



Property Damage Negotiation Guide

I. To have car repaired (car is not a total loss):

A. If the other driver has insurance:

1. If the bad driver's insurance company has accepted liability, and if the insurance carrier has provided an estimate to repair your vehicle (it is not a total loss) then you can pick the place you want the vehicle repaired; see if your repair facility will do the property damage repairs for the amount offered by the other driver's insurance company. If additional damage is found and a supplement needs to be done, then have the repair shop contact the other driver's insurance company for a supplement and see if their insurance company will agree to pay for the additional repairs.
2. If the other driver's insurance company hasn't accepted liability, then if you have collision coverage on your vehicle car, get your insurance company involved as soon as possible. Your insurance company will pay for the repairs, less your deductible. Your insurance company will try to get back from the Driver's insurance company both: the amount your insurance company paid in repairs plus your deductible.
3. If the other driver has insurance and is paying for the repairs, you are entitled to a rent car similar to the quality and size of the wrecked car. Sometimes you can avoid renting the car and use the bus, bum rides from friends, etc. and get paid \$20.00/day for lost use of your vehicle (you may be entitled to even more depending on the size or function of your wrecked car). This payment can be applied to your replacement car which you purchase.

B. If the other driver does not have insurance: For all repair cases:

4. If the bad driver has no insurance (or not enough insurance) but you have collision coverage and/or uninsured/underinsured motorist (UM) property damage coverage, then you can use either of your property damage coverages (e.g. whichever has lowest deductible). If you need a rental car and the other driver was uninsured then you may use your uninsured motorist coverage to get reimbursed for the cost of a rental car while your car is being repaired). You may select the repair facility. See if the repair shop will fix the car for amount offered by your insurance company (less your deductible). If a supplement needs to be done, have the repair shop contact your UM carrier to get authorization for the supplement.
5. Rental car: If you only have collision coverage, but no UM coverage and no rent car coverage, then your insurance company will not pay for your rent car bill and you will be personally responsible for payment for the rental car. If you have UM coverage, and if the bad driver is uninsured/underinsured and was at fault, then your UM coverage should pay rent car bill at the daily contract rate specified in your policy (usually between \$20-35/day) for up to 30 days.

II. If car is a total loss:

6. If the other driver has insurance, get an estimate of the fair market value of car before collision, including tax, title and license. Then the other driver's insurance company should pay the fair market value and keep the car; you have essentially been forced, by the collision, to sell your car to the other driver. If you wish to keep the car, then the other carrier should pay the fair market value, less the salvage value (often \$250 or so) and less the tax, title and license.
7. If you have settled for the fair market value and the other driver is getting your car, then you should sign over title when you receive payment. You will need to have their car's lien holder, if any, state a pay off figure; the lien holder is typically named on the check and will sign over the title when the payment is made.
8. If you do not like other driver's estimate, or if the liability is disputed and the other insurance company is not making an offer then: If you have collision coverage on your policy, then you should immediately get your insurance coverage to make total loss offer (fair market value less the deductible). If both companies (yours and the other driver's) make an offer, then you can choose which offer you prefer. If you use your own insurance, then your insurance company will try to get its money back, plus your deductible, from the other driver or his company.
9. If the bad driver has no insurance, then you should immediately get your collision coverage and/or UM coverage involved. Your carrier should make you a total loss offer (fair market value less the deductible).
10. To try to get fair market value/offer raised:
 - a) give the insurance company evidence of higher ad prices {check Sunday newspaper, go online to Kelly Bluebook (kbb.com)} for same make/model and options;
 - b) get a written dealer estimate of fair market value;
 - c) hire an outside company (CCC Information Services Inc.) or Auto Source (NADA Guide 281-364-8463) to give a fair market value.
11. If the vehicle is worth less than the amount owed on it: that is a shame. As soon as you drive a new vehicle off the lot, it begins depreciating. If you applied a very small down-payment to the purchase price, you may owe more on the loan than the vehicle is worth. The other driver's insurance company is not obligated to pay more for your vehicle than it is worth, which may leave a deficiency balance owed by you. If you purchased "gap" insurance when you bought the vehicle, then your insurance will pay the deficiency balance. If not, you have to pay that deficiency yourself. One way to handle this problem is to wrap the deficiency balance into the loan for the replacement vehicle, but doing so immediately creates an even larger negative equity. Pray that you are not unlucky enough to total the replacement vehicle.
12. If your monthly payments go up because your replacement vehicle is newer than your totaled vehicle, or because it is nicer than your totaled vehicle, or because you replaced a paid-for vehicle with a non-paid-for vehicle: that is a shame. You cannot require the other driver's insurance company to find you an exact replacement (same age, same great deal, same "it was my favorite car and I was never going to sell it," or same paid-for status) for your totaled vehicle. A lawyer cannot force the other driver's insurance carrier to replicate your past property status, especially if you choose (or can only locate) a replacement vehicle that is nicer, newer, or more expensive than the totaled vehicle.

13. Rental car if your car is a total loss: Texas law does not necessarily require the other driver's insurance company to reimburse you for the cost of a rental vehicle while the insurance company is investigating the loss and negotiating with you on a property damage settlement. The other carrier may authorize and pay for a rental car anyway, but it will often try to cut off the rental car as soon as it determines that your vehicle is a total loss, even if it has not made you an acceptable offer. If you have rent car insurance, use your own coverage if the other driver's carrier stops paying; just be sure not to settle the property damage claim or sign a release without coordinating with your insurance carrier to determine whether or not your carrier is entitled to be repaid for its rental car payments on your behalf.
14. Tips:
 - a) do your homework before you get the insurance company's offer so you don't incur an unreasonable, extended rental car bill while you are negotiating; otherwise, you will end up arguing over who will pay for the rental car during the period of negotiations;
 - b) shop for a replacement car while you are negotiating the fair market value/property damage offer so you don't have to keep the rental car after the offer is negotiated. The adjuster typically requires that you turn in the rental car on the day an offer is made, even if you have not begun your car shopping.
 - c) You may be asked to allow the insurance company to move the car to a salvage yard to reduce/avoid daily storage fees. Get all personal property out of your car before you release the car to salvage. If you do not authorize the move to the salvage yard, and your car incurs additional storage fees, then you may have to pay the storage fees incurred for each day after the request to move it was made.
15. Do not sign any property damage release until you are satisfied. Watch out for language on the front or back of the insurance company check, too, stating that the endorsement of the check constitutes a release of all claims or that the check is full and final settlement of all claims or of all property damage claims.
16. Do not sign a bodily injury release at all when your property damage is settled. Make sure your property damage release does not include a release of your bodily injury claim. Watch out for language on the front or back of the insurance company check, too, stating that endorsement of the check constitutes a release of all claims or that the check is full and final settlement of all claims or of all personal injury claims. If there is bodily injury release language on the release or on the check, cross it out and initial the strike out, with the written agreement of the insurance company.
17. The negligence statute of limitations is generally two years from the date of the injury if you wish to sue the bad driver. It may be up to four years to sue your own uninsured motorist carrier, but coordinate with your own insurance company if any suit needs to be filed against the other driver within the two year statute of limitations.
18. Take photographs of the property damage, especially if damage is extensive or fault for the collision is in dispute. Once the car is sold/repaired, you have lost the chance to document the damage.
19. If you are hurt, go to the doctor and get your injuries evaluated/treated promptly!