

**NEW JERSEY  
STATE ASSOCIATION**



**OF  
FIRE  
DISTRICTS**

# **Fire Commissioner's Handbook**

## **Acknowledgment**

As in any other publication, this manual is a result of people working together over a long period of time. Richard Braslow drafted a great deal of text. Mr. Braslow serves as counsel to a great many fire districts. Mr. Braslow also serves as counsel to the New Jersey State Association of Fire Districts. Those sections dealing with insurance or Risk Management have been written by Mr. Walter Fortnum of the Volunteer Firemens Insurance Services, Inc. State Association members Frank Zielinski and Jacob J. Genovay have provided input and editing. Our very special thanks to all for giving your vast knowledge, experience and time.

## **Preface**

The New Jersey State Association of Fire Districts is pleased to present this publication on various issues relative to the Fire Districts. This book is offered as a guide to provide Fire District officials, Fire Department personnel, and others with technical information and guidance on fire district operations and regulatory topics. However, the rules, regulations and statutes are constantly changing. Board should refer to their Attorney When making decisions.

## **Introduction**

CONGRATULATIONS! You have just been either appointed to an unexpired term or elected to serve as a Fire Commissioner. At this point you are not sure what you have agreed to. You may have been a volunteer fireman and someone asked you to become a Commissioner due to a vacancy, or you may be a disgruntled fireman believing your company was not being treated properly by the Commissioners. You may even be a resident of the district either content or discontent with a level of service being provided by the Board. Regardless, your exposure to the Board was sufficiently interesting to lead you to accept the position offered. However, now the question arises in your mind "WHAT HAVE I GOTTEN MYSELF INTO?"

The purpose of this manual is to supply sufficient background information, provide guidance, and answer enough questions so that a newly appointed or elected Commissioner may feel comfortable in carrying out this function as an active, participating Board member. It is also intended to serve as a resource for more experienced members as they go about the business of attempting to provide adequate, affordable protection to their constituents, the residents and taxpayers of the fire district. It should be understood from the onset that this manual will not answer all of your questions. In fact, if it is to be useful at all it should only serve to prompt Board members to probe further.

There is a little doubt that there will always be individual distinct differences reflected in the character of a given Board. However, it is my hope and that of the Association Officers that these diverse personalities will not be reflected in either diluted quality of fire protection or an abuse of the power vested in us under the statutes which regulate fire districts.

Roger S. Potts / President

New Jersey State Association of Fire Districts

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**in memoriam**

**Walter G.  
Fortnum, JR.**

**March 31, 2002**

**This handbook lovingly dedicated to Walt  
for his untiring efforts to promulgate the  
most efficient Fire Districts in the Country.  
We extend our deepest regrets and sympathy  
to his wife Kathy and his family.**

**The Officers and Member Associations of  
New Jersey State Association of Fire Districts.**

**We also thank the Robert S. Maxam & the VFIS  
Organizations for allowing him to work with us  
on many time-consuming projects.**

## SECTION # 1

### **FIRE COMPANY vs. FIRE DISTRICT**

A Fire Company is a non-profit corporation which is established pursuant to Title 15 of the New Jersey statutes. This entity has its own certificate of incorporation filed with the Secretary of State. It also has its own bylaws which govern the actions and activities of the members of the organization.

A Fire District is a municipal entity which is established and governed by the laws and statutes of New Jersey and are found in New Jersey Statutes Annotated Title 40A:14-70 AND 40A:5A et. seq. It is of the utmost importance that the members of the Boards of Fire Commissioners make themselves knowledgeable of and adhere to the principles contained therein. It is a public body corporate which is an autonomous entity separate and distinct from the Fire Company. A Fire District by statute has the obligation to provide fire protection to the residents and taxpayers within the geographical boundaries of the Fire District.

It is important to remember that a member of the Board of Fire Commissioners of a Fire District is an elected public official and must recognize that he or she represents therefore the entirety of the public in making decisions and not just the Fire Company. You must be able to distinguish your role as a firefighter from your role as a Commissioner.

A Fire District and a Fire Company are separate entities with each providing fire protection services to the public. Each has its own officers and its own bylaws. It is important to recognize this distinction in serving as a Commissioner.

### **FIRE COMPANY vs. FIRE DISTRICT ASSETS AND MONIES AND EXPENDITURE OF FUNDS**

Since the Fire District and Fire Company are separate entities each has its own monies and assets. The funds may not be commingled and each of the entities should have its financial records audited as required by law. A Fire District must have an annual audit performed as mandated by New Jersey statute ( see 40A:14-89 & 40A:5A-15). A Fire Company should have an annual audit or accounting and may be required by statute to provide an audit or accounting to a Fire District or municipality when the Fire Company receives public funds from either the Fire District or municipality.

A Fire District receives public monies through a fire tax and must expend these monies in accordance with New Jersey statutory requirements. A Fire District must specifically comply with the statutory law on public bidding when expending monies. In addition all assets purchased by the Fire District should be titled to or owned by the Fire District. It is inappropriate and possibly illegal to expend public monies as the Fire District and title or recognize ownership of the assets as that of the Fire Company.

The Fire Company generally receives funds from a Fire District or a municipality . The Fire Company can also receive contributions through fundraising, donations or grants. An Attorney General's opinion has been issued which addresses the statutory laws which must be adhered to concerning expenditure of Fire District monies. The Fire Company bylaws may also address the issue of expenditure of funds and may have to be followed. In addition there is case law in New Jersey which addresses ownership of the assets purchased and whether the Fire Company actually is the owner of the assets.



## SECTION # 2

### **WHAT IS A FIRE DISTRICT COMMISSIONER AND WHAT ARE THE REQUIREMENTS TO SERVE**

The New Jersey Statute Title 40A:14-70 provides for five duly elected Commissioners to a Board of Fire Commissioners for a Fire District. Other than in a newly created Fire District each Commissioner serves a three year term. In order to be eligible to serve as a Commissioner there are certain requirements which must be met, that you have to be a resident, you must be of legal age (18) to hold public office. There is an additional requirement of being a registered voter however the statute is not clear in this regard. There are no other requirements to serve as a Fire District Commissioner. Specifically, you do not have to be a fireman to serve as a Fire Commissioner.

