

RACINE WATER WORKS COMMISSION POLICY ON TENANT/LANDLORD INVOICES AS A RESULT OF ACT 274

I. TENANT DELINQUENT UTILITY BILL LEGISLATION – REVISES SEC. 66.0809 (ACT 274)

A. Background

1. Act 274 represents compromise legislation between the Wisconsin Realtors Association and several municipal utility stakeholder groups (League, MEG-Water, MEUW, WRWA)
2. It protects a municipal utility's ability to place delinquent tenant utility charges on the landlord's property tax bill, but establishes a few new requirements to do so
3. Revisions primarily appear as amendments or additions to State Statute 66.0809, which applies to municipal public utility charges

B. Applicability

1. Only applies to residential tenant customers
2. Only applies to individually metered units that can be separately shut-off
 - a. State law requires that if gas, electric, or water service is measured jointly for two or more rental dwelling units, the owner must maintain the utility account in the name of the owner or the property manager (196.643(2))
3. Most provisions only apply if the landlord notifies the municipal utility that the residential tenant is responsible for the payment of utility bills, and provides the utility with both the landlord's and the responsible tenant's name and address. Racine Water Utility has established an application and registration form for this process of registering a tenant as the responsible party to satisfy the outstanding invoice. Failure to complete the form to the satisfaction of the Racine Water Utility may render the application void. A copy of the registration form is attached to this policy. The registration form can be amended from time to time.

C. Provisions that go into effect immediately

1. Utility must disclose to the owner of a rental dwelling unit, upon request, whether a new or prospective tenant has outstanding past-due charges for utility service to that utility in that tenant's name at a different address. This assumes that the Utility has prior knowledge of registered tenants. Since Racine does not require customers to be registered, Racine Water Utility does not keep or currently maintain records of who owns particular parcels in their distribution system
 - a. If utility charges are paid by the landlord, there would be no outstanding past due charges
2. Utilities are not required to offer deferred payment agreements to customers who are residential tenants (66.0809(9)) by State Statute

- a. The PSC (Public Service Commission) Staff has advised that this may require a utility to file and seek PSC approval for a change in its service rules or Tariffs since the PSC rate order and PSC code requires Utilities to offer deferred payment plans.
3. Utilities may adopt application, deposit, disconnection, or collection rules that distinguish between whether a customer owns or leases a property (66.0809(10))
 - a. New §196.37(5) provides that “It is not unreasonable or unjustly discriminatory for a municipal public utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.”
 - b. It allows (but does not require) utility to distinguish between those that have property that would be subject to a property tax lien, and those that do not
 - c. It gives utilities more discretion on how to manage these accounts
 - d. PSC Staff has advised that a change in utility practices would require a utility to file and seek PSC approval for a change in its service rules
 4. Utilities may (but are not required to) require customer applications (66.0809(7)) Racine will have a registration application process as part of ACT 274 implementation requiring landlords and tenants to register with the Utility.

D. Provisions that go into effect in January 2015

If a landlord has notified the municipal utility that a residential tenant is responsible for the utility bill, and has registered that tenant and property with the Racine water Utility we will have to:

1. Provide notice to the landlord of the residential tenant’s past-due charges within 14 days after the charges become past due (66.0809(5)(b))
 - a. Current law gives a utility the option to provide notice within 14 days or to provide the owner with a duplicate copy of the utility bill
 - b. If utility bills are monthly, provision of duplicate bills (with past-due amount listed on the bill) should typically satisfy the 14-day requirement (*This is not the case for residential properties in the Racine distribution system*)
 - c. For quarterly residential billers like Racine, this will require an additional notice
 - d. Utility may comply with this 14-day notice electronically if the landlord has opted to receive electronic notices (66.0809(5)(c)) The application requires an email address for the landlord or owner
 - e. Current law requires that if landlord notification is received, a utility must send bills for service to a tenant customer in the customer’s name. Racine intends to send a duplicate bill to the landlord at the time of invoicing a tenant customer.

2. Provide notice on or before October 15th to both the property owner and responsible tenant of delinquent utility charges (66.0809(5)(d))
3. Provide notice on or after October 15 to the responsible tenant that the Racine Water Utility has a lien upon the tenant's assets for the delinquent utility bills, and that the lien will transfer to the landlord if the landlord pays the delinquent charges (66.0809(3m)(b))
 - a. This is a statutory lien - Nothing more needs to be done at this point for the lien to arise
 - b. If tenant pays: Municipal lien is satisfied. Since lien was not filed anywhere, no satisfaction of lien is necessary. No court filing or CCAP filing occurs. This encourages tenant payment to avoid CCAP
4. Transfer the lien on the tenant's assets to the landlord if the landlord pays the delinquent charges (66.0809(5)(d))
 - a. Municipal lien is to be transferred to owner
 - b. Owner can file the lien with the Clerk of Courts. Clerk of Courts is to file the lien in the lien and judgment docket. If the lien is filed, it will appear on CCAP. (Landlord can ensure CCAP notice by filing the lien with the Clerk of Courts.)
5. The Racine Utility is obligated to transfer a list of delinquent customer accounts and tenant customer accounts to the surrounding Cities and Villages after November 15th of each year. At that time, the local unit of government will need to provide a list of residential tenant customers with delinquent accounts to the County Clerk in addition to their normal duties so that they may be placed on the property tax roll to the Clerk of Courts prior to December 17 (66.0809(3m)(c))
 - a. Applies if no payment on delinquent charges is made by November 15
 - b. The Clerk of Courts is expected to file these names in the judgment and lien docket. These names will then appear on CCAP
 - c. No requirement for the payment of the fee is in the legislation – Under § 814.61(5) fee for filing and entering liens is \$5
 - d. When the owner pays the taxes (and utility arrearages), the municipality's lien on the tenant's assets transfers to the owner
 - e. Delinquent charges still go on the tax roll also
6. If the tenant pays the delinquent charges after December 16, the responsible municipality or County shall file a lien satisfaction with the Clerk of Courts (66.0809(3m)(f)). The municipality will also need to notify the Racine water Utility to take the name of the tenant off of its list of delinquent tenants.
 - a. Lien satisfaction must be filed with the Clerk of Courts within 7 days after the lien has been satisfied

- b. If the owner pays the municipality first (which will likely be most of the time), the lien is transferred to the owner, and the owner is responsible for filing the lien satisfaction if and when the tenant pays the amount of the lien. Lien has been satisfied just because the owner pays the delinquent charges.
7. The League of Municipalities has posted, on its website, an ACT 274 informational packet prepared by MEUW, MEG-Water, WRWA, and the League of Wisconsin Municipalities. The packet includes a set of FAQs, the bill text, a memorandum from the Wisconsin Legislative Council providing background information on the tax roll process, and a memorandum from the PSC explaining its understanding of its role in the implementation of ACT 274.

The Utility must also maintain a list of delinquent tenants and upon request of a landlord; the Utility must let the landlord know if a tenant is currently in arrears with the Utility at another property with the Utility's jurisdiction.