



NDIRF COVERAGE, FINANCIAL, AND CLAIMS REVIEW

CEO BRENNAN QUINTUS

NORTH DAKOTA
NDIRF
INSURANCE
RESERVE FUND

DISCLAIMER

This presentation is provided for educational purposes only and provides a general description of NDIRF or NDFT coverage. Representations of coverage provided by the NDIRF or NDFT within the context of the presentation may not reference all language contained in the coverage documents provided by the NDIRF or the NDFT. Refer to the appropriate coverage documents for exact coverage, conditions, exclusions, and other relevant information. Coverage documents can be viewed and downloaded from our website at www.NDIRF.com.

WHO WE ARE

NDIRF

- Liability
- Auto
- Public Assets

NDFT

- Property
- ND State Bonding Fund
- Employee Fidelity Risk

NDPHIT

- Health and ancillary benefit coverage



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WHY WE EXIST

The North Dakota Insurance Reserve Fund was formed in 1986 by North Dakota political subdivisions.

Today, our risk pool serves over 2,550 North Dakota political subdivisions:

- Cities, 34%
- Counties, 30%
- **Schools, 15%**
- Other, 22%



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WHY WE EXIST

- Evolution of Sovereign Immunity in North Dakota
 - “The King can do no wrong.”
 - Origin in English law
 - *Russell v. Men of Devon*, 2 T.R. 667, 100 Eng. Rep. R. 359 (1788).
 - The court feared an “infinity of actions” and no fund to pay damages.
 - Priority of the government over the individual.
 - First adopted in the United States in 1812
 - A Massachusetts court, relying upon the *Russell* decision, held that an incorporated county was immune from liability for the tortious acts of its employees. *Mower v. Leicester*, 9 Mass. 247.
 - The decision in *Mower* quickly became the law in many other states throughout the U.S.



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WHY WE EXIST

- Evolution of Sovereign Immunity in North Dakota
 - In North Dakota, the erosion of sovereign immunity began in late 1884 when a plaintiff was awarded damages arising from a broken leg caused by poor roadway maintenance. *Larson v. City of Grand Forks*, 3 Dak. 307, 19 N.W. 414 (1884).
 - "It may be true, and we think is true, that the case of *Russell v. Men of Devon*, 2 Term R. 667...never was intended to be authoritative further than that the inhabitants of a certain territory designated as a county, but not incorporated, and having no corporate purse, could not be held liable for such injuries, and that the case is not an authority for nonliability of counties in this country, where counties are incorporated and have a corporate purse." *Vail v. Town of Amenia*, 4 N.D. 239, 59 N.W. 1092, 1094 (1894).

WHY WE EXIST

- Evolution of Sovereign Immunity in North Dakota
 - In 1946, the federal government passed the Federal Tort Claims Act (28 U.S.C. § 2674), waiving immunity to suit and liability for some actions. Many state legislatures followed by enacting statutes to define immunity limits for state governmental entities and employees.
 - Ultimately, throughout the 1950s-1980s, states began abolishing absolute sovereign immunity and, in some cases, allowing legislatures time to draft a statutory framework for suits against local government.



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WHY WE EXIST

- Evolution of Sovereign Immunity in North Dakota
 - Sovereign immunity for North Dakota political subdivisions was ultimately abolished in *Kitto v. Minot Park District*, 224 N.W.2d 795 (N.D. 1974).
 - “We hold that no tort action will lie against governmental units for those acts which may be termed discretionary in character” *Id.* at 804.
 - The court nudged the legislature to create a liability framework for government liability.
 - North Dakota’s legislature created that framework in 1975.



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WHY WE EXIST

This Time Magazine cover article titled, “Sorry, America, Your Insurance Has Been Cancelled,” is from March 24, 1986.