A Fire District Commissioner has the obligation with his or her fellow Commissioners of ensuring that the Fire District has the ability to extinguish and prevent fires. In this regard a Commissioner makes decisions concerning fire safety including the expenditure of moneys to ensure the protection on such items as training, equipment, etc., for the volunteer and paid firefighters. A budget is formulated by the Board of Fire Commissioners to allow for the expenditure of moneys.

If a vacancy exists relative to the Board of Fire Commissioners pursuant to New Jersey statute the remaining Commissioners fill the vacancy until the next annual election. There is no established procedure to follow in filling the vacancy and the only requirements are those set forth above. At the annual Fire District election the unexpired term for this position is placed on the ballot and the public elects a new Commissioner to complete the unexpired term.

## SECTION # 3

### WHO MAY SERVE AS A COMMISSIONER

The Local Finance Board issued an ethics opinion concerning the issue of whether various administrative and firematic officers of a Fire Company serving the Fire District could also serve as a Fire Commissioner or whether this created a conflict of interest. The opinion concluded that an individual who is the President, Vice- President, Chief or Assistant Chief of the Fire Company in the Fire District cannot serve as a Fire Commissioner. The opinion also set forth that other line officers or administrative officers positions may be in conflict but these would have to be analyzed on a case by case basis. Many Fire Districts and Fire Companies do not agree with this opinion; however it is apparent that if a complaint is filed with the Local Finance Board alleging that a conflict of interest exists the Local Finance Board will determine that there is a conflict which exposes this individual to a fine and possible removal from office. Please refer to the ethics opinion set forth in the appendix for further reference. It should also be noted that a Fire District or Fire Company may establish its own policies and procedures addressing the issue of conflict in serving as an administrative or line officer and as a Commissioner which may address and determine this issue.



## SECTION # 4

### FIRE DISTRICT ELECTION

40A:14-72

An annual Fire District election is conducted on the third Saturday in February between the hours of 2:00 p.m. and 9:00 p.m. The New Jersey statutes mandate the date and hours as referenced herein. The election hours may extend beyond 9:00 p.m. if voters are present and waiting to vote.

The statutes further indicate that at the election the voters are to vote for the election of Commissioners, the budget and such other special issues such as capital items to be approved by the voters. There are various time frames to be satisfied in conducting an election and set forth in the appendix is a memorandum setting forth the specific time frames to be satisfied. In addition set forth are forms that may be utilized in conducting the election. There is a form of Ballot referenced in the statute which must be substantially adhered to however there are no requirements by statute as to many of the other forms set forth in the appendix other than the requirement of various basic information which must be contained in the notices. In addition Title 19 of the New Jersey statutes sets forth the form of absentee notices to be utilized in an election, the Fire District should contact the Board of Elections and/or County Clerk in each respective County to ensure the proper form and information is being used.

If a Fire District is conducting a special election the same polling hours and notice requirements must be followed, with additional notice requirements set forth in the statute if an annual or special election involves the issuance of bonds.

The statutes Title 40A (Fire District) and Title 19 (Election) should both be referenced in determining election procedures that apply to a Fire District election. Specifically Title 19 should be carefully reviewed because many of the procedures and provisions do not apply. In many Counties the Board of Elections may be contacted if questions exist although it must be noted that many County Board of Elections maintain that the Election Board has no jurisdiction over the Fire District election and therefore will not offer any assistance or advice. Each fire District should consult with its legal advisor if election issues arise to determine the proper method of resolving the issue.

Of particular concern relative to the Fire District election are two issues that arise repeatedly, the statutory deadline for submission of a candidacy petition to have a name placed on the ballot for Commissioner and whether an individual whose name does not appear on the ballot can be elected as a Commissioner by being a write-in candidate. These issues are answered as follows:

1. The statute mandates that a candidacy petition be submitted no later than 28 days prior to the election. This date is always a Saturday when many Boards of Fire Commissioners are not open or available to receive the petition. Therefore many Boards make the deadline the preceding Friday (29 days) or the subsequent Monday (27 days and sometimes a legal holiday) or Tuesday (26 days). There is legislation proposed by the New Jersey State Association of Fire Districts to clarify the statute which legislation is pending. A strict interpretation of the statute is that the petition deadline is Saturday (28 days). If the Board were to shorten this time frame this may be subject to legal challenge.
2. The right to vote for a candidate of the voter's choosing is absolute. Therefore write-in votes are permitted by law and while the form of ballot in the statute does not provide for such a scenario, many Election Boards require that absentee ballots provide for potential write-in votes. The issue of whether a candidate who is a

successful candidate is qualified to serve as a Commissioner is determined by examining the requirements to serve in this position. Additionally, the issue of whether such votes were properly cast is determined by examining voting procedures under Title 19 and Title 40A as well as the election ballot.

## SECTION # 5

### ORGANIZATION OF BOARD OF FIRE COMMISSIONERS

A Board of Fire Commissioners has five members with each serving in a separate administrative position. These positions are President/Chairman, Secretary/Clerk and Treasurer. These duplicate designations are used interchangeably in the statute. The Fire District shall set forth the responsibilities of each position.

The term of a Commissioner (other than Boards initially created) is for three years and it expires on the first Tuesday in March at 12:00 noon. The terms are staggered so that two Commissioners are elected for a full term in one election. In the next year's election, either one Commissioner or two are elected for a full term. The next election would be for the remaining position(s) as the case may be. Therefore, no election would be held for filling more than two full terms at one time. One election in any three-year rotation would fill only one full term position. Vacancies shall be filled by the remaining Board members until the next annual election at which time a resident of the district shall be elected for the unexpired term.

