

WHAT TO DO IF YOU HAVE AN AUTOMOBILE ACCIDENT

INTRODUCTION

Automobile accidents are a regrettable part of modern life. Whether you drive in a large city or a small town, sooner or later, you can expect to be involved in one. Even the most careful, defensive driver cannot always avoid the actions of another driver. Knowing your rights and obligations when an accident occurs increases the likelihood that you will minimize the aggravation and expenses associated with automobile accidents. Knowing your rights helps you to be ready to act to protect them. Carry this booklet in the glove compartment of your car and use the forms in it to collect information about the accident.

The information in this booklet is designed to help you in case you have an accident. It cannot replace the careful consideration of your case by a qualified attorney, who is able to apply the relevant law to the circumstances of the accident and advise you as to the proper course of action. Your attorney will be able to tell you your legal rights and what to expect as your case proceeds. He or she can value your case and represent your interests aggressively so that you receive the amount necessary to compensate you fully for the accident.

SECTION I THE ACCIDENT

Question: I've just had an accident What should I do first?

Answer: The first thing you must do if you are involved in an automobile accident is to stop. Accidents happen to even the most careful drivers, but no one can ever have a valid excuse for failing to stop after an accident. In most states hit and run offenses are felonies, with increased penalties if someone has been injured in the accident.

Question: After I have stopped what should I do?

Answer: Check each person involved in the accident to see if they have been hurt. Call the police. Call an ambulance if necessary.

Question: If someone is hurt should I try to help?

Answer: Yes. If the person is seriously injured, do not attempt to move him or her unless it is absolutely necessary to protect him or her from further injury. Get someone to call the police or 911 if an ambulance is needed. Do what you can to make the injured person comfortable until paramedics

or the police arrive.

Question: The injured person has been taken care of. What next?

Answer: You and the other driver(s) must exchange information. You will want the other driver's name, address, phone numbers, driver's license number, insurance carrier, policy number, agent, and a phone number for the agent. You will be expected to provide the same information to the other driver(s).

Question: What information about the car do I need?

Answer: You need to note the make, model and year, its color and license plate number. Be sure to check the expiration date of the license plate. The form in the back of this booklet provides space to record all the necessary information.

Question: Do I need to get the same sort of information from the passengers in the other car?

Answer: Yes. You need to obtain the name, address and telephone number of each passenger in the other car. Take a moment to observe each of the passengers, where they were sitting or riding and whether they appear injured or unharmed by the accident. Look for slurred speech, glassy eyes and difficulty in remembering when you talk to them and note how they appear on the form provided.

Question: What should I do about the people in my car?

Answer: Take down the same information (use the form in the back of this booklet) that you gathered from the passengers in the other car. (Name, address, telephone number, where sitting.) Take a moment to observe each of them as they tell you their names and addresses to see whether they are exhibiting signs of injury.

Question: What should I do if there were witnesses?

Answer: Before the witnesses leave you should obtain their names, addresses and telephone numbers. You should record where the witness was when the accident occurred and if possible a short statement of what the witness observed.

Question: I've got the witness information, the other driver's information and a list of the passengers. What now?

Answer: If you have a camera, take pictures of the accident scene. Take pictures of the cars, the street in both directions from the accident (including skid marks, if any), any stop signs or other traffic signals or signs. Also take pictures of the accident from the direction of travel of each of the automobiles involved. A video camera is especially useful in recording the behavior of the other driver, which may be useful if the other driver has been drinking or using drugs.

Question: What should I do if I do not have a camera with me?

Answer: Make a diagram of the accident, indicating the direction each car was traveling, the speed of each, and what happened. Measure any skid marks. Record the condition of the street (wet, dry, under construction, lots of gravel, big potholes) and any signs restricting the free flow of traffic. Record the posted speed limit and anything else that will help you remember later what occurred prior to the accident.

Question: I can get a camera when I get home. Is there anything I need to take a picture of then?

Answer: Take pictures of the damage to your car as soon as you can. Take close-up and farther away pictures to show the damage. Take pictures of yourself and any passengers in your car who were injured. Again take full body pictures and close-ups to show the injuries.

Question: Should we move the cars?

Answer: Whether you should move the cars depends on the severity of the accident and where it occurred. A serious accident with injured people should be left alone until the police arrive. You may have to direct traffic around the accident, set flares or station someone in a position to warn oncoming motorists. A fender-bender during rush-hour that threatens to tie up traffic for miles might be moved out of the driving lanes after you have determined that no one is hurt.

Question: What should I do if I have an accident in a parking lot?

Answer: In most states the police will not respond to an accident in a parking lot that does not involve personal injury. The parking lot is private property and the minor accidents there are generally outside the jurisdiction of the police. You should exchange personal, driver's license and insurance information with the other driver.

Question: If the police do not come and investigate the accident what should I do?