“The article referenced the collapse of the U.S. commercial liability insurance market – principally associated with run-away inflation and the bursting of a historically high interest rate bubble” (BCURiskAdvisors.com, 2023)



Image source: <http://content.time.com/time/covers/0,16641,19860324,00.html>

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CREATION OF PUBLIC ENTITY POOLING

Government risk pools, like the NDIRF, started to emerge in the 1970s after commercial insurers abandoned the local governmental marketplace.

According to the Association of Governmental Risk Pools (AGRiP), over 500 pools provide coverage to local governments across the United States and Canada. AGRiP estimates that at least 80% of the over 90,000 public entities in the U.S. obtain coverage from a governmental risk pool.



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LIABILITY LIMITATIONS

Under North Dakota Century Code Chapter 32-12.1-03, a political subdivision's liability is limited for personal injury or property damage caused by the negligence or some other wrongful act or omission by an employee acting within the scope of the employee's employment for the political subdivision.

It's important to note that while liability limitations exist under North Dakota law, they may not apply to all liability claims. For example, if your District was found to have violated a person's federally protected rights, liability limitations may not apply, and your District may be liable for amounts much higher than the liability limitations afforded under N.D. Cent. Code § 32-12.1-03. We most often see claims not protected by the liability limitations under North Dakota law in the context of employment matters, law enforcement, and corrections.

CHALLENGES TO LIABILITY LIMITATIONS

- In North Dakota, the caps were challenged due to a significant school bus accident. (see *Larimore Pub. Sch. Dist. No. 44 v. Aamodt*, 908 N.W.2d 442 (N.D. 2018)).
- The parents of injured students argued that the tort caps do not permit meaningful redress or access to the courts, therefore violating the North Dakota constitution.
- The School District argued that the caps did not violate the North Dakota constitution and that the School District provides an essential, mandated service and are unlike private citizens.
- The North Dakota Supreme Court ultimately found that the tort caps are constitutional, and the North Dakota legislature can set them at whatever level they determine is appropriate.

CHALLENGES TO LIABILITY LIMITATIONS

- Political subdivisions are required to provide schools and educational opportunities to all children, police, fire, and emergency services, water, sewage, and trash disposal, street and road maintenance, and dozens of other public services. Political subdivisions are captives to the public's needs. After *Kitto*, they also became responsible to answer for any negligent acts in addition to providing vital public needs. *Larimore Pub. Sch. Dist. No. 44 v. Aamodt*, 908 N.W.2d 442, 456 (N.D. 2018).
- Every dollar siphoned away to pay for tort liability, or to purchase more insurance removes limited resources and tax revenues collected for the specific public function of the political subdivision. The legislature certainly must have had these issues in mind when it set out to mitigate the hardships created by the *Kitto* decision. *Id.*

CHALLENGES TO LIABILITY LIMITATIONS

- Is it better to provide for unlimited governmental liability in tort to individual private parties, or it is better to limit such liability in order to avoid curtailing services on which the public as a whole depends for its health, safety, and welfare? *Id.* at 460.

CURRENT LIABILITY LIMITATIONS

During the 2021 legislative session, N.D. Cent. Code § 32-12.1-03 was adjusted to increase the liability limitations afforded to political subdivisions under the following schedule:

- Effective July 1, 2022: \$375,000/person; \$1 million/occurrence
- Effective July 1, 2023: \$406,250/person; \$1.625 million/occurrence
- Effective July 1, 2024: \$437,500/person; \$1.75 million/occurrence
- Effective July 1, 2025: \$468,750/person; \$1.875 million/occurrence
- Effective July 1, 2026: \$500,000/person; \$2 million/occurrence

Visit with your local agent to review your District's current liability coverage amount and assess your District's risk to determine an adequate coverage amount. *A few key factors to consider are your District's size and the types of services you provide.*

Given these increases as well as the social inflationary pressures impacting claims not subject to the liability limitations afforded under N.D. Cent. Code § 32-12.1-03, we recommend performing an annual liability coverage amount review .

Contact the NDIRF to request a liability coverage amount increase.