Newly elected or appointed Commissioners should be sworn in utilizing an oath of office and the Board must then reorganize with each Commissioner serving in a position reflected above. The Board may alter the positions during the year if required or deemed necessary.

## SECTION # 6

### ROLE OF A BOARD OF FIRE COMMISSIONERS 40A:14-81

The statutory purpose of a Fire District, as previously stated, is to ensure fire protection for the residents and taxpayers of the Fire District. The Board of Fire Commissioners must ensure that this fire protection is provided, whether it be volunteer and/or paid personnel. The Board through its expenditure of budgetary monies fosters the providing of services. The ultimate obligation for fire protection is that of the Fire District.



## SECTION # 7

### **BUDGET** **40A:14-78.1**

The Fire District operates with a budget, which is either approved or disapproved by the voters at the annual election. If the budget is defeated, the local Municipal Government shall set the budget as prescribed by law. The budget allows the Fire District to operate from January 1 to December 31, which is the mandated fiscal year of all Fire Districts.

The budget is prepared in accordance with prescribed procedures and forms promulgated by DCA. These forms may be altered from year to year by DCA and are set forth in the appendix. In preparing the budget there are certain procedural requirements and the time schedule as set forth in the statute that must be adhered to. Forms and a memorandum explaining the procedure can be found in the appendix.

Each budget consists of an operational and capital section. Each section contains line items prescribed by DCA which identify the projected expenditures. The capital section of the budget may contain debt service and it is important to note that the Township Committee cannot excise debt service from the budget if the voters defeat the budget.

Fire District budgets are not subject to CAP laws, which apply to municipalities. It is the belief of many legislators that the CAP should not apply since Fire District budgets are either approved or disapproved by the voters. There is a statutory CAP concerning debt of a Fire District relating to issuance of bonds of \$60,000 or 2% of the tax ratables, whichever is greater.

## SECTION # 8

### AUDIT 40A:14-89

In each year the Fire District must have an audit prepared concerning its financial operations. The audit is prepared by an independent auditor who must be registered as a CPA or RMA. In accepting the audit the Fire District uses the form of Resolution set forth in the appendix. Additionally a group affidavit must be executed signifying that the Commissioners understand and approve the audit report. This form is also set forth in the appendix. Finally, a corrective action plan must be adopted by the Fire District addressing the deficiencies, if any, set forth by the auditor in the audit report and the actions to be undertaken to correct these deficiencies. A form of resolution is set forth in the appendix.

After acceptance of the audit, a copy is provided to DCA and the Township Clerk. Additionally, a summary of the audit is published in a newspaper.

## SECTION # 9

### INSURANCE

A Fire District engages in various activities to which liability attaches. It is essential that appropriate insurance exists to cover these activities. The Fire District would pay for the insurance through a line item in the budget. The types and amount of insurance should be discussed with your attorney and insurance agent and you should ensure that you as an individual Commissioner are covered for your actions and/or inaction as a Board member. Insurance is more specifically addressed in the following article in this section of the booklet.

Workers Compensation insurance must be provided by law to cover the volunteer/paid firefighters of the Fire District.

The Fire District in such forms and amounts permitted by law may provide Life Insurance. A Fire District may provide for its volunteers up to \$ 10,000 in Group Life Insurance and/or up to \$ 16,500 in Universal Life Insurance.

Finally, a surety bond must be provided to insure the proper accountability relative to the Fire District moneys. The bond should cover all the Fire District moneys on hand at any given time and includes both budgetary funds received as well as reserve funds such as capital reserves.

### INTRODUCTION

The following article is an article on managing risk in emergency organizations. It is a narrative report on the exposures faced by your organization.

#### **MANAGING RISK IN EMERGENCY ORGANIZATIONS**

*The role of any emergency service organization is to protect people from the consequences of life's calamitous events. You try to prevent fires. You train people in first aid. You lobby for better building codes and stricter enforcement. Then when the worst happens, you're on the scene saving lives, protecting property and preventing further injury and damage. The mission is clear. What may not be clear to managers of emergency service organizations and to community leaders responsible for their operation is the need to protect the organization before they can protect the public, but the nature of your operations exposes you to additional risks that are greater than those the public faces.*

*Your charge is preparedness. You have to have people trained and ready and outfitted with the proper equipment to respond immediately no matter what the nature of the emergency. It's a heavy responsibility that requires recruitment and training of people, purchase and maintenance of equipment, budgeting, scheduling and clear, continuous communication. Unlike many other enterprises, there is little room for management error.*

*Careful management of risk is critical to your continued ability to carry out your mission. When trained people are hurt, when equipment is lost or damaged, when you are grieving over the loss of a friend, the mission is jeopardized. Risk management is the planning, policies and procedures you use to protect your human assets and your physical assets so you can continue on your mission, even when the unforeseen happens.*



*The first step in the risk management process is identification of assets and exposures to loss. Make a list of your assets. For each asset list all the possible ways the asset could be lost, damaged or destroyed. Then decide which assets are most important. The loss of a portable radio is an inconvenience. The loss of a vehicle, depending on the size of your organization, may be catastrophic. Since time, energy and resources are limited, risk management includes setting priorities about which assets need to be protected the most.*

*When assets and exposures have been identified and priorities established, the next step is to consider various alternatives for handling the risks you face. Your choices are to avoid risk altogether, reduce the chances of loss occurring and minimize the damage caused by losses that do occur, bear the risk yourself by creating a fund to pay for your own losses, or transfer the risk to a third party.*

*Risk avoidance is not a practical alternative. Yes you can close your doors or stop providing a service whose risk you want to avoid, but that would defeat your purpose. Risk bearing is also not practical, except in a limited way, for all but the very largest organizations with very large budgets. That leaves loss control, loss reduction and transfer of risk as the best alternatives for treating emergency service organization exposures. These methods work best in combination, so the loss control and loss reduction efforts of your organization help reduce the cost of transferring your risk to a third party. While it is possible to transfer risk through hold harmless agreements in contracts for services, the most important form of risk transfer is the purchase of insurance policies.*