Answer: You should make a report of the accident within 24 hours at the nearest police station. The counter report, sometimes called a cold report, should explain the accident and identify the parties involved.

SECTION II THE POLICE REPORT

Question: What happens when the police arrive?

Answer: You will be asked to show a valid driver's license, current registration for your car and, in many states, proof that the car is insured. Answer the questions the police officer asks and try to remain calm.

Question: What should I do if the other driver has been drinking?

Answer: If you notice the other driver appears intoxicated or smell alcohol on him or her, be sure to mention this fact to the investigating officer.

Question: Do I have to be able to prove I was wearing my seat belt?

Answer: Make sure the police officer notes in the report that you were wearing your seat belt. You will probably be asked if you had it on as part of the report procedure. If you noticed the other driver was not wearing a seat belt, mention this to the investigating officer.

Question: Anything else I should do?

Answer: Make a note of the investigating officer's name, badge number and whether he or she is a city police officer, highway patrol officer, or county sheriff deputy. Ask for a report or case number and where and when you can pick up a copy of the report. Be polite at all times.

Question: Is there anything I should not do?

Answer: Do not admit fault for the accident to anyone. Do not tell anyone how much insurance you carry. Do not sign anything. (You will have to sign the citation if you are issued a traffic ticket by the investigating officer. This signature is not an admission of guilt; you are merely acknowledging that you received the ticket.)

Question: If the other driver gets a ticket does that mean that he or she caused the accident and has to pay for it?

Answer: No. The fact that the police officer issues a citation to the other driver does not assign blame for the accident. The investigating officer is only giving his opinion as to what happened and whose fault he or she thinks it was. The officer still has to convince a judge or jury that the ticket was justified if the driver does not plead guilty. The ticket has no bearing on your case. The same result occurs if you are ticketed; the ticket is not proof that you caused the accident.

Question: How soon do I need to tell my insurance company that I have been in an accident?

Answer: You should notify your insurance carrier as soon as you can. The sooner they can begin processing your claim, the smoother the process can be. Be prepared to tell them the investigating officer's name and badge number, the report number and what happened.

Question: Is there anything else I should expect?

Answer: You might be required to prove that you are financially responsible after you have been involved in an accident. You might have to submit proof of insurance coverage or proof that you have sufficient assets to cover any damages you might cause as a driver.

SECTION III CAR REPAIR

Question: Can I get a rental car while my car is being repaired?

Answer: Yes. There are companies specializing in providing cars to people whose cars are being repaired. Look for them in the Yellow Pages or ask your attorney.

Question: Where do I have to take my car to get it repaired?

Answer: It is up to you to decide who you want to repair your car. Do not be bullied by the insurance company into thinking you have to have your car repaired by the shop giving the lowest bid. You are entitled to have your car repaired to the same condition it was in before the accident.

Question: How many estimates do I have to get?

Answer: You are not obligated to obtain more than one estimate. You might want to get more than one estimate if you are not sure where you want to have your car repaired and you want to compare different shops. Your attorney can help you by recommending repair shops that have good reputations for quality work.

SECTION IV INJURIES

Question: If I have been injured what should I do?

Answer: For any injury, no matter how slight you think it might be, you need to have a qualified medical examination. The examination will help you get the medical assistance you need as soon as possible.

Question: What if I haven't been injured?

Answer: There are many injuries in an automobile accident that are not apparent at the time of the accident. It is a good idea to get a medical examination after an accident to be sure that you have not suffered an injury that will not manifest itself until some time in the future, and then you wonder why all of a sudden your back hurts or you can't move your neck.

Question: If I have been hurt, who will pay for my treatment?

Answer: The person who caused the accident, or his or her insurance company, is responsible for paying for your treatment. Your insurance carrier will also be involved in paying your medical claims in some cases. That is why it is important to identify any medical problems caused by the accident as soon as possible.

Question: Does the insurance company pick the doctor I have to see?

Answer: No. You can use your own doctor. No one can tell you what doctor you have to use.

Question: What else should I do if I have been injured?

Answer: You need to keep a daily log of your medical condition. List each day any symptoms you have. Include descriptions of the pain you feel and any restrictions on your normal activities. You also need to keep a record of your trips to see the doctor or anyone else he or she sends you to see. Keep track of the mileage and the time it takes and any money you have to spend because of the trips.

Question: What do I do if I have to take time off work?

Answer: Keep a record of the time you miss from work, even if you still get paid because you use sick time or vacation. Keep track of the amount of money you lose by not being able to work. All this time you cannot work has to be paid for by the person who caused the accident.

Question: What do I do with all the bills that come in after the accident?

Answer: Talk with your attorney about the bills. He or she can negotiate to have them paid by the insurance company directly or, in other cases, postponed until after your case has been resolved. Don't let the bills worry you.

