

Approved:

Effective: August 16, 2017  
Review: April 21, 2017  
Office of the General Counsel  
Topic No.: 225-085-002-e



Department of Transportation

## **SUBMISSION AND RECOVERY OF PROPERTY DAMAGE CLAIMS**

### **PURPOSE:**

To establish a process for the handling of *Property Damage Claims* to effectuate the recovery of the cost to repair or replace Florida Department of Transportation (Department) property damaged by third parties and effectuate the recovery of the cost to repair or replace Installed Material.

### **AUTHORITY:**

Sections 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

### **SCOPE:**

This procedure affects any office that is responsible for the repair or replacement, or coordination of the repair or replacement, of damaged property owned or maintained by the Department or damage to Installed Material. This procedure also affects the Office of the General Counsel (OGC), as the office responsible for the recovery and collection of monies owed to the Department for the repair or replacement of property damaged by third parties.

### **REFERENCES:**

Sections 95.11, 316.560, 334.044, 335.055, 335.10, 768.81, and Chapter 324, F.S.  
Paragraph 7.14, Uniform Commercial Code  
Department Topic No. 500-000-015, Loss Prevention Manual  
Department Topic No. 850-005-001, Reporting Incidents and Management of Damage Repair  
Article 7-14 Contractor's Responsibility for Work, Standard Specifications for Road and Bridge Construction

## **DEFINITIONS AND ABBREVIATIONS:**

**ACCOUNTABLE OFFICE:** The Department office responsible for the repair and replacement, or the coordination of the repair or replacement of damaged Department property or damage to Installed Material.

**DHSMV:** The Department of Highway Safety and Motor Vehicles.

**CONTRACTOR:** An individual, firm, joint venture, or company contracting with the Department to perform work in accordance with the contract documents.

**DEPARTMENT:** The Florida Department of Transportation.

**INSTALLED MATERIAL:** Any material put in place by a Contractor as part of the contract with the Department.

**OGC CLAIMS SECTION:** The Section of The State of Florida, Department of Transportation, Office of the General Counsel, responsible for processing claims is located at Haydon Burns Building, Mail Station 58, 605 Suwannee Street, Tallahassee, Florida, phone (850) 414-5357, and facsimile (850) 412-8078.

**POV:** Privately Owned Vehicle.

**PROPERTY DAMAGE:** Damage to any real or personal property owned by the Department or damage to Installed Material caused by the negligence, vicarious liability, criminal acts, or wanton and reckless disregard of the law by third parties. This includes, but is not limited to, the cost of repair or replacement of real or personal property or Installed Material, the manpower and equipment costs to clean up spills, and the manpower costs for inspections and costs incurred in overseeing the abatement or remediation of hazardous material spills.

**PROPERTY DAMAGE CLAIM:** The documentation necessary to establish the cost to repair or replace damaged real or personal property owned by the Department or the cost to repair or replace damaged Installed Material including ***Report of Repair and Certification of Funds Expenditure, Form No. 850-005-01, State Force and Contract Cost Documentation, Form No. 850-005-02***, and all supporting documentation as described below in ***Sections 2 and 4***.

**RESPONSIBLE INDIVIDUAL:** Any individual, driver, owner, insurance carrier, corporation, company, agency, or entity legally responsible for the cost of the repair or replacement of damaged property owned by the Department or damaged Installed Material.

