WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4038

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed March 11, 2010

In Effect Ninety Days From Passage
AN ACT to repeal §33-17-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-17-9b of said code; and to amend said code by adding thereto a new article, designated §38-10E-1 and §38-10E-2, all relating to imposing a statutory lien on fire insurance proceeds in the event of a total loss to real property; requiring insurance companies to notify insured and municipality or county after determining that a claim involves a total loss to real property; defining terms; requiring a municipality or county to perfect the lien within thirty days of notice of a total loss determination; providing for release of the lien upon satisfaction of certain conditions; and authorizing the Insurance Commissioner to declare surplus lines insurers ineligible for certain violations.

Be it enacted by the Legislature of West Virginia:

That §33-17-9a of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-
17-9b of said code; and to amend said code by adding thereto a new article, designated §38-10E-1 and §38-10E-2, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 12. SURPLUS LINE.

§33-12C-6a. Debris removal liens; noncompliance; penalties.

1 The commissioner may declare a surplus lines insurer ineligible for committing any violation of the provisions of article ten-e, chapter thirty-eight of this code.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9b. Claims for total loss; debris removal proceeds.

1 (a) No proceeds shall be paid by an insurance company that has issued a policy which provides coverage for debris removal for cleanup, removal of refuse, debris, remnants, or remains of a dwelling or structure upon a claim of total loss unless and until the insurance company receives certification that the refuse, debris, remnants, or remains of the dwelling or structure have been cleaned up, removed or otherwise disposed of. In the event the insurance company receives, within six months of the date of loss, certification that such cleanup, removal or disposal costs have been incurred by a municipality, county or other governmental entity, rather than the policyholder, such debris removal and cleanup proceeds shall be paid to the municipality, county or other government entity which has incurred such costs: Provided, That any company that has issued a policy that provides coverage for damage to real property as a result of fire or explosion, regardless of whether such policy includes coverage for debris removal, shall comply with the provisions of section one, article ten-e, chapter thirty-eight of this code.
No insurance company subject to this section which complies with this section may be held liable for any claim that may arise out of the cleanup, removal or disposal of debris pursuant to this section.

(b) An insurance company subject to this section that complies with this section and with section one, article ten-e, chapter thirty-eight of this code shall be deemed to have fully satisfied all contractual obligations to the policyholder regarding debris removal; in no event shall an insurance company be required to pay moneys in excess of policy limits.

(c) Compliance with this section and section one, article ten-e, chapter thirty-eight of the code may not be deemed a violation of section nine of this article.

CHAPTER 38. LIENS.

ARTICLE 10E. LIEN ON INSURANCE PROCEEDS FOR DEBRIS REMOVAL.

§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.

(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) shall thereafter be
for the estimated cost of cleanup contained in such notice of
lien: 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 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 such sum, 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).
§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
22 paid or otherwise satisfied and the treasurer or sheriff refuses
23 to cause such lien to be released, the insurance company or
24 policyholder may apply to the circuit court for an order
25 compelling the clerk to record a release.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of April, 2010.

Governor
PRESENTED TO THE GOVERNOR

MAR 3 0 2010

Time: 10:30 AM