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PERSONAL LIABILITY OF EMPLOYEES

- Was the employee acting within the scope of their employment?
- If so, did their conduct constitute reckless or grossly negligent conduct, or willful or wanton misconduct?
- If within the scope of their employment and not conduct constituting reckless or grossly negligent conduct, or willful or wanton misconduct, then it is likely that the local government is required to defend and indemnify the employee.
 - The tort caps will likely apply under the above circumstances.

NDIRF COVERAGE HIGHLIGHTS

- **Personal Injury and Governance Liability**
 - Up to \$10 million limit of liability available
 - No annual aggregate limit
 - Defense Costs are paid in addition to the limit of liability
 - Liquor Liability
 - Employment Practice Liability
 - Discrimination and Harassment are included in the definition of Personal Injury
 - Employee Benefits Liability
 - Special Event coverage (charge may apply)
 - \$250K coverage for sudden and accidental pollution liability
- **Medical Payments**
 - Provides \$2,500 to volunteer personnel while responding to an emergency
 - Excludes inmates, students, sidewalks, parking lots, vacant property

NDIRF COVERAGE HIGHLIGHTS

- **Automobile**
 - No deductible for glass repair
 - Towing (No deductible)
 - Rental Reimbursement
 - Stated Amount Coverage
 - Firefighting Vehicles and Ambulances
- **Public Assets**
 - Blanket option
 - Personal Property of Emergency Personnel
 - Towing and Debris Removal
 - Rental Reimbursement

WHO IS A COVERED PARTY?

- You (The Named NDIRF Member)
- Your past/present employee, elected individual, or volunteer acting on your behalf
- Your past/present employee, elected individual, or volunteer while rendering aid as a result of an accident
- Any commission, agency, board, district, authority, or similar entity while acting on your behalf
- However, an Independent Contractor is NOT a covered party

VIOLENT EVENT COVERAGE

- “Violent Event” means an event that is caused by an intentional act or a series of related intentional acts and involves the use of a physical object, instrument, device, tool, or weapon, other than the human body, for the purpose of injury or death to “affected individual(s)” and results in one or more “affected individual(s)” sustaining injury or death on your premises.
- “Affected Individual(s)” means your student(s), employee(s), volunteer(s), and anyone else occupying your premises with your permission who sustains injury or death as a result of a “violent event”. “Affected individual(s)” does not include the perpetrator(s) of the “violent event.”
- “Response Expenses” means reasonable and necessary expenses incurred by an “affected individual(s)”, arising out of a “violent event”, for the following: 1. First Aid and Other medical payments; 2. Ambulance or other medical transportation; 3. Funeral expenses; 4. Counseling services; and 5. Counseling services for immediate family members of “affected individual(s)”.

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VIOLENT EVENT COVERAGE

- Coverage Limits
 - \$25,000 per person
 - \$250,000 per event
 - \$250,000 aggregate limit

IDEA DUE PROCESS HEARING COVERAGE

- **Option 1: Parent or guardian attorney's fees** awarded by a court of competent jurisdiction as the result of a request for a hearing under The Individuals with Disabilities Education Act (IDEA), a similar North Dakota State Plan for education of individuals with disabilities, or other federal law for education of individuals with disabilities are covered. **Payment of attorney fees is limited to \$50,000.**
- **Option 2: Your attorney fees and expenses** incurred arising out of a request by a parent or guardian for a hearing under The Individuals with Disabilities Education Act (IDEA), a similar North Dakota State Plan for education of individuals with disabilities, or other federal law for education of individuals with disabilities are covered. **A parent(s) or guardian(s) attorney's fees** are covered if they are awarded by a court of competent jurisdiction. **Payments of all attorney fees and expenses are limited to \$50,000.**

CYBER COVERAGE

NDIRF liability coverage continues to support the further implementation of technology in schools by offering cyber liability coverage.

