your case. It's the best way to get their attention. Keep a written record of your calls. Once an insurer and you agree to settle the claim, the insurer must mail the check within 10 days.

If you have collision insurance, turn the claim over to your insurance company and let them worry about collecting damages (including your deductible) from the other driver or the other driver's insurance company.

3. ***What if it takes longer than two weeks to settle my claim?***

Ask the adjuster for an explanation for the delay. Insist that they put the explanation in writing. If there is no reasonable explanation, you may want to complain to the Commissioner of Insurance. The consumer hotline number is 800-662-7777. You can also file a complaint online at <http://www.ncdoi.com/>.

4. ***The adjuster says I can only get "Blue Book" value for my car, even though the pay-off on my loan is more than that. Is he right?***

The adjuster is not required to pay off your loan if the loan is more than the fair market value of your car. In North Carolina, you may recover the difference between the fair market value of the damaged vehicle immediately *before* it was damaged, and its fair market value immediately *after* it was damaged.

If requested, the insurance carrier is required to provide a written statement listing the estimates, evaluations, and deductions used in calculating value of the total loss, and the source of those values. For more detail on how an insurance company is supposed to handle a total loss see the North Carolina Administrative Code.

<http://ncrules.state.nc.us/ncac/title%2011%20-%20insurance/chapter%2004%20-%20consumer%20services%20division/11%20ncac%2004%20.0418.pdf>

5. *The adjuster says they will only pay for the cost of my repairs, but will pay me nothing more for the loss of value to my car. Is he correct?*

No. North Carolina holds that the cost of repairs is not the true measure of damages. The total amount of damages you are entitled to is the difference between the fair market value of the property immediately *before* it was damaged, and its fair market value immediately *after* it was damaged. Insurance carriers refer to “loss of value” as depreciation, diminished value or a “before & after” claim.

North Carolina law provides an alternative dispute resolution for depreciation claims when liability is not in dispute.

If the difference in the claimant's and the insurer's estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less, then

- 1) On the written demand of either the claimant or the insurer.
- 2) Each shall select a **competent and disinterested appraiser** and notify the other of the appraiser selected within 20 days after the demand.
- 3) The appraisers shall then appraise the loss.
- 4) **Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire.**
- 5) If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the accident occurred select the umpire.
- 6) The appraisers shall then submit their differences to the umpire. The umpire then shall prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers or the report of the umpire, when filed with the insurer and the claimant, shall determine the amount of the damages.
- 7) In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers.
- 8) In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted.
- 9) The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection.
- 10) If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer.
- 11) Each appraiser shall be paid by the party selecting the appraiser, and the expenses of appraisal and umpire shall be paid by the parties equally.
- 12) For purposes of this section, “appraiser” and “umpire” shall mean a person **licensed as a motor vehicle damage appraiser** under G.S. 58-33-26 and G.S. 58-33-30 and who as a part of his or her regular employment is in the business of

advising relative to the nature and amount of motor vehicle damage and the fair market value of damaged and undamaged motor vehicles.

The requirements that the appraisers be “licensed” in North Carolina and “disinterested” are consumer friendly. It prevents an insurer from using an employee and should prevent an employee of a “select repair shop” which has a working relationship with the insurer from being its appraiser.

6. *How many estimates do I need?*

There is no legal requirement as to the number of estimates, although most insurance companies have a *policy* of requiring two estimates. This is within their rights. If an insurer requires more than two estimates, the costs of obtaining the additional estimates is the responsibility of the insurer. The North Carolina Administrative code contains additional information on repair estimates.

<http://reports.oah.state.nc.us/ncac/title%2011%20-%20insurance/chapter%2004%20-%20consumer%20services%20division/11%20ncac%2004%20.0419.pdf>

7. *What if they disregard my estimate?*

Most companies will accept written estimates from legitimate car dealers or repair shops. However, in the event of a serious disagreement, you may want a written estimate from a professional appraisal service.

Some insurance companies write their own estimates. You are entitled to a legible front and back of the estimate. The estimate is required to contain the name and address of the insurer, and if it is prepared by a repair service, the name and address of the repair service. Any damage which the insurer claims is pre-existing should be clearly designated on the estimate. Upon request, the insurance carrier is required to provide you with a copy of the estimate and supplements used to offer a settlement.

<http://reports.oah.state.nc.us/ncac/title%2011%20-%20insurance/chapter%2004%20-%20consumer%20services%20division/11%20ncac%2004%20.0419.pdf>

8. *I need a rental car while my car is being repaired. How long can I keep it, and how much do they have to pay for it?*

There are three general rules which may apply in North Carolina, depending on your specific circumstances:

(1) *Repairs possible at reasonable cost in reasonable time.* If your car can be repaired, you are entitled to be paid for the cost of renting a vehicle like yours (while your car is being repaired), *whether or not* you actually rent a similar car (It’s referred to as “loss of use.”).

(2) *Total destruction or repairs unreasonable.* If your car is “totaled,” you are entitled to the rental value of a car like yours, but only for the time reasonably necessary to replace your car.

(3) *Owner elects to replace repairable vehicle.* If your car can be repaired, but you decide to replace it anyway, you are entitled to the rental value of your car for either, one,

the time it would take to repair your car, or two, the time to replace your car, whichever is shorter.

9. *Can I settle my property damage claim now, even though I am not ready to settle my claim for my personal injuries?*

Yes. However, you must be careful not to sign any document or check which says “Release of all Claims” or “Release of Bodily Injury Claim.” If you are not certain about the language in the release, please ask an attorney to review the document for you.

10. *If I am not injured and they deny my claim, what can I do about it?*

(1) If you have collision coverage, you can turn your claim over to your collision carrier; or,

(2) Depending on the amount of damage, you may be able to file a claim in Small Claims Court. You do not need an attorney. You may get the necessary forms — *free* — at the Hall of Justice (**WARNING:** If you also have a personal injury claim you should consult an attorney before potentially proceeding with this option to determine whether this may bar your personal injury claim, as North Carolina has a general rule against “claim splitting” meaning you must pursue all your damages in one lawsuit); or,

(3) Hire an attorney. Although our firm does not typically accept cases involving only property damage, you may wish to call the North Carolina Bar Referral Service at 800-662-7660.

Disclaimer: This document is for general information only. It is not intended as legal advice. No attorney client relationship is established by this document. Should you need legal advice, you should consult an attorney.

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