

California
Department of
Insurance

So You've Been in an Accident What's Next?

RICARDO LARA
INSURANCE COMMISSIONER

California Department of Insurance



1-800-927-4357

www.insurance.ca.gov



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INSURANCE COMMISSIONER

California Department of Insurance

Dear California Consumer:

The California Department of Insurance (CDI) is the nation's leading state consumer protection agency and your best resource for honest and impartial answers to insurance questions.

Knowledgeable insurance professionals are available through our consumer hotline. My staff will be able to help you get answers to all your insurance related questions, file a request for assistance or report suspected insurance fraud.

Call 1-800-927-HELP (4357) or visit www.insurance.ca.gov to view all of our consumer information guides and insurance resources. These tools are available to consumers free of charge.

Thank you for giving us the opportunity to serve you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ric Lara". The signature is fluid and cursive, with a long horizontal stroke at the end.

RICARDO LARA
Insurance Commissioner

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INTRODUCTION

Driving on California's highways can be a risky proposition. Whenever you are in a vehicle, there's a risk of being involved in a traffic accident. Whether it's a small "*fender bender*" or a major injury accident, knowing in advance what to do can help you avoid costly mistakes. This guide discusses what to do after an accident and what to expect when you file a claim with your insurance company.

When purchasing insurance, **carefully review** the application before signing to determine if the coverages, policy limits, and deductibles are suitable for your needs. After you receive the policy, review the declaration page. It contains important information about the covered drivers, identifies the vehicles insured, as well as the coverage limits amounts and deductibles. Make sure the information is correct and the coverage is what you purchased. If changes are needed, send your request to your agent and or insurance company in writing and keep a copy. Use *certified mail return receipt requested* to verify receipt of your documents.

Become familiar with your automobile insurance policy so you will understand it before the need arises to file a claim. Read the policy thoroughly so you know what is covered and what is excluded.

What to Do If There Is an accident

Q. What should I do at the scene of an accident ?

A. **STOP Immediately and move only if it is safe to do so.**

- Call 911 if there are injuries.
- Call the police. In some areas, police authorities may respond to every accident scene. They may consider factors such as the severity and location of the accident (some police authorities will not come to the scene if the accident is on private property). However, you should attempt to notify the police. You should also be aware that most policies require notification to the police within a specified time period if the accident is a hit and run.
- Obtain names, addresses, telephone numbers, and driver's license numbers from all drivers.
- Obtain license plate(s) and vehicle identification numbers. Ask to see driver's license(s) and vehicle registration(s) to verify the information is accurate.
- Obtain names, addresses, and telephone numbers of other passengers and any witnesses.
- If you have a camera or a cellphone, take photographs of the damage, and the accident scene (traffic controls, visual obstacles).
- If the owner of a damaged car or damaged property cannot be located, leave a note with the names and addresses of the driver and owners of the involved cars.
- Notify your agent and/or your insurance company immediately.
- If anyone is injured or the vehicle damage exceeds \$750.00, you must report the accident to the Department of Motor Vehicles within 10 days. Failure to notify the DMV may result in the suspension of your driver's license.

SOME OF THE MOST FREQUENTLY ASKED QUESTIONS ABOUT AUTOMOBILE INSURANCE CLAIMS ARE DISCUSSED BELOW.

Q. What happens after I file the claim with my Insurance company?

A. Your insurance company will contact you for detailed information regarding the loss and may take a written or recorded statement. An examination under oath can sometimes be requested. As part of the investigation, other drivers and witnesses may also be contacted. If you have medical payments or an uninsured motorist claim, you must provide documentation of your loss (*injuries, medical expenses, lost wages, etc.*).

Q. What should I do if the insurance company does not contact me?

A. A claim representative should contact you within a reasonable period of time after you report the loss. However under certain circumstances, the insurance company can take up to 15 days to contact you. If you do not hear from anyone, call your agent or insurance company for assistance. If they are not responsive, or you believe there is an unreasonable delay in settling your claim, contact the Department of Insurance.

