

The insurance company says that my car is a total loss, now what?

We have compiled a list of questions which we are frequently asked when our customers' cars are declared to be a total loss by the insurance company. If you have further questions, please don't hesitate to ask us for more information.

What is a total loss? The term "total loss" most commonly means that the cost of repairing the damage to the vehicle is a large enough portion of the vehicle's value, that repairing the car isn't reasonable to the insurance company. Additionally, KY law mandates that when the costs of repairs reach 75% of the value of the vehicle, the car MUST be declared a total loss. Obviously the insurance company has to abide by KY law. The insurance company, not the body shop, determines whether or not the vehicle is a total loss. The State of KY utilizes the NADA guide in all their official processes and KY obligates the insurance company to use the NADA value in their calculation of whether the car is a total loss.

How much does the insurance company pay for my car? The insurance company is required to pay the "**actual cash value**" or "**fair market value**" of the vehicle PLUS tax, tags and registration fees.

How do they determine the value? They can do this in a number of ways, usually whichever is most advantageous to them. Typically, the insurance company performs a "market analysis" which is a computer based program that cross references the information that they input about your car against other cars in the "market". There can be a wide range of accuracy or inaccuracy in these reports. You are absolutely entitled to a copy of the market analysis report for your vehicle – it is your right to have a copy of their report. **Demand a copy.** Look it over and check for inaccuracies. Experience finds that the NADA guide is the most accurate of any of the guides or methods of determining a fair value very simply because the values reported in the NADA guide are based upon actual car sales and not speculation. Visit www.NADA.com to determine the value of your car.

What if I disagree with their value? In order to best ensure that you are treated fairly by the insurance company, it's a good idea for you to be armed with information **BEFORE** the insurance company makes an offer for the value of the vehicle. We recommend that you do your homework and research the value of the vehicle immediately and have the information readily at hand to discuss with the insurance company to ensure a fair settlement. We recommend that our customers go to www.nada.com, www.kbb.com and www.edmunds.com. They are all "guides" which report data from various sources and they can be searched by the specifics of your car. We also recommend that our customers search for actual vehicles which are available for sale within a reasonable distance from your home. Check www.mvc.com, www.autotrader.com and www.cars.com for comparable vehicles which are actually available for sale right now.

What if they still won't settle on a fair value? An informed consumer is usually a consumer that will be treated more fairly by the insurance company in these circumstances however there are times when an insurance company may engage in unfair practices in settling your claim. You have options in the event that you believe that you are not being treated fairly. Whether or not to execute

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those options depends on the amount of the difference and the measure of your personal resolve. The options available to you are not always without cost and the costs have to be weighed against the potential recovery. An effective method of settling a dispute is to file a formal complaint with the KY Department of Insurance which forces the insurance company to be accountable to a State regulatory agency and ensures that you will be treated fairly. Ask us for more information.

I just spent money having work done on my car; don't they owe me for that too? Yes and no. Remember that they owe you the "actual cash value" of your vehicle – in other words, the fair market value. The money which you recently spent may or may not enhance the "fair market value" of your car. Think about it from this perspective: What would YOU be willing to pay more for when buying a car? Items such as new tires can enhance the appeal of a car for sale while others, not so much. If the work you recently had done would make the car more appealing to the perspective buyer then it may add to the value. A vehicle which has been diligently maintained may also have enhanced value when compared to the "normal" market vehicle. Very well maintained vehicles should bring a value comparable to the value of a "Certified Pre-owned" car that would be available on a franchised dealer lot.

The insurance company wants to come pick up my car? **DO NOT** allow them to take your vehicle from you until you have reached an agreeable settlement **AND** you have been paid. If you surrender your vehicle before settling and receiving payment, then they have your car and they have your money.

How long can I keep the rental car? The insurance company will do their level best to force you out of the rental car three days after making a settlement offer or even from the time that they declare the car to be a total loss. If YOUR insurance company is settling the claim, check the terms of your insurance policy for specific coverage and limitations. Ordinarily, the insurance company **MUST** allow you a REASONABLE amount of time to find a replacement vehicle. Three days from the moment in which they decide to declare your car a total or from the time which they make the first offer isn't always "reasonable". Make sure that you are treated fairly by the insurance company.

