



# What To Do After An Automobile Accident In North Carolina

**If the accident in which you were involved resulted in injuries, all those who were injured should immediately obtain medical care and should consult an attorney who is experienced in handling injury cases.**

If only property damage to your vehicle or its contents was involved or you had only very minor injuries, this kit answers most of the common questions that may arise regarding how to resolve your claim.

When only property damage or minor injury occurs, a lawsuit with attorney involvement generally is not practical. Even a lawsuit that you handle without a lawyer's assistance may not be a reasonable option. When your primary objective is

to get your car repaired as quickly as possible, these delays can be counterproductive. In addition, if an insurance company is on the other side, it will have an attorney. Unless you also employ an attorney, you will be at a disadvantage. This kit focuses primarily on your negotiating a settlement rather than hiring an attorney. However, we are here to help if need further assistance we have office locations in [Raleigh](#), [Durham](#), and Wilmington North Carolina.

## AT THE ACCIDENT SCENE

### Should I call the police?

North Carolina [car accident law](#) requires that a driver involved in a collision contact a law enforcement agency by the quickest means possible if there is: (1) injury to any person; (2) [death to any person](#); or (3) total property damage of \$500 or more. Failure to do so is a misdemeanor. It does not take much damage at current repair costs to exceed the statutory minimum, so it is always a good idea to contact the police.

In some cases, the parties may decide not to involve the police. Although this may at first appear to be less time-consuming, the police provide a valuable investigatory resource. The police prepare a report that will include information from the accident scene, such as point of impact and length of skid marks, which may help to establish which driver was at fault. In cases where the police are not called, especially where there are no witnesses, the other driver or the insurance company may be more likely to later deny fault for the accident.

### What should I do until the police arrive?

Your first responsibility is to find out if anyone was injured in the accident and make sure medical personnel are called if needed.

You should exchange the information required by law with each of the parties involved in the accident. This includes the name, address, and telephone number of the driver of each vehicle as well as each driver's license number, license plate, automobile insurance company, and the appropriate policy number. If witnesses do not wish to remain on the scene until the police arrive, obtain their names, addresses, and home and work telephone numbers.

### Should I move my car before the police arrive?

Although it is better not to move your car after an accident (this makes the investigation easier), North Carolina law prohibits stranded vehicles upon the main traveled portion of the road except when they are disabled. There, if you can, you may have to move your car to allow traffic to continue. If you cannot move your car, then take reasonable precautions to warn others of your location. If you move your car, try to remember its exact location. Provide this

information to the investigating officer. Before moving any cars, it is wise to mark on the roadway the position of each of the tires on all cars involved in the accident. Carry a piece of chalk in your glove box for this purpose. If you have no chalk, photograph the location of vehicles from every angle.

#### What will the police do when they arrive?

The police are required to prepare an accident report. To complete the report, the investigating officer will interview the parties involved in the accident as well as other witnesses. The investigating officer will gather appropriate physical evidence (location at the point of impact, length of skid marks, whether each vehicle's equipment was functioning properly, etc.) and the officer will issue citations as the circumstances indicate.

Even if citations are not issued, the officer will likely note circumstances contributing to the cause of the collision on the report. The police will also require each party to prepare an "exchange card" which has the information that you may already have obtained from the other party regarding his or her identity and automobile insurance information.

You should obtain the name and badge number of the investigating officer and determine which agency he or she works for (i.e., city police department, county sheriff's department, NC Highway Patrol, etc.)

#### What happens after the investigation is completed?

If your vehicle is drivable, you will be permitted to drive it away. If not, you can make arrangements to have the vehicle towed, or the police will make arrangements. Be certain to get the name and address of the towing company and the location where your vehicle will be stored. If the police tow the vehicle, you may want to make arrangements as soon as possible to remove it to your own property because you generally will be charged a daily storage fee while your car is on the storage lot. Be sure to check your own insurance policy; some policies will reimburse you for certain towing charges.

## IMMEDIATELY AFTER THE ACCIDENT

#### Can I get a copy of the accident report?

At the accident scene, the investigating officer will give you the number of the police report (it should be listed on the exchange card). Most accident reports are completed and available three to four days after the accident. You can obtain a copy from the internet in some locations or for a nominal fee at the Division of Motor Vehicles. You can ask for the report by its number, or by simply giving the names of the drivers and the date and location of the accident.

