

Whether you are single or married, you need a will. If you die without a will, your estate will be distributed according to a formula set by the Legislature. Of course, this formula may be very different than what you actually want. Without a will, people you intended to take care of may end up with nothing. You have the right to decide how your assets will be distributed upon your death, but in order to do so, you have to make a will. We can help. If you are an active *or retired* FDNY firefighter living in New York State, we will prepare a will for you and your spouse free of charge. We will also prepare health-care proxies for you and your spouse.

**TAKE CARE OF YOUR FAMILY - NOW!
WE PREPARE SIMPLE WILLS FOR FREE
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A grateful client's son

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of luck. If he needs additional surgeries related to his burns that were not anticipated, he may not bring a lawsuit to recover for the additional pain and suffering he will endure. When his personal-injury case settled, the fat lady sang, and the case was over, never to be reopened.

In contrast, for sick 9/11 workers, the story is very different. One of the most significant pieces of legislation ever enacted for the protection of rescue workers is the James Zadroga 9/11 Health and Compensation Act. Firefighters and other rescue workers continue to be disproportionately affected by the 9/11 terrorist attacks, and doctors and researchers are still learning about the long-term effects of exposure to the toxins at Ground Zero.

Thanks to the Zadroga Act, firefighters are entitled to medical monitoring by physicians who are qualified to recognize and treat the problems for which 9/11 first responders are at risk. Members of the program are given a complete yearly physical, and are specifically tested for conditions that are linked to 9/11 exposure, so that they can be detected and treated early.

In addition, rescue workers who develop illnesses related to their exposure to 9/11 toxins are eligible for monetary compensation from the Victim Compensation Fund. What you might not know is that the Zadroga Fund is not, to borrow a phrase, a "one and done" benefit for rescue workers. The architects of the program recognized that the different illnesses associated with 9/11 exposure develop over different periods of time. It has happened more times than we care to recount, that a rescue worker developed gastroesophageal reflux, or asthma, and years later developed another covered condition - one of the 68 cancers that have been linked to 9/11 exposure. Unlike accident victims who bring traditional lawsuits, these 9/11 responders may file supplemental claims with the Zadroga Victim Compensation Fund for the newly diagnosed illnesses, although they already recovered from the Fund for the other illnesses.

The purpose of the Zadroga Health and Compensation Act is to help sick rescue workers who answered the call of duty during one of our nation's darkest hours. If you have been diagnosed with cancer that is covered under the program, you are entitled to treatment and compensation, as long as the VCF is still open (thanks to the Zadroga extension, the VCF is scheduled to remain open through December 20, 2020). But remember that you must register with the VCF within two years of the diagnosis.

This is the SIXTY-FIFTH edition of the BARASCH McGARRY SALZMAN & PENSON NEWSLETTER...attorney advertising which presents topics of interest to firefighters. For questions, additional copies, or more information about topics raised in this newsletter, call or write:

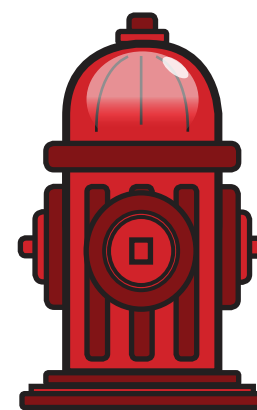
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FIREFIGHTERS' NEWSLETTER

INJURED FIREFIGHTERS: DON'T SHOOT YOURSELF IN THE FOOT

TREAT EVERY CD-72 AS IF IT WERE YOUR LAST

It may seem unfair to you, but the way that an accident is described on your Member Injury Report can mean the difference between a disability pension or a straight service pension. More often than not, it is not immediately apparent that an injury to a firefighter will be career ending. Rather, the full picture emerges over time, as he undergoes medical treatment. In other words, you likely will not know whether the CD-72 that you are filling out is for the accident that will end your career. You can be sure that if it is, the words you use to describe the accident will be the subject of intense scrutiny. Every CD-72, no matter how minor the injury might seem, must be filled out with the utmost care.



Firefighters must always be mindful of the distinction between an "incident" and an "accident". For pension purposes, courts define an accident as a "sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious upon impact." We know what you're thinking.

