

Chapter 140, FIRE INSURANCE PROCEEDS

[HISTORY: Adopted by the Board of Trustees of the Village of Horseheads 2-12-2004 by L.L. No. 2-2004. Amendments noted where applicable.]

§ 140-1. Definitions.

As used in this chapter, any inconsistent provisions of law notwithstanding, the following terms shall have the following meanings:

ENFORCING OFFICER -- The Village Manager.

LIEN -- Any unpaid tax, special ad valorem levy, special assessment or other charge imposed upon real property by or on behalf of the Village or special district, which is an encumbrance on real property and which has remained undischarged for a period of one year or more.

REAL PROPERTY -- Any property upon which there is erected any residential, commercial or industrial building or structure, except a one- or two- family residential structure.

SPECIAL LIEN -- A lien upon fire insurance proceeds pursuant to this chapter and § 22 of the General Municipal Law.

§ 140-2. Notice of intention to claim.

The Village Manager shall file a notice of intention to claim against the proceeds of fire insurance policies with the State Superintendent of Insurance for entry in the Index of Tax Districts in accordance with § 22 of the General Municipal Law, the New York State Insurance Law and all rules and regulations promulgated by the New York State Department of Insurance with respect to this procedure.

§ 140-3. Claim to constitute special lien.

Prior to the payment of any proceeds of a policy of insurance for damages caused by fire to real property, which policy insures the interest of an owner and is issued on real property located within the Village, and following notification to the enforcing officer by an insurer of the filing of a claim for payment of such proceeds, the enforcing officer shall claim, by serving a certificate of lien, against such proceeds to the extent of any lien, including interest and penalties to the date of the claim thereon, which claims, when made and perfected in the manner provided for in § 22 of the General Municipal Law and § 331 of the Insurance Law, shall constitute a special lien against such proceeds and shall, as to such proceeds, be prior to all other liens and

claims except the claim of a mortgagee of record named in such policy. Notice of the service of the certificate of the special lien shall be given to the insured by certified mail.

§ 140-4. Additional powers.

The provisions of this chapter shall not be deemed or construed to alter or impair the right of the Village to acquire or enforce any lien against property but shall be in addition to any other power provided by law to acquire or enforce such right.

§ 140-5. Release of proceeds.

Whenever the proceeds of a policy of fire insurance will be or have been paid to the Village instead of an insured, all or part of such proceeds may be paid or released to the insured if the insured satisfies to the enforcing officer that the affected premises have been or will be repaired or restored or demolished with all debris removed, that such repairs or restoration or demolition are in the public interest and that the insured is issued and complies with an agreement entered into pursuant to this chapter. To secure such payment or release of proceeds, the insured must notify the Village Clerk/Treasurer within 45 days after the mailing to the insured of a notice of the service of the certificate of special lien pursuant to § 140-3 of this chapter of the intention to restore or repair or demolish with all debris removed the affected premises and must file with the enforcing officer a completed application with all required supporting documentation pursuant to § 140-6 of this chapter within 60 days thereafter, unless the enforcing officer grants an extension for a stated period of time.

§ 140-6. Conditions of release of proceeds.

The release or return to the insured of any amounts to which he or she or it would otherwise be entitled to claim shall be subject to the following conditions:

- A. Such release or return shall be subject to the repair or restoration of the affected premises, in accordance with applicable building laws, to the condition it was in prior to the time the lien of the Village arose or to an improved condition or demolished with all debris removed.
- B. The insured shall file with the enforcing officer an application in affidavit form with such supporting documentation as the enforcing officer shall require containing the following:
 - (1) A complete description of the nature and extent of the damage to the insured premises and of the condition of the premises prior to the time the lien of the Village arose.
 - (2) A complete description of the nature of the repairs or restoration or demolition to be

- undertaken and the cost thereof.
- (3) A statement as to the source of funds needed to complete such repairs or restoration or demolition if the insurance proceeds are not sufficient therefor.
 - (4) The name and address of each contractor who will effect such repairs or restoration or demolition.
 - (5) An estimated time schedule showing how long the repairs or restoration and each phase thereof will take.
 - (6) Such other information as may be required by the enforcing officer to enable him or her to determine whether the repairs or restoration or demolition are in the public interest and will be or have been timely and properly made.
- C. Upon preliminary approval of an application by the enforcing officer, the enforcing officer may enter into a written agreement with the insured, which shall set forth the terms and conditions for the release and return of all or part of the proceeds, and the enforcing officer is hereby authorized to enter into such agreement on behalf of the Village.
- D. The repairs or restoration or demolition required by the enforcing officer shall be completed in compliance with the terms and conditions of the agreement prior to the release or return of any part of the insurance proceeds; provided, however, that the enforcing officer may, upon written request of the insured and in his or her sole discretion, approve a prior release of such proceeds or a portion thereof in a lump sum or in installments, where the insured certifies and demonstrates that such release is required to permit such repairs or restoration or demolition to go forward. Any such insurance proceeds released or returned prior to the completion of the repairs or restoration or demolition required by the enforcing officer may be paid directly to the contractor or contractors responsible for making such repairs or restoration or demolition. Such payment shall, to the extent thereof, release the enforcing officer from further liability to the insured.
- E. Whenever the enforcing officer releases the entire amount of the proceeds prior to compliance with the terms and conditions of agreement, the insured shall post a bond in an amount sufficient to assume the restoration or improvement of the property.

§ 140-7. Termination of right of insured to assert claim.

If the insured fails to notify the Village of his or her or its intention to repair or restore the affected premises as required in § 140-5 of this chapter or fails to file a completed application pursuant to this chapter or fails to enter an agreement with the enforcing officer or comply therewith within the time set forth, the right of the insured to assert a claim against the insurance

proceeds, except to the extent they exceed the amount of the lien, shall terminate.

§ 140-8. Fund for proceeds.

There shall be established in the office of the Clerk/Treasurer a fund for the deposit of fire insurance proceeds to be held and applied in accordance with this chapter. Such funds shall not be held together with the general tax levies in the general fund.

§ 140-9. Disposition of proceeds.

Until such termination, any insurance proceeds received by the Village shall be deposited in a special fund and shall be retained therein. Upon termination of the insured's right to claim against the proceeds, the proceeds and any interest accrued thereon shall be applied to the liens affecting the premises in a manner to be determined by the enforcing officer and may be transferred to the general fund.

§ 140-10. Continuance of liens in effect until paid.

The lien or liens against the affected premises upon which the special lien against proceeds is based shall continue in full force and effect, except to the extent that such lien or liens are or have been paid.

§ 140-11. Purpose of agreements; repairs not municipal projects.

Any agreement entered into by the enforcing officer pursuant to this chapter shall be for the purpose of preserving and evidencing the right of release of the special lien created by this chapter and shall be subject solely to the provisions of this chapter. Any repair or restoration or demolition performed in anticipation of a release of insurance proceeds shall not be deemed to be a public work or municipal project or to have been done pursuant to a municipal contract.

§ 140-12. Notice to owner.

In the event of a loss which is subject to this chapter, it shall be the duty of the Code Enforcement Officer, and in lieu thereof the Village Manager, to promptly notify the owner of the applicability of this chapter. Nevertheless, failure to notify the owner shall not affect the applicability of this chapter.

§ 140-13. Power to promulgate rules and adopt approved forms.

The enforcing officer shall be empowered to promulgate rules and regulations and to adopt approved forms to be used by applicants.

§ 140-14. Penalties for offenses.

Violation of this chapter shall be punishable by fine or imprisonment or both as prescribed by Chapter 1, Article 11, General Penalty, of the Village Code. Each separate violation shall constitute a separate additional offense.