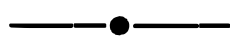


HB 4038

2010 APR -1 PM 4:25

CLERK OF COURTS  
CLERK OF STATE

**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

**ENROLLED**

FILED  
2010 APR -1 PM 4:25

COMMITTEE SUBSTITUTE

FOR

CLARENCE M. ABRAHAM  
SECRETARY OF STATE

**H. B. 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That §33-17-9a of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-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  
2           ineligible for committing any violation of the provisions of  
3           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  
2           that has issued a policy which provides coverage for debris  
3           removal for cleanup, removal of refuse, debris, remnants, or  
4           remains of a dwelling or structure upon a claim of total loss  
5           unless and until the insurance company receives certification  
6           that the refuse, debris, remnants, or remains of the dwelling  
7           or structure have been cleaned up, removed or otherwise  
8           disposed of. In the event the insurance company receives,  
9           within six months of the date of loss, certification that such  
10          cleanup, removal or disposal costs have been incurred by a  
11          municipality, county or other governmental entity, rather than  
12          the policyholder, such debris removal and cleanup proceeds  
13          shall be paid to the municipality, county or other government  
14          entity which has incurred such costs: *Provided*, That any  
15          company that has issued a policy that provides coverage for  
16          damage to real property as a result of fire or explosion,  
17          regardless of whether such policy includes coverage for  
18          debris removal, shall comply with the provisions of section  
19          one, article ten-e, chapter thirty-eight of this code.

20 No insurance company subject to this section which  
21 complies with this section may be held liable for any claim  
22 that may arise out of the cleanup, removal or disposal of  
23 debris pursuant to this section.

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

31 (c) Compliance with this section and section one, article  
32 ten-e, chapter thirty-eight of the code may not be deemed a  
33 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.

1 (a)(1) Notwithstanding any provision of this code to the  
2 contrary, the receipt by an insurance company of a claim  
3 under a fire insurance policy for a total loss to real property  
4 creates a statutory lien on the insurance proceeds payable for  
5 such claim in favor of the municipality in which the property  
6 is situate or, if the property is located outside a municipality,  
7 the county in which the property is situate, in an amount  
8 equal to the greater of: (A) \$5,000; or (B) ten percent of the  
9 policy limits for loss to the real property, including any  
10 coverage for debris removal: *Provided*, That the amount of  
11 the lien may not exceed the policy limits of coverage for the

12 real property plus debris removal, if any: *Provided, however,*  
13 That the lien created by this subsection does not apply to  
14 proceeds payable under the policy for any losses other than  
15 those to the real property insured, including loss of personal  
16 property and payments for temporary housing and related  
17 living expenses.

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

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

33 (c)(1) The lien created pursuant to subsection (a) of this  
34 section shall be discharged unless the municipality or county,  
35 whichever is applicable, within thirty days of the receipt of  
36 the letter sent in accordance with subsection (b) of this  
37 section, perfects and preserves such lien by filing a notice  
38 thereof with the clerk of the county commission of the county  
39 in which such property is situate: *Provided, That upon filing*  
40 *of a notice of lien in accordance with this subdivision, the*  
41 *amount of the lien created in subsection (a) shall thereafter be*  
42 *for the estimated cost of cleanup contained in such notice of*  
43 *lien: Provided, however, That the discharge of a lien based*  
44 *on the municipality’s or county’s failure to file a notice*

45 pursuant to this subdivision does not affect any other  
46 remedies the municipality or county may have with respect  
47 to such property or the liability of the property owner.

48 (2) A notice of lien filed in accordance with this  
49 subsection shall include a statement of the estimated cost to  
50 the municipality or county for the cleanup of the damaged  
51 property, removal of any refuse, debris, remnants or remains  
52 of the building and appurtenances, and securing the  
53 structure: *Provided*, That such estimated cost may not  
54 exceed the amount of the lien created pursuant to subsection  
55 (a) of this section.

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

59 Notice of Lien for Debris Removal

60 To (name of insurance company):

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

68 You are further notified that, in order to secure the  
69 payment of such sum, the undersigned, on behalf of the  
70 (municipality or county) and pursuant to the provisions of  
71 section one, article ten-e, chapter thirty-eight of the West  
72 Virginia Code, claims a lien in such amount upon the interest  
73 of (policyholder's name) in a fire insurance policy (the policy  
74 number or other identifying information) issued by (the  
75 insurance company's name and address).

76 (Signature of treasurer or municipal officer exercising the  
77 power and authority commonly exercised by a treasurer, or  
78 sheriff)

79 (Title)

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

**§38-10E-2. Release of lien.**

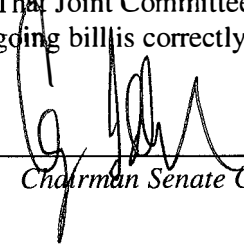
1 (a) A lien recorded in accordance with section one of this  
2 article shall be released if the municipality or county  
3 determines that the property has been satisfactorily cleaned  
4 up or repaired, the city or county determines that satisfactory  
5 measures have been taken to assure that the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

15 (b) Upon the satisfaction of a lien in accordance with  
16 subsection (a) of this section, the treasurer or sheriff,  
17 whichever is applicable, shall sign a release and cause it to be  
18 recorded by the clerk of the county commission in the  
19 "Debris Removal Liens" book and, immediately upon  
20 recordation, he or she shall send a certified copy thereof to  
21 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.



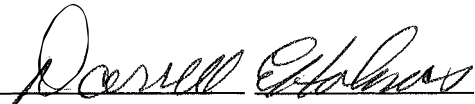
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

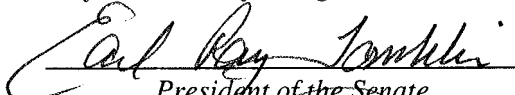
  
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Chairman House Committee

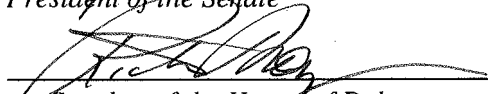
Originating in the House.

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

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SENATE

The within is approved this the 18  
day of April 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 30 2010

Time 10:30am