- \$250,000 Data Breach Expense Coverage
 - Post Breach Consulting Services
 - Notification Services
 - Notification Recipient Services
- Data Breach Liability Coverage increased to \$1 million
- Cyber Liability Coverage limit is \$1 million under the NDIRF Liability Memorandum of Coverage.

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Schools can save up to four percent (4%) on liability coverage by implementing these three cybersecurity services:

- **Cyber Maturity Assessment**
- **Network Monitoring System**
- **Internal Network Scanning Service**

These services are available at no cost to Schools through NDIRF.

2022 FINANCIAL OVERVIEW

Here are some notable measures from the NDIRF's 2022 financial performance:

- \$17.9 million in written premium
- \$9.2 million in losses
- -\$2.7 million in net loss
 - \$2.45 million operating profit
 - \$5.1 million unrealized investment losses
- \$22.6 million in members' equity



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Conferment of Benefits

Our Conferment of Benefits program is designed to return surplus premium to members. **Our board of directors did not declare a 2022 Conferment of Benefits** largely due to investment market conditions; however, the NDIRF experienced an exceptionally strong operational year, reporting \$2.45 million in profit.

Additionally, we did not file for a 2023 general rate increase.



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CLAIMS PERFORMANCE

In 2020, School Districts accounted for 298 of 1,648 NDIRF claims reported (18%). The total dollar amount incurred from these claims was \$1.2 million.

In 2021, School Districts accounted for 416 of 1,729 NDIRF claims reported (24%). The total dollar amount incurred from these claims was \$2.07 million.

In 2022, School Districts accounted for 440 of 2,198 NDIRF claims reported (20%). The total dollar amount incurred from these claims was \$2.1 million.

AUTO & MOBILE EQUIPMENT CLAIMS

Includes only School District claim information.

2020

- 55 Accidents (stationary object, backing, rocks or debris, etc.) totaling \$135,934
- 44 Owned Property: Collision (towing, intersection, etc.) totaling \$126,159
- 105 Owned Property: Other than Collision (glass damage, hail, etc.) totaling \$136,300

Auto and mobile equipment claims accounted for 204 of the 298 total School District claims (68%).

The auto and mobile equipment claims incurred total was \$398,393, which is 32% of the total amount of claims incurred (\$1,246,469).

AUTO & MOBILE EQUIPMENT CLAIMS

Includes only School District claim information.

2021

- 53 Accidents totaling \$278,633
- 45 Owned Property: Collision totaling \$121,478
- 168 Owned Property: Other than Collision totaling \$287,619

Auto and mobile equipment claims accounted for 266 of 416 total claims (64%).

The auto and mobile equipment claims incurred total was \$687,730, which is 33% of the total amount of claims incurred (\$2,071,577).

AUTO & MOBILE EQUIPMENT CLAIMS

Includes only School District claim information.

2022

- 73 Accidents totaling \$481,592
- 58 Owned Property: Collision totaling \$198,664
- 171 Owned Property: Other than Collision totaling \$342,107

Auto and mobile equipment claims accounted for 302 of 440 total (67%).

The auto and mobile equipment claims incurred total was \$1,022,363, which is 48% of the total amount of claims incurred (\$2,108,657).

AUTO & MOBILE EQUIPMENT CLAIMS

The following information includes auto and mobile equipment claims reported and opened/reopened from Jan. 1, 2018, to March 3, 2023, from only School District loss data.

Five-Year Review

- **Total Number of Claims: 1,457**
- Total Amount Incurred: \$3.5 million
- Average cost per claim: \$2,424

Five-Year Claim Cost Trends

- Accident – Intersection: \$552,776 (44 claims)
- Accident – Stationary Object: \$346,855 (132 claims)
- Collision – Stationary Object: \$410,691 for 102 claims

MEMBER SERVICES FOR AUTO & MOBILE EQUIPMENT INCIDENTS

The NDIRF offers defensive driving courses (DDC) online and in-person as a tool to help reduce accident claim types.

- Courses certified by the National Safety Council
- In-person or online

Our online training platform LocalGovU also offers driving courses. LocalGovU is available at www.NDIRF.com>Training.