SECTION VI LEGAL REPRESENTATION

Question: Do I need a lawyer?

Answer: No matter what kind of accident you have been involved in, you should get a competent legal opinion on your rights and responsibilities that were affected by the accident. Legal rights are affected by any accident and it is in your best interests to have a knowledgeable attorney review the facts of your case before deciding what course of action to pursue. An experienced attorney can evaluate your case and tell you what to expect. The attorney can recommend appropriate medical treatment, negotiate a replacement automobile, negotiate to have your automobile repaired, and negotiate a fair and full settlement with the insurance company that takes into account all of your damages, including your pain and suffering. And you can find out all this in an initial, no-cost, no-obligation consultation. The other option open to you is to attempt to negotiate for yourself. Against the battery of lawyers and claims adjusters employed by the insurance company. Who get paid, praised and promoted for keeping their side's costs down. Who know the business, know what to look for that might be hidden, waiting to be discovered only after the settlement check has been cashed and your rights to a full and fair compensation for your injuries, to yourself and your car, irretrievably thrown away.

Question: What will this cost me?

Answer: Using an experienced attorney can actually increase the amount of money you will be paid to compensate you for the accident, so that even after the attorney's fee is paid you will have more money in your pocket than if you attempted to represent yourself. An experienced trial attorney knows what you are entitled to receive as compensation. He or she knows all that you should receive to put you back in the position you were in immediately before the accident, and the insurance companies know this. Having an experienced trial attorney on your side, representing only you, tells the insurance company that you are serious about protecting your rights. They know better than to try a low-ball offer, misrepresent their obligations or tell you that you have to take whatever they offer. Peace of mind from knowing your interests are being protected allows you to get back to your life with as few delays as possible and with a settlement that fairly compensates you for the accident.

Question: What is a contingency fee?

Answer: A contingency fee has been called the poor man's key to the courthouse. You agree to pay a percentage of the amount your attorney obtains for you in exchange for the legal representation and expertise of the attorney. This fee is paid from the proceeds of the settlement, so you do not have to pay any money out of your own pocket to get aggressive protection of your rights. If there is no recovery, there is no fee.

Question: Will I have to sue?

Answer: Sometimes a lawsuit is the only option when the insurance company offers an unfair settlement amount. It is then necessary to sue to protect your rights to full and fair compensation. An experienced trial attorney can calculate the value of your case so you will know whether the offer from the insurance company is adequate or not.

Question: Isn't it better to take the insurance company's settlement offer instead of risking a trial where I might lose and get nothing?

Answer: Your attorney can advise you but it is your claim and your injury so you have to make the final decision of whether to settle or go to trial. Your attorney's experience can guide you in making your decision. He or she knows the chances of success at trial and how far below a full and adequate settlement the insurance offer is.

**SECTION VII
DAMAGES**

Question: What can I expect to get from the insurance company?

Answer: You are entitled to be made whole," which is legal language for your right to be put back in the same position after the settlement as you were in immediately before the accident. Some of

the process of making you whole is easily calculated and other aspects are more difficult.

Question: What will I get for my car?

Answer: You will get the amount of money necessary to repair your car to the condition it was in immediately before the accident. At times the amount of money necessary for repairs exceeds the value of the car, in which case the insurance company may opt to declare the car as a total loss. You would then be offered the amount the car was worth, based on industry price-setting guides (like the *Kelly Blue Book*), and the car would not be repaired.

Question: What will I get for my injuries?

Answer: You are entitled to be fully compensated for your injuries. The amount necessary to compensate you fully obviously causes the most problems in arriving at a settlement figure acceptable to both sides. There is usually little argument over the compensation for time missed from work and lost wages, doctor and hospital bills, rehabilitations costs, transportation to and from the doctor and therapists. You will have receipts for these expenses. The controversy arises when you attempt to put a dollar value on the more intangible injuries you have suffered, such as loss of consortium, loss of sexual capacity or desire, emotional distress, pain and suffering, loss of future earnings and loss of future enjoyment of life.

Question: What is loss of consortium?

Answer: Your husband or wife has a right to your company that has been damaged by the accident. Based on the time spent in the hospital or disabled, your husband or wife is entitled to recover from the person causing the accident for the loss of your companionship.

Question: You can put a value on the loss of sex?

Answer: Yes. If the accident has disrupted your sex life, the person who is responsible for the accident should pay for what he or she caused. It is your right to enjoy your sex life without interference.

Question: What is emotional distress?

Answer: An accident is a traumatic event that causes emotional distress to those involved. Obviously not every fender-bender causes distress in the persons affected, but major accidents can well cause severe emotional distress. It is a serious problem in some accidents.

Question: How do you know what pain and suffering is worth?

Answer: Finding an acceptable amount for your pain and suffering requires experience with many similar cases. Pain and suffering awards are necessarily subjective and usually are based on similar cases, so the attorney's knowledge of the community and insurance companies is most important here.

