



Bicycles and Automobiles and Pedestrians...Oh My...

Bicycle Accidents



Who really has the Right of Way, or *Bicycle v. Automobile...*

In Manhattan, all of the new bicycle lanes have made travel a bit more challenging for everyone. It isn't always clear who has the right of way under the law.

The law states that both the vehicle driver and the bicycle rider must use reasonable care, operate in a safe manner, and keep a look-out to avoid collisions. The motorist must sound his horn when necessary to warn the bicyclist of impending danger. The bicyclist, in turn, should avoid placing himself in a dangerous position.

The same traffic laws that apply to cars also apply to bicycles. In other words, a red traffic light means stop for both bicycles and vehicles. Bicycles must use an available bicycle lane, or, if none has been provided, ride near the right-hand side of the roadway so as not to interfere with the flow of traffic, unless it is unsafe to do so, or unless preparing to make a left turn. Bicyclists are to use hand signals when turning left or right.

Liability for an accident depends on who has the right of way, whether it be the

bicycle or the motor vehicle. At an intersection with traffic lights, the party with the green traffic light has the right of way. At an intersection with stop signs for both parties, the party who reaches the stop sign first has the right of way.

A vehicle turning left or right must yield to a bicycle going straight in the bike lane next to the vehicle. (Both bicycles and vehicles must also yield to pedestrians in the crosswalk.)

Generally, when two vehicles and/or bicycles traveling in the same direction approach an intersection not controlled by stop signs, the vehicle arriving first has the right of way. If they arrive at the same time, the one to the right has the right of way.

Pedestrian Accidents



Pedestrian v. Automobile...

All pedestrians with a green traffic light or "Walk" signal walking in the crosswalk have the right of way over both vehicles and bicycles. Any vehicle turning left or right must yield to the pedestrians crossing in the crosswalk. In other words, the vehicles must wait for



the pedestrian to finish crossing the street before they proceed.

The most common accidents occur when vehicles with the green light turn left or right into pedestrians who are crossing the street. Even though both have the green light, the pedestrian always “wins” in this scenario.

A pedestrian crossing in the middle of the street or outside of the crosswalk bears the responsibility for his own accident. If the vehicle, however, has a red traffic signal, stop sign, or was speeding, he may also be responsible for a “pedestrian knockdown.”

Pedestrian v. Bicycle...

Spring brings with it flowers... and more bicycles. Pedestrians need to be watching in all directions for their own safety. The bicycle rider must follow the same rules of the road as a motor vehicle. In other words, riding in the same direction as the vehicle traffic, and not riding the opposite way on a one-way street. Also, bicycles must stop for stop signs and red traffic signals just as vehicles are required to do.

Unfortunately, a pedestrian would be unlikely to recover for injuries in an accident with a bicycle. No-fault insurance does not cover accidents with bicycles, and, generally, a bicycle rider would not have private liability insurance for accidents.



Before you leave the scene of the accident

1. Always call the police or have someone else call on your behalf. Unless you need to be rushed to the hospital, always wait for them to arrive so they can make a proper police report. Without a police report, it is difficult to obtain even no-fault benefits, or to bring a lawsuit if you have suffered a “serious injury.”
2. If you are very injured, tell the police that you need an ambulance. Also, tell them all of the parts of your body that hurt. If you do not tell them, they will not seek medical assistance for you and they will not document their police report that you were injured. (If the accident occurred in the City of Yonkers, you must tell the police when you are injured or they will often not even make a report.)
3. If possible, take any relevant photographs with your cell phone of the damages to the car or bicycle, and their locations after the crash.
4. Take the names, addresses and phone numbers of any witnesses that you can.
5. If the car that hit you left the scene of the accident, always give the police any and all information you have about the driver that fled. It is important that the police write in their report that it was a “hit and run” accident.
6. When you are at the hospital, do not speak to anyone who claims that they are an attorney, or that they work for an attorney. Sometimes these “attorneys” refer you to their doctors right there at the hospital. This is a highly unethical practice and not condoned by the New York Bar. Also, you never know who you will get, because the person you meet in



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the hospital is not going to be your actual attorney.

- 7. Always tell the doctors about every single body part that hurts you. Always listen to the doctors at the hospital, and follow their medical advice when you leave the hospital. It is perfectly okay for you to take referrals from doctors to other doctors that you should see for your injury.



Things to do when you get back from the hospital

- 1. If you are a pedestrian or bicycle rider that is struck by a vehicle, the no-fault insurance of the vehicle that hit you would be responsible to pay for your medical expenses. You should attempt to report the accident to the insurance company of the owner of the car within 24 hours of the accident. If you cannot do so, obtain the police report and contact an attorney immediately. If nobody reports the accident, the insurance company could completely deny payment of your medical bills.
- 2. Obtain a copy of the police report as soon as it is ready from the precinct closest to the accident location.
- 3. If the vehicle that struck you is a police car, ambulance, fire truck, MTA bus, Access-A-Ride Vehicle, or any other City-owned

vehicle, you must contact an attorney immediately. YOU HAVE ONLY 90 DAYS TO FILE A NOTICE OF CLAIM.

- 4. If you are the driver of a motor vehicle that has struck a pedestrian or bicycle, you must file an MV-104 form and file with the Department of Motor Vehicles in Albany. If your insurance company does not provide you with this form, you can request one directly from the Department of Motor Vehicles.
- 5. Seek legal counsel right away in order to protect your rights.