## 1. GENERAL PROVISIONS

- 1.1 Each Accountable Office must provide complete and timely **Property Damage Claims** to the OGC Claims Section to facilitate the recovery of the cost of repair or replacement of Department property damaged by third parties. Timeliness is essential because **Property Damage Claims** pursued within six (6) months of the date of loss have a better rate of collection; the older a claim is, the more difficult it is to collect. The statute of limitations generally bars claims brought more than four (4) years from the date of the incident.
- 1.2 Reimbursement shall be pursued for all property damaged when the costs incurred for repair or replacement exceed \$300.00. Reimbursement should not be pursued when the costs incurred are \$300.00 or less because it is not cost effective. Any exceptions will be at the discretion of the OGC Claims Section, upon specific request by the Accountable Office, or upon request of an office of the State Attorney.
- 1.3 The Accountable Office must verify that there is no contract, agreement, or joint venture that would preclude the Department from pursuing damages. If another entity is entitled to pursue the recovery of costs, the Accountable Office should not forward documentation of damages to the OGC Claims Section. In such instances, the Accountable Office should contact the entity contractually responsible for repairs to undertake both the necessary repairs and, if desired, the recovery of repair or replacement costs on its own behalf.
- 1.4 In the event the Department has sought financial assistance regarding damaged property from either federal or local agencies, details of the funding source must be addressed by the Accountable Office by memo, which must be included with the **Property Damage Claim**.
- 1.5 The Accountable Office must ensure that the **Property Damage Claim** has not been previously sent to the OGC Claims Section. Although updated repair or replacement cost information may be submitted to the OGC Claims Section, it may not be possible to recover additional amounts if payment has previously been made by a Responsible Individual and a Release has been signed. Updated information must be clearly identified as such when sent to the OGC Claims Section.
- 1.6 All inquiries about **Property Damage Claims** should be directed to the OGC Claims Section.
- 1.7 The Accountable Office must, whenever possible, take photographs of the property damage and label all photographs with the date, location, and name of the person taking the pictures. Pictures from all possible sides and angles should be taken of the property damage as well as the offending vehicle, trailer, and

load, if possible. Negatives, copies, or backups should be retained by the Accountable Office. Care should be taken to limit the number of people who have custody of original photographs and negatives.

- 1.8** The OGC Claims Section may forward inquiries or disputes from the Responsible Individual as to the costs of repair or replacement to the Accountable Office for review and comment. Based upon information received, the OGC Claims Section will respond to the inquiry.
- 1.9** A Contractor, at its discretion, may seek reimbursement from the Department for damage to Installed Material caused by third parties pursuant to **Article 7-14, Standard Specifications for Road and Bridge Construction**.

## **2. REPAIRING PROPERTY DAMAGE**

- 2.1** Minor property damage repairs shall be completed by the Accountable Office and reported to the OGC Claims Section within sixty (60) days of receipt of the **Florida Traffic Crash Report**.
- 2.2** Major property damage repairs shall be completed by the Accountable Office and reported to the OGC Claims Section as quickly as possible. A target date of six (6) months after receipt of the **Florida Traffic Crash Report** should be established for repairs. If major property damage repairs cannot be completed within the target date, the Accountable Office will provide the OGC Claims Section a written statement of the status of repairs and the expected date of completion, together with an estimate of the repair or replacement costs.
- 2.3** Documentation of costs for repair or replacement of Department owned property or Installed Material must be forwarded to the OGC Claims Section within sixty (60) days of completion of the repair or replacement of the property damage.

## **3. LEGAL ISSUES**

### **3.1 Expedited Reporting**

- 3.1.1** In accordance with **Chapter 324, F.S., The Florida "Financial Responsibility Law of 1955"** the DHSMV may suspend the license and registration of any Responsible Individual involved in a vehicular incident causing injury to persons or property and who has failed to provide proof of insurance.
- 3.1.2** To reinstate driving and registration privileges, the Responsible Individual must provide to the DHSMV a release, or consent letter, from all injured parties.

