

RESOLUTION

NO. R18-02-009 _____

A RESOLUTION ESTABLISHING A PROCEDURE FOR THE PAYMENT OF INSURANCE PROCEEDS; CREATING A TAX LIEN, PURSUANT TO K.S.A. 40-3901 THROUGH 40-3909 AND REPEALING RESOLUTION NO. R00-06-93.

WHEREAS, Miami County, Kansas is a county municipal government with the power of home rule pursuant to K.S.A. 19-101 et seq.; and

WHEREAS, K.S.A. 40-3903 authorizes a county to establish, by resolution, a procedure for the payment of, not to exceed 15% to the County of the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure, for those claims which are in excess of 75% of the face value of the covering policy; and

WHEREAS, K.S.A. 40-3904 authorizes a county to create by resolution a tax lien in favor of a county in the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure; and

WHEREAS, the Miami County Commission finds that aforesaid procedure and tax liens will benefit the public health, safety and welfare by insuring that extensively damaged buildings are either repaired or removed in a timely manner so as not to constitute a detriment to surrounding property values or to the public health, welfare and safety.

IT IS HEREBY RESOLVED BY THE MIAMI COUNTY COMMISSION THAT:

Section 1. *ADOPTION OF PROCEDURE.*

Miami County, Kansas 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 Miami County where the amount of the recoverable loss or damage to the building or other structure is in excess of 75 % 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 2. *LIEN CREATED.*

(A) Miami County, Kansas 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 area of Miami County, Kansas, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75% of the face value of the policy covering such building or other insured 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 undischarged for at least one year prior to the filing of a 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.

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

(A) When final settlement on a covered claim has been agreed to or achieved between the named insured and the company, and the final settlement exceeds 75 % 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 shall execute a draft payable to the County Treasurer in an amount not to exceed 15% of the covered claim payment, unless the County Director of Code Services 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 the 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 Director of Code Services 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 under this Resolution.

Section 4. *PROCEDURE UPON RECEIPT OF MONEYS; INVESTIGATION.*

(A) Upon receipt of moneys as provided by this Resolution, the County Treasurer shall immediately notify the Director of Code Services of such receipt, and transmit all documentation received from the insurance company to aforesaid department.

(B) Within 45 days of the receipt of the moneys as provided by this Resolution, the Director of Code Services shall determine, based upon an investigation, whether the County shall instigate proceedings under Resolution No. R00-01-001 and subsequent amendments thereto, which provides for removal of unsafe or dangerous structures and abandoned buildings and which utilizes the procedures outlined in K.S.A. 12-1752. For purposes of this resolution, the building codes enforcement officer shall have responsibility for determining an immediate hazard, pursuant to K.S.A. 12-1750 et seq. and the Director of Code Services shall have the responsibility for enforcement of this Resolution.

(C) Prior to the expiration of the 45-day period established in this section, the Director of Code Services shall notify the County Treasurer whether the County intends to initiate proceedings under K.S.A. 12-1750 et seq. and Resolution No. R00-01-001 and subsequent amendments thereto.

(D) If the Director of Code Services has determined that proceedings under K.S.A. 12-1752 et seq. and R00-01-001 and subsequent amendments thereto shall be initiated, the Director shall do so immediately, but no later than 45 days after receipt of the moneys by the County Treasurer.

(E) Upon notification to the County Treasurer by the Director of Code Services that no proceedings shall be initiated under K.S.A. 12-1752 et seq. and R00-01-001 and subsequent amendments thereto, the County Treasurer shall return all moneys received to the insured or insureds as identified in the communication from the insurance company. Such return shall be accomplished within 45 days of the receipt of the moneys from the insurance company or companies.

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

(A) If the Director of Code Services has proceeded under the provisions of K.S.A. 12-1752 et seq. and R00-01-001 and subsequent amendments thereto, 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, if any, shall be paid to the insured.

(B) If the Director of Code Services determines that it is necessary to act under aforesaid statutes and Resolution against a building or other structure, any proceeds received by the County Treasurer under the authority granted in this division 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 R00-01-001 and subsequent amendments thereto. Upon reimbursement from the insurance proceeds, the Codes Department shall immediately effect the release of the lien resulting therefrom. Should the expense incurred by the County exceed the insurance proceeds paid over to the County Treasurer under Section 3 of this Resolution, the Director of Code Services shall publish a new lien in an amount equal to such expenses incurred.

Section 6. *EFFECT UPON INSURANCE POLICIES.*

Pursuant to K.S.A. 40-3908, 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 7. *INSURERS 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.

Section 8. *NOTICE TO INSURANCE COMMISSIONER.*

Pursuant to K.S.A. 40-3905, the County Clerk is hereby directed to mail by first class mail to the Kansas State Commissioner of Insurance a signed and sealed copy of this Resolution within 14 days of adoption.

Section 9. *DEFINITION OF DIRECTOR OF CODE SERVICES.*

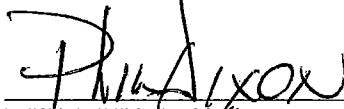
For the purpose of this Resolution, the Director of Code Services shall mean the administrative head of the Codes Department, an employee of said department designated by the Director to enforce this Resolution or other County employees designated by the County Administrator to enforce or assist in the enforcement of this Resolution.

Section 10. *EFFECTIVE DATE.*

This Resolution shall take effect and be in force from and after its publication once in the official County newspaper and upon taking effect, Resolution 00-06-93 shall be repealed.

RESOLVED AND ADOPTED THIS 28TH DAY OF FEBRUARY, 2018.

BOARD OF COUNTY COMMISSIONERS
MIAMI COUNTY, KANSAS



PHIL DIXON, Chairman



ROB ROBERTS, Chairman Pro-tem



GEORGE PRETZ, Commissioner



RONALD E. STILES, Commissioner



DANIEL GALLAGHER, Commissioner

ATTEST:



JANET WHITE, County Clerk