*Insurance policies are a financial backstop that protects your organization from the financial consequences of loss, but the best investment of your risk management resources is in the area of loss prevention. Human assets cannot be replaced, and you suffer much more from their loss than just their availability to respond to the mission. Property can be replaced, if you recover enough money from your insurance company, but the process of replacing property is slow, and the mission is jeopardized during the process.*

*Emergency service organizations have a big advantage over other enterprises when it comes to loss prevention because you already know a lot about it. It's part of your mission to educate the people you serve about techniques for preserving their lives and property. You know about the value of protective equipment and proper hazardous material storage and alarms and sprinklers and drills. You know about procedures and protocols and preparation to be a defendant in a lawsuit. You know a lot about loss prevention and loss reduction that you may not be applying to your own organization because your focus is on the people you serve.*

*Loss control has become a science, and there are some highly skilled practitioners who work for insurance providers who can help you focus your own knowledge on your organization and keep you abreast of the most current techniques. Loss control service is included in the calculation of your insurance premiums, and you need to be sure you get your money's worth. If your insurance provider is not responsive to your need for loss control services, you should get your insurance from someone else.*

*Insurance for emergency service organizations can be divided into three general categories: people insurance, property insurance and liability insurance. People insurance includes workers' compensation and accident insurance that supplements workers' compensation benefits. Workers' compensation is legislated by statute in almost every state, and every state workers' compensation statute is different. In many states there are provisions in the workers' compensation statutes that apply specifically to emergency service*



organizations. To understand the benefits in your state you need to call the state agency that is responsible for administering workers' compensation and get a copy of the statute.

*The statute will tell you when coverage applies and which activities are covered. Are your people covered when they are doing fund-raising activities? Are they covered when they attend meetings? Is travel to and from covered? How about parades and athletic contests? Who is covered? Are inactive members covered? How about trustees and directors and junior members and members of auxiliaries? What are the benefits and for how long are they paid?*

*Typically, workers' compensation statutes provide for medical expense benefits, lost wage benefits and death and dismemberment benefits. The amount of the benefits and the duration of payment vary by state. One important question regarding lost wage benefits is the definition of disability that triggers the payment of benefits. The two most commonly used definitions are the inability to perform the duties of your own occupation and the inability to perform the duties of any occupation for which you may be qualified by background, training, or experience. The "any occupation" definition can cause benefits to terminate earlier than the "own occupation" definition. Sometimes the "own occupation" definition applies for a certain period of time, and then continued benefits depend on your meeting the "any occupation" definition of disability.*

*Workers' compensation benefits are rarely adequate to cover the medical expense, lost wage and death and disability benefit needs of all your people. You need an accident policy to provide supplemental benefits. Emergency service accident and sickness policies are designed to fill the gaps in workers' compensation coverage. They may provide benefits for some of the people who are not covered by workers' compensation. They may provide benefits for people who are injured while participating in activities not covered by workers' compensation. They may also supplement lost wage benefits under workers' compensation that are not large enough to compensate your better paid volunteers.*

*State workers' compensation statutes usually cap lost wage benefits at some percentage of the statewide average weekly wage. Usually the percentage is somewhere between 65% and 80% depending on the state. The cap on lost wage benefits included in workers' compensation statutes is particularly important to emergency service organizations who depend on volunteers for their staffing. Some of your volunteers may be professional people, or people who own their own business or people who have high-paying jobs. These people will not be able to pay their bills if they receive only a percentage of the statewide average weekly wage for very long. You need an accident policy, If for no other reason than to make sure your volunteers have access to better lost wage benefits than they can get from workers' compensation.*

*All accident policies are not alike, and the same questions that apply to workers' compensation apply to accident policies. What is the definition of disability? What people are covered? What activities are covered? Some coverages only apply when a member is performing emergency activities. Is there any coverage for AIDS and other infectious diseases? Is there a permanent impairment benefit, or does long-term payment of lost wage benefits depend on continuing to meet the policy definition of disability? Contrary to popular belief, insurance is not a commodity. There are real differences among the policies that require you to think very carefully about the financial impact of injury or death on your people and their families, and ask a lot of questions to be sure you buy the policy that protects them the best.*

*Insuring your people properly will be less expensive if you develop your own accident prevention program. Exercise and nutrition programs and periodic physical exams are important tools for keeping people in*



adequate physical condition to perform emergency service duties. Proper training and strict enforcement of personal protective equipment guidelines are also very effective in reducing injuries. Reducing injuries saves insurance premiums, but more important, it saves the pain and suffering and grief associated with injury to people you care about.

Property insurance is not a commodity either, and emergency service organizations have a lot of property to protect. Expensive buildings, expensive vehicles, furniture and fixtures, computer equipment and all kinds of portable equipment you need at the emergency scene are part of the assets of the modern emergency service organization. When you analyze property insurance, there are lots of questions to ask. Whose property is covered? Is there any coverage for your members' property or for property you commandeer? What property is covered? What method of valuation will be used to settle a loss? Are the limits of insurance adequate to cover your property using the valuation method described in the policy? What causes of loss are covered? What causes of loss are not covered?

Property policies can be written in one of two ways with regard to causes of loss. One way is for the policy to list the perils (causes of loss) that are covered. Any peril that is not on the list is not covered. The other way to provide for cause so loss is to say that all perils are covered unless they are specifically excluded. The first policy is called "named peril" and the second is called "named exclusion." Named exclusion policies (sometimes erroneously called all risk) provide the most coverage and are the ones most often sold to emergency service organizations. However, you need to ask the question to be sure you have the broader coverage of a named exclusion policy. You also need to ask about the exclusions. Typically, flood and earthquake are excluded perils, but some providers of insurance cover losses caused by flood and earthquake. Damage to computers and their software may be excluded or the coverage severely limited in some policies, but some providers' policies cover computers and their software more adequately. Asking questions about exclusions will help you make a better decision about which policies to buy.