**3.1.3** When contacted by the Responsible Individual whose driving and registration privileges have been suspended, the OGC Claims Section will contact the Accountable Office to prepare a **Property Damage Claim** within three (3) business days of the request. The **Property Damage Claim** may be sent by facsimile. An estimate must be provided if the repair or replacement has not been completed. Other license and registration suspension questions should be referred to DHSMV, Customer Service, at (850) 617-2000 or <http://www.flhsmv.gov/contact-us/>

**3.1.4** All inquiries regarding obtaining a release or consent letter should be directed to the OGC Claims Section.

**3.1.5** All releases must be signed by the Department's General Counsel or delegate.

## **3.2 Court Ordered Restitution**

**3.2.1** Many traffic violations become criminal matters litigated through the offices of the local State Attorney. These matters are generally quickly set for trial. If there is property damage or damage to Installed Material, a restitution order may be granted in favor of the Department. This is often the most cost-effective opportunity for recovery of expenses incurred to repair or replace Department property or Installed Material.

**3.2.2** In most cases, the Department has ten (10) days to respond to the State Attorney's inquiries. Therefore, the Accountable Office shall forward the **Property Damage Claim** directly to the Assistant State Attorney and provide a copy to the OGC Claims Section for all damage to Department owned property or Installed Material. If the repairs have not been completed, an estimate must be prepared. On the **Report of Repair and Certification of Funds Expenditure, Form No. 850-000-01**, indicate "estimate" in place of the date completed. The Accountable Office should contact the OGC Claims Section if assistance is required.

**3.2.3** The State Attorney's Office will need to know the name, phone number, and physical address of the Department employee best able to testify on behalf of the Department at a restitution hearing, if necessary. The person testifying must have personal knowledge of the property damage and the cost of repair or replacement. For such hearings, it is recommended that the person to testify should be the Maintenance Engineer or the Resident Engineer if the damage is to Installed Material. Should he or she decide to send a member of his or her staff, it is important to let the assigned Assistant State Attorney know prior to the hearing who will attend on behalf of the Department.

**3.2.4** It is important that Department employees cooperate fully with State Attorneys and be available for trial when needed.

**3.2.5** Upon receipt by the Claims Section, the Department's General Accounting Office, Accounts Receivable, must be provided a copy of all court orders requiring restitution.

### **3.3 Negligence**

**3.3.1** The Responsible Individual who caused, or was cited for, property damage is legally liable for the costs of repair or replacement. If there is no insurance coverage, the owner and operator, jointly and severally, or individually if the same person, are responsible for the payment of such costs. Employees involved in an incident resulting in damage to Department vehicles must follow the process described in the ***Loss Prevention Manual, Topic No. 500-000-015***.

**3.3.2** Questions regarding liability should be referred to the OGC Claims Section or respective District Chief Counsel. Under Florida law the fault for damages and injuries may be shared between one or more parties (comparative negligence). For example, a Department employee driving a Department vehicle in excess of the speed limit, may collide with a POV that enters the roadway. The POV may be wrong because it failed to yield the right of way. However, the Department also could be held responsible for a portion of the damages.

**3.3.3** The Accountable Office must include any information that may create a potential liability to the Department. For example, if a motor vehicle incident occurred at a location that has been determined to be high risk, such information must be presented for review by the OGC Claims Section.

## **4. DOCUMENTING DAMAGES**

**4.1** The Responsible Individual is entitled to a complete explanation of the damages and costs. The following documentation shall be included with the ***Property Damage Claim*** submitted to the OGC Claims Section by the Accountable Office:

- The cost of any repairs or replacement, temporary or otherwise.
- The cost of traffic control, cleanup, and mobilization of repair crews.
- The cost of state force (Department employee) performed or contractor performed repairs or replacement.

**4.2** If more than one Accountable Office has repaired property damage or replaced property resulting from the same incident, each affected Accountable Office must coordinate preparation of a single submittal of individual ***Property Damage Claims***. The single submittal should be forwarded to the OGC Claims Section.

