New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001
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Local Law Filing

(Use this form to file a Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

COUNTY OF LEWIS

Local Law No. 11 of the Year 2019

A LOCAL LAW AUTHORIZING A MUNICIPAL LIEN IN FAVOR OF THE COUNTY OF LEWIS ON FIRE INSURANCE PROCEEDS IN ACCORDANCE WITH GENERAL MUNICIPAL LAW §22 AND INSURANCE LAW §331.

BE IT ENACTED by the Board of Legislators of the County of Lewis, as follows:

SECTION 1. TITLE:

This Local Law shall be known as the LOCAL LAW AUTHORIZING A MUNICIPAL LIEN IN FAVOR OF THE COUNTY OF LEWIS ON FIRE INSURANCE PROCEEDS.

SECTION 2. PURPOSE:

A. In response to increases in insurance fraud and arson, especially commercial properties which oftentimes left abandoned, burned structures and properties with unpaid property taxes, the state legislature enacted NY General Municipal Law §22 and Insurance Law §331. Under GML §22, every tax district (county, city, town or village) having the power to enforce the collection of taxes, special ad valorem levies, special assessments or other municipal charges imposed upon real property by or on behalf of a municipal corporation or special district, is authorized and empowered to claim against the proceeds of a policy of fire insurance insuring the interest of an owner and issued on real property located therein (except a one or two family residential structure), when made and perfected in the manner set forth under the statute.

B. In order to become eligible for the attachment process set forth in GML §22, the taxing district must first enact a local law which provides for the release or return to the insured of any amounts to which it would otherwise be entitled to claim, provided that the insured agrees in writing to restore the affected premises to the same or improved condition that it was in prior to the time that the lien of such district against proceeds arose, or agrees to demolish and remove the damaged structure, if warranted, and subject to such conditions as such County Resolution shall provide to guarantee performance of such obligation(s), including but not limited to, an agreement to deposit such proceeds in an escrow account or to obtain a performance bond.

SECTION 3. DEFINITIONS:

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

Lien: Any lien including liens for taxes, special ad valorem levis, special assessments and municipal charges arising by operation of law against property in favor of the County and remaining undischarged for a period of one (1) year or more.

Real Property: Property upon which there is erected any residence, commercial or industrial building or structure, except not a one or two family residence structure.

Special Lien: A lien upon fire insurance proceeds pursuant to this Law and New York General Municipal Law §22 and Insurance Law §§331 and 3410, as they may be amended from time to time.

SECTION 4. TREASURER'S RESPONSIBILITIES AND PROCEDURE:

A. Filing with State Superintendent of Financial Services.

Pursuant to the provisions of §22 of the General Municipal Law and subsequent to the adoption of a resolution by the County Board of Legislators providing therefor, the County Treasurer shall file a notice of intention to claim against the proceeds of fire insurance policies with the State Superintendent of Financial Services. Said notice shall be entered in the index of liens maintained by the State Superintendent of Financial Services as provided in §331 of the Insurance Law. Said notice shall constitute constructive notice to each insurer of real property of the County's claim against any proceeds payable under the provisions of any fire insurance policy.

B. Service of Certificate of Lien by County Treasurer.

Prior to the payment of any proceeds of a policy of insurance for damages caused by fire to real property situated within the County of Lewis, each insurer shall notify the County Treasurer that a loss has been sustained and demand that the Treasurer's Certificate indicating the amount of all liens of the County against said property, including interest and penalties to the date of the Certificate, be served, at a specified address, in person or by certified mail, upon the insurer, within twenty (20) days from the date of mailing such demand. Within ten (10) days of receipt of such Certificate of Lien and a final determination of the insurer's obligation to pay such proceeds, the insurer shall pay therefrom the amounts specified in the Certificate to the County Treasurer. Notice of the filing of the Certificate shall be given to the insured by the County Treasurer by certified mail to the address identified by the insured on the real property tax records.

C. Special Lien.

The claim filed by the County Treasurer shall constitute a special lien against the proceeds of a fire insurance policy on real property and shall be prior to all other liens and claims against said proceeds, except the claim of a mortgagee of record named in the fire insurance policy.