THINGS TO AVOID

- Do not argue with other drivers and passengers.
- Save your story for the police and your insurance company.
- Do not sign statements regarding fault or promise to pay for the other parties damages.
- If the other party offers to pay your deductible, don't sign anything.
- You must show your driver's license, vehicle registration card, evidence of financial responsibility, and current address to the other driver or persons involved, or to a peace officer.

Q. How does the insurance company evaluate vehicle damage?

A. A qualified adjuster or appraiser usually inspects the vehicle damage. The adjuster or appraiser then writes an estimate based on the initial inspection. If further damage is found during the repair process, the shop will contact the insurer to get approval for the additional cost of repairs. Keep in mind the insurer may send out an adjuster to re-inspect the additional damages. If the damage is relatively minor, the company may instead ask you to submit competitive repair estimates. Remember, it is your responsibility to sign and authorize the shop to repair your vehicle once you are satisfied with the final estimate and repair facility.

Q. What will the company pay on a physical damage claim under a standard auto policy?

A. Generally, the company will pay the lesser of the following:

- The amount necessary to repair the vehicle or
- The actual cash value (ACV) of the vehicle.

Read your policy to determine what is covered. Pay particular attention to exclusions and limitations. For example, there is usually no or limited coverage for enhanced aftermarket stereo equipment, telephones, or tires and wheels unless it is Original Equipment installed by the automobile Manufacturer (OEM). Additional coverage is usually available for such installed equipment at an additional charge.

Q. What is actual cash value (ACV)?

A. Actual Cash Value - Unless otherwise defined in the policy, *actual cash value* in California means fair market value. The fair market value of an item is the dollar amount that a prospective buyer and seller are willing to pay and are reasonably knowledgeable about the asset. They must be behaving in their own best interest and free of undue pressure to transact.

Q. What is an appraisal provision?

A. Most standard policies contain an appraisal provision, which can be helpful in the event there is a dispute regarding the amount being offered by the insurance company on a total loss settlement of your vehicle. Read your policy to see if it contains one. Under this provision, either of you can demand an appraisal. Each party selects a competent appraiser. The appraisers then select a neutral umpire. If the appraisers cannot reach a mutually agreed amount, their differences are submitted to the umpire. An amount that any two agree upon is binding. Each party pays its own appraiser; the umpire fee is shared.

Q. How is the check or draft prepared?

A. The check can be issued in the name of the insured and any lienholder, such as a bank or finance company. If the vehicle is deemed repairable, the company may also include the repair facility as a payee.

Q. Who is responsible for the balance of a car loan?

A. The borrower is responsible for the balance of the loan, even if the vehicle is stolen or damaged beyond repair. If your claim payment is less than the loan balance, the lender will expect you to pay the difference. Coverage commonly referred to as “gap” insurance can usually be purchased to protect against this situation.

Q. Will the insurance company pay for a rental car while mine is being repaired?

A. Yes, if you have purchased rental vehicle coverage. Review your policy before you rent a vehicle. Although policy limits vary, the company pays up to a specified amount per day for a specified number of days. The coverage ends when your vehicle is repaired, the loss is paid or after the specified period, whichever comes first.

If your vehicle is stolen, the policy may automatically provide transportation expenses. Again, review your policy to be sure. This type of coverage usually begins 48 hours after the theft and ends when your vehicle is recovered, the loss is paid or after a specified period, whichever comes first.

Q. What is a collision damage waiver and will the insurance company pay these charges for the rental vehicle?

A. The terms of the rental agreement make the customer responsible for collision damage while he or she has possession of the vehicle. Additionally, rental companies insure themselves for damage to the vehicle caused by collision. For an additional fee, the rental company will waive all or a portion of the customer's obligation to pay repair costs for damage to the vehicle caused by collision. Both the amount of the fee and the language of the waiver vary. Coverage for collision damage to the rental car under your personal automobile policy depends upon the policy language. Read your policy carefully. Ask your agent or company before you rent a vehicle.

