



Seeking payment for delinquent water bills

By Jeanette Behr, research attorney, League of Minnesota Cities

Minnesota cities use one or both of two methods to get paid for water services when the normal billing process fails. This is an overview of shutting off water services — not municipal gas or electric utilities — or certifying unpaid water bills to the county auditor for payment with property taxes.

Any city may provide comprehensive water services and systems, including sewer and storm sewer services, for its citizens. Coincidentally, a city may use reasonable rules to enforce payment for water services from the owner, lessee, occupant of the property or all of them. “Water services” refers to water, sewer, and storm water services.

What process is required to enforce payment? Cities must establish reasonable and appropriate timelines to provide water consumers written notice of their right to contest unpaid bills, water shut-off, or certification of unpaid bills to the county auditor. The notice must clearly identify the person or persons the city authorizes to listen to consumers and make appropriate decisions based on the facts. A discussion of unpaid bills, or hearing, is an informal proceeding and cities can enter into installment agreements with consumers to address delinquent bills.

If the consumer does not respond to reasonable notice or no resolution is reached, the city may proceed with shutting of water or certification to the county auditor to procure payment. First, cities should use reasonable methods to ensure the responsible person receives written notice of the pending action. Some cities send notice by certified mail to the person's last known address, other cities deliver a red tag to the front door of the property as a warning of water shut off or certification.

When is a city barred from shutting off water? The cold weather rule is an important exception to keep in mind before shutting off water service. This rule applies to shutting off water if the primary heat source is related in

any way to the water supply. No utility can disconnect service to a resident unit between October 15 and April 15 if that shut-off would in any way affect the primary heat source of the unit and the consumer complies with the provisions of the rule.

Can cities shut off tenant's or landlords' water? The law allows cities to enforce charges against a lessee or occupant, but also requires cities to provide tenants notice and a hearing. Since it's often difficult to engage in this lengthy process with individuals who live in an area for a short time, most cities pass an ordinance making property owners financially responsible for water services. As to landlords, a tenant's water supply must not be terminated due to a landlord's outstanding water debt without notifying the tenant and providing a chance to discuss the situation.

How is shutting off water affected by property sales? If the owner of a particular property sells the property and has delinquent water bills, cities cannot require the buyer to pay those delinquent bills before providing water services. Nor can cities shut off water services to a new owner based only on the outstanding water bills of the seller.

What about bankruptcy proceedings and water shut-offs? Initially, water may not be shut off when a property owner with delinquent bills files a petition for bankruptcy. However, 20 days from the filing date a city can terminate water to the property unless the owner or bankruptcy trustee provides a deposit or some assurance of payment for continuing water service. A state law makes governmental services a prior lien in bankruptcy proceedings by operation of law.

Is certification for collection with taxes a better option than shutting off water? There are many exceptions to consider before shutting off water to a particular property. To avoid this, cities can certify unpaid water bills to their county auditor once a year. The outstanding debt then becomes a lien, or charge, against the property, collected with property taxes. Even if the property is sold after certification, the buyer must pay the debt. Also, a prior lien against the property secures the debt if the owner later declares bankruptcy. Additionally, certification prevents large delinquent bills carrying over from year to year and, once delinquent bills are certified, staff time spent trying to collect payment is eliminated.

Cities should ask their county auditor when unpaid water bills must be certified; the state implies a deadline of December 28 in conjunction with property taxes, but some counties require certification of unpaid water bills by November 29 with special assessments. Remember, notice and a hearing must be provided prior to certification.

For examples of notice and hearing procedures, please call the League Research Service at 651-281-1200 or 800-925-1122.

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