

WHAT
SHOULD I
DO IF I
HAVE AN
AUTO
ACCIDENT?

GET THE
LEGAL
FACTS
OF LIFE

What should I do if I have an auto accident?

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The Insurance Law Committee of the State Bar's Business Law Section assisted in the revision of this pamphlet.

1 *If I have an auto accident, do I have to stop?*

Yes. California law says you must stop — whether the accident involves a pedestrian, a moving car, a parked car or someone's property. If you drive away, you can be charged with *hit and run* even if the accident was not your fault. You must also exchange information with the other driver — your name and driver's license number, the vehicle identification number of the car you are driving, the name and address of the car's owner, the name and address of your insurance company and your insurance policy number (or other evidence of financial responsibility, such as a bond posted with the Department of Motor Vehicles).

Hit-and-run penalties are severe. Depending on the damage or injuries, you may be fined, sent to jail or both. You also could lose your driver's license.

If you hit a parked car or other property, try to find the owner or driver. If you cannot, the law says you may drive away only after you leave behind, in a conspicuous place, your name, address and an explanation of the accident, and the name and address of your car's owner (if other than yourself). You also must notify the local police or California Highway Patrol (CHP) either by telephone or in person as soon as possible.

You must call the police or the CHP if the accident caused a death or injury. An officer who comes to the scene of the accident will conduct an investigation. If an officer doesn't show up, you must make a written report on a form available at the police department or CHP office as soon as possible.

2 *What should I do if someone is injured?*

The law requires you to give reasonable assistance to anyone who is injured. For example, you may need to call an ambulance, take the injured person to a doctor or hospital, or give

first aid – if you know how.

If you are not trained in the appropriate first aid procedures, do not move someone who is badly hurt; you might make the injury worse. However, you should move someone who is in danger of being hurt worse or killed (for example, in a car fire) even if you do make the injury worse.

To help prevent additional collisions, try to warn other motorists that an accident has occurred. Placing flares on the road (only if there are no flammable fluids or items nearby), turning on your car's hazard lights and lifting the engine hood are usually good ways to warn others on the road. Arrange to get help for anyone who is injured, and try not to panic.

3 *How can I get help?*

As soon as you can get to a telephone, call 911. Explain the situation and give the exact location of the accident, so that help can arrive quickly. Be sure to mention whether you need an ambulance or a fire engine. Remain on the telephone until the operator tells you it is okay to hang up. Or, flag down a passing car and ask the driver to go for help. The driver may have a cell phone in the car and be able to make an emergency call on the spot.

4 *What information should I gather at the accident scene?*

Since many records now are confidential under the law, you may not be able to obtain the information that you want from the Department of Motor Vehicles (DMV). So be sure to get as much correct and complete information as you can *at the scene* of the accident.

You and the other driver should show each other your driver's licenses and vehicle registrations. Then you should write down:

- The *other driver's* name, address, date of birth, telephone number, driver's license number

and expiration date, and insurance company.

- The *other car's* make, year, model, license plate number and expiration date, and vehicle identification number.

- The names, addresses, telephone numbers and insurance companies of the other car's *legal and registered owners* – if the driver does not own the car.

- The names, addresses, dates of birth, driver's license numbers and telephone numbers of any *passengers* in the other car.

- The names, addresses and telephone numbers of any *witnesses* to the accident. Ask them to stay to talk to the CHP or police. If they insist on leaving, ask them to tell you what they saw and write everything down.

- Try to identify people at the accident scene, even if they will not give their names. For example, if someone who saw the accident drives off, take down his or her license plate number. Law enforcement officials can trace the owner's name and address.

- The name and badge number of the *law officer* who comes to the accident scene. Ask the officer where and when you can get a copy of any accident report.

- A simple *diagram of the accident*. Draw the positions of both cars before, during and after the accident. If there are skid marks on the road, pace them off. Draw them on the diagram, noting the distance they cover. Mark the positions of any crosswalks, stop signs, traffic lights or streetlights. If you have a camera with you, take pictures of the scene, and of the other drivers and occupants. However, *do not* place yourself in a position of danger in order to complete an accident diagram. Be aware of traffic conditions

and skip any measurements that could place you in a position of harm.

Make notes, too, on weather and road conditions. If the accident happened after dark, note whether the streetlights were on. Estimate your speed and that of the other vehicle. Be sure to record the exact time, date and place the accident happened.

For a checklist of how to help prevent and handle car accidents, see pages 11 and 12.

5 *If I think the accident was my fault, should I say so?*

Do not volunteer any information about who was to blame for the accident. You may think you are in the wrong and then learn that the other driver is as much or more to blame than you are. You should first talk to your insurance agent, your lawyer or both. Anything you say to the police or the other driver can be used against you later.

Do not agree to pay for damages or sign any paper except a traffic ticket (see #6) until you check with your insurance company or lawyer.

However, be sure to cooperate with the police officer investigating the case. But stick to the facts. For instance, if you were driving 30 miles an hour, say so. Do *not* say, "I wasn't speeding."

