

RESOLUTION NO. 15-2016

A RESOLUTION PURSUANT TO K.S.A. 40-3901, et. seq., REQUIRING PAYMENT TO CHEROKEE COUNTY, KANSAS, OF A PORTION OF INSURANCE PROCEEDS COVERING A DAMAGED STRUCTURE TO BE PAID TO CHEROKEE COUNTY, KANSAS, WHERE SUCH DAMAGED STRUCTURE HAS NOT BEEN MADE SAFE AND SECURE

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CHEROKEE COUNTY, KANSAS, THAT THE FOLLOWING RESOLUTION BE ADOPTED:

SECTION 1. GENERAL AUTHORITY. K.S.A. 19-101, *et. seq.*, and K.S.A. 19-212 authorize the Board of County Commissioners of Cherokee County, Kansas, to transact all County business and perform all powers of local legislation deemed appropriate, and to make all contracts and do all other acts in relation to the property and concerns of the County necessary to the exercise of its corporate or administrative powers.

SECTION 2. SCOPE AND APPLICATION. The County is hereby authorized to utilize the procedures established by K.S.A. 40-3901 *et. seq.*, whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the County arising out of any fire, explosion or windstorm where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure unless there is compliance with the procedures set out in this resolution.

SECTION 3. LIEN CREATED. The governing body of Cherokee County, Kansas, hereby creates a lien in favor of the County on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the County, caused by or arising out of any fire, explosion or windstorm where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policies covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property, by or on behalf of the County, which is an encumbrance on real property, whether or not evidenced by written instrument or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of lien.

SECTION 4. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by Section 3, the insurer or insurers shall contact the County Treasurer of Cherokee County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances, a draft payable to Cherokee County, Kansas.

SECTION 5. SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

SECTION 6. PROCEDURE.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto shall have been paid, the insurance company or companies shall execute a draft payable to the County Treasurer of Cherokee County, Kansas, in an amount equal to the sum of 15 percent of the covered claim payment, unless the code enforcement officer of the County has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the County shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this resolution, the insurance company shall provide the County with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon, the code enforcement officer shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the County and apprise them of the procedures to be followed under this ordinance.

SECTION 7. FUND CREATED; DEPOSIT OF MONEYS. The County Treasurer of Cherokee County, Kansas, is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the County Treasurer of Cherokee County, Kansas, as provided for by this ordinance, shall be placed in said fund and deposited in an interest-bearing account.

SECTION 8. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this ordinance, the County Treasurer of Cherokee County, Kansas, shall immediately notify the code enforcement officer of said receipt and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within 20 days of the receipt of said moneys, the code enforcement officer shall determine, after prior investigation, whether the County shall instigate proceedings under the provisions of K.S.A. 12-1750, et. seq., as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this resolution the code enforcement officer shall notify the County Treasurer of Cherokee County, Kansas, whether he or she intends to initiate proceedings under K.S.A. 12-1750, et. seq., as amended.

(d) If the code enforcement officer has determined that proceedings under K.S.A.12-1750, et. seq., as amended, shall be initiated, he or she will do so immediately but no later than 30 days after receipt o the moneys by the County Treasurer of Cherokee County, Kansas.

(e) Upon notification to the County Treasurer of Cherokee County, Kansas, by the code enforcement officer that no proceedings shall be initiated under K.S.A. 12-1750 et. seq., as amended, the County Treasurer of Cherokee County, Kansas, shall return all such moneys received, plus accrued, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies.

SECTION 9. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the code enforcement officer has proceeded under the provisions of K.S.A. 12-1750 et. seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, is any, shall be paid to the insured.

SECTION 10. SAME; DISPOSITION OF FUNDS. If the code enforcement officer, with regard to a building or other structure damaged by fire, explosion or windstorm determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the County Treasurer of Cherokee County, Kansas, under the authority of Section 5(a) relating to that building or other structure shall be used to reimburse the County for any expenses incurred by the County in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the code enforcement officer shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the County exceed the insurance proceeds paid over to the County Treasurer of Cherokee County, Kansas, under Section 5(a), the code enforcement officer shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

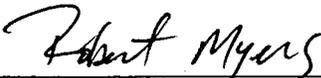
SECTION 11. EFFECT UPON INSURANCE POLICIES. This resolution shall not make the County a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

SECTION 12. INSURERS; LIABILITY. Insurers complying with this resolution or attempting in good faith to comply with this resolution shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing of disclosing any information pursuant to this ordinance.

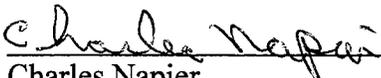
SECTION 13. All resolutions and parts thereof in conflict herewith are hereby expressly repealed in so far as they conflict herewith.

SECTION 14. This ordinance shall be retroactive to January 1, 2016, and be in full force and effect from and after passage and publication in the official County newspaper.

PASSED AND APPROVED this 27 day of June, 2016, by the Board of County Commissioners of Cherokee County, Kansas.



Robert Myers, Chairman
Cherokee County Commissioner



Charles Napier
Cherokee County Commissioner



Patrick Collins
Cherokee County Commissioner

ATTEST:



Rodney D. Edmondson, County Clerk

SEAL