You should get a copy as soon as possible. It will provide valuable information that may help you deal with the insurance company or with the other driver.

## What happens if traffic citations are issued?

In most automobile accidents, the investigating officer will determine whether North Carolina law has been violated and indicate all violations on the accident report. The officer might also issue a ticket to one or more of the parties involved. For more serious violations of North Carolina law (for example, DWI and reckless driving), a criminal arrest may be made. In most cases, however, a ticket is considered an infraction and is handled in the District Court. As a practical matter, if the investigating officer indicates a violation on your part, you'll have a difficult time convincing the other driver's insurance company to pay your property damages.

If you receive a ticket, the date and time for you to appear will be printed on it. At that time, you can admit the violations and pay the fine or plead not guilty, present evidence, and argue that the ticket was improperly issued. You have the right to retain an attorney for these matters. For the more serious criminal matters or if someone was injured in the accident, it is especially wise to consult an attorney.

If your ticket is for an infraction, a plea of "responsible" can be used against you in a later civil trial for damages. However, a finding of responsibility at trial cannot be used against you in a later civil trial for damages.

Your insurance company is required to issue you a document proving financial responsibility which shows that you have the insurance coverage required by North Carolina law. If you do not have this document at the time of the accident, you may be given a citation. Prior to the hearing on that ticket, you can present evidence to the court that you had insurance at the time of the accident and that citation will usually be dismissed.

If you did not have insurance at the time of the accident, you are subject to a possible fine and suspension of your driver's license and auto registration.

## What should I do after the investigation is completed?

Promptly notify your insurance company of the accident. If your car is still drivable, you should obtain a repair estimate from a reputable body shop. You also should take photographs which show all the damage to the vehicle from several angles. If you believe the car is a total loss, you should make some effort to determine the pre-accident value of the car. You may do this by reviewing the newspaper classified ads to determine the selling prices of similar cars. You should also check with used car dealers in your area to determine the cost of similar cars and consult the National Automobile Dealers' Association (NADA) Price Guide Book ([www.nada.com](http://www.nada.com)) and other valuation services online at the local library or at your bank.

Finally, you should prepare a written statement of the circumstances surrounding the accident while those facts are fresh in your mind. Maintain a file folder in which you keep all pertinent papers (police report, photographs, diagrams,

estimates, correspondence from insurance companies, etc.)

### Should I get written statements from the witnesses?

It generally is advisable to obtain a statement from witnesses to the accident. These statements should be written, dated, and signed. This should be done as soon after the accident as possible, while the accident is still fresh in their minds. These statements can be extremely valuable if the other driver or that driver's insurance company later claims the accident was all or partially your fault. Be aware that if the witness statements indicate some fault on your part, the other side may eventually use them against you.

The investigating officer usually will list witnesses on the police report, and he or she also may obtain statements from them. Statements may be included in the report if any are obtained.

## DEALING WITH THE INSURANCE COMPANIES

### Which insurance company should I contact?

The "exchange card" or other information you have obtained from the other driver should tell you if that party has insurance. If you believe the accident was the fault of the other driver, you should contact that driver's insurance company. As a precaution, you should also report the accident to your own insurance company.

### What will the insurance companies do?

The insurance companies will investigate the claim and make a determination regarding liability or fault (that is, who is responsible for the accident). The insurance company often will ask you to give a written or recorded statement of your version of the accident. Before providing any type of statement to the insurance companies, you should make every effort to prepare for the statement and organize your thoughts so the statement is an accurate description of what happened. You should not give a statement while taking medication that impairs your ability to think and communicate clearly. You should also be careful to answer only the questions asked. Do not volunteer any information.

### What happens when more than two vehicles are involved?

Multiple vehicle accidents can become very complex. If you believe two or more other parties were at fault for the accident, you should contact each party, or the insurance company for each. In North Carolina, both parties may be responsible for all of your damages.

### What if the accident was partially my fault and partially the fault of the other driver?

If you think the accident was partially or entirely your fault, you should contact your own insurance company. North Carolina is a "contributory negligence" state. This means that if you are partially at fault in the accident you are not entitled to any recovery against the other driver. Instead, you need to make a claim under the collision coverage of your own policy. In essence, you can only recover from the other driver (or under your uninsured motorist coverage) if you were not in any way at fault.