6 *What if I get a ticket?*

Sign it. A ticket has nothing to do with your guilt or innocence. When you sign, you are only promising to appear in court to contest the ticket, or to pay it later if you wish. If you do not sign the ticket, the police officer can arrest you.

While it is okay to sign the ticket, you may want to talk with your lawyer before you pay a fine or plead guilty to the charges. Find out if you can attend traffic school instead. If you plead guilty, you may hurt your chances of collecting damages from the other driver later. Or, you may help the other driver to collect damages from you.

- **Drunk driving.** Driving with a blood alcohol level of 0.08 percent or higher (or any percent if you are under 21) is illegal, and the penalties for drunk driving in California are severe.

- **Seat belts/child passenger restraints.** You can be pulled over and ticketed by the police if you or your passengers are not wearing seat belts. In addition, children must be protected by a special safety seat until they turn 6 or weigh at least 60 pounds. Children who are required to be in safety seats also must sit in a back seat under most circumstances. (There are exceptions for, among other circumstances, when a vehicle does not have a back seat or when all rear seats are already occupied by children under 12.) And youngsters are not permitted to ride in the front seat of a vehicle with an active air bag if they are under a year old, weigh less than 20 pounds or are restrained in a rear-facing car seat.

7 *Do I need auto insurance?*

California's compulsory financial responsibility law requires that every driver and vehicle owner have insurance or other proof of financial responsibility. You must carry written evidence of financial responsibility whenever you drive. For most of us, that means evidence of an automobile insurance policy.

Often, that evidence takes the form of an insurance card issued by your insurer. However, if the name of the insurer and the policy number are contained in the DMV's vehicle registration records, you may simply write your automobile insurance policy number and the name of the insurer on the back of your vehicle registration. If you don't have this evidence to show to a police officer after a citation stop or an accident, you may have to pay a fine and a court may impound your vehicle. If you have an accident and can't show proof of financial responsibility, you may also lose your driver's license for up to four years.

The law says that you can prove your financial responsibility in one of these ways:

- **Insurance.** For most drivers, you must have liability insurance that provides at least \$5,000 coverage for property damage for one accident, \$15,000 for one person injured or killed in an accident, and \$30,000 for two or more people injured or killed. Low-income drivers in certain counties may qualify for state-sponsored, low-cost liability insurance that has lower coverage amounts.
- **Cash.** You can deposit \$35,000 in cash with the DMV.
- **Bond.** The DMV also will accept a bond for \$35,000, issued by a California-licensed surety bonding company.
- **A DMV-issued certificate of self-insurance.**

8 *Should I get a physical checkup after the accident?*

A checkup may be a good idea for both you and your passengers if any of you have concerns about your health. You could be injured and not know it right away. You may wish to call your doctor or another health care provider for advice. Your automobile insurance may pay some or all of these health care bills (see #10 and #11). You should consult your policy or agent for details on what is covered.

9 *Do I have to report the accident?*

Yes. *First*, you may need to call the CHP or the local police (see #1). *Second*, report the accident to your insurance company. Ask your insurance company or insurance agent what forms you should fill out and to help you make other necessary reports on the accident. *Third*, you and

the other driver must report the accident to the DMV within 10 days if:

- the damage to *either* car is more than \$750; or
- anyone is injured or killed in the accident.

Get an SR-1 Report of Traffic Accident form from your local DMV office, CHP, police or insurance company.

10 *Who pays if I'm injured or my car is damaged?*

That depends on who is at fault, whether you and the other driver have insurance and what kind of insurance you have. There are two major types of automobile insurance: *liability* and *collision*.

- **Liability.** If you are to blame for an accident, your liability insurance will pay the other driver for property damage and personal injuries up to your policy's limits.

If you are not at fault, the *other driver's* liability insurance pays for your car damage and/or personal injuries up to the policy limits of the other driver's policy.

In California, if you and the other driver both have car damage or injuries and you both are partly responsible for the accident, you each may be able to collect part of your loss, but not all of it. How much each of you collects from the other's policy (or from each other's assets if there is no insurance) depends on the amount of your damages and on how much each of you is at fault.

If you loan your car to someone who has an accident, your insurance can also help pay for the damages.

- **Collision.** No matter who is at fault, your collision insurance pays for damages to your car (not your medical expenses), minus the policy deductible.

- You may have other insurance, too. Your health insurance, for example, may pay your medical bills. Also, your automobile insurance may have medical payments coverage. If so, it can pay the cost of necessary medical treatment for you and your passenger up to the medical payment policy limits.

11 *What should I do if the other driver does not have insurance?*

If the other driver caused the accident and is not insured, your own policy can pay for your personal injuries—if you have *uninsured motorist* or *medical payments* coverage, up to the specified limits as provided in your policy.

If the other driver's insurance is not enough to pay for all of your damages, your own insurance may pay the difference—if you have *underinsured motorist* coverage.

If you do not have these kinds of insurance or if your damages are more than the policy's limit, you can sue the other driver. However, even if you win the case, you cannot be sure that the other driver has the money to pay.