- 4.3** All **Property Damage Claims** must identify one individual who can substantiate damages and costs. This should be the individual who prepares the **Report of Repair and Certification of Funds Expenditure, Form No. 850-005-01**.
- 4.4** If the property damage requires a contract to be let for required repairs or replacement, the Accountable Office must provide to the OGC Claims Section a single, unified report identifying a “bottom line” figure for all Department expenses related to the incident, including construction, engineering, and inspection costs, contract costs, Hazmat inspections, etc. The repair costs reported shall be limited to those charges for repairs or replacement related to the incident in question. Rates used will be those in effect at the time the property damage occurred.
- 4.5** The Accountable Office shall forward one (1) original set, and three (3) copies of the **Report of Repair and Certification of Funds Expenditure, Form No. 850-005-01, State Force and Contract Cost Documentation**, and **Form No. 850-005-02** to the OGC Claims Section. Unless otherwise specified, the following forms and documents must be included, where applicable:
- Department **Form No. 850-005-01, Report of Repair and Certification of Funds Expenditure** is critical in the pursuit of property damage. This form provides certification of Department costs directly resulting from the incident. This form is mandatory for all **Property Damage Claims** and claims for damage to Installed Material.
  - Department **Form No. 500-000-15, Vehicle Crash/Incident Report**, is used when Department employees are involved in a crash/incident in a Department vehicle. This form is mandatory for all Department vehicle crashes/incidents.
  - Department **Form No. 850-005-02, State Force and Contract Cost Documentation** itemizes all expenses including payroll, benefits, and overhead; vehicle and equipment use; materials; and contract costs. The total for each section should appear on this form, even if reference is made to attachments. This form is mandatory for all **Property Damage Claims** where the Department has expended personnel time, vehicles, or materials to repair or replace the property damage or damage to Installed Material has been repaired or replaced by the Contractor. The following instructions and clarifications are provided to assist in completing this form:
- 4.5.1** When a Department vehicle has been totaled, **Form No. 850-005-02, State Force and Contract Cost Documentation**, must be completed and include an acceptable payoff, settlement, or value for the vehicle, as governed by the Department of Management Services.

- 4.5.2** If the cost to replace the property is incurred through a contract, then the contract price must be provided. If the property has not been replaced, but will be replaced in the future, then the word “pending” should be used in place of the “date completed.”
- 4.5.3** Estimates are acceptable to expedite the claims process. If the cost provided is based on an estimate, the word “estimate” should be used in place of “Date Completed.” If an estimate is presented and accepted by the Responsible Individual, it is not necessary to provide documentation of actual costs once the repair is complete.
- 4.5.4** State force costs and contract costs may be used for a single incident when warranted. For example, it is acceptable to use state force and materials costs for guardrail repair and contract costs for replacement of an overhead sign structure when both damages arise from the same incident.
- 4.5.5** If work is done by a contractor on a lump-sum basis, a breakdown should be provided, either by the contractor or the Accountable Office. Insurance companies often require this documentation.
- 4.5.6** Original photos. For digital image photos, provide color copies. Backup copies should remain with the photographer or Accountable Office.
- 4.5.7** For vehicle repairs, copies of an actual invoice(s) or two (2) written estimates. This provision does not apply to the repair or replacement costs of damage to Installed Material.
- 4.5..8** Warehouse tickets, receipts, or other proof of payment.
- 4.5. 9** Report of Emergency Bridge Inspection.
- 4.5. 10** Report of Post-Repair Bridge Inspection.
- 4.5. 11** Other agency accident or incident reports.
- 4.5. 12** Witness statements, preferably typed and signed under oath before a Notary Public.
- 4.5. 13** Copies of invoice(s) for towing charges.

## **5. PURSUING PROPERTY DAMAGE CLAIMS**



**5.1** The OGC Claims Section shall pursue the recovery of any and all property damage including damage to Installed Material, subject to the limitations in **Section 1.2** above.

**5.2** When it is in the best interest of the Department, the Accountable Office may pursue the recovery of costs for property damage where liability exists against another party and the OGC Claims Section has reviewed the matter for potential liability to the Department and has approved the claim for collection.