Important Phone Numbers

NYC Police & Ambulance –
 Emergency: 911
 Non-Emergency: 311
 NYPD Switchboard: (646) 610-5000
 Department of Motor Vehicles – Albany
 (212)645-5550, (718) 966-6155, (800) 368-1186

Other Areas of the Law...A Quick Reference Guide for the Informed....



Snow & Ice

A property owner is responsible for any accident that occurs due to snow or ice on the



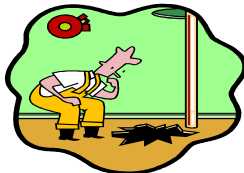
sidewalk as long as it is not snowing or raining at the time of the accident, and has not snowed or rained for at least four hours before that time. So if you fall during a snow or rain storm, the property owner will not be liable (unless some other defect existed that caused or contributed to your fall).

Property owners include anyone from a small house or apartment building to a large apartment complex to the New York City Housing Authority. * The laws may be slightly different in counties outside of the five boroughs.

If the owner does not shovel the sidewalks in front of their house at all, then they could be liable for any accidents that occur on their property, including the sidewalks surrounding it. Shoveling the sidewalk just a little bit, or not well, might relieve the property owner of liability.

Public entities, such as the City of New York or the New York City Housing Authority (NYCHA), also have a duty to shovel snow and ice from the sidewalks around property owned by them. The law may differ, however, depending upon the public entity, and you have only 90 days to file a Notice of Claim.

Ice that forms on the sidewalk can result from many things. Sometimes snow that is not shoveled, additional rain, or just leaking water from a known or unknown source can result in ice formation.



Trip & Fall

The current law makes the private landowner responsible to maintain the

sidewalks around their property. **If, however, the property is an owner-occupied one to three family house, then the City is responsible (and a Notice of Claim must be filed within 90 days.)** This is the law in all the five counties of New York City. The law is different outside New York City and depends very much on the location of the accident. Responsibility means that every property owner is supposed to make repairs to holes, cracks and raised portions of their sidewalk.

Broken curbs or curb defects are still the responsibility of the City of New York (and a Notice of Claim must be filed within 90 days.)

Any defect in a sidewalk that is at least 1 inch high is usually an “actionable” defect (unless you have a bad judge). This means that if you fall on or in a hole at least 1 inch deep or high, you may be able to bring a lawsuit.

Sidewalks in and around public parks, schools, and other City-owned buildings are the responsibility of the City of New York. The sidewalks around buildings owned by the New York City Housing Authority (NYCHA) are still the responsibility of New York City. Interior sidewalks of NYCHA buildings and complexes remain the responsibility of the NYCHA.



Car Accidents

The liability of each driver in a car accident depends very much on the specific facts of the accident. There are some general rules, however, to keep in mind. According to the law, every driver has a duty to keep a reasonable look-out for other drivers on the



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roads. In the event of a rear-end collision, the driver doing the rear-ending is most usually the liable party. The length of time stopped, either due to a stop light or stop sign, is important to note. Every driver is responsible to drive at a reasonable speed and at a reasonable distance behind other cars. Sometimes, however, in the event of a sudden pull-out from a parking spot, both parties can be liable.

A stop sign for one driver and not the other means he is more liable because the other driver does have the right of way. The driver without the stop sign, however, still has to keep a careful lookout if he has a chance to avoid the accident.

A driver, while turning left or right or going through a red light, will be liable if he hits a pedestrian who is in a crosswalk.

No-Fault Insurance Law

“No-fault insurance” means that if you are in a car accident, regardless of fault, and you are injured, you can have all of your medical expenses paid. The insurance company that insures the car in which you are riding is responsible to pay those medical expenses. If you are the owner of the car, then you know the name of your insurance company. If you are a passenger, then you would need to ask the owner which company insures their car. If you are a pedestrian or riding a bicycle, then you would be covered under the no-fault policy of the vehicle that struck you (and would need to obtain the insurance information from the police report). By the way, motorcycles are not required by law to have any no-fault coverage for payment of medical expenses. So, if you are on a motorcycle, you will need to use other

insurance to pay for your medical bills.

In order to receive no-fault benefits, the No-Fault Application (Form NF-2) must be filed within 30 days of the accident. The No-Fault Application can be obtained either directly from the insurance company, your legal counsel, or sometimes your doctors.

While this law does allow every person to have his medical bills paid, it does not allow every person to bring a lawsuit for pain and suffering. The law states that only those who have a “serious injury” can start a lawsuit against the liable party. The statute lists those injuries that are considered “serious,” such as a fracture, severe scarring, and some other injuries. It is best to consult an attorney to find out whether you have a “serious injury” under the statute so that you can bring a lawsuit for pain and suffering.

Uninsured Drivers

If you are unlucky enough to be in an accident with a driver who does not have insurance, do not worry, you still have options. Under your own insurance policy, there is a provision called “Uninsured/Underinsured Motorist Coverage.” Although the minimum amount required by law is only \$25,000/50,000, it is best to purchase \$100,000 if you can. This extra coverage will protect you in the event you are hit by someone who is driving around either without insurance, or with only the minimum amount required (\$25,000). If you are badly injured, you will then be protected up to the amount of your own uninsured/underinsured motorist coverage.

If you are a passenger, then the uninsured/underinsured motorist coverage of the car in which you are riding will apply. If



you are a pedestrian, or bicycle rider, and struck by an uninsured or “hit & run” vehicle, you can recover by making a claim against MVIAC (Motor Vehicle Indemnification Accident Corporation). This is an entity created specifically to protect people from uninsured drivers.

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