One common cause of property loss is lightning damage to computers and communications equipment. Equipment that is subject to lightning damage should be grounded and protected with surge suppression devices. High value buildings that house high value equipment should be protected by heat and smoke detection systems or by sprinkler systems. These systems are especially important for buildings that are unoccupied most of the time.

After covered causes of loss, the second most important question about property coverage is what method of valuation will be used to determine what is paid in the event of a loss. The most appropriate method of valuing property at the time of loss is replacement cost. Replacement cost is roughly defined as the cost to repair or replace lost or damaged property with materials of like kind and quality at current material and labor prices. Most buildings are insured today on the basis of replacement cost. However, in some cases, replacement cost isn't good enough.

What happens in the event of a hurricane or other natural disaster when many buildings in a small geographic area are damaged at the same time? Under these circumstances, supply and demand push up the cost of construction to the point where replacement cost can exceed the policy limits. If that happens, you will need Guaranteed Replacement Cost coverage to make your organization whole. Some providers of insurance to emergency service organizations sell Guaranteed Replacement Cost coverage and some don't. You need to ask the question before you buy the policy.



Limits are another important consideration with property insurance. The premium you pay is based on the limits of coverage, so you don't want limits that are too high. However, you do want limits that are adequate to make you whole after a loss. To be sure your limits are adequate, you need to find a convenient way to value your property. The most expensive way to value property, but the one likely to arrive at the most accurate value, is to pay a private appraisal company to do an appraisal and write a report. The private appraisal has the added advantage of providing strong evidence on your behalf if you ever end up in a legal battle with an insurance company over your property values. After private appraisals, the next best way to value your property is to ask a local contractor to give you an estimate. Another method is to ask an insurance agent to estimate the value based on construction materials and square footage. Many agents use value estimation guides they have purchased from appraisal companies.

Getting the value right is important because you need to purchase limits high enough to make you whole in the event of a total loss, but values are also important when you only have a partial loss. Most property policies include a coinsurance clause which, in effect, makes you pay part of any loss if the limit you have purchased is not within a specified percentage (usually 80%) of the value of your property at the time of loss. You need to ask questions about the coinsurance provisions in the policies you are considering so you understand their implications before you choose your policy limits.

Another issue with property insurance is building ordinances. As you know, many localities have ordinances that require that a building damaged to a certain percentage of its value must be torn down and built to current code standards. The federal "Americans with Disabilities Act" has similar provisions. Unendorsed property policies do not cover the cost of tearing down the undamaged portion of the building. Nor do they pay for the loss of the undamaged portion, nor the cost of debris removal, nor the additional rebuilding costs required to meet current standards. You can buy ordinance coverage from some providers of insurance for emergency service organizations and some include it automatically. You have to ask to be sure you get the coverage.

Building contents (your furniture and fixtures and inventory and supplies) can also be insured for replacement cost, but often they are insured for "actual cash value." Actual cash value is roughly defined as replacement cost minus an allowance for depreciation and obsolescence. From the insurance company standpoint, actual cash value is a fair way to settle property losses, because it puts you back in the same position financially as you were in before the loss. The only problem is you can't buy a ten-year old television set or a five-year old refrigerator or an eight-year old chair. As a practical matter, you have to buy new furniture and appliances and inventory and supplies after a loss, so you need replacement cost coverage on your contents as well as your buildings. The coverage is available from many providers of insurance, but you have to ask to be sure you get it.

In addition to buildings and contents, emergency service organizations have a whole array of property that is sometimes located in the building, but often travels with you to emergencies and is sometimes located in your people's homes or in their personal vehicles. This "portable equipment" cannot be covered by your building and contents policy because that policy is designed to cover property at a fixed location. For portable equipment you need coverage that floats with the property and provides coverage no matter where the property is located. Some providers call these policies floaters and some use the term "portable equipment policy." With portable equipment floaters you need to ask if the coverage is on a replacement cost or actual cash value basis and whether an inventory is required. Some providers of insurance have come up with innovative ways of estimating the value of your portable equipment without your having to complete an



*inventory. Countless hours of work and frustration can be saved by working with a provider that does not require an inventory form.*

*No one has to tell you about the importance of maintaining them in top condition, and it's equally important to maintain the proper vehicle insurance coverages. Typical insurance for commercial vehicles provides for recovery on an actual cash value basis, and many ambulances and fire trucks are insured that way. The problem is that the depreciated value of a ten-year old fire truck, which probably has very low mileage, is much less than the cost to buy a new truck.*

*By paying depreciated value (actual cash value), the insurance company is putting you back in the same financial position as you were in before the loss, but you probably have to buy a new vehicle to get back in a position to be able to perform your mission. Fortunately, you can buy a form of coverage that allows you to agree in advance on a value that is closer to what it would cost you to replace the vehicle. Agreed value coverage has the potential to put you back in business after a loss without the need to take on a big fund-raising project or float a bond.*

*Once again, insurance is not a commodity. Even when you buy agreed value auto coverage, you need to be careful to select a value based on the amount of money you think will put you back on the road following a loss. You also need to ask what formula the insurance company will use to determine when they will pay the full agreed value and when they to do extensive repairs on the damaged vehicle. You also need to ask how small losses will be settled. Will the insurance company pay the full replacement cost for parts and labor and will they take a deduction for depreciation?*

*Also ask what perils (causes of loss) are excluded. Freezing is an excluded peril under commercial auto policies, however, you can buy coverage for freezing of pumps, gauges and tanks on emergency vehicles. This coverage will be very important in many areas of the country during midwinter emergencies or when the heat goes off in the parking bay. Other auto insurance questions include what coverage is provided for hired, borrowed and commandeered vehicles and what coverage is provided for volunteer's cars that are damaged when responding to emergencies. Will volunteers have to pay the cost of their deductibles out of pocket or will your auto policy cover their deductibles? Auto insurance is not a commodity. If you ask these questions when you buy your auto policy, you have a better chance of getting the coverages you need to keep the organization focused on the mission.*

