WEST PIKELAND TOWNSHIP
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Memorandum

To: West Pikeland Township Board of Supervisors

CC: Guy Donatelli, Solicitor
Joan C. Matthews, Township Secretary

From: Stephen J. Ross, Township Manager

Date: April 13, 2010

Re: Fire Insurance Escrow Act

Enclosed with this memo is a copy of Act 94 of 1994 and Uwchlan Township Ordinance No. 95-7 enacted on April 24, 1995. I would like the Board to review the ordinance and consider discussing it when we meet on May 17, 2010, and if it is deemed appropriate, authorize the Solicitor to prepare a similar ordinance for West Pikeland Township.

On Wildlife Drive there is an abandoned property which is unsecured and subject to vandalism. This should be a concern to the Township but especially the neighbors in the vicinity. To avoid this happening again in the future there is a law that enables the Township to enact an ordinance setting forth an escrow account for securing the building and paying for repairs or removal of the building.

The ordinance includes various provisions that could be a benefit to the Township. These include the following:

- An insurance company representing a damaged property shall not pay a claim to the owner until he receives a certificate from the Township.
- The certificate will insure payment of delinquent taxes, assessments, penalties or user charges against the property.
- That all expenses incurred by the Township for the removal, repair or securing of a building or other structure on the property shall be paid from the money being held in escrow by the Township.
- The total costs incurred by the Township including all administrative, personnel and overhead costs shall be paid from the escrow being held by the Township.

Again, please consider this ordinance when we meet on May 17.

Steve

UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 95-7

AN ORDINANCE PURSUANT TO SECTION 508 OF THE INSURANCE COMPANY LAW OF 1921, AS AMENDED, REQUIRING A MUNICIPAL CERTIFICATE PRIOR TO THE PAYMENT OF FIRE LOSS CLAIMS UNDER SECTIONS 508(A) AND (B) THEREOF AND BY AUTHORIZING THE PROCEDURES FOR MUNICIPAL FIRE INSURANCE ESCROWS UNDER SECTIONS 508(C) AND (D) THEREOF. EFFECTIVE FIVE DAYS FROM ENACTMENT.

AND NOW, this 24th day of April, 1995, the Board of Supervisors of Uwchlan Township hereby ENACTS and ORDAINS as follows:

Section 1. General. No insurance company, association or exchange doing business in the Commonwealth of Pennsylvania shall pay a claim of a named insured for fire damage to a structure located within Uwchlan Township under the terms of Section 508(a) of the Insurance Company Law of 1921, as amended, 40 P.S. §638(a), unless the insurance company, association or exchange is furnished with a certificate pursuant to §2 of this Ordinance and unless there is compliance with the procedures set forth in §3 and §4 of this Ordinance.

Section 2. Fire Loss Certificate.

(a) The Township treasurer shall, upon the written request of the named insured specifying the tax description of the property, name and address of the insurance company, association or exchange and the date agreed upon by the insurance company, association or exchange and the named insured as the date of the receipt of a loss report of the claim, and the payment of a certification fee in the amount of $25.00 for the administrative expense of processing the request and copying, furnish the insurance company, association or exchange either of the following within fourteen (14) working days of the request:

(1) a certificate or, at the discretion of the Township, a verbal notification which shall be confirmed in writing by the insured to the effect that, as of the date specified in the request, there are no delinquent taxes, assessments, penalties or user charges against the property and that, as of the date of the treasurer's certificate or verbal notification, the Township has not certified any amount as total costs incurred by the Township for the removal, repair or securing of a building or other structure on the property; or

(2) a certificate and bill showing the amount of delinquent taxes, assessments, penalties or user charges against the property as of the date specified in the request that have not been paid as of the date of the certificate and also showing as of the date of the treasurer's certificate, the amount of the total costs, if any, certified to the treasurer that have been incurred by the Township for the removal, repair or securing of a building or other structure on the property. For the purposes of this subclause, the Township Manager shall certify to the treasurer the total amount, if any, of such costs. For the purposes of this Ordinance, a tax, assessment, penalty or user charge becomes delinquent at the time and on the date a lien could otherwise have been filed against the property by the Township under applicable law or ordinance.

