MRSC FOCUS

Resources for Local Government

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# Utility Termination

Nobody likes to shut off a person's utility services. Nevertheless, municipal utilities must receive payment for providing utility services; if they do not receive payment, they may have no choice but to terminate those services. However, termination must be accompanied by certain due process protections, such as adequate notice and an opportunity to contest the billing. And, termination gets more complicated when landlords and tenants are involved or the utility customer is subject to bankruptcy proceedings. So, it is important to understand the legal limitations with respect to utility terminations and also to have in place clear policies that meet legal requirements and that are consistently applied.

Although, with some exceptions (e.g., RCW 35.21.300), the authority to terminate utility services is not specifically spelled out by statute, it is inherent in the contractual relationship between a utility and its customers. It is up to each local government utility to determine when and if a customer's service is to be terminated.

## Due Process Requirements

The U.S. Supreme Court, in *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 98 S.Ct. 1554 (1978), held that due process considerations require that certain notice procedures be followed before utility service may be terminated. These procedures can be summarized as follows:

- Written notice must be given to the customer prior to termination of utility service.

- All written notices advising of the termination must clearly and in layman's terms inform the customer of the available opportunities to present his or her objections to the bill to the utility, and identify the telephone number, address, and department of the person who will handle the complaint. The opportunity for this informal hearing must be available in advance of the termination date.

- The employee or official responding to the customer communication as outlined in the written notice must have the authority to review the facts and files, to correct any errors in the billings, and arrange for credit terms.

Each city and county that provides utility services should adopt policies to insure that the procedures outlined above are followed.

Cities providing water and/or electric utility service are subject to an additional limitation. RCW 35.21.300(1) provides that, if the *owner of the premises* (thus, not a tenant) disputes a bill and, before service is cut off, tenders the amount he or she claims is due, the city may not cut off service until it sues for the disputed amount and receives a judgment in its favor.

## Landlord-Tenant Issues

"the landlord-tenant relationship can cause headaches for municipal utilities"

For a number of reasons, the landlord-tenant relationship can cause headaches for municipal utilities. A basic reason is that the tenant may be the customer who is contractually liable for the utility bill, but it is the landlord's property to which any available lien will attach. If the landlord is the customer who contracts with the utility, the tenant will be directly affected by a termination caused by the landlord's delinquent utility payment. Also, the utility can get dragged into a landlord-tenant conflict when a landlord requests termination because of issues related to the tenancy. These problems can for the most part be avoided by clear policies that protect the due process rights of all parties.

As the owner of the property receiving utility service, a landlord may not, generally, escape liability for a delinquency incurred by a tenant. Because a municipal utility has a lien on the property to which service is provided, it may enforce the lien to collect a delinquency. However, a lien for city water or electric service may be enforced only by shutting off that service. RCW 35.21.300(1). The utility may also, of course, pursue collection against the tenant. Some cities require that the utility account be in the landlord's name.

When the utility account is in the tenant's name, a city utility must notify the landlord of the tenant's delinquency if such notice is requested by the landlord. Failure of a city to do so, when requested by the landlord, prevents a lien from being applied to the premises for the tenant's delinquency. RCW 35.21.217.

"the tenant, in addition to the landlord, should be given advance notice of the termination"

If the utility account is in the landlord's name, and the account becomes delinquent and subject to termination, the tenant, in addition to the landlord, should be given advance notice of the termination. A 1994 Ninth Circuit Court of Appeals decision held that tenants were deprived of due process because the failure to notify them of termination prevented them from suing the landlord for injunctive relief prior to the service being terminated. *Turpen v. City of Corvallis*, 26 F.3d 979 (9th Cir. 1994). A few Washington cities give tenants of single-family units or of individually metered multi-family units the opportunity to have the utility account put in the tenant's name when the landlord's account is delinquent and termination is imminent.

Due process also protects new tenants who rent a unit for which the prior tenant was delinquent in paying utility charges. A utility may not refuse service to a new tenant based on a prior tenant's delinquency. *O'Neal v. Seattle*, 66 F.3d 1064 (1995).

If an account is in the landlord's name and the landlord requests termination where there is no delinquency, it is advisable to give the tenant notice so that he or she may, if called for, pursue legal remedies against the landlord. A residential landlord is prohibited from terminating a tenant's utility service. RCW 59.18.300.

## Utility Termination and Bankruptcy

Special rules under bankruptcy law apply when a delinquent utility customer is in bankruptcy proceedings. The Bankruptcy Code provides that a municipal utility cannot alter, refuse, or discontinue service because of a bankruptcy filing or because of an unpaid pre-bankruptcy petition utility bill.

"a municipal utility cannot alter, refuse, or discontinue service because of a bankruptcy filing"

However, a utility may require that "adequate assurance of payment" be provided within 20 days of the "order for relief" in a bankruptcy case. An "order for relief" is the commencement of a voluntary bankruptcy case or the entry of an order of relief in an involuntary case. Adequate assurance of payment is typically a cash deposit, but a bankruptcy court may determine some other form or security to be reasonable. If adequate assurance of payment is not provided within the 20-day period, the utility may discontinue service, but only for a delinquency arising after commencement of the bankruptcy case.

If utility service was terminated prior to the bankruptcy filing, resumption of service is not required.

## Termination of One Type of Utility Service Because of a Delinquency in Another

With one exception, there is no clear legal authority for a municipal utility to terminate service in one utility because of a delinquency in another utility. The exception is provided by statute, RCW 35.67.290, which provides that a city utility may shut off water service because of a delinquency in a sewer utility account.

"a city utility may shut off water service because of a delinquency in a sewer utility account"

Most cities that provide more than one utility service combine all utilities into one bill, itemizing each utility amount. It is probably within the authority of these cities to provide that a delinquency in the payment of the combined account will result in termination of all utility services.

## Miscellaneous Issues

***Is a municipal utility required to restore service when it receives partial payment of a delinquency?*** No, restoration of service is not required when a utility receives partial payment, except in one circumstance. That circumstance is where a city utility customer is more than four months delinquent on his or her water bill and

submits payment of an amount equal to charges for the past four months. The city utility must restore service in that situation because the lien for water service, which can be enforced only by termination of service, is only for four months' charges. RCW 35.21.290.

***How long before termination of utility service must notice of the termination be given?*** The law does not specify how much notice must be given. Five days' notice is a fairly common length of notice provided by municipal utilities in the state.

***Does the Americans with Disabilities Act (ADA) prohibit termination of utility service to a disabled individual?*** No, the ADA does not prohibit termination of utility service to a disabled individual. Of course, a utility may decide to apply a different termination policy to the disabled.

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Additional information on utility termination can be obtained from the MRSC Web site at **http://www.mrsc.org/pubworks/utilbill/collect.htm**, or by contacting MRSC at (206) 625-1300 or (800) 933-6772 or through our Web site at **http://www.mrsc.org/contactus.htm**.



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