Q. What is the salvage value?

A. This is the remaining value of your damaged vehicle if your vehicle is determined to be a total loss.

Q. What is subrogation?

A. Subrogation is the right of the insurance company to recover from a third party the amount of damages it paid to you. For example, if another party is at fault in an accident that damages your car, and you have a collision claim, your company will ask the other party to reimburse the money it paid on your claim. The policy requires your cooperation with the company's subrogation efforts. Also, you cannot do anything that jeopardizes the company's right of recovery. For example, you cannot sign an agreement releasing the other party in exchange for payment of your deductible.

Q. Is the insurance company required to help me recover my deductible?

A. Yes and no. The insurance company must advise you as to whether or not they intend to pursue subrogation. If the company pursues subrogation, they are required to include your deductible as a part of the process. However, if the company does not pursue subrogation they are required to advise you of that fact so that you may pursue your deductible on your own. If their efforts are successful, in whole or in part, most companies will reimburse you in accordance with the recovery. For example, if 100 percent of the paid claim is recovered, you will receive 100 percent of your deductible; if the recovery is 65 percent, you will receive 65 percent of your deductible. Any expenses or fees (*e.g., legal fees, incurred by the company in its recovery efforts*) will be apportioned between the company and you, if recovery is made. However, if you choose not to have the company include your deductible in its efforts, you can seek recovery directly from the other party on your own. But before you do, discuss the matter with your insurance company to avoid jeopardizing its recovery.

Q. Is the car covered outside of California?

A. Most policies provide coverage in other states, U.S. territories and possessions, and Canada. As is the case in California, many other states and territories have enacted financial responsibility laws requiring drivers to carry a specified amount of automobile insurance to cover losses resulting from ownership or operation of a motor vehicle. If the financial responsibility requirements where you are traveling are higher than your policy limits, your company will meet the higher requirements. Most policies do not provide coverage in Mexico, so if you plan to drive your car there, it's wise to buy that coverage separately. Check your out-of-state coverage before you travel.

California's financial responsibility law is set forth commencing with Section 16020 of the California Vehicle Code. Among other things, it requires all drivers to be able to pay damages resulting from ownership or operation of a motor vehicle.

Drivers must show ability to pay damages (financial responsibility) of a minimum of \$15,000 for each person injured or killed in an accident, \$30,000 for injury/death of two or more persons in one accident, and a minimum of \$5,000 for property damage in any one accident. If you are cited by a peace officer for a moving violation, or are involved in an accident, you may be asked for written proof of financial responsibility. This can be done by recording the name of your insurance company and policy number on the vehicle registration card issued by the DMV. This proof of insurance should be kept in the vehicle or a place where it will always be available when driving. For further information, contact the California Department of Motor Vehicles.

Q. What should be done if you are served with a lawsuit (Summons and Complaint) as a result of an accident?

A. Notify your agent and insurance company immediately. Keep a copy for yourself and mail or deliver the original documents to your company. Do not give statements or discuss the accident with anyone except a verified representative of your company. If the lawsuit arises out of a covered loss, your company will provide legal defense.

Q. Is a newly acquired vehicle covered?

A. Most policies provide automatic coverage for a vehicle that replaces a vehicle already on your policy. The coverage normally is the same coverage you had on your previous vehicle. Notify your broker-agent as soon as possible of any replacement vehicle. If you wish additional coverage, there is usually a requirement that you notify your agent or your company within a designated time period.

Most policies also provide automatic coverage for a newly acquired vehicle that is an addition to the vehicles you already have on your policy. There are usually specific conditions that must be met.

Most automatic coverage provisions require that the insured notify the insurer within 30 days of acquiring the new vehicle if the insured wants it covered under the existing automobile policy. Be aware that some policy notification periods can be less than 30 days. Some insurance company's notification periods are 14 days or less.

If the insured fails to notify the insurer of the newly acquired vehicle within the specified time, the vehicle will be uninsured. Unless there is a specific notice procedure in the insurance policy, an insured's verbal notice to his or her insurance agent can be deemed sufficient to trigger the automatic coverage for a newly acquired vehicle.