Can I keep my car even if it's totaled? Yes but whether or not it's in your best interest depends on a number of factors. First and foremost is the bank. If you owe any money on the car or if it's leased then keeping your car isn't an option. If you own the vehicle free and clear and you want to keep the car, the insurance company is prohibited by law to issue the settlement check to you until you provide them with a copy of the vehicle title after it has been transferred to a "Salvage Title". It's best to discuss these options with us before seriously considering keeping your totaled car.

Can I take things from my car before it's towed away? Yes and no. Your personal belongings are your personal belongings and they have nothing to do with the value of the car or the settlement. Remove all of your personal belongings from the car before the car is towed away. Parts of the car however, are part of the value of the car and they are part of the settlement. Before you remove any

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parts or accessories from the car, make sure that the insurance company is not including the value of the item(s) in the settlement.

What about my license plate? **ALWAYS** take your license plate off the car and take it to the County Clerk. The insurance companies frequently fail to transfer the title in a timely manner and the County Clerk may charge you with additional property taxes – even into the next year. When you give your plate to the County Clerk they can make note that the car has been totaled and that the insurance company has possession of it.

If your vehicle has a navigation system and you have any data stored in the computer – such as where you live, please tell us and we will erase the memory on the navigation unit so that no one else can retrieve it.

What about KY law? KY law defines the way that the insurance company **MUST** determine the value of your car and that is simply; by searching the market for vehicles which compare to yours. Again, our experience finds that the NADA is very accurate with their data and values. The law also requires the insurance company to cover the cost of taxes, license and transfer fees. Finally, and **NO** insurance company will voluntarily tell you this, you have the right to make the insurance company re-negotiate the value of your car within 35 days if you cannot find a comparable replacement for the amount they offered.

If your claim originated in Ohio then Ohio law applies but Ohio law is nearly identical to KY law in its language. They pretty much use the same template in all the states.

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance states in part:

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) If the policy, certificate, or contract provides for the adjustment and settlement of first party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file;

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle including all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The actual cost shall be determined by any one (1) of the following:

1. The cost of a comparable motor vehicle in the local market area if a comparable motor vehicle is available in the local market area;

2. If a comparable motor vehicle is not available in the local market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business located within the local market area; or

3. Any source for determining statistically valid fair market values including nationally-recognized automobile evaluation publications that meet all of the following criteria:

a. The source shall give consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

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b. The source's data base shall produce values for at least eighty-five (85) percent of all makes and models for the last eight (8) model years taking into account the values of all major options for these vehicles; c. The source shall produce fair market values based on current data available from the local market area where the insured vehicle was principally garaged or a necessary expansion of parameters such as travel time and area to assure statistical validity;

4. Actual cash value as determined by the use of the source's database shall be adjusted to reflect any value of enhancements to the motor vehicle not accounted for by the database;

5. If the vehicle's condition does not meet the criteria for value used in source's database, the actual cash value amount may be adjusted; and

6. Absent an appraisal provision in the insurance contract, if the insured demonstrates, by presenting two (2) independent appraisals, based on measurable and discernible factors, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database, the local market value shall be considered when determining the actual cash value;

(c) Right of recourse. If the insurer is notified within thirty-five (35) days of the receipt of the claim draft that the insured cannot purchase a comparable motor vehicle for market value as defined in paragraph (b)3 of this subsection, the insurer shall reopen its claim file and comply with the following procedures:

1. The insurer may locate a comparable motor vehicle by the same manufacturer, same year, similar body style, and similar options and price range for the insured for the market value determined by the insurer at the time of settlement. This vehicle shall be available through licensed motor vehicle dealers;

2. The insurer shall either pay the insured the difference between the market value before applicable deductions and the cost of the comparable motor vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this motor vehicle for the insured; or

3. The insurer may conclude the loss settlement as prepared for under the appraisal provision of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or law; or