Like many legal definitions, this one isn't exactly a model of clarity. Many firefighters have actually quoted this language in the narrative portion of their CD-72's because they were concerned that if they didn't, their accident would be deemed an "incident". As a result, we have seen some very odd CD-72's. Injured firefighters have written things like: "Member tripped over charged hoseline, injuring left knee. The accident was fortuitous, unexpected, and injurious on impact." Nice try.

Quoting the court's language isn't the way to prepare a CD-72. Rather, if there were factors that made the accident "unexpected" and "unusual", you must describe them in the CD-72. For example, was visibility especially poor? Was the hoseline someplace unexpected? Was the layout of the building out of the ordinary because of illegal partitions? Was it hard to navigate the space because the premises where the accident occurred was a Collyer's mansion?

Another common pitfall is failing to note in your CD-72 all of the body parts that you injured in the accident, and to describe how each was injured. If you badly injure your shoulder, but also sustain

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9/11 VICTIMS DO NOT WAIVE THEIR FUTURE LEGAL RIGHTS WHEN THEY GET AN AWARD FROM THE ZADROGA VICTIM COMPENSATION FUND

Unlike line-of-duty personal-injury lawsuits, 9/11 rescue workers may apply for compensation for newly diagnosed illnesses, even if they have already received compensation

A person who brings a personal-injury lawsuit gets just one opportunity to obtain compensation for his injuries. After a jury verdict or a settlement, there is no second bite at the apple. The injured person may never go back to court to seek additional compensation for a new problem related to the accident, no matter how serious the problem. When the lawsuit is over, the

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"You protect us...we protect you."
THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS

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a minor injury to your left thumb, don't just say that you hurt your shoulder. The thumb injury may turn out to be more of a problem than you think.

Below are two narratives describing the same accident. Which do you think is better?

Narrative one:

"While ascending interior stairs, a marble step tread collapsed under my right foot. My head slammed into the steps above me. My right foot fell through the opening and my right knee struck the steel frame of the staircase. I tried to break my fall by putting my arms out in front of me, and jammed my right arm and right shoulder. I felt a shocking and shooting pain in my neck and right arm, and hyperextended my right knee. I was transported via Battalion vehicle to KCMC."

Narrative two:

"Member fell on a broken stair tread, injuring foot, right knee and right arm and shoulder. The accident was fortuitous, sudden, and injurious on impact."

Obviously, the first example is preferable. It gives a thorough description of where and how the accident occurred, what the firefighter was doing at the time ("while ascending stairs, a marble step tread collapsed under my right foot"), and why the accident was unavoidable. It also describes how each of his injuries were sustained during the accident.

Narrative two doesn't mention that the step broke under his weight which is the very thing that made the accident unforeseeable. Since it doesn't describe that the step suddenly collapsed, and merely states that it was "broken", the firefighter missed an opportunity to document just how sudden and unexpected the accident was. Moreover, narrative 2 doesn't fully describe

the injuries and doesn't indicate how they occurred. And, it doesn't explain how significant the trauma was. This was a dramatic accident; narrative two doesn't impart that at all.

Remember, it is your right to ensure that your CD-72 is completed properly and to your satisfaction. The narrative descriptions are often filled out by an officer, but he or she is receiving details of the accident second-hand. You must read your CD-72 carefully. Don't just sign off on it. It's never a routine matter.

CD-72's are not just critical for disability-pension applications: They are also important in Line of Duty lawsuits

In the event that an injured firefighter brings a lawsuit to recover against negligent parties, the CD-72 will take front-and-center stage. If the accident description is not consistent with what the firefighter testifies to in court, the prospects of a successful jury verdict or settlement plummet. Be sure to include helpful details, and be truthful, always.

For example, we were once contacted by a firefighter who told us that he was injured at a fire while pulling a ladder off of a truck. He stepped into a sinking manhole cover while he was backing up with the ladder. However, here is what his CD-72 said:

"While pulling ladder off rig, member lost his footing and was struck in the knee by ladder."

That narrative caused a world of problems in the case. You can see what's wrong with the description: there is no mention of a defect in the road or a sinking manhole cover. He and his officer didn't think it was important to mention what caused him to

lose his footing. But it was, especially since the accident was unwitnessed. It was an uphill battle to prove that the omission of this detail didn't mean that the manhole wasn't a factor in causing the accident. The defendant's insurance company used the omission in the CD-72 when they cross-examined him at trial. Instead of helping himself, this firefighter shot himself in the foot.

