

**RESOLUTION NO. 2013-27**

**A RESOLUTION ADOPTING A PROCEDURE UNDER K.S.A. 40-3903 REGARDING THE PAYOUT OF INSURANCE CLAIMS IN THE UNINCORPORATED AREAS OF ELLIS COUNTY WHEREIN DAMAGE IS IN EXCESS OF 75 PERCENT OF THE FACE VALUE OF THE POLICY**

**WHEREAS**, From time to time, a building or other structure in the unincorporated areas of Ellis County becomes damaged by fire, explosion, or windstorm in excess of 75 percent of the face value of the insurance coverage on said building or other structure, and

**WHEREAS**, From time to time, It is possible the insured may take the payout of the insurance without taking remedial action to clean-up said damaged building or other structure, and

**WHEREAS**, the Ellis County Commission is authorized to adopt the procedure in K.S.A. 40-3903 under which the County will receive a portion of the insurance payout on any building or other structure in the unincorporated areas of Ellis County damaged by fire, explosion, or windstorm to the extent that payout on the damage exceeds 75 percent of the face value of the policy covering such building or other structure to insure the likelihood of cleanup of said building or other structure, and

**WHEREAS**, by reviewing the list of cities and counties that have adopted this regulation, it appears obvious that this regulation is primarily applicable to areas of residential concentration,

**NOW, THEREFORE, BE IT RESOLVED** by the Ellis County Commission that the following procedure be adopted:

1. **ADOPTION OF PROCEDURE.** Ellis County is hereby authorized to utilize the procedures established by K.S.A. 40-3903, 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 unincorporated areas of Ellis County that arises out of any fire, explosion, or windstorm where the amount of the recoverable loss or damage to the building or other structure is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless the building or other structure insured is cleaned up to the satisfaction of Ellis County.
2. **LIEN CREATED**
  - (A) Ellis County hereby creates a lien, pursuant to K.S.A. 40-3904, 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 unincorporated areas of Ellis 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 policy covering such building or other insurance structure. The lien shall arise upon any unpaid tax, special ad valorem levy, special assessment, or any other charge imposed upon real property by or on behalf of the County, which is an encumbrance on real property, whether evidenced by written instrument, or such tax, levy, assessment, expense or other charge

that has remained un-discharged or at least one year prior to the filing of the proof of loss.

- (B) Prior to final settlement on any claim covered by this section, the insurer or insurers shall contact the County Treasurer to determine whether any such encumbrances are presently in existence. If so, the Insurer or Insurers shall execute and transmit, in an amount equal to that owing under the encumbrances, a draft payable to the County Treasurer.
- (C) A transfer of proceeds under this section shall be on a pro rata basis by all insurance companies insuring the building or other structure.

**3. TRANSFER OF FUNDS UPON SETTLEMENT OF CLAIM.**

- (A) When final settlement on a covered claim has been agreed to or achieved at between the named insured and the company, 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 fire 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 Ellis County Treasurer in an amount not to exceed 15 percent of the covered claim payment, unless the County Administrator has issued a certificate to the insurance company that the insured has removed the damaged building or other structure, as well as all associated debris, or has repaired, rebuilt, or otherwise made the premises safe and secure.
- (B) Companies insuring the building or other structure shall transfer such funds based on each company's pro rata share of the settlement of the covered claim. Policy proceeds remaining after the transfer to the County shall be disbursed in accordance with policy terms.
- (C) Upon transfer of the funds as required in this section, the insurance company shall provide the County with the name and address of the insured or insureds, the total insurance coverage applicable to the 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 County Administrator shall contact the named insured or insureds by certified mail, notifying them that the insurance proceeds have been received and apprising them of the procedures to be followed.

**4. PROCEDURE UPON RECEIPT OF MONEYS, INVESTIGATION.**

- (A) Upon receipt of moneys as provided by this resolution, the County Treasurer shall immediately notify the County Administrator of such receipt, and transmit all documents received from the insurance company to the County Administrator.