EMPLOYMENT CLAIMS

Includes only School District claim information.

2020

- 19 claims (discrimination, harassment, wage dispute, etc.) totaling \$32,228
 - Employment contract (\$9k for 2 claims)
 - DOL/EEOC complaint (\$7k for 1 claim)
- Comprised 19 of 298 school claim counts from 2020 (6%)
- Average cost per claim: \$1,696

2021

- 20 claims totaling \$35,471
 - Employment contract (\$17k for 3 claims)
- Comprised 20 of 416 school claim counts from 2021 (5%)
- Average cost per claim: \$1,773

EMPLOYMENT CLAIMS

Includes only School District claim information.

2022

- 8 Claims totaling \$121,889
 - DOL/EEOC complaint (\$80k for 5 claims)
 - Wage dispute (\$42k for 1 claim)
- Comprised 8 of 440 total 2021 claims (2%)
- Average cost per claim: \$15,236

EMPLOYMENT CLAIMS

The following information includes employment claims reported and opened/reopened from Jan. 1, 2018, to March 3, 2023, from only School District loss data.

Five-Year Review

- Total Number of Claims: 65
- Total Amount Incurred: \$326,286
- **Average Amount Incurred Annually: \$65,257**
- Average cost per claim: \$5,020

Five-Year Claim Cost Trends

- DOL/EEOC complaint: \$132,428 for 9 claims
- Wage Dispute: \$48,622 for 5 claims
- Employment contract: \$26,035 for 6 claims

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MEMBER SERVICES FOR EMPLOYMENT INCIDENTS

- HR Collaborative for Local Government
 - Available at www.HRNDGOV.org
 - HR Reference Guide for Local Government
 - Summer Virtual Series, first session held June 7
 - Biennial Conference, April 17-18, 2024, in Bismarck
- LocalGovU
 - Available at www.NDIRF.com>Training

ND STATE FIRE AND TORNADO FUND (NDFT)

When we assumed administration of the NDFT in June 2019, we shared our three-year transition process with the ND Insurance Department and Fund's members:

- **Year 1:** Understand operation and process
- **Year 2:** Target immediate changes (valuations, coverage issues, rating)
- **Year 3:** NDFT operation looking like NDIRF, including updated coverage forms, rating, and valuation/inspection processes
- After Year 3, NDFT will look like an NDIRF product

Today, our goal is to review all property covered under the Fund by 2025.