Litigation against negligent property owners is, by nature, adversarial, and proceedings before pension boards can be just as challenging. Don't create unnecessary problems for yourself by failing to accurately complete your CD-72. And do tap into the resources that are available to you. If you have a question about what to include in your CD-72 after an accident, reach out to the union. You may also call an attorney experienced in representing New York City firefighters for a second opinion.



Sara, Lorena and Jessica enjoyed meeting delegates at the UFA Seminar.

FIREFIGHTER CANCER RATES CLIMBING SKIN AND PROSTATE CANCER ARE MOST COMMON

Mike Barasch was invited to both the Uniformed Firefighters Association Education Seminar and the Uniformed Fire Officers Association Seminar this spring. Mike met with Dr. Kerry Kelly, Chief Medical Officer of the FDNY's Bureau of Health Services. While heart problems remain the number one cause of death of firefighters, Dr. Kelly discussed the alarming increase in the rate of cancer seen by the BHS medical staff. Dr. Kelly shared her department's statistics with the delegates and guests who attended the seminar. The list below is a warning to all firefighters that they need to be diligent about going for their annual physicals and skin screening exams.

While the statistics are influenced in large part by the exposure that many members had to the toxins at the World Trade Center (68 cancers have been linked to the WTC air and dust and the BHS has reported a 20-25% increase in cancers since 9/11), Dr. Kelly warned that all firefighters are at risk for cancer in general, and skin cancer in particular. There have been 1573 WTC-certified cancers diagnosed among active and retired firefighters since 2001.

Unfortunately, the BHS' WTC Health Program does not provide annual skin cancer screening but most health insurance companies, including GHI, will cover an annual exam. Dr. Kelly implored the delegates in attendance to spread the word to their fellow members: "Please get yourself checked out by a dermatologist," she said.

The most important reason to get your skin checked is, of course, the value of early detection. Identifying and removing a basal cell or squamous cell cancer early can save your life. Once someone is diagnosed with a less severe form of skin cancer, they are at increased risk for developing a melanoma, which can be lethal. For those of you who worked at the WTC site, if you needed any more incentive to go for a skin screening, you should know that there is a medical presumption that skin cancer was caused by your exposure to the WTC toxins. Once cancer is certified as WTC-related, it could very well mean an award of \$100,000 from the Victim Compensation Fund.

But, remember that everyone must register a claim within two years of the date of their cancer diagnosis. It breaks our heart when guys call us after the two-year deadline. Please don't let your friends and co-workers miss the deadline.

FDNY WTC TOP TEN CANCERS:

- | | |
|-------------------------------------|--------------------------------|
| 1. SKIN (NON-MELANOMA) CANCER – 492 | 6. LUNG CANCER – 54 |
| 2. PROSTATE CANCER – 367 | 7. KIDNEY/RENAL CANCER – 47 |
| 3. MELANOMA – 153 | 8. BLADDER CANCER – 47 |
| 4. LYMPHOMA (NON-HODGKINS) – 65 | 9. THYROID CANCER – 47 |
| 5. COLON CANCER – 57 | 10. LEUKEMIA, UNSPECIFIED – 39 |



Mike Barasch spoke with Dr. Kerry Kelly of the FDNY's BHS about the rising rate of cancers among firefighters at the UFA education Seminar.

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fat lady has sung.

To illustrate the point, let's consider a timely example: burn injuries. The Fire Department recently reported that fires are down 33% in New York City. Yet burn injuries to firefighters are *up* 33%. This anomaly may be in part due to a gap between firefighters' hoods and the collars of their bunker coats. Necks are sometimes exposed, especially when the chin strap isn't affixed.

A firefighter who has been burned may be able to recover compensation from various people who bear responsibility for the injuries. He may, for example, bring a lawsuit against the building/home owner who negligently caused the fire, or perhaps even the Fire Department if there was a problem with his gear. But once his lawsuit is resolved, he may never go back to court to get more money from the responsible parties, even if he develops a new condition that is directly related to the original accident. For example, if he also inhaled smoke at that fire, but didn't develop respiratory problems until after the lawsuit, he is out

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