If you have collision insurance, it will usually pay for the damage to your car, minus your deductible, no matter who is at fault (see #10).

12 *What if someone sues me?*

Contact your insurance company or insurance agent and/or your lawyer right away. Generally, your insurance company will assign a lawyer to handle your case. But, if you are sued for more money than your policy covers, or if your insurance company indicates it may not cover you for everything, you may also need your own attorney.

Also, insurance company lawyers do not handle traffic citations or criminal cases, such as hit-and-run charges.

13 *What if I want to make a claim for my injuries?*

If the other driver was at fault, you may be entitled to compensation – for your personal injuries, car damage and other expenses, such as lost wages or the cost of a nurse needed after the accident. If you had your own insurance at the time of the accident, you may also be able to sue for *pain and suffering*. You should make a claim with the other driver’s insurance company. But, if you are not satisfied with the amount they offer, you may want to sue.

If you plan to sue, do not delay. There are time limits for filing various types of claims – so act quickly.

You, as an individual, generally can file a claim for up to \$7,500 in small claims court. (Businesses and other entities generally cannot sue for more than \$5,000.) A lawyer can’t represent you in court, but you can talk with one beforehand. For more information on small claims, see the State Bar pamphlet *How Do I Use the Small Claims Court?* (To find out how to order the State Bar’s consumer pamphlets, see #14.)

If you want to sue for a larger amount, your own lawyer can represent you. An insurance company lawyer cannot represent you if you are the *plaintiff* (the person who is suing).

Many lawyers take auto accident cases on a *contingency fee* basis. That means you do not pay the lawyer his or her attorney fees if you lose the case. If you win, you pay the lawyer a percentage of the money you get. Most lawyers charge a smaller percentage if the case is settled before the lawyer does all the work necessary to go to trial.

If you and your lawyer agree to a contingency fee, the lawyer must put the agreement in writing and give you a signed copy. The contract should explain what percentage the lawyer will get if you win and how it might vary. It also should state who will pay for any court or other costs.

14 *How can I find a lawyer to represent me?*

If you do not know a lawyer, ask someone whose judgment you can trust—a friend or employer, for example. Or call a local State Bar-certified lawyer referral service. For an online list of certified lawyer referral services, visit the State Bar’s website at calbar.ca.gov/lrs. Or, for the phone numbers of such services in your county, call 1-866-44-CA-LAW (442-2529). Out-of-state callers can call 415-538-2250 to hear the same message. Or check the Yellow Pages of your telephone directory or contact your local bar association.

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don’t forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

What if you do not have enough money to pay for legal advice? You may belong to a “legal insurance” plan that covers the kind of services you need. Or, if you have very little income, you may qualify for free or low-cost help. You can ask your county bar association if its State Bar-certified lawyer referral service offers free legal advice for low-income people, or if it can direct you to a no-cost legal services organization. (California’s statewide legal services website—LawHelpCalifornia.org—can help you locate a local program and provide you with additional resources as well.)

If you're charged with a crime and can't afford a lawyer, call your county's public defender. Depending on your income, you may qualify for free assistance. To find the public defender, look in the white pages under the name of your county.

For more information, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* You can order this pamphlet and other State Bar consumer pamphlets free of charge by sending an email to pamphlets@calbar.ca.gov. Or, to find out how to order the State Bar's consumer publications by mail, call 1-888-875-LAWS (875-5297). Or visit the State Bar's website – calbar.ca.gov – where you'll find the pamphlets, as well as information on ordering them.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. Consult a lawyer if you have a specific legal problem.

C H E C K L I S T

Protect yourself and others:

- Drive defensively.
- Don't drive after drinking.
- Make sure you and your passengers wear seat belts.
- Use appropriate and properly installed car seats for small children.
- Have adequate insurance coverage.

If an accident happens:

- Stop.
- Help or get help for injured people.
- Warn motorists (use flares, hazard lights).
- Call 911 to contact the police or California Highway Patrol if an injury or death occurs.
- Use the last page of this pamphlet to take notes on the accident – write down information about the other driver and car, witnesses, passengers, accident location and more.
- Cooperate fully with law officers, but speak with your insurance company or insurance agent and/or lawyer before accepting any blame.

After an accident:

- Call or see your physician if you have any health concerns.
- Report the accident to your insurance company.
- Report the accident to the Department of Motor Vehicles within 10 days if someone is injured or killed or if damage to either car is more than \$750.
- Make a claim with your insurance company and/or the other driver's insurance company to pay for your injuries and losses.
- Contact your insurance company and/or a lawyer if you are sued.
- Contact a lawyer if you need legal advice or assistance in making a claim or in dealing with your insurance company. (See #14)



The State Bar of California
Office of Media and Information Services

180 Howard Street

San Francisco, CA 94105-1639

415-538-2000

Publications: 1-888-875-LAWS (875-5297)

pamphlets@calbar.ca.gov

calbar.ca.gov



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Office of Media and Information Services

180 Howard Street

San Francisco, CA 94105-1639

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