*Your auto policy is actually two policies in one. The second part is auto liability. Auto liability protects your assets from the financial consequences of legal action brought against you because of bodily injury or damage to the property of others caused by your ownership, maintenance or use of autos. An auto is usually defined as "a land motor vehicle, trailer or semi-trailer designed for travel on public roads." The first question to ask about auto liability is what vehicles are covered. Some auto policies for emergency service organizations cover liability for ownership, maintenance or use of "any auto." Other policies limit coverage to owned autos, and still other policies may limit coverage to specifically described vehicles. You need to be aware of what autos are covered, so you can make the proper provisions for liability coverage when you hire, borrow or commandeer an auto. Another question to ask about liability coverage is who is covered? With auto liability the owner is covered and as a general rule, anyone who is driving with the permission of the owner. With other liability policies the question of who is covered can be more complicated.*



*Liability policies usually begin with a broad general statement about what is covered. This broad statement, called an insuring agreement, is refined by the policy exclusions and the definitions of key words. A typical auto liability insuring agreement reads as follows: "We will pay all sums an insured legally must pay as damages because of bodily injury or property damage to which the insurance applies, caused by an accident and resulting from ownership, maintenance or use of a covered auto. The insuring agreement goes on to say that the insurance company has a right and a duty to defend suits asking for damages.*

*One common auto policy exclusion that is of concern to emergency service organizations is the exclusion for bodily injury to one employee or member caused by a fellow employee or member. This coverage is added back automatically by some insurance companies that provide coverage for emergency service organizations. Other companies make the coverage available as an option, and others don't make it available at all. Another important auto liability exclusion removes coverage for the discharge, dispersal, release or escape of pollutants. Since emergency vehicles often carry substances that would be pollutants if released, it is important to ask your insurance provider whether there is a modification to the pollution exclusion in their auto liability policy.*

*Managing the auto exposure is one of the biggest risk management challenges emergency service organizations face. Emergency vehicles are expensive, difficult to repair or replace, and critical to the mission. They are also dangerous pieces of equipment which can cause serious injury and damage to other people's property, even when they are operated carefully by well-trained drivers. Training is the key to preventing accidents with emergency vehicles. Preventing accidents prevents injury to your people, damage to your vehicles and lawsuits from injured third parties. It also prevents your drivers from experiencing the horror of being responsible for the death or serious injury of another human being. It is a horror from which conscientious people can never escape as long as they live.*

*Some providers of insurance for emergency service organizations have driver training programs designed to cover the basics of emergency vehicle driving. The programs include classroom training and hands-on practical experience. At least one provider of emergency service organization insurance also has a program that teaches techniques for avoiding accidents during emergency response driving, including techniques for avoiding accidents at intersections. Participants are motivated to learn the material by videotaped testimonials from drivers who have had their lives ruined because of emergency vehicle accidents. Part of every dollar of insurance premium is earmarked for loss prevention. If you are not getting driver training programs from your insurance provider, you are not getting every thing you paid for.*

*Another important liability coverage for an emergency service organization is general liability coverage. General liability protects your organization's assets from the financial consequences of legal action brought against you because of bodily injury or damage to property of others caused by occurrences that do not involve autos. If you are sued by someone who trips and falls in front of your building or by someone who alleges you damaged their property, or someone who is injured in the course of your handling a medical emergency or fighting a fire, or someone who is injured or becomes sick because of a product you sold, the coverage is provided by your general liability policy.*

*A frequent source of liability claims is injury to members of the public who are on emergency service organization premises. Your insurance provider should be able to supply you with self-inspection checklists that create awareness of broken steps and cracks in sidewalks and parking areas that can become tripping hazards. If your building is used as a place of public assembly, an emergency lighting system, lighted exit signs and panic hardware on exit doors are critical.*



*The general liability policy, like the auto liability policy, also has a very broad insuring agreement. One insuring agreement that many companies use in their policies reads as follows: "We will pay those sums that the insured becomes legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies. " Just like auto liability, general liability coverage is defined by the policy exclusions, and there are several exclusions in general liability policies that are of concern to emergency service organizations. The first is an exclusion for bodily injury or property damage expected or intended from the standpoint of the insured. Sometimes during emergency operations you have to cause intentional injury or property damage to save lives and property. Ask if you can buy a general liability policy that modifies the "expected or intended" exclusion in a way that allows you to focus on the mission in times of emergency.*

*Another general liability exclusion applies to insureds who are in the business of manufacturing, distributing, selling, servicing or furnishing alcoholic beverages. The term "in the business " is not defined, and it is open to interpretation. So you do not run afoul of this exclusion, you need to review your activities that involve liquor with your insurance advisor and ask if you should buy additional coverage for this exposure. The primary cause of liquor liability lawsuits is serving people who are intoxicated. Servers of alcohol need to be trained through awareness programs like TIPS or TAM to identify people who are intoxicated and tactfully refuse to serve them. If your provider of insurance doesn't provide training for your servers of alcoholic beverages, you may want to buy your insurance from someone else.*

*Pollution is another exclusion in general liability policies that is of concern to emergency service organizations. Sometimes during emergency operations you may release asbestos fibers into the air or spill hazardous chemicals or cause the spread of a spill. Sometimes fires you burn during training may release pollutants into the air. Ask whether the pollution exclusion in your general liability policy can be modified to provide coverage during emergencies and while you are training.*

*Coverage under general liability can also be limited by key definitions. For example, the definition of who is an insured says coverage does not apply to employees who cause bodily injury to other employees or to bodily injury arising out of providing or failing to provide professional health care services. Ask if your policy can be modified to provide these excluded coverages for your employees and volunteers. These coverages are available from some providers of insurance for emergency service organizations, but not from all of them.*

