

Article 2, Section 6. - RECOVERY OF PROPERTY LIENS FROM FIRE INSURANCE PROCEEDS

Sec. 2.6.010. - Scope and application.

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., and amendments thereto, and for Sedgwick County, K.S.A 40-3903 and amendments thereto, 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 city or 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 seventy-five 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 section.

Sec. 2.6.020. - Lien created.

The governing bodies of the city and county hereby create a lien in favor of the city or county, within the jurisdiction of each government entity, 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 city or 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 seventy-five percent of the face value of the policy(s) 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, 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 loss.

Sec. 2.6.030. - Same—Encumbrances.

Prior to final settlement on any claim covered by Section 2.6.020 of this Code, the insurer or insurers shall contact the Office of the County Treasurer of Sedgwick 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 the County Treasurer of Sedgwick County, Kansas.

Sec. 2.6.040. - 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.

Sec. 2.6.050. - 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 seventy-five 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 Director of Finance of the city or county in an amount equal to the sum of fifteen percent of the covered claim payment, unless the Director of the MABCD 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 city or county shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of funds as required by subsection (a) of this section, the insurance company shall provide the city or county with the name and address of the named insured or insureds; the total insurance coverage applicable to said building or 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 the MABCD shall contact the named insured or insureds, by registered mail, notifying them that said insurance proceeds have been received by the city or county and apprise them of the procedures to be followed under this section.

Sec. 2.6.060. - Fund created—Deposit of moneys.

The Director of Finance for the city or county is authorized and shall create a fund to be known as the "fire insurance proceeds fund." All moneys received by the Director of Finance as provided for by this section shall be placed in said fund and deposited in an interest-bearing account.

Sec. 2.6.070. - Director of the MABCD—Investigation, removal of structure.

(a) Upon receipt of moneys as provided for by this Section, the Director of Finance for the city or county shall immediately notify the Director of the MABCD of said receipt, and transmit all documentation received from the insurance company or companies to him or her.

(b) Within ~~twenty~~thirty-five (35) days of the receipt of said monies, the Director of the MABCD shall determine, after prior investigation, whether the city or county shall instigate proceedings under the provisions of K.S.A. 12-1750 et. seq., or for the county under the provisions of Sedgwick County Code Sec. 19-41 et. seq., and amendments thereto.

(c) Prior to the expiration of the ~~twenty~~thirty-five (35) days established by subsection (b) of this section, the Director of the MABCD shall notify the Director of Finance of the city or county whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., or Sedgwick County Code Sec. 19-41 et. seq., and amendments thereto.

(d) If the Director of the MABCD has determined that proceedings under K.S.A. 12-1750 et. seq., or Sec. 19-41, et. seq., and amendments thereto, shall be initiated, he or she will do so immediately but no later than ~~thirty~~thirty-five (45) days after receipt of the moneys by the Director of Finance of the city or county.

(e) Upon notification of the Director of Finance of the city or county by the Director of the MABCD that no proceedings shall be initiated under K.S.A. 12-1750 et. seq., or Sec. 19-41 et. seq., and amendments thereto, the Director of Finance of the city or county shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within thirty days of the receipt of the moneys from the insurance company or companies.

Sec. 2.6.080. - Removal of structure—Excess moneys.

If the Director of the MABCD has proceeded under the provisions of K.S.A. 12-1750 et. seq., or Sec. 19-41 et. seq. and 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.

Sec. 2.6.090. - Same—Disposition of funds.

If the Director of the MABCD, with regard to a building or other structure ~~damaged by fire, explosion or windstorm~~ where insurance proceeds have been received pursuant to K.S.A. 40-3901 et seq., determines that it is necessary to act under K.S.A. 12-1756 or Sec. 19-41, et. seq., and amendments thereto, any proceeds received by the Director of Finance of the city or county under the authority of Section 2.6.050(a) of this Code relating to that building or other structure shall be used to reimburse the City of Wichita or Sedgwick County for any expenses incurred by the city or county in proceeding under K.S.A. 12-1756, or Sec. 19-41 et. seq. and amendments thereto. The Director of the MABCD shall be responsible for notifying the Director of Finance of the city or county the amount of these expenses incurred by the city or county. Upon reimbursement from the insurance proceeds, the Director of Finance of the city or county shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city or county exceed the insurance proceeds paid over to the Director of Finance of the city or county under Section 2.6.050(a) of this Code, he or she shall publish a new lien as authorized by K.S.A. 12-1756, or Sec. 19-41, et. seq. and amendments thereto, in an amount equal to such excess expenses incurred.

Sec. 2.6.100. - Effect upon insurance policies.

This section shall not make the city or 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.

Sec. 2.6.110. - Insurers—Liability.

Insurers complying with this section or attempting in good faith to comply with this section 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 section, or releasing or disclosing any information pursuant to this section.