D. Lien not to Impair Other Rights.

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

E. Release of Return of Proceeds to Property Owner.

All or part of the proceeds of a policy of fire insurance paid or to be paid to the County of Lewis, as set forth hereinabove, may be paid or released to the insured by the County, if the insured satisfies the County, in consultation with its Code Enforcement Department Official, that repairs or restoration of the affected premises are in the public interest, have been or will be made by the insured, or that the damaged structure is beyond repair and will be properly demolished and removed in accordance with all applicable laws and regulations. To secure such payment or release of proceeds, the insured must notify the County Treasurer that he/she intends to restore or repair the affected premises to the same or improved condition it was in prior to the time the lien against the property arose, or intends to demolish and remove the debris and structure. Such notification must be filed with the County Treasurer within forty-five (45) days of the mailing by the County to the insured of the notice of the filing of the Special Lien. The County Treasurer shall advise the County Manager and the Code Enforcement Official of such filing.

SECTION 5. CODE ENFORCEMENT OFFICIAL'S RESPONSIBILITIES AND CONDITIONS/ DOCUMENTATION FOR TREASURER'S RELEASE OF PROCEEDS:

The release or return of the fire insurance proceeds by the County Treasurer to the insured 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 and zoning codes and other regulations, to the condition it was in prior to the time the lien of the County arose, or to an improved condition; or it shall be properly demolished and removed in accordance with all applicable laws and regulations.

B. The insured shall file with the County Code Enforcement Official, an application, in affidavit form, with such supporting documentation as he/she shall require, containing the following: 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 lien held by the County against the property; a complete description of the nature of the repairs or restoration or demolition to be undertaken and the cost thereof; a statement as to the source of funds needed to complete such repairs or restoration or demolition and removal, if the insurance proceeds are not sufficient; the name and address of each contractor who will effect such repairs or restoration or demolition/removal; an estimated time schedule showing how long the repairs or restoration or demolition/removal, and each phase, will take; and such other information as may be required by the County Code Enforcement Official to enable him/her to determine whether the repairs or restoration or demolition/removal are in the public interest and will be or have been timely and properly made.

C. Upon preliminary approval by the Code Enforcement Official of an application, as set forth in Subsection B of this section, the Code Enforcement Official shall notify the County Treasurer and County Manager and the applicant, in writing, evidencing the right of release to the insured of part or all of the insurance proceeds, upon such conditions as may be set forth therein.

D. The repairs or restoration or demolition/removal required by the Code Enforcement Official shall be completed in compliance with the terms and conditions set forth in said notification prior to the release or return of any part of the insurance proceeds unless the Code Enforcement Official, upon the written request of the insured and in the discretion of the Code Enforcement Official in consultation with the County Manager and County Treasurer, approves a prior release of such proceeds or a portion thereof. The Code Enforcement Official may not approve such prior release unless the insured certifies and demonstrates that such release is necessary to permit the repairs or restoration to go forward. The Code Enforcement Official shall require a guarantee from the insured of performance of such obligation including, but not limited to, an agreement to deposit such proceeds in an escrow account maintained by the County Treasurer, or that the insured shall obtain a performance bond. Any said insurance proceeds or portion thereof released or returned prior to the completion of the repairs or restoration or demolition/removal required by the County, may be paid directly to the contractor or contractors responsible for making such repairs or restoration or demolition/removal. Such payment shall, to the extent thereof, release the County, its Treasurer, County Manager, Code Enforcement Official and any other County official and/or employee from liability to the insured.

E. Whenever the Code Enforcement Official approves a release of all or part of the insurance proceeds prior to compliance with the terms and conditions of the agreement, the Code Enforcement Official may require the insured to post an undertaking in an amount sufficient to assume the restoration, improvement or demolition of the property, obtain a performance bond or deposit such proceeds in an escrow account.