Question: What is km of future earnings?

Answer: If you have been seriously injured, you may not be able to resume the same type of work you did previously or be able to work as hard or as long. Since your decreased ability to work was the result of the accident, the person who caused the accident should compensate you for your loss in earning potential. In the same way, you have a right to be compensated for any decrease in your ability to enjoy the things you did before the accident that are now not possible for you (loss of future enjoyment of life).

Question: How do I know how much money I should get?

Answer: Insurance companies count on you not knowing the true value of your claim. They try to tell you what it is worth and settle with you before an experienced attorney reviews the facts of the case. Your attorney knows how much money will be necessary to fully compensate you for your injuries and the insurance companies know that. Talk with your attorney so that you will know how much is fair in your case.

**SECTION VIII
INSURANCE**

Question: What kind of insurance should I have on my car?

Answer: Many states set minimum mandatory insurance requirements that you must meet to drive your car *in* that state. The terms used by the insurance industry include:

Liability - protection for the person or property that you unintentionally damage when driving your car. In states that require insurance coverage, liability coverage for bodily injury and property damage of a certain amount is required.

Collision - pays for damage to your car whether caused by you or someone else who cannot be found.

Comprehensive - pays for fire, theft or vandalism of your car and contents.

Medical payment - covers medical expenses for any one in your car.

Uninsured motorist - pays if the driver at fault is not insured.

Underinsured motorist—pays your expenses above the amount the other driver's insurance covers.

Determining the appropriate amount of insurance protection to carry depends on the circumstances of your life. The more wealth you have, the more insurance can benefit you by protecting your wealth from the astronomical costs of a serious automobile accident Adequate insurance coverage that can

pay for the damages of an accident permits you to devote your energies to getting well again, knowing that you do not have to worry about how you will pay for your necessary medical treatment and living expenses. Your attorney can help you calculate the amount and types of insurance coverage you and your family need to protect yourselves.

**SECTION X
ACCIDENT SCENE FORMS DRIVERS**

OTHER DRIVER

Name _____

Address _____

City _____

State _____

Zip Code _____

Date of birth _____

Telephone #s (home) _____ (work) _____

Driver's license# _____

State Expiration date _____

Restrictions _____

Injured in accident? (describe) _____

INSURANCE INFORMATION

Policy number _____

Company _____

Agent _____

Telephone number _____

Expiration date _____

AUTOMOBILE INFORMATION

Make of car _____

Model _____ Year _____

Color _____

License plate _____ Expiration date _____

Owner _____

Address _____

Condition of car _____

INFORMATION ON PASSENGER

OTHER CAR

Name _____

Address _____

City _____

State _____ Zip _____

Telephone #s (home) _____ (work) _____

Where sitting _____

Injured in accident? (describe) _____

YOUR CAR

Name _____

Address _____

City _____

State _____ Zip _____

Telephone #s (home) _____ (work) _____

Where sitting _____

Injured in accident? (describe) _____

WITNESSES

Name _____

Address _____

City _____

State _____ Zip _____

Telephone #s (home) _____ (work) _____

Location when accident occurred _____

Did you see the accident? _____

What happened? _____

YOUR INFORMATION

Name _____

Address _____

City _____

State _____ Zip _____
Telephone #s (home) _____ (work) _____
Driver's license number _____
State _____ Expiration date _____

OWNER OF AUTOMOBILE

Name _____
Address _____
City _____
State _____ Zip _____
Telephone #s (home) _____ (work) _____

AUTOMOBILE INFORMATION

Make, model and year _____
Color _____
License plate _____ State _____
Expiration date _____
Special options _____

INSURANCE INFORMATION

Policy number _____
Company _____
Agent _____
Telephone number _____
Effective date _____

HEALTH INSURANCE INFORMATION

Company _____
Policy number _____
Telephone number for coverage _____
Doctor's name _____
Telephone number _____
Blood Type _____
Allergies to medication _____
Organ donor _____

EMERGENCY CONTACT

In Case of Emergency, Please Contact:

Was other car behaving in erratic manner? _____

Did the other driver appear to have been drinking? _____

Were pedestrians involved? _____

Was there a marked crosswalk? _____

Describe accident _____

POLICE REPORT

Officer's name _____

Badge number _____

Jurisdiction (Highway Patrol, City Police, County Sheriff) _____

Telephone number _____

Station or substation address _____

Date report taken _____

Was alcohol involved? _____

Action taken: arrest made _____

 citation made _____

 to whom _____

 offense charged _____

 investigation ordered _____

Medical assistance _____

 Company _____

 Time arrived _____

 Action taken _____

Your car towed _____

 Company _____

 Telephone number _____

 Location _____

Other car towed _____

 Company _____

 Telephone number _____

 Location _____