(b) (1) Upon receipt of a certificate pursuant to clause (a)(1) of this subsection, the insurance company, association or exchange shall pay the claim of the named insured in accordance with the policy terms, unless the loss agreed to between the named insured and the company, association or exchange equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or other structure. In the case of such a loss, the insurance company, association or exchange, the insured property owner and the Township shall follow the procedures set forth in §3 and §4 of this Ordinance.

(2) Upon the receipt of a certificate and bill pursuant to clause (a)(2) of this subsection, the insurance company, association or exchange shall return the bill to the treasurer and transfer to the treasurer an amount from the insurance proceeds necessary to pay the taxes, assessments, penalties, charges and costs shown on the bill. In the case of a loss subject to §3 and §4 of this Ordinance, the insurance company, association or exchange shall transfer to the treasurer the amount from the insurance proceeds shown on the bill by separate draft from the amounts transferred under §3 of the Ordinance. The Township shall receive the amount and apply or credit it to payment of the items shown in the bill.

Section 3. Establishment of Municipal Fire Insurance Escrow. When the loss agreed to between the named insured and the company, association or exchange equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or other structure, the insurance company, association or exchange shall transfer from the insurance proceeds to the Township treasurer the amounts required by and in accordance with the procedures set forth in 40 P.S. §638(c). Policy proceeds remaining after the transfer to the Township shall be disbursed in accordance with the policy terms. The named insured may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure after the transfer, and the Township treasurer shall return the amount of the fund in excess of the estimate to the named insured if the Township has not commenced to remove,

repair or secure the building or other structure. The Township treasurer shall carry out the duties of this section.

Section 4. Disposition of Escrow Proceeds. Upon receipt of the proceeds by the Township as authorized by §3, the Township treasurer shall place the proceeds in a separate fund to be used solely as security against the total cost of removing, repairing or securing incurred by the Township. When transferring the funds as required in §3, an insurance company, association or exchange shall provide the Township with the name and address of the named insured, whereupon the Township shall contact the named insured, certify that the proceeds have been received by the municipality and notify the named insured that the procedures under this subsection shall be followed. The fund shall be returned to the named insured when repairs, removal or securing of the building or other structure have been completed and the required proof received by the Township treasurer if the Township has not incurred any costs for repairs, removal or securing. If the Township has incurred costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund, and, if excess funds remain, the Township shall transfer the remaining funds to the named insured. Nothing in this Ordinance shall be construed to limit the ability of the Township to recover any deficiency. Further, nothing in this section shall be construed to prohibit the Township and the named insured from entering into an agreement that permits the transfer of funds to the named insured if some other reasonable disposition of the damaged property has been negotiated.

Section 5. The total costs incurred by the Township for the removal, repair or securing of a building or other structure under this Ordinance shall include, but not be limited to, all administrative, personnel and overhead costs incurred by the Township in accordance with generally accepted accounting procedures.

Section 6. Upon the enactment of this Ordinance, the Township Secretary shall file an exact copy of the Ordinance with the Department of Community Affairs together with the name, position and phone number of the municipal official responsible for compliance with Section 508 of the Insurance Company Law of 1921, as amended.

Section 7. The provisions of this Ordinance are severable. If any section, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional, illegal or otherwise invalid by the judgment or decree of a court of competent jurisdiction, that invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 8. This Ordinance shall be effective five (5) days from the date of enactment.

ENACTED and ORDAINED this 24th day of April, 1995.