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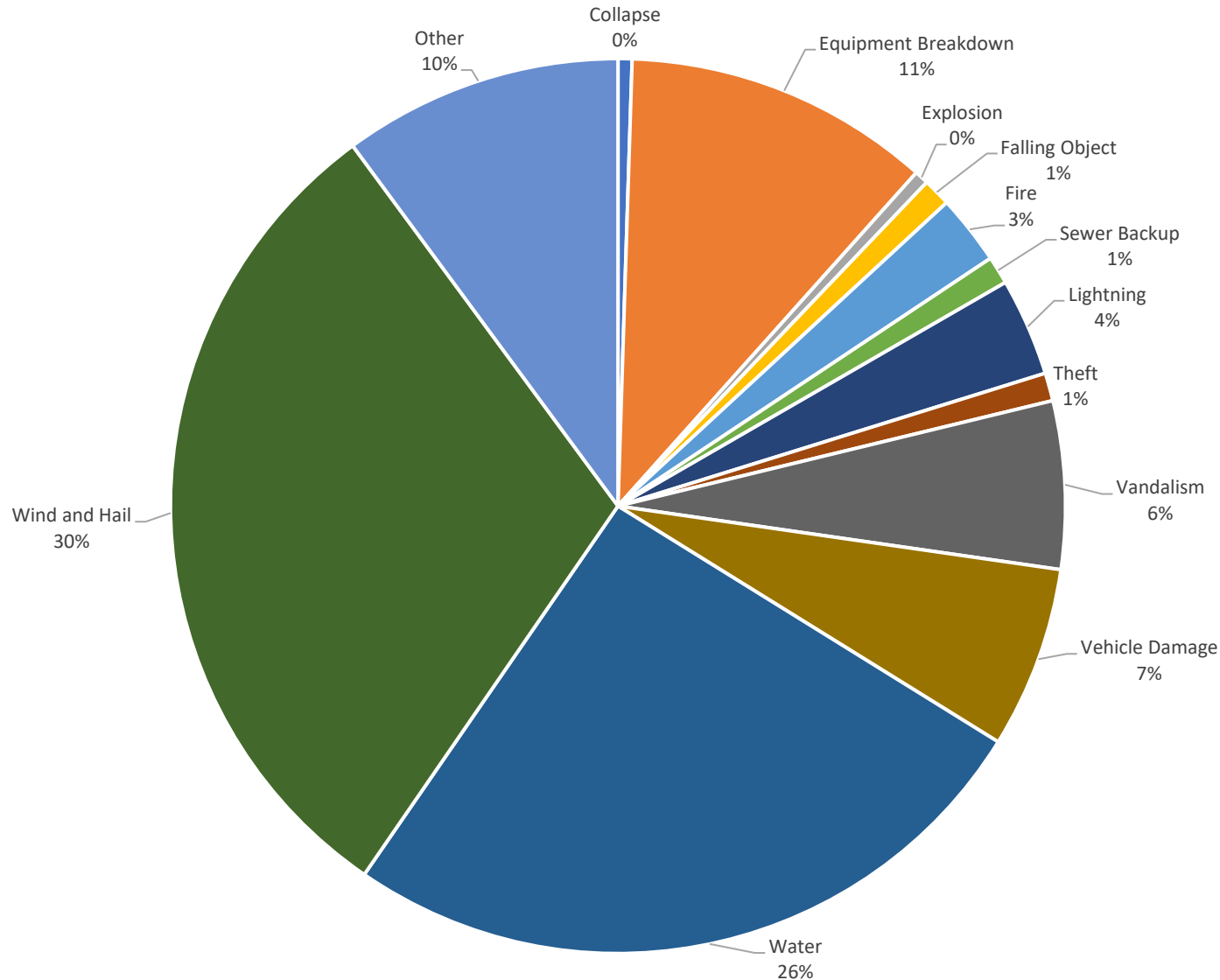
ND STATE FIRE AND TORNADO FUND (NDFT)

In 2022, Schools accounted for 77 of the North Dakota State Fire and Tornado Fund's total 292 claims (26%).



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NDFT CLAIMS REPORTED (2018-23)



2022

- **Water (total incurred): \$343,272**
- Wind and hail (total incurred): \$193,425
- Collapse (total incurred): \$186,500

Claims total (all School claims):
\$817,733

NDFT ENDORSEMENTS

Endorsements are additional coverages you can purchase to enhance your existing North Dakota State Fire and Tornado Fund coverage.

The Fund offers the following endorsements to help members enhance their coverage should they experience a covered loss:

- Blanket Limit of Coverage
- Wind/Hail Per Building Deductible Removal
- Increase Sewer Backup Limit to \$25,000
- Additional Per Building Debris Removal Limit

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The Fund also offers **Equipment Breakdown Coverage** to help cover repair or replacement costs associated with an unexpected mechanical, electrical, or pressure failure caused by a breakdown.

MEMBER SERVICES FOR NDFT

Property Valuation Survey

- Available at www.NDIRF.com>Member Services> F&T Coverage Forms
- Enter username NDFT and *fire* as password

Risk Assessment Survey

- Contact our Member Services Department at MemberServices@ndirf.com

Certified Playground Safety Inspector (CPSI) Course

- Offered by the North Dakota Park and Recreation Association
 - NDIRF-sponsored scholarships

QUESTIONS?

Please contact us if you have any questions regarding this presentation:



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