WEST VIRGINIA CODE CHAPTER 38 ARTICLE 10E

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§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.

(a)(1) Notwithstanding any provision of this code to the contrary, the receipt by an insurance company of a claim under a fire insurance policy for a total loss to real property creates a statutory lien on the insurance proceeds payable for such claim in favor of the municipality in which the property is situate or, if the property is located outside a municipality, the county in which the property is situate, in an amount equal to the greater of: (A) $5,000; or (B) ten percent of the policy limits for loss to the real property, including any coverage for debris removal: Provided, That the amount of the lien may not exceed the policy limits of coverage for the real property plus debris removal, if any: Provided, however, That the lien created by this subsection does not apply to proceeds payable under the policy for any losses other than those to the real property insured, including loss of personal property and payments for temporary housing and related living expenses: Provided, further, That the lien amount imposed against proceeds payable under policies issued by farmers' mutual fire insurance companies pursuant to article twenty-two, chapter thirty-three of this code shall in no event exceed ten percent of the policy limits for loss to the real property, including any coverage for debris removal.

(2) The terms "municipality" and "treasurer" have the same meanings ascribed to them in section two, article one, chapter eight of this code.

(b) Within ten days of a determination by the insurer that a covered claim constitutes a total loss, the insurance company shall send certified letters to the insured and, as applicable, to the treasurer of the municipality in which the property is situate or, if the property is situate outside a municipality, to the sheriff of the county in which the property is situate, stating any amount claimed; the limits and conditions of coverage; the location of the property; the terms and limits of coverage designated by the insurance policy for securing, cleanup and removal, if any; any time limitations imposed on the insured for securing, cleanup and removal; and the policyholder's name and mailing address.

(c)(1) The lien created pursuant to subsection (a) of this section shall be discharged unless the municipality or county, whichever is applicable, within thirty days of the receipt of the letter sent in accordance with subsection (b) of this section, perfects and preserves such lien by filing a notice thereof with the clerk of the county commission of the county in which such property is situate: Provided, That upon filing of a notice of lien in accordance with this subdivision, the amount of the lien created in subsection (a) of this section shall thereafter be for the estimated cost of cleanup contained in such notice of lien, subject to the limitation stated in subsection (a) of this section with respect to policies issued by farmers' mutual insurance companies: Provided, however, That the discharge of a lien based on the municipality's or county's failure to file a notice pursuant to this subdivision does not affect any other remedies the municipality or county may have with respect to such property or the liability of the property owner.

(2) A notice of lien filed in accordance with this subsection shall include a statement of the

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estimated cost to the municipality or county for the cleanup of the damaged property, removal of any refuse, debris, remnants or remains of the building and appurtenances, and securing the structure: Provided, That such estimated cost may not exceed the amount of the lien created pursuant to subsection (a) of this section.

(3) A notice of lien filed in accordance with this section shall be notarized and shall be sufficient if in form and effect as follows:

Notice of Lien for Debris Removal

To (name of insurance company):

You will please take notice that the undersigned, on behalf of the (municipality or county) (of County, if a municipality), West Virginia, has estimated that the cost of removing debris and otherwise cleaning up (a certain building, other structure or improvement) on real estate known as (an adequate and ascertainable description of the real estate) would be (estimated cleanup cost).

You are further notified that, in order to secure the payment of the amount allowed by the provisions of subsection (a), section one, article ten-e, chapter thirty-eight of the West Virginia Code, the undersigned, on behalf of the (municipality or county) and pursuant to the provisions of section one, article ten-e, chapter thirty-eight of the West Virginia Code, claims a lien in such amount upon the interest of (policyholder's name) in a fire insurance policy (the policy number or other identifying information) issued by (the insurance company's name and address). (Signature of treasurer or municipal officer exercising the power and authority commonly exercised by a treasurer, or sheriff).

(Title)

(d) The clerk of the county commission shall, upon the filing of such notice, index the same in a book in his or her office called "Debris Removal Liens" as a lien against the insurance proceeds in favor of the municipality or county and shall send a copy of the notice to the insurer.

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§38-10E-2. Release of lien.

(a) A lien recorded in accordance with section one of this article shall be released if the municipality or county determines that the property has been satisfactorily cleaned up or repaired, the city or county determines that satisfactory measures have been taken to assure that the property will be repaired or cleaned up within a reasonable time, with the property owner first being given the opportunity to make said clean-up or removal within sixty days, or that the insurance company has paid the amount of the lien to the municipality or county or such person designated to receive such moneys: Provided, That if the insurer has paid the amount of the lien to the treasurer or sheriff and the subsequent cost of cleanup is less than that amount, the difference shall be returned to the insurer.

(b) Upon the satisfaction of a lien in accordance with subsection (a) of this section, the treasurer or sheriff, whichever is applicable, shall sign a release and cause it to be recorded by the clerk of the county commission in the "Debris Removal Liens" book and, immediately upon recordation, he or she shall send a certified copy thereof to the insurance company: Provided, That if a lien has been paid or otherwise satisfied and the treasurer or sheriff refuses to cause such lien to be released, the insurance company or policyholder may apply to the circuit court for an order compelling the clerk to record a release.

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