BOARD OF SUPERVISORS OF
UWCHLAN TOWNSHIP

C. Ward Braceland, Chairman

John J. Pribanic, Vice Chairman

John J. Mahoney, Member

ATTEST:

Douglass Hanley, Township Manager

pennsylvania
GOVERNOR'S CENTER FOR
LOCAL GOVERNMENT SERVICES

Fire Insurance Escrow Act

Act 93 of 1994

Fire Insurance Escrow Act

Act 93 of 1994

§ 638. Municipal certificate required prior to payment of fire loss claims

(a) No insurance company, association or exchange doing business in this Commonwealth shall pay a claim of a named insured for fire damage to a structure located within a municipality where the amount recoverable for the fire loss to the structure under all policies exceeds seven thousand five hundred dollars ($ 7,500) unless the insurance company, association or exchange is furnished with a certificate pursuant to subsection (b) of this section and unless there is compliance with the procedures set forth in subsections (c) and (d) of this section.

(b) (1) The municipal treasurer shall, upon the written request of the named insured specifying the tax description of the property, name and address of the insurance company, association or exchange and the date agreed upon by the insurance company, association or exchange and the named insured as the date of the receipt of a loss report of the claim, furnish the insurance company, association or exchange either of the following within fourteen (14) working days of the request:

(i) a certificate or, at the discretion of the municipality, a verbal notification which shall be confirmed in writing by the insurer to the effect that, as of the date specified in the request, there are no delinquent taxes, assessments, penalties or user charges against the property and that, as of the date of the treasurer's certificate or verbal notification, no municipality has certified any amount as total costs incurred by the municipality for the removal, repair or securing of a building or other structure on the property; or

(ii) a certificate and bill showing the amount of delinquent taxes, assessments, penalties and user charges against the property as of the date specified in the request that have not been paid as of the date of the certificate and also showing, as of the date of the treasurer's certificate, the amount of the total costs, if any, certified to the treasurer that have been incurred by a municipality for the removal, repair or securing of a building or other structure on the property. For the purposes of this subclause, the municipality shall certify to the treasurer the total amount, if any, of such costs. A tax, assessment, penalty or user charge becomes delinquent at the time and on the date a lien could otherwise have been filed against the property by the municipality under applicable law.

(2) (i) Upon the receipt of a certificate pursuant to clause (1)(i) of this subsection, the insurance company, association or exchange shall pay the claim of the named insured in accordance with the policy terms, unless the loss agreed to between the named insured and the company, association or exchange equals or exceeds sixty per centum (60%) of the aggregate limits of liability on all fire policies covering the building or other structure. In the case of such a loss, the insurance company, association or exchange, the insured property owner and the municipality shall follow the procedures set forth in subsections (c) and (d) of this section.

(ii) Upon the receipt of a certificate and bill pursuant to clause (1)(ii) of this subsection, the insurance company, association or exchange shall return the bill to the treasurer and transfer to the treasurer an amount from the insurance proceeds necessary to pay the taxes, assessments, penalties, charges and costs as shown on the bill. The municipality shall receive the amount and apply or credit it to payment of the items shown in the bill.

(c) When the loss agreed to between the named insured and the company, association or exchange equals or exceeds sixty per centum (60%) of the aggregate limits of liability on all fire policies covering the building or other structure, the insurance company, association or exchange shall transfer from the insurance proceeds to the designated officer of the municipality in the aggregate two thousand dollars ($ 2,000) for each fifteen thousand dollars ($ 15,000) and each fraction of that amount of a claim, or, if at the time of a loss report the named insured has submitted a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurance company, association or exchange shall transfer from the insurance proceeds the amount specified in the estimate. The transfer of proceeds shall be on a pro rata basis by all companies, associations or exchanges insuring the building or other structure. Policy proceeds remaining after the transfer to the municipality shall be disbursed in accordance with the policy terms. The named insured may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure after the transfer, and the designated officer shall return the amount of the fund in excess of the estimate to the named insured if the municipality has not commenced to remove, repair or secure the building or other structure. This subsection only applies to municipalities that have adopted an ordinance authorizing the procedure described in subsections (c) and (d) of this section and applies only to fire losses that occur after the adoption of the ordinance. The ordinance shall designate the officer authorized to carry out the duties of this section.