IMPORTANT TIPS

1. **Read your policy. Don't wait until after an accident.**
2. **If you don't understand your policy, ask your agent and/or company for clarification.**
3. **If you have an accident, call the police. If there are injuries, call paramedics.**
4. **Get as much information as possible at the accident scene to furnish to your agent and/or insurance company.**
5. **Immediately notify your agent and/or insurance company of an accident.**
6. **Cooperate with the insurance adjusters/ investigators to aid in their efforts.**
7. **If you don't understand something about the claims procedure, ask your agent and/or insurance company representative to explain.**
8. **Notify your agent or company in writing of any change in your vehicle ownership.**

YOUR RIGHTS UNDER THE FAIR CLAIMS SETTLEMENT PRACTICES REGULATIONS

In general, insurance companies are required to do the following:

- Advise you of all benefits, coverage, time limits or other provisions of your insurance policy.
- Acknowledge claim, start investigation, provide forms and instructions, and provide reasonable assistance immediately but in no event later than 15 days after receiving notice of claim. (Notice of claim is any written or oral communication to the insurance company which reasonably apprises the insurer that you wish to make a claim).
- Respond to communications received from you immediately but in no event later than 15 days.
- Accept or deny the claim immediately but in no event later than 40 days after receiving proof of claim. Proof of claim is documentation in your possession which provides any evidence of the claim and supports the magnitude or the amount of the loss such as estimates of repair or police report indicating theft of your vehicle, et cetera.
- Unless the insurer has provided you with the name of a specific towing company prior to your using a towing facility, the insurer must pay reasonable towing expenses.
- Offer a fair settlement. If you suffered a total loss, settlement must include taxes, license and transfer fees. The settlement must reflect the value of a comparable vehicle of like kind and quality. If you retain the salvage, deductions from the settlement for salvage must be fair, measurable, and discernible.

- Once the claim has been accepted, the insurer must pay the claim immediately, but in no event later than 30 days from the date settlement was reached.
- Advise you whether or not they will pursue subrogation. If the insurance company pursues subrogation, they must include your deductible unless you have already recovered your deductible.

The above represents a paraphrased brief overview of some of the Fair Claims Settlement Practices Regulations. You may view a complete copy of the Regulations by visiting the CDI website located at www.insurance.ca.gov.



AUTOMOBILE INSURANCE FRAUD

Automobile insurance fraud in California historically has taken several forms. The most common fraud schemes involve *automobile property* and *automobile accidents*.

Automobile Property - This type of fraud most often involves dishonest auto body and repair shops and/or insureds who may employ a variety of illegal or questionable techniques including:

- Reporting parts of vehicles as damaged or lost when in fact they were not damaged or lost prior to the shop receiving the vehicle.
- Making final cost in excess of the original estimate of damage.
- Billing for repairs that were not authorized.
- Charging for genuine parts when aftermarket or used parts from a junk yard were used.
- Pounding out dents or using bondo when charging for brand new auto parts.
- Falsely reporting stolen vehicles or vandalism of vehicles in order to collect insurance monies.

It is always important for the consumer to review carefully all paper work from auto body and repair shops in order to protect against potential fraud. Also, consumers should be cautious of any auto body or repair facility that makes referrals to medical or legal offices. This practice may be an indicator of “capping.” Capping (a felony in California) is the illegal referral of clients to legal offices for a fee.

Automobile Accidents - Automobile fraud often involves organized auto accident rings. Staged auto accidents, which are not accidents at all, follow several basic schemes including:

- Suddenly stopping for no apparent reason
- Intentionally disregarding the right-of-way
- Giving up the right-of-way in order to cause an accident
- Claims report list passengers who were not in the vehicle at the time of the accident
- Witnesses are listed who were not at the scene of the accident
- Injuries claimed are excessive compared to vehicle damage
- Driver has a temporary vehicle registration
- Prior damage to the other vehicle
- Contact by an attorney without being solicited

If you have been in an auto accident, be cautious of any unsolicited referral to a body shop, law office or medical office. Organized accident rings and cappers actively solicit others in the community to participate in the creation of accidents. Often these accidents only exist on paper (referred to as paper accidents), and no innocent parties are involved. Paper accidents have gained in popularity among fraud perpetrators, as they are less dangerous from a bodily injury standpoint, and there is less likelihood of police involvement.