*Probably the most important question about liability insurance is how much should you purchase? Incidents involving questions of legal liability are happening more frequently and when they happen, they can be very expensive. What are the assets of your organization worth? Are you part of a municipal entity or special district with access to tax revenues? If so, your exposure to financial loss from lawsuits is quite high. But maybe you have immunity. Has someone told you there is a state municipal immunity law that protects you, or that your liability is capped by statute at so much per injured person and so much per accident?*

*Municipal immunity statutes are helpful, but they are not the total answer. The first question to ask about municipal immunity is whether the statute has held up to legal challenge. Until there is a body of case law supporting the statute, you never know when the seriousness of someone's injury will cause a court to overturn it. Also, most municipal immunity statutes waive immunity when the municipal entity is deemed to be guilty of "gross negligence " or "willful and wanton " behavior. Since the statutes do not define "gross negligence " or willful and wanton, " these phrases provide another opening for courts to award damages to seriously injured parties. Another important thing to remember is that state municipal immunity laws provide no immunity from*



lawsuits brought in federal court. Also, even when municipal immunity does apply, you have to pay the cost to defend against the lawsuit to the point when the court determines you are immune.

Auto liability and general liability policies are often written with primary limits of \$500,000 or \$1,000,000. On top of these limits, excess and umbrella liability policies are available. Excess and umbrella policies provide additional coverage when the limits of your auto liability or general liability policy are exhausted. The purpose of excess and umbrella policies is to increase your liability limits so your organization is protected from the really severe losses that occasionally happen. Excess and umbrella policy limits from \$1,000,000 up to \$10,000,000 are readily available. Limits higher than \$10,000,000 can sometimes be negotiated. When an emergency vehicle collides with a school bus or a young patient becomes paraplegic, no liability limit is too high.

Bodily injury and damage to property of others are not the only sources of legal liability emergency service organizations face. In fact, the real growth in legal liability claims is coming from the areas of financial injury, discrimination and violation of civil rights. Sexual harassment and employment discrimination suits are being filed against emergency service organizations all over the country. To protect your organization from lawsuits involving these kinds of allegations, you need a different kind of liability policy, a policy that provides coverage when the allegations of harm go beyond bodily injury or property damage. Such policies go by various names. Errors and omissions policies, directors and officers policies, management liability policies and public officials policies are all in this category. These policies are not standardized by any means. Each insurance company has its own policy forms which have different provisions from those in other companies' policy forms. Also, these policies are designed to cover the exposures of businesses and, in the case of public officials policies, municipalities. Since the exposures of emergency service organizations are different, it can be difficult to find a policy that fits.

The questions you need to ask about liability coverage for the management exposures you face are similar to those you need to ask about auto liability and general liability. Who is covered? Directors and officers policies typically do not cover the organization nor the members who are not officers or directors. What are the exclusions? Are discrimination and violation of civil rights excluded? How about sexual harassment and employee benefits liability? What about defense coverage? Is the cost of defense applied to your policy limit, or does the insurance company agree to pay judgments up to the amount of the policy limit in addition to any money it has paid to defend you? Defense is an extremely important part of liability coverage, and it makes a real difference whether defense coverage is included in your policy limit or paid in addition to your policy limit.

There is also the question of whether you are covered on a claims-made or occurrence basis. Many of the liability policies that cover management exposures are written on a claims-made basis. That means that any claim is assigned to the policy that is in force in the year when the claim is first presented instead of the policy that was in force in the year when the occurrence that gave rise to the claim occurred. The distinction is important because liability claims are often made many years after the event that gave rise to the claim occurred.

With claims-made liability policies, you need to pay close attention to prior acts and to the reporting period. If there is no prior acts coverage, a claims-made policy will only cover claims presented during the current policy year, which are the result of occurrences that happened after policy inception. When you add prior acts coverage, you pick up claims that result from occurrences that happened prior to the policy year. If someone says they were sexually harassed two years ago and file suit today, you have coverage if your claims-made



*policy provides at least two years prior acts coverage. Some claims-made Policies provide unlimited prior acts coverage, some provide prior acts coverage for a limited number of years, and some provide no prior acts coverage at all.*

*The other concern about claims-made policies is the window of time you have after the policy expires to report claims. The window of time can be as little as 60 days unless you have the policy endorsed. The reporting period is no problem so long as you keep renewing your claims-made policy with the same insurance company. It becomes a problem when you want to change insurance companies. The new company may exclude coverage for prior acts under the theory that the old policy should cover them. If you don't get an extended reporting period on the old policy, you run the risk of a claim arising from an occurrence during an old policy period not being covered.*

*Insurance is essentially a set of promises written into a contract and backed by the financial strength and the integrity of an insurance company. Policy language is always subject to interpretation, and some companies are more likely to interpret in your favor than others. In any insurance transaction, the agent has a lot to do with how you are treated and whether you get the proper value for the premium you pay. Agents should be chosen carefully for their skill and knowledge of insurance and emergency services and for the concern they have for the well-being of their customers.*

*The best way to pick an agent is to ask him or her a lot of questions. Pose all the "what ifs" and listen to the responses. In a short time, you will be able to tell who knows their business and who is bluffing. Just as there are big differences among the various insurance policies, there are big differences among agents. Professional agents will analyze your exposures before recommending coverage. Average agents will photocopy your current policies and deliver a "quote". Professional agents will meet with you regularly to explain coverages and find out about changes in exposures. Average agents will mail your policies and a bill and never show up to answer questions. Most important, professional agents will go to bat for you when you have a claim. At claim time, you need an advocate to make sure the insurance company response is timely and that coverage interpretations are made in a way that is most favorable to you. Average agents mail the claim in and hope for the best. Professional agents get involved and stay involved until a fair determination is made. The choice of an agent is so critical that it should never be based on relationships. Knowledge, skill and conscientiousness are the qualities to look for.*