- (B) Within twenty (20) days of the receipt of the money as provided by this resolution, the County Administrator shall determine, based upon investigation, whether the County shall instigate proceedings, which provide for removal of unsafe or dangerous structures abandoned building and which utilizes the procedures outlined in K.S.A. 12-1752. For purposes of this resolution, the Rural Fire District Chief shall have the responsibility for determining an immediate hazard, pursuant to K.S.A. 12-1750 *et seq.* and the County Administrator shall have the responsibility for enforcement of this resolution.
- (C) Prior to the expiration of the twenty (20) day period established in this resolution, the County Administrator shall notify the County Treasurer whether the County intends to initiate proceedings under K.S.A. 12-1750 and this resolution.
- (D) If the County Administrator has determined that proceedings under K.S.A. 12-1750 *et seq.* and this resolution and subsequent amendments thereto shall be initiated, the County Administrator shall do so immediately, but no later than thirty (30) days after the receipt of the money by the County Treasurer.
- (E) Upon notification to the County Treasurer by the County Administrator that no proceedings shall be initiated under K.S.A. 12-1750 *et seq.* and this resolution, the County Treasurer shall return all money received to the insured or insureds as identified in the communication from the insurance company. Such return shall be accomplished within thirty (30) day of the receipt of the moneys from the insurance company or companies.

**5. REMOVAL OF STRUCTURE; EXCESS MONEYS.**

- (A) If the County Administrator has proceeded under the provisions of K.S.A. 12-1750 *et seq.* and this resolution, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or other structure, less salvage value, if any, shall be paid to the insured.
- (B) If the County Administrator has proceeded under the provisions of K.S.A. 12-1750 *et seq.* and this resolution, against a building or other structure damaged by fire, explosion, or windstorm, any proceeds received by the County Treasurer under the authority of this resolution relating to the 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 and/or this resolution. Upon reimbursement from the insurance proceeds, the County Administrator shall immediately effect the release of the lien resulting therefrom. Should the expense by the County exceed the insurance proceeds paid over to the County Treasurer under this resolution, the County Administrator shall publish a new lien in an amount equal to such expenses incurred.

6. **EFFECT UPON INSURANCE POLICIES.** Pursuant to K.S.A. 40-3909, this article 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.
7. **INSURER'S LIABILITY.** Pursuant to K.S.A. 40-3909, 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 resolution, or releasing or disclosing any information pursuant to this resolution.
8. **DEFINITION OF COUNTY ADMINISTRATOR.** For the purposes of this resolution, the County Administrator is the person appointed by the County Commission as the Chief Administrative Officer for the County.

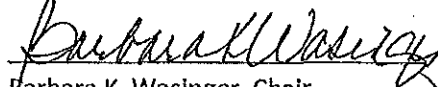
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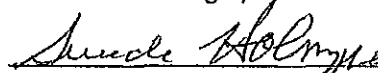
**BE IT FURTHER RESOLVED**, by the Ellis County Commission that this regulation shall only be effective in the rural areas of Ellis County and the city of Schoenchen defined in the Ellis County Zoning Regulations Article 1 Section 105 as Rural Residential Districts, Suburban Residential Districts, Single Family Residential Districts, and Village Districts.

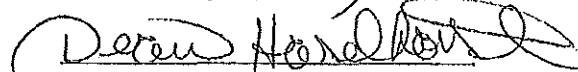
Enacted and Dated this 26<sup>th</sup> day of January 2014.



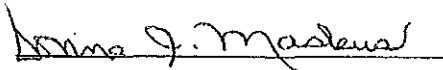
ELLIS COUNTY COMMISSION

  
Barbara K. Wasinger, Chair

  
Swede Holmgren, Commissioner

  
Dean Haselhorst, Commissioner

ATTEST:

  
Donna J. Maskus, Clerk