



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Municipal Utilities' Tax Lien Bill Collection Powers and Their Application to Rental Properties

INTRODUCTION

Among other differences, municipal utilities differ from other utilities in that they may collect unpaid service bills through a tax lien on the property served. This creates special problems for the owners of rental property in the case where a tenant fails to pay for municipal utility service and the amount due becomes a lien on the property and, thus, the responsibility of the landlord.

This information memorandum describes the statutes governing bill collection by municipal utilities and certain procedures required in those statutes designed to assist landlords.

MUNICIPAL UTILITY COLLECTION OF UNPAID BILLS VIA TAX LIENS

Municipally owned public utilities are authorized to collect unpaid charges for utility service by placing the charges on the tax rolls, as a lien on the property served. [s. 66.0809 (3), Stats.] By cross-reference, the same power is given to public inland lake protection and rehabilitation districts, town sanitary districts, municipal sewerage systems (other than storm water and surface water sewerage systems), metropolitan sewerage districts, and municipalities that receive sewerage services from the Milwaukee Metropolitan Sewerage District under contract.*

The most common services to which this lien authority applies are municipal water and sewer services. The power also applies to the 82 municipal electric utilities in Wisconsin, provided that two conditions are met: the municipality has enacted an ordinance authorizing the exercise of this power for the collection of unpaid municipal electric bills; and, in 1996, the municipality collected such bills as special charges, under the statutes that existed at that time (s. 66.60 (16), 1993 Stats., subsequently amended and renumbered s. 66.0267, Stats.). It also applies to any municipal utility that provides natural gas or telecommunications service.

In order to have unpaid charges become a tax lien, a municipal utility must follow a procedure that begins with giving notice on October 15 of each year to the owner or occupant of each parcel of land to which service has been furnished and for which payment is in arrears. The notice informs the owner or occupant of the amount of arrearage and the ability of the utility to assess penalties and to collect the arrearages and penalties through the property tax system if the arrearages and penalties are not paid by November 15. On November 16, any overdue payments that remain in arrears become a lien upon the property and are collected by the municipality in the same manner as property taxes.

The procedures for a water utility of a first class city (i.e., the Milwaukee Water Works) differ from the procedures for other municipal utilities primarily in that no notice to the owner or occupant of the property is required and the unpaid charges become a lien on November 1, rather than November 15. [s. 62.69 (2) (f), Stats.]

ADDITIONAL PROCEDURES FOR RENTAL RESIDENTIAL PROPERTY

The use of tax liens on property to collect unpaid municipal utility and sewerage service charges does not distinguish between charges incurred by an owner occupant and those incurred by a tenant. Consequently, bills for utility or sewerage service provided by a municipality and incurred by a tenant can become a lien on the property of the landlord if they remain unpaid at the time that the tenant vacates the rental property and if the landlord is unable to compel the tenant to pay the outstanding utility bill.

Owners of rental residential property can invoke additional procedures in ss. 62.69 and 66.0809, Stats., that are designed to help landlords to prevent this situation by notifying them when arrearages on their rental properties are accumulating. The procedures apply explicitly to water and electric utilities and *not* to other municipal utility services (i.e., natural gas or telecommunications services). The procedures do *not* apply to town sanitary districts or public inland lake protection and rehabilitation districts that have sewerage connections serving fewer than 700 service addresses.

It is not entirely clear whether these procedures apply to billing for sewer service. As defined, “utility” does not include a municipality that provides sewer service (except as a combined municipal water and sewer utility). The cross-references identified in the first part of this memorandum clearly extend the lien procedure to charges for municipal sewer service. They

could be read to extend the additional procedures for rental residential property to charges for municipal sewer service, too, but attorneys practicing in this area have expressed conflicting opinions on this question. In practice, most municipal sewer services observe the procedures.

To initiate the procedure, the owner of a rental dwelling unit notifies the utility, in writing, of the name and address of the owner and of the tenant of the dwelling who is responsible for the payment of charges for water or electric service. If requested by the utility, the owner also provides the utility with a copy of the rental or lease agreement in which the tenant assumes responsibility for the payment of the utility charges. After receiving such a notice, the utility must follow one of two alternative notice procedures regarding any unpaid utility charges. The choice of the procedure that will be used is left to the utility. A utility that fails to follow the procedures after being requested to do so by a landlord is prohibited from collecting unpaid utility charges for that rental dwelling unit under s. 66.0809, Stats.

Under the first alternative procedure, the utility must send bills to the tenant, in the tenant’s own name (as opposed to sending bills to a street address or to “occupant,” as is sometimes done for water service). The utility must provide the landlord with copies of any past due notices provided to the tenant for charges that are more than one billing cycle past due. If a tenant vacates the dwelling while utility charges are in arrears and the landlord provides the utility with a written notice containing the date the tenant vacated the rental dwelling unit and the tenant’s forwarding address, the utility must continue to send past due notices to the tenant at the forwarding address until either the charges have been paid or the utility has started the procedure for collecting the charges as a tax lien.

Under the second alternative procedure, the utility is required to notify the landlord

whenever charges for utility service provided to the tenant are past due. The notice must be provided within 14 days of the charges becoming past due. Under this alternative, there is no specific requirement that the utility send bills to the tenant in the tenant's own name or that the utility pursue collection of the charges from the tenant after the tenant has vacated the dwelling.

The statutes include specific requirements regarding how notices are provided by municipal utilities and how landlords must notify the utility of the identity of tenants who are responsible for utility bills.

The treatment of the Milwaukee Water Works is substantially the same as other municipal

utilities. It differs in requiring a landlord to provide a sworn affidavit to the utility including the date the tenant vacated the premises, the tenant's forwarding address, and a meter reading reflecting the service for which the tenant is responsible. (In other municipalities, the property owner needs only to provide a written notice containing the date the tenant vacated the premises and the tenant's forwarding address.)

This memorandum was prepared on May 28, 2004, by *David L. Lovell, Senior Analyst*. The information memorandum is not a policy statement of the Joint Legislative Council or its staff.

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

<http://www.legis.state.wi.us/lc>

* The specific references are as follows: public inland lake protection and rehabilitation districts, s. 33.22 (3), Stats.; town sanitary districts, s. 60.77 (5) (e), Stats.; municipal sewerage systems (other than storm water and surface water sewerage systems), s. 66.0821 (4) (d), Stats.; metropolitan sewerage districts, s. 200.13 (13), Stats.; and municipalities that receive sewerage services from the Milwaukee Metropolitan Sewerage District under contract, s. 200.55 (5) (d) 2., Stats.