

. 2-297. Insurance for damage or loss due to fire, explosion or windstorm--Payment to unified government for removal of damaged structures; fire insurance proceeds fund established.

(a) The unified government is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., where no insurance company doing business within the city shall pay a claim of a named insured for loss or damage to a building or other structure arising, out of any fire, explosion or windstorm located within the city, where the amount recoverable for 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 insured structure unless there is compliance with the following procedures:

(1) When final settlement on a covered claim has been agreed to between the named insured or insureds and the company and said final settlement exceeds 75 percent of the face value of the policy covering a building or other insured structures, 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 treasurer of the unified government in an amount equal to 15 percent of the covered claim payment, unless the public officer of the unified government 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 repaired, rebuilt or otherwise made the premises safe and secure.

(2) Such transfer of proceeds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the unified government shall be disbursed in accordance with the policy terms.

(3) Upon transfer of the funds as required in subsection (a)(1) of this section, an insurance company shall provide the unified government insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to between the insurance company and the insured or insured by restricted mail to notify them that said insurance proceeds have been received by the unified government and apprise them of the procedures to be followed under this section.

(b) The treasurer of the unified government of is hereby authorized and shall create a fund to be known as the fire insurance proceeds fund. All money received by the treasurer as provided by this section shall be deposited by him in an interest bearing account.

(1) Upon receipt of said moneys, the treasurer of the unified government shall immediately notify the public officer of the unified government of said receipt and transmit all documentation received from the insurance company to the public officer.

(2) Within 20 days of the receipt of said moneys, the public officer of the unified government shall determine after prior investigation whether the unified government shall instigate proceedings under the provisions of applicable state statutes.

(3) Prior to the expiration of the 20 days established in subsection (b) of this section, the public officer shall notify the unified government treasurer whether he intends to initiate proceedings under applicable state statutes.

(4) If the public officer has determined the proceedings under applicable state statutes shall be initiated, he shall do so immediately but no later than 30 days after receipt of said moneys by the treasurer.

(5) Upon notification to the unified government treasurer by the public officer that no proceedings shall be initiated under applicable state statutes, the treasurer shall initiate the return of said moneys plus accrued interest to the insured or insureds as identified in the

communication from the insurance company. Such return shall be accompanied within 30 days of the receipt of said moneys from the insurance company.

(6) If the public officer has proceeded under the provisions of applicable state statutes, all moneys in excess of that which is ultimately necessary to comply with said provisions for the removal of the building or structure, less salvage value, shall be paid to the insured.

(7) If the public officer, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the treasurer under the authority of subsection (a)(1) of this section, relating to the building or other structure, shall be used to reimburse the unified government for any expenses incurred by the unified government in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the public officer shall immediately effectuate the release of any lien resulting therefrom. Should the expenses incurred by the unified government exceed the insurance proceeds paid over to the treasurer under subsection (a)(1) of this section, the public officer shall establish a new lien as authorized by K.S.A. 12-1756 in an amount equal to such excess expenses incurred.

(c) This section shall apply to fire, and explosion or windstorm claims arising on all buildings or structures.

(d) This section does not make the unified government 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.

(e) 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, including withholding payment of any insurance proceeds pursuant to this section, or releasing or disclosing any information pursuant to this section.

(Code 1964, § 15-14; Code 1988, § 2-214; Ord. No. 64084, §§ 1--4, 6--9, 9-23-1982; Ord. No. O-9-98, § 1, 3-5-1998)

Cross references: Fire prevention and protection, ch. 15.

Sec. 2-298. Same--Lien established.

(a) The unified government board of commissioners hereby creates a lien in favor of the unified government 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 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 policies covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed based upon real property by or on behalf of the unified government which is an encumbrance on 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.

(b) Prior to final settlement on any claim covered by subsection (a) of this section, the insurer or insurers shall contact the treasurer of the unified government 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 the owing under said encumbrances a draft to the treasurer of the unified government.

(c) Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

(Code 1964, § 15-15; Code 1988, § 2-215; Ord. No. 64185, §§ 1--3, 11-24-1982; Ord. No. O-9-98, § 1, 3-5-1998)