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## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

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

Among other differences, municipal utilities differ from other public utilities in that they may collect unpaid bills for utility service through a tax lien on the property served. This can create special problems for the owners of rental property. In the case where a tenant fails to pay for municipal utility service, the amount due becomes a lien on the property and, thus, the responsibility of the landlord. The statutes include provisions designed to assist landlords to avoid this situation.

#### ***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.<sup>1</sup>

The most common services to which this lien authority applies are municipal water and sewerage services, including storm water sewerage 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.<sup>2</sup> It also applies to any municipal utility that provides natural gas or telecommunications service.

#### ***PROCEDURES***

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. (This notice will be referred to in this Information Memorandum as "the October 15 notice".) The notice informs the owner or occupant

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<sup>1</sup> The specific references are as follows: public inland lake protection and rehabilitation districts, s. 33.22 (3) (a), Stats.; town sanitary districts, s. 60.77 (5) (e), Stats.; municipal 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.

<sup>2</sup> Section 66.60 (16), 1993 Stats., subsequently amended and renumbered s. 66.0627, Stats.

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.]

### ***TREATMENT OF MOBILE HOMES***

In general, a lien for the collection of unpaid municipal utility bills is placed on the lot or parcel of real estate to which the utility service was furnished. However, if the utility service is delivered and metered directly to a mobile home in a licensed mobile home park, the amount of the unpaid bills and penalties becomes a lien on the mobile home itself, rather than on the underlying real estate. If the mobile home park owner owns both the real estate and the mobile home, there is no practical effect of this distinction. In the common situation in which the resident owns the mobile home unit and rents the lot from the mobile home park owner, however, this results in leaving the responsibility for the unpaid bill with the tenant.

### **ADDITIONAL PROCEDURES A LANDLORD MAY INVOKE**

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.

A landlord can invoke additional procedures applicable to specific rental residential properties that the landlord identifies. Some provisions are designed to alert a landlord when unpaid bills are accumulating and to avert the problem. Others give landlords tools to identify potential tenants with a history of unpaid utility bills. Once invoked, a municipal utility is prohibited from collecting arrearages for service to the specific properties if it fails to comply with these procedures. 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.<sup>3</sup>

### ***INITIATION OF ADDITIONAL PROCEDURES***

To initiate the procedures, the owner of a rental dwelling unit notifies the utility, in writing, of the name and address of the owner of the dwelling and of the tenant who is responsible for the payment of charges for utility 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

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<sup>3</sup> It is not entirely clear whether these procedures apply to billing for sewerage service. As defined, "utility" does not include a municipality that provides sewerage service (except as a combined municipal water and sewerage utility). The cross-references identified in the first part of this memorandum clearly extend the lien procedure to charges for municipal sewerage service. They could be read to extend the additional procedures for rental residential property to charges for municipal sewerage service, too, but attorneys practicing in this area have expressed conflicting opinions on this question. In practice, most municipal sewerage services observe the procedures.

charges. Because the landlord's notification to the utility is specific to individual utility customers, the municipal utility's obligations that flow from it apply only to those customers.

## ***NOTICE PROCEDURES***

### ***Notice Procedures Applicable Through 2014***

Under legislation enacted in 1996 (1995 Wisconsin Act 419), which remains in effect through 2014, the utility must follow one of two alternative notice procedures regarding any unpaid charges for utility service to a specified rental dwelling. The choice of the procedure that will be used is left to the utility.

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.)

### ***Notice Procedures Applicable Beginning January 1, 2015***

Legislation enacted in 2014 (2013 Wisconsin Act 274), which takes effect January 1, 2015, replaces the option of two different notice procedures with a single procedure, as follows:

- A municipal utility must send bills for service to a customer who is a tenant in the tenant's own name.
- A municipal utility must provide notice to a landlord of a tenant's arrears within 14 days of the charges becoming past due.
- If the landlord notifies the utility that a tenant has vacated the dwelling while utility charges are in arrears and, within 21 days of the tenant vacating the dwelling, the landlord has provided the utility with a forwarding address for the tenant, 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.