#### What should I do if the other party does not have insurance?

All vehicles in North Carolina are required to have minimum levels of liability insurance. Unfortunately, some drivers are not in compliance with the law. If the other party was not insured, you can make a claim under your uninsured motorist coverage with your own insurance company. It will apply up to the limit of the coverage it affords.

If you rejected uninsured motorist coverage, you can make a claim under the collision of your own policy, assuming the damages exceed your deductible. If you do not have any insurance available, however, your only option will be to attempt to recover your damages from the driver or owner of the car that caused the accident.

If you want to have your car repaired immediately, you will most likely have to pay the cost yourself, and then try to recover that expense from the other driver or his insurance company. You can start that process by sending the other driver a letter, along with copies of the estimate of repair bills, and ask for payment for the cost of the repairs. It may be necessary to work out a payment schedule if the other person is not able to pay all the damages at once.

If the person responsible for the accident refuses to pay your damages, your only recourse may be to file a civil lawsuit.

#### Am I entitled to a rental car?

As a basic rule, if the other driver caused the accident, and your car is not safe to operate or is undergoing repairs, you are entitled to a rental car or compensation for the loss of use of your car while it is inoperable. Whether the other driver's insurance company will assist in providing you with a rental car varies.

Some insurance companies provide a rental car for your use until your vehicle is repaired. In that case, you generally will not have to pay any money out of your pocket. Other insurance companies require that you rent a car on your own and the company will reimburse you at a fixed daily rate. This rate usually is fairly low, so you should shop around to get the best rental rate.

Some insurance companies compensate you on a weekly basis while others will not reimburse you until your entire claim is settled.



Although you are entitled to a car that is comparable to the car that was damaged, as a practical matter, most insurance companies willingly compensate you only for basic transportation at a fairly low rate. If you rent a more expensive car and pay for the difference out of your own pocket, it may be difficult for you to obtain the difference from the insurance company without a lawsuit.

The rental car will be available to you until your car either is repaired, or the insurance company "totals" your car. You are entitled to a rental car or loss of use compensation even if you have other transportation available to you.

Some car rental companies have "replacement car" rates that are lower than regular rental charges. Be sure the rental company knows you are temporarily replacing a damaged vehicle.

If you are unable to make appropriate arrangements with the other driver's insurance company, you should check your own policy to see whether or not you have coverage to provide a rental vehicle.

Finally, be aware that most insurance companies will not pay the "Collision Damage Coverage" expense that the rental car company might charge. When renting a car, consult your insurance agent to determine if your own policy includes collision coverage for the rental car. If it does you can provide your policy information and waive the collision damage coverage.

## GETTING YOUR CAR REPAIRED

### What damages am I entitled to?

Generally, where repairs are appropriate, the amount you can collect from the other driver or his insurance company is the difference in the fair market value before the wreck and the fair market value after the wreck. The actual cost of repairs or estimate of repairs is evidence of the damages.

Even though your car is repaired, it might have a reduced value known as diminished value. This is especially true if the repair cost is 25 percent or more of the value of your car at the time of the accident. Determining a fair amount for diminished value is difficult. It has been our experience that if the vehicle is not more than two years old you can expect to claim depreciation and receive an additional 20 percent to 30 percent over the cost of repairs to over the reduced value of your vehicle. In any case, especially if your car is older than two years, we suggest that you contact an appraiser for an opinion. Ask for diminished value before you conclude your property damage claim.

### If I am not at fault, which insurance company will repair my car?

If it is clear that the other party was at fault in causing the accident, and if you have collision coverage on your automobile policy, you have two choices: You can insist that the other driver's insurance company repair the car or you can have the repairs paid for by your insurance company under your policy.

#### When the other driver's insurance company pays to repair my car...

If you do not have collision coverage, or if you are unwilling to pay the deductible, you should seek to have the driver who was at fault or his insurance company pay your damages. That insurance company may be cooperative and satisfy you that the repairs will be done in a prompt and satisfactory manner.

If your car is drivable, the other party's insurance company may want you to go to a drive-in claims office for an appraisal. You should make arrangements with the adjuster assigned to your claim for an appropriate time. If the car is not drivable you should notify the adjuster of the location of the car so it can be viewed. In some cases, arrangements will have to be made to have the car towed to a dealer for an estimate. Also, be sure to let the company know if the car is being stored and the storage charges.