*Your mission is clear. Your job as a manager of an emergency service organization is to keep the organization in a continuous state of readiness. Risk management techniques help you maintain that state of readiness, and insurance is the most important technique in the risk management process. Contrary to popular opinion, insurance is not a commodity. It is a complex set of contractual promises the quality of which can make all the difference in the world when something serious happens. Coverages need to be matched to exposures, limits have to be adequate and agent and company have to be committed to delivering on their promises in a fair and timely manner. With the help of a professional agent and a willingness on your part to dig into the details, your insurance and risk management program can be designed to assure that you will be better prepared to complete your mission when the unexpected happens.*

## SECTION # 10

### SOURCES OF REFERENCE

There are numerous proposed bills and bills which are signed into law which Fire Districts should be aware of in performing their duties. A source for obtaining this information is Legislative Services in Trenton. This office will assist you in obtaining legislation and/or advising you as to the status of any particular bill. Contact may be made by calling 1-800-792-8630. This number may be reached Monday through Friday, 9:00 a.m. to 5:00 p.m., and when the Legislature is in session. This information plus State Statutes can be found on the internet. The URL is [www.njleg.state.nj.us](http://www.njleg.state.nj.us).

In addition to the above another source of information is the Attorney General's opinions. Many times the Attorney General's office issues internal opinions to government agencies or Departments, which may be of assistance in addressing a particular issue. A request can be made of the Attorney General's office or DCA as to whether the opinion may be shared. There are also published Attorney General's opinions, which may be obtained by contacting their office. The New Jersey Register lists rule adoptions/changes to the Administrative Code effected by Department Heads and the Governor.

### N.J.S.A. 40A:14-70 et. seq.

- 14-70 Establishment of fire districts; boards of fire commissioners; powers; members; election; term of office; vacancies
- 14-70.1 Fire Districts; establishment of or contract with volunteer fire companies
- 14-71 Candidates; nominations
- 14-72 Annual election; members of board and determination as to money to be raised
- 14-73 Ballots for election of commissioners
- 14-74 Elections; notice; publication; eligibility of voters
- 14-75 Use of voting machines
- 14-76 Polls; hours
- 14-77 Manner of conducting elections
- 14-78 Appropriations and other matters to be voted upon
  - 14-78.1 Fire district budget; time of introduction; public hearing notice
  - 14-78.2 Adoption of fire district budget
  - 14-78.3 Amendments; hearing; notice
  - 14-78.4 Adoption of budget; time; advertisement
  - 14-78.5 Affirmative vote by majority of legal voters for final adoption; certification of amount to assessor; fixing budget after negative vote
  - 14-78.6 Separate sections for fire district budget
  - 14-78.7 Separate items in operating appropriations sections
  - 14-78.8 Separate items in fire district budget
  - 14-78.9 Transfers of excess funds appropriated for designated line items to line items with insufficient appropriations
  - 14-78.10 Transfers of excess line item appropriation to pay claims from preceding year for other line items
  - 14-78.11 Emergency appropriations
  - 14-78.12 Limitation on emergency appropriation
  - 14-78.13 Emergency appropriation procedure
  - 14-78.14 Total of emergency appropriations as deferred charge in budget for succeeding year
  - 14-78.15 Financing emergency appropriations



### N.J.S.A. 40A:14-70 et. seq. continued

- 14-78.16 Fire district fiscal years; conversions from other fiscal years
- 14-78.17 Temporary budget for contracts, commitments, or payments prior to adoption of regular budget
- 14-79 Assessment and collection of taxes; disposition of tax proceeds
- 14-80 Borrowing money in anticipation of revenue
- 14-81 Board of fire commissioners; general powers
- 14-81.1 Fire districts; paid positions; establishment; resolution; procedure for passage; publication
- 14-81.2 Qualifications for appointment to paid position
- 14-81.3 Supervisory authority
- 14-81.4 Employees and volunteer firemen; reimbursement for expenses and losses
- 14-81.5 Travel expenses; advances
- 14-82 Limitation of average hours of duty for uniformed members of fire district fire departments
- 14-83 Leasing space in building of fire district
- 14-84 Revenue for fire district purposes; limitations; meetings
- 14-85 Acquisition of property and equipment for fire districts; limitations; referendum for bonds issuance
- 14-85.1 Appropriations to purchase first aid, ambulance, rescue or other emergency vehicles, equipment, supplies and material
- 14-86 Voting on bond issue of fire district; issuance and sale
- 14-86.1 Fire district bonds; bond anticipation notes
- 14-87 Payments of interest and principal; inclusion in budget; borrowing to pay
- 14-88 Compensation for members of boards of fire commissioners
- 14-89 Fire district treasurer, custodian of money; bond; annual audit
- 14-90 Enlargement of a fire district
- 14-91 Dissolution of fire district
- 14-92 Cancellation of taxes or refunds on dissolution of fire district
- 14-93 Illegally created fire district; abatements or refunds
- 14-94 Formation of new municipalities; abolition of fire district; apportionment of assets and liabilities
- 14-95 Establishment of Junior Firemen's Auxiliary
- 14-96 Eligibility for membership in the Junior Firemen's Auxiliary
- 14-97 Insurance coverage for members
- 14-98 Rules and regulations governing activities of Junior Firemen's Auxiliary

## *SECTION # 11*

### **LOSAP**

The Governor signed into law the Length of Service Award (LOSAP) legislation which would provide a benefit for volunteer firefighters and first aiders. Set forth in the appendix is the legislation and rules and regulations concerning LOSAP. Also attached is a form of Resolution and Ballot to be utilized relative to securing approval of LOSAP by the legal voters. The utilization of LOSAP is to recruit and retain volunteers and this type of program has been established in many states.

There are many issues concerning LOSAP such as vesting which are subject to different interpretations and which may have to be clarified through further legislative enactments.