- A municipal utility must send the October 15 notice of a tax lien to the tenant and to the owner.

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

Again, the requirements applicable to the Milwaukee Water Works are substantially the same as the requirements applicable to other municipal utilities. Because there is no October 15 notice in the Milwaukee Water Works' procedure, the steps triggered by that notice for other municipal utilities are triggered for the Milwaukee Water Works by certification of a lien on the property served, which occurs on November 1.<sup>4</sup>

### ***LIEN AGAINST THE TENANT'S ASSETS***

When a municipal utility provides the October 15 notice to a landlord and tenant, the municipality has a lien on the assets of the tenant in the amount of the arrears. If the landlord pays the amount of the arrears to the municipality, the lien transfers to the landlord. The lienholder (the municipality or the landlord) must file a notice of the lien with the clerk of courts before it may commence an action to enforce the lien and must file a notice of lien satisfaction with the clerk of courts when the lien is satisfied. Also, once filed, a record of the lien will be publicly available on the Consolidated Court Automation Program (CCAP) Internet site.

When a municipal utility provides the October 15 notice to a landlord and tenant, it must also provide a written notice to the tenant explaining the lien that has arisen on the tenant's assets.

This provision takes effect on January 1, 2015.

### ***DISCONNECTION OF ELECTRIC SERVICE***

Beginning 14 days after receiving a notice of a tenant's past-due charges for electric service, a landlord may request a municipal utility to disconnect electric service from the rental dwelling unit. Except as provided in rules of the Public Service Commission (PSC), relating to disconnection of service<sup>5</sup>, the municipal utility must then terminate electric service.

This provision also takes effect on January 1, 2015.

### ***PROVISIONS APPLICABLE TO ALL RENTAL DWELLINGS***

A number of other provisions of the statute governing municipal utility charges relate to municipal utility service to all rental dwellings and collection of unpaid bills for such service.

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<sup>4</sup> Prior to enactment of 2013 Wisconsin Act 274, the treatment of rental property by the Milwaukee Water Works was governed by a separate statute, s. 62.69 (2) (g). Act 274 repealed that paragraph, with the result that the Milwaukee Water Works is now governed by the same statute as other municipal utilities for this purpose.

<sup>5</sup> PSC rules prohibit disconnection of electric utility service, for example, during the winter months, during heat emergencies, if disconnection of service will aggravate an existing medical or protective services emergency, if the customer is in compliance with a deferred payment agreement, and while a dispute over the amount of arrears is under investigation by the PSC. Procedural requirements in these rules relate to matters such as ensuring that the customer has adequate notice and opportunity to respond prior to losing service. [See subchs. III and IV of ch. PSC 113, Wis. Adm. Code.]

***DISCLOSURE OF OUTSTANDING PAST-DUE CHARGES***

Upon request of the owner of rental residential property, a municipal utility is required to disclose whether a new or prospective tenant has outstanding past-due charges for service provided by the utility in that tenant's name at a different address.

***DEFERRED PAYMENT AGREEMENTS***

PSC rules require that, before disconnecting service, a public utility must offer a deferred payment agreement to a residential customer who is behind in paying for utility service. [s. PSC 113.0404, Wis. Adm. Code.] Section 66.0809, Stats., specifies that a municipal utility is not required to offer a customer who is a tenant at a rental dwelling a deferred payment agreement.

***STANDARD OF "UNREASONABLE OR UNJUSTLY DISCRIMINATORY"***

A standard requirement of utility service is that a public utility may not adopt or enforce rules or procedures that are unreasonable or unjustly discriminatory. This principle is articulated in s. 196.37, Stats. However, that section includes a statement that it is not unreasonable or unjustly discriminatory for a municipal utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based on whether the customer owns or leases the property that is receiving utility service and subject to a lien for unpaid utility bills. In addition, s. 66.0809 includes explicit authority for a municipal utility to adopt such rules and practices.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by David L. Lovell, Principal Analyst, on May 5, 2014.

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