#### When I use my own collision coverage to repair my car...

If you cannot come to a speedy agreement with the other driver's insurance company regarding the responsibility for the accident and the amount of the damages, this will delay your car from being repaired. In this case, you should have your own insurance company pay for the repairs. When your company repairs the vehicle, it will cover the entire repair cost (excluding your deductible) regardless of who caused the accident.

If your insurance company pays for the repairs it may attempt to collect the amount it paid from the other driver's insurance company providing that driver was at fault. If your company is successful in doing this, it should also collect the deductible that you have previously paid, and it should be returned to you. You should request that your company do this for you.

In some cases, you may find it easier to work with your own insurance company which may be more willing to make repairs to your satisfaction than the other party's company. Obviously, your own insurance company would like to keep you as a customer, whereas the other insurance company has no similar incentive.

#### If I am partly at fault, which insurance company will repair my car?

If you are even partially at fault, the other driver's insurance company has a legal defense under North Carolina law. Therefore, you are left with making a claim under your own collision coverage, if that is available under your policy.

#### Will my insurance rates be affected if I make a claim under my own insurance policy?



If the accident clearly was not your fault, your premium should remain unaffected by any claim under your own collision coverage provided your insurance company receives payment from the at-fault parties' insurance. If your company attempts to increase your premium as a result of an accident that was not your fault, you should discuss this with your insurance agent. If you receive no satisfaction contact the NC Insurance Department 1-800-662-7777. If the accident was partially your fault, expect your company to increase your premium.

### Can I select a body shop to make the repairs on my car?

The insurance company (yours or the other party's) must compensate you for the amount reasonably necessary to repair your car. Often insurance companies have arrangements with certain repair shops for reduced rates, and they will ask that you have your car repaired by that shop. Although you have the legal right to select the shop where your car is to be repaired, the insurance company is required only to compensate you for the reasonable repair cost (which may be less than your own shop of choice would charge). You may be responsible for the difference if the additional costs are unreasonable.

The choice of body shops is a matter subject to negotiation with the insurance company. However, it is against the law for the insurance company to "steer" you to a body shop. If the estimate given by the insurance company's shop is far lower than the estimate you received from the repair shop you select, you should have your repair shop discuss the matter with the insurance adjuster. Alternatively, ask your repairman to review the insurance company's estimate and point out to you why that estimate is unreasonably low. You should take this information to the insurance company to see if you can work out a compromise.

If no agreement can be reached, you have the choice of either accepting the company's repair estimate or paying your repair shop to do the work and then file a lawsuit against the responsible party (or your insurance company, if you are making a claim under your own collision coverage) for the cost of repairs. This is a difficult matter because the insurance company may hire an attorney to contest your lawsuit and the cost of resolving the case in court may exceed what you reasonably can expect to receive.

### Who is responsible for faulty repairs?

If you discover that the repairs have not been completed satisfactorily, discuss this immediately with the insurance company and the repair shop. If the shop is unwilling to make further repairs that you think are necessary, or if the company refuses to authorize further repairs and the repair shop claims that the repairs were satisfactory both in terms of the quality of the parts used and the workmanship, you have limited options.

Generally, faulty workmanship is the responsibility of the repair or body shop, as it would be if you were having repair work performed in the absence of insurance. If satisfactory results cannot be worked out, you may need to take your vehicle to another body shop to correct the problems. This would give rise to a claim against the original body shop (and possibly the insurance company) and may require a lawsuit.

Know your body shop's reputation before you commit to repairs. It is generally best to avoid a shop recommended by the insurance company. Always go to an independent auto body shop.

### Can I insist on new or dealer manufactured parts?

Repair shops, often at the direction of the insurance companies, may attempt to repair the car with used parts or with parts manufactured by someone other than the original manufacturer of your car.

For example, if your car is a Chevrolet, the repair shop may attempt to either install used parts or parts which are not manufactured by General Motors. If you are having the repairs performed under the collision coverage of your own policy, be sure to check the policy to see what it says with regard to the type of parts that can be used for the repairs. You can negotiate with your insurance company at this point.

If the other party's insurance company is paying for the repairs, you generally are in a better position to insist on new or manufacturer quality parts if you can show there is any potential defect in the parts that the repair shop or insurance company wants to use. If the parts proposed are of demonstrably less quality (for example, they are not treated for rusting, or are not as strong as the parts that were in your original car), you have a good argument that new or higher quality parts must be used.