AUTO BODY REPAIR SHOPS

Under California Insurance Code §758.5 an insurance company cannot require that an automobile be repaired at a specific repair shop. However, an insurance company can recommend that an automobile be repaired at a specific repair shop under the following conditions outlined by law:

- The consumer specifically requests a recommendation from the insurance company to a repair shop.
- The consumer has been informed in writing of the right to select a repair shop of his or her choice.
- If the consumer agrees to use the recommended repair shop, the insurance company must restore the damaged vehicle to its condition prior to the accident or loss with no additional cost other than as stated in the policy or as otherwise allowed by law.

- If the company makes an oral recommendation to a repair shop, and it is accepted by the consumer, then the company must follow the oral recommendation with the prescribed written notice within five calendar days as specified by law.

If the vehicle is repaired in a shop chosen by the consumer, then the insurance company must pay the reasonable costs to repair the vehicle made in accordance with accepted trade standards for good and workmanlike automotive repairs.

- The insurance company is prohibited from limiting or discounting reasonable repair costs based on charges that would have occurred if the vehicle had been repaired at the company's recommended repair shop.
- Also, the insurance company must stand behind the repairs of the recommended shop if the vehicle is not repaired properly.

AUTO REPLACEMENT PARTS

In some cases an auto repair may include replacement of damaged parts with after-market parts. After-market parts are parts which are not made by the original manufacturer. After-market parts may be equal or better in quality than (OEM) original equipment manufacturer parts. Although non-original equipment manufactured replacement parts can be used to repair your vehicle, any such part must be comparable to (OEM) original equipment manufactured parts in terms of kind, quality, safety, fit and performance. Consumers should take note of the following:

- An auto repair shop is required to provide a written repair estimate of the cost of repairs prior to initiating repairs to the vehicle. Once the work is completed, the shop must then provide a written repair invoice. State law requires that the type of auto parts used in repairs must be identified on the repair invoice. Consumers should carefully check their invoice to ensure that the auto body shop has identified each auto part replaced as being used, reconditioned, rebuilt, after-market or an original equipment manufacturer part (OEM).



Consejos importantes

A quick overview for our Spanish readers.

So you've had an Accident, What Next?

1. Lea su póliza. No espere hasta tener un accidente.
2. Si no entiende su póliza, pida una aclaración a su agente o a su compañía de seguros.
3. Si tiene un accidente, llame a la policía.
Si hay lesiones, llame a los paramédicos.
4. Obtenga la mayor cantidad de información posible en el lugar del accidente, para entregársela a su agente y/o a su compañía de seguros.
5. Notifique inmediatamente a su agente y/o a su compañía de seguros si tiene un accidente.
6. Coopere con los tasadores e investigadores de la compañía de seguros.
7. Si no entiende algo sobre el procedimiento de las reclamaciones, por ejemplo, la cantidad de la oferta de liquidación, pida a su agente y/o a su compañía de seguros que se lo expliquen.
8. Notifique por escrito a su agente o compañía de seguros cualquier cambio en la propiedad de su vehículo.

Talk to the Department of Insurance

We are the state agency that regulates the insurance industry. We also work to protect the rights of insurance consumers.

Contact the California Department of Insurance (CDI):

- If you feel that an insurance agent, broker, or company has treated you unfairly.
- If you have questions or concerns about health insurance.
- If you want to order CDI brochures.
- If you want to file a request for assistance against your agent, broker, or insurance company.
- If you are having difficulty opening a claim with your insurance company.
- To check the license of an agent, broker, or insurance company.



Call:

Consumer Hotline 1-800-927-4357
TDD 1-800-482-4833



Visit us on the Web at:

www.insurance.ca.gov



Write:

California Department of Insurance
300 South Spring St., South Tower, Los Angeles, CA 90013



Visit us in person:

300 South Spring St., South Tower, 9th Floor, Los Angeles, CA 90013
8:00 AM to 5:00 PM, Monday to Friday, except holidays

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The California Department of Insurance

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Form 130 / So You Had an Accident What's Next ?

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