(d) Upon receipt of proceeds by the municipality as authorized by this section, the designated officer shall place the proceeds in a separate fund to be used solely as security against the total cost of removing, repairing or securing incurred by the municipality. When transferring the funds as required in subsection (c) of this section, an insurance company, association or exchange shall provide the municipality with the name and address of the named insured, whereupon the municipality shall contact the named insured, certify that the proceeds have been received by the municipality and notify the named insured that the procedures under this subsection shall be followed. The fund shall be returned to the named insured when repairs, removal or securing of the building or other structure have been completed and the required proof received by the designated officer if the municipality has not incurred any costs for repairs, removal or securing. If the municipality has incurred costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund, and, if excess funds remain, the municipality shall transfer the remaining funds to the named insured. Nothing in this section shall be construed to limit the ability of a municipality to recover any deficiency. Further, nothing in this subsection shall be construed to prohibit the municipality and the named insured from entering into an agreement that permits the transfer of funds to the named insured if some other reasonable disposition of the damaged property has been negotiated.

(e) Proof of payment by the insurance company, association or exchange of proceeds under a policy in accordance with subsection (c) of this section is conclusive evidence of the discharge of its obligation to the insured under the policy to the extent of the payment and of compliance by the company, association or exchange with subsection (c) of this section.

(f) Nothing in this section shall be construed to make an insurance company, association or exchange liable for any amount in excess of proceeds payable under its insurance policy or for any other act performed pursuant to this section or to make a municipality or public official an insured under a policy of insurance or to create an obligation to pay delinquent property taxes or unpaid removal liens or expenses other than as provided in this section.

(g) An insurance company, association or exchange making payments of policy proceeds under this section for delinquent taxes or structure removal liens or removal expenses incurred by a municipality shall have a full benefit of such payment, including all rights of subrogation and of assignment.

(h) Subsections (a) and (b) of this section shall apply only to municipalities that have adopted an ordinance authorizing the procedure set forth in subsections (a) and (b) and only to fire losses that occur after the effective date of the ordinance.

(i) When an ordinance is first passed or adopted by a municipality under subsections (a) and (b) of this section or subsections (c) and (d) of this section, or both, an exact copy of the ordinance shall be filed with the Department of Community Affairs together with the name, position and phone number of the municipal official responsible for compliance with this section. Each municipality enacting an ordinance under this section shall supply the information required by this subsection to the Department of Community Affairs as part of the implementation of its ordinance. The Department of Community Affairs shall periodically produce a register listing those municipalities filing the ordinance. This register shall be made available to insurance companies at minimum cost. An insurance company, association or exchange shall not be required to comply with any municipal ordinance if the municipality fails to provide a copy of the ordinance to the Department of Community Affairs.

(j) The term "municipality," as used in this section, shall mean any city, borough, town, township or home rule municipality. The term "treasurer," as used in this section, shall mean an elected treasurer or other appropriate municipal officer authorized to collect real property taxes.

(k) This section shall be liberally construed to accomplish its purpose to deter the commission of arson and related crimes, to discourage the abandonment of property and to prevent urban blight and deterioration.

HISTORY: 1921, May 17, P.L. 682, No. 284 § 508, added 1992, July 9, P.L. 678, No. 98 Amended 1994, Oct. 13, P.L. 609, No. 93

LexisNexis (R) Notes:

CASE NOTES

1. Credit granted to an insurer for the amount of delinquent taxes it paid prior to paying the insured's claim was improper, because *40 P.S. § 638* did not apply to the claim of a mortgagee. *Sotelo v. Washington Mut. Ins. Co., 1999 PA Super 159, 734 A.2d 421, 1999 Pa. Super. LEXIS 1861 (Pa. Super. Ct. 1999).*

TREATISES AND ANALYTICAL MATERIALS

1. *1 P.L.E. INSURANCE § 276,* Pennsylvania Law Encyclopedia, INSURANCE, § 276 Fire Insurance, Copyright 2006, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

LAW REVIEWS

1. *4 Widener J. Pub. L. 1035, 1994* LEGISLATIVE REVIEW: LEGISLATIVE ACTS OF 1994.