Used parts in good condition should be acceptable since the parts in your car which are being replaced also were used at the time of the accident. Once again, this comes down to a point of negotiation with the insurance company. Unfortunately, if the insurance company refuses to negotiate and you feel strongly about the matter, your only recourse may be to file a civil suit.

### Do I have to sign a release?

At the time you pick up your car from the shop where repairs were made, you might be required to sign a release giving up any future claims against the responsible party and his insurance company for the property damage to your car. You should ask the repair shop to allow you to inspect and test drive the car before signing the release to make sure there are no apparent defects or problems.

Be sure to read the release form you sign and make sure it is limited solely to property damage and does not give up any other claims you might have, including those for bodily injuries.

Also, examine the check you receive to make sure it is noted that this payment is for property damage only. You should not endorse and negotiate a check that indicates payment of all claims or payment in full.

### What if my car is "totaled"?

In some instances, especially with older cars, the cost of repair will exceed the fair market value of your car. Where a car is considered to be destroyed and not reasonably capable of repair, you are entitled to the difference between the vehicle's value before the accident and its salvage value if any, after the accident.

In North Carolina, a vehicle is totaled if the cost of repairs exceeds (including consequential costs) 75 percent of the fair market retail value of the vehicle. The fair market retail value before the accident can be determined in the NADA Pricing Guide Book.

If your car is totaled, the insurance company, as a condition of paying you the value of your car, may require that the car and the title be turned over to the company.

Alternatively, the company will establish a "salvage value" for the car and you may be able to negotiate with the insurance company to receive the fair market value of the car less the salvage value. In this case, you keep the car. However, the car cannot be driven until you have had it repaired, inspected, and received a "Salvage Title" from the DMV.

If you disagree with the figure the insurance company uses regarding the fair market value of your automobile, you can negotiate with the adjuster using information from the sources mentioned previously. Unfortunately, most insurance companies use their own service to estimate value, and they are not always willing to give you more than that service indicates the automobile is worth.

If you have made recent and major improvements to the vehicle that are not considered ordinary maintenance, you should provide copies of these invoices to the insurance company's representative. This is particularly true of older vehicles.

You should also ask for reimbursement for taxes, title transfer and registration fees when negotiating.

If they are offering you substantially less than what you believe your car is worth, your only option may be to file a civil lawsuit.

## BODILY INJURIES

What is I later find I was injured in the accident?

If you have signed a general release form which is not limited to property damage, any future injuries might be your own responsibility, even if the other driver was at fault. The insurance company has no right to require you to give up any potential bodily injury claims in order to settle your property damage claim. Be sure that any release you sign is limited to property damage only. If you discover at any time after an accident that you were injured by the accident, promptly contact an attorney who is experienced in handling accidental injury claims.

### Who will pay the medical bills?

Sometimes when a person is injured in an automobile accident, the injuries do not become apparent until weeks or even months after the accident. If this occurs, seek medical attention at once. If you do have accident-related injuries, you should consult an attorney who is experienced in handling injury cases. Most attorneys who practice personal injury law are willing to consult with you about accident-related injuries for free. If you retain them to represent you, they will generally work on a contingency basis, which means the lawyer will earn a fee only if the case is successful.

A variety of sources may be available from which you may recover medical expenses. First, if you have a medical insurance plan (through work or otherwise), that coverage will, in most instances, apply. Additionally, a standard coverage which is available on most automobile policies is medical payments coverage. If you have medical payments coverage under your own policy, it generally entitles you to have your medical bills reimbursed up to the specified policy limits for you or anyone in your car who is injured in an accident. These payments are made regardless of who is at fault.

If the other driver was at fault but was uninsured, you can proceed under your own uninsured motorist coverage to have your insurance company handle your accident-related medical bills. If the other party has liability insurance you also can contact that insurance company for payment.

If you were on your job at the time of the accident, contact your employer about filing a [workers' compensation claim](#).

In some instances, an insurance company will require you to pay your medical bills and then it will reimburse you. There always is the possibility that the insurance company will deny that the injury is accident-related, depending on the amount of time that elapsed between the accident and your first treatment by a doctor. For this reason, it is critical that you have any injuries which appear to be accident-related examined by a doctor as soon as possible after you experience symptoms.

### **DISCLAIMER:**

*Martin & Jones has made every effort to ensure that the information in this booklet is correct and up-to-date. However, laws change, and specific fact solutions may require the application of a different rule of law. For this reason, you should*

*consult an attorney if you have further questions about automobile accident claims.*

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