### **5.3 Claim Recovery Process**

**5.3.1** The OGC Claims Section receives all **Property Damage Claims** from Accountable Offices for processing. Each Property Damage Claim is clocked in immediately and entered into the database for processing within ten (10) working days of receipt.

**5.3.2** Demand letters together with subrogation papers are sent to all Responsible Individuals explaining the details and terms of the claim and how payment is to be made. Subsequent letters are sent as deemed necessary to obtain full recovery.

**5.3.3** After the Responsible Individual pays the claim the file is closed and sent to storage to be retained for five (5) years in accordance with the **Records Retention Schedule for Government Agencies** as issued by the Department of State, Bureau of Archives and Records Management, unless it is determined that files should be retained longer.

**5.3.3.1** If the claim is not paid in full, the Responsible Individual can make arrangements to pay the claim through a **Promissory Note** with an installment payment plan. A copy of the **Promissory Note** and the installment plan must be provided to the Department's General Accounting Office, Accounts Receivable. This allows the Responsible Individual to make monthly payments without interest so long as payments are made every thirty (30) days. When the claim is paid in full, the file is closed, a letter is sent to the Responsible Individual, indicating the amount has been paid in full, and the file is sent to storage and retained for five (5) years in accordance with the **Records Retention Schedule for Government Agencies** as issued by the Department of State, Bureau of Archives and Records Management, unless it is determined that files should be retained longer.

**5.3.3.2** If the claim is not paid, or if the Responsible Individual fails to make the agreed upon payments, the claim is referred to the OGC Chief Civil Litigation Counsel, to be pursued through a lawsuit, or to the Department of Financial Services to be pursued through a collection agency. The method chosen is determined by the cost effectiveness to the Department. If it is determined that a claim will be pursued through a lawsuit, the Chief Civil Litigation Counsel will assign the claim

to an attorney for handling. The attorney may contact the Responsible Individual in order to obtain payment prior to suit or proceed directly to suit to obtain a judgment for the costs of damages.

- 5.3.3.3** When a judgment is obtained, the Department may have the license and registration privileges of the Responsible Individual suspended and place liens on personal or real property to collect the judgment. At that time, the Responsible Individual frequently contacts the Department and pays the judgment in full, which will include interest from the date of the judgment as provided in **Chapter 55, F.S.** Payment will allow the Department to request the release of the suspension on the Responsible Individual's driver's license. The Responsible Individual may also contact the Department seeking a payment plan to satisfy the judgment, which will include interest from the date of the judgment. When the judgment has been paid in full, the Department will file a "Satisfaction of Judgment" with the appropriate court and provide a copy to the Responsible Individual.

## **6. PAYMENT FOR DAMAGES**

- 6.1** Payment of the costs to repair property damage or replace property should be made payable to the "Florida Department of Transportation", and mailed to the **Florida Department of Transportation, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450.**
- 6.2** In accordance with **Section 335.10(3) and 316.560, F.S.** any and all money collected as compensation for damages to any Department road, highway, or highway structure shall be paid into the State Treasury to the credit of the State Transportation Trust Fund or other appropriate Department Trust Fund if the damage occurred to the Turnpike System. If, pursuant to the terms of **Section 7-14, Standard Specifications for Road and Bridge Construction**, the Contractor is entitled to return of a proportional share of its deductible attributable to the claim for damage to Installed Material, the Office of State Construction will be notified by the Claims Section to take all necessary steps to ensure the proportional share of the deductible is paid to the Contractor.

## **7. TRAINING**

There is no training required by this procedure. Training is available and can be scheduled by contacting the Claims Administrator, Office of the General Counsel at (850) 414-5357.

## **8. FORMS**

The following forms are available from the Department's Forms Library:

850-005-01, Report of Repair and Certification of Funds Expenditure  
850-005-02, State Force and Contract Cost Documentation  
500-000-15, Vehicle Crash/Incident Report