

FIRE COUNSEL NOTES



Take Care Before You Burn!

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Fire protection districts are frequently contacted by property owners in their jurisdiction who offer to donate houses or buildings for use by the district's fire department for training. Typically, this involves the structure being used for a period of time for a variety of training exercises and then being completely burned at the conclusion of the training process. While this can be a very useful training method for fire departments many of which may have very few actual structure fire calls each year, there are several matters that districts should be aware of in undertaking such training and in accepting an offer of this type.

Any donation of a building for a training exercise should be the subject of a written agreement with the donor/property owner which covers at least the following several points:

- The writing should memorialize the donation, that is, it should state that the owner is donating the structure to the district for training without the payment of any consideration by the district. This avoids any later dispute that the donor "sold" the structure to the district. If the donor intends to treat the donation as a tax deductible item, it may be necessary for the district to issue an acknowledgement of the donation, but

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the district should not simply attest to the value of the donation at the request of the donor.

- There should be a provision for the owner to cancel fire insurance, but not liability insurance coverage on the structure. Liability coverage should be maintained.
- The writing should contain a representation by the donor that the donor in fact owns the structure and has the right to donate it to the district for training, and for ultimate demolition.
- There should be a provision for clean up following the final burn. Is the district going to undertake this step for the donor? If so, that needs to be spelled out in particular so that there will be no dispute about how the remains following the final burn are to be left on the site.
- There should be an express authorization to use the structure for training and it is a good idea to specify the type of training, for example, smoke training, victim extraction and rescue, fire extinguishment.
- If the amount of time the structure is to be available to the district for the training is an issue, the time limit should be spelled out in the agreement.
- The agreement should specify responsibility for asbestos abatement or any required remediation of the structure before it is demolished. Typically, the district would not assume this responsibility and the donor would represent in the writing that all necessary abatement or remediation has been performed. Similarly, if there are any underground storage tanks or utility issues, these should also be addressed.
- In many jurisdictions, a permit may be required for the demolition by burning or otherwise, and the writing should specify who will be responsible for obtaining any required approvals or permits. The district should request a copy of any permit.
- The writing should contain a full and complete release by the donor in favor of the district, the fire department, and its members for any property damage or other claims arising from the training and the demolition by burning the structure. It should also specify that the district will endeavor to avoid damage to other structures nearby, but that no guarantee can be made in this regard.

- The donor will likely want the writing to contain language that the district has general public liability insurance which covers its training activities and it may want to be added as an additional insured on the district's policy of insurance. The donor may want a certificate of insurance reflecting this coverage. The donor may also want a representation that the district has workers compensation insurance coverage in effect. Districts should confer with their insurance representatives and carriers about these insurance issues.

From the district's side, it is important that it have general liability insurance coverage in place which will cover any claims which

may arise from the activities conducted in the structure by its department members. This should include coverage for claims of property damage or personal injury by third parties such as adjoining property owners whose structures might be damaged in the event of loss of control.

The district will also generally be responsible for obtaining the necessary permit from the Illinois Environmental Protection Agency for the burn. Typically, the owner will not undertake that step and it will be up to the district to be certain that this clearance is in place before any open burning occurs.

Last, as noted above, the district needs to be clear regarding its responsibilities following the

completion of the training exercises and the burn. The district typically would not want to be responsible for the removal of any debris from the site or for clearing the site for the owner. The donor should be clear that this is not being undertaken by the district.

It is a good idea for districts to have their legal counsel develop a form which covers the foregoing issues and for the district to confer with its counsel and its insurance representative in connection with the acceptance of a donation of a structure for a burn exercise. ■