F. If the insured fails to notify the County Treasurer of his intention to repair or restore or demolish the affected premises as hereinbefore set forth, or fails to file a completed application, or fails to supply the Code enforcement Official with specified documentation as required, or fails to obtain the approval of the Code Enforcement Official to the repairs or restoration or demolition/removal within the time set forth, the right of the insured to assert a claim against the insurance proceeds, except to the extent said proceeds exceed the amount of the County's Special Lien, shall terminate.

G. The Code Enforcement Official shall promulgate such proposed forms and additional regulations to be used by the applicant, subject to County Board of Legislators review and approval.

SECTION 6. ESTABLISHMENT OF SPECIAL FUND:

A. Any insurance proceeds received by the County of Lewis pursuant to this law shall be deposited in a special fund by the County Treasurer designated as the fund for the deposit of fire insurance proceeds, and retained and applied in accordance with this law. Such funds shall not be held together with the general tax levies in the general fund.

B. Upon termination of the insured's right to claim against the proceeds, the proceeds and any interest accrued thereon remaining, shall be applied to the liens affecting the premises in a manner determined by the County Treasurer, and may be transferred to the general fund.

C. The lien or liens against the affected premises upon which the special line 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.

SECTION 7. EFFECTIVE DATE:

This local law shall take effect immediately upon filing with the Secretary of State and upon all legal requirements being met.

(Complete the certification in the paragraph that applies to the filing of this Local Law and strike out that which is not applicable)

1. (Final Adoption by Local Legislative Body Only.)

I hereby certify that the Local Law annexed hereto, designated as Local Law No. 11 of 2019, of the County of Lewis was duly passed by the Lewis County Board of Legislators on December 3, 2019, in accordance with the applicable provisions of law.

~~**2. (Passage by Local Legislative Body with Approval, No Disapproval or Repassage After Disapproval by the Elective Chief Executive Officer*).**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. _____ of 20__, of the County, City, Town, Village of _____ was duly passed by the _____ on _____, 20__, and was approved, not approved, repassed after disapproval, by the _____, and was deemed duly adopted on _____, 20__, in accordance with the applicable provisions of law.~~

~~**3. (Final Adoption by Referendum.)**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. _____ of 20__, of the County, City, Town, Village of _____ was duly passed by the _____ on _____, 20__, and was approved, not approved, repassed after disapproval, by the _____ on _____, 20__. Such Local Law was submitted to the people by reason of a mandatory/permissive referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the general/special/annual election held on _____, 20__, in accordance with the applicable provisions of law.~~

~~**4. (Subject to a Permissive Referendum and Final Adoption Because No Valid Petition was Filed Requesting Referendum.)**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. ____ of 20__, of the County of Lewis was duly passed by the Lewis County Board of Legislators on , 20__, and was approved, not approved, repassed after disapproval, by the _____ on _____, 20__. Such Local Law was subject to permissive referendum and no valid petition requesting such referendum was filed as of , 20__, in accordance with the applicable provisions of law.~~

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* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis, or if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto Local Laws or Ordinances.

~~**5. (City Local Law Concerning Charter Revision Proposed by Petition.)**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. _____ of 20__, of the City of _____ having been submitted to referendum pursuant to the provisions of Section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special/general election held on _____, 20__, became operative.~~

~~**6. (County Local Law Concerning Adoption of Charter.)**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. _____ of 20__, of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____, 20__, pursuant to the subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

(If any other authorized form of final adoption has been followed, please provide an appropriate certification).

I further certify that I have compared the preceding Local Law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original Local Law, and was finally adopted in the manner indicated in Paragraph 1, above.

Teresa K. Clark

TERESA K. CLARK, CLERK
LEWIS COUNTY BOARD OF LEGISLATORS
Dated: December 4, 2019.

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK)
COUNTY OF LEWIS) ss:

I, the undersigned, hereby certify that the foregoing Local Law contains the correct text and that all proper proceedings have been had or taken for the enactment of the Local Law annexed hereto.

Joan E. McNichol

JOAN E. McNICHOL, ESQ.
LEWIS COUNTY ATTORNEY
Dated: December 4, 2019.