

MEMORANDUM

TO: MEG - Water Members
FROM: Lawrie Kobza, Legal Counsel
DATE: November 18, 2014
RE: Delinquent Utility Bills on the Property Tax Roll
-- New Requirement for Notice to Landlords Starts January 1, 2015

Wisconsin Act 274 changed the requirements applicable to billing some rental properties. In order to retain the right to place delinquent utility bills incurred at some residential rental properties on the property tax roll at the end of the year, a municipal utility must give additional notices to landlords throughout the year. The new notice requirement is explained below.

NEW REQUIREMENT FOR 14-DAY NOTICE TO LANDLORD STARTS JANUARY 1, 2015

Beginning January 1, 2015, a municipal utility must give a landlord covered by Act 274 notice of a residential tenant's past-due utility charges ***within 14 days*** after the charges become past due.

If a utility does not provide a covered landlord with the 14-day notice, a utility loses the right to place the tenant's delinquent utility bills on the landlord's property tax roll at the end of the year.

- For utilities that bill monthly and require bills to be paid in 20 days, providing the landlord with a duplicate copy of the next month's bill (with the past due amount listed on the bill as "past due") would typically satisfy the 14 day requirement. You should confirm, however, that monthly bills are sent out less than 34 days apart.
- For utilities that bill quarterly, an additional notice to the landlord would be required to comply with the 14-day notice requirement. The notice could be a copy of the bill with the words "past due" stamped on it.

Some utilities have indicated that their standard practice is to provide a landlord with a copy of all their tenants' utility bills, regardless of whether amounts are past due or not. If this is your standard practice, and you bill monthly, landlords will automatically be getting notice of a delinquency within 14 days.

If your utility does not bill monthly, or if it does not send landlords copies of all tenant utility bills, your utility will need to develop a method to ensure that landlords are receiving notice of a residential tenant's past-due charges within 14 days after the charge becomes past due.

Notices may be provided to a landlord electronically if the landlord agrees to receive electronic notices

NOT ALL RENTAL PROPERTY COVERED BY NEW REQUIREMENTS

The 14-day requirement only applies to certain rental property. The requirement applies only if:

- the property is *residential* rental property;
- the rental property has separate utility meters for each individual rental unit (i.e., the rental property is a single unit property, or a multi-unit property with separate meters for each unit); and
- the landlord provides written notification to the municipal utility consisting of:
 - the property owner's name and address,
 - the tenant's name and address, if the tenant is responsible for the utility bill, and
 - confirmation that the property is residential rental property.

If a rental property is not individually metered, or if a landlord does not provide the required notice, a municipal utility is not required to provide a landlord with the 14-day notice. The utility would be able to place delinquent utility bills from the rental property on the landlord's property tax rolls without complying with the new notice requirements of Act 274.

2015 TAX ROLL PROCESS WILL CHANGE; FURTHER GUIDANCE WILL BE PROVIDED

The tax roll process for 2015 will change as a result of Act 274. Interested groups, including MEG - Water, will be working to provide municipalities and municipal utilities with guidance on how these changes should be handled. Watch for further information in the spring of 2015.

State of Wisconsin



2013 Senate Bill 517

Date of enactment: April 16, 2014
Date of publication*: April 17, 2014

2013 WISCONSIN ACT 274

AN ACT to repeal 62.69 (2) (g); to renumber and amend 66.0809 (3) and 66.0809 (5) (b) 1.; to consolidate, renumber and amend 66.0809 (5) (b) (intro.) and 2.; to amend 66.0809 (5) (c) and 66.0809 (5) (d); and to create 66.0809 (3m), 66.0809 (5) (bm), 66.0809 (7), 66.0809 (8), 66.0809 (9), 66.0809 (10) and 196.37 (5) of the statutes; relating to: collection of certain municipal utility arrearages and the provision of municipal utility service to tenants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 62.69 (2) (g) of the statutes is repealed.

SECTION 2. 66.0809 (3) of the statutes is renumbered 66.0809 (3) (a) and amended to read:

66.0809 (3) (a) Except as provided in subs. (4) and (5), on October 15 in each year notice shall be given to the owner or occupant of all the lots or parcels of real estate to which utility service has been furnished prior to October 1 by a public utility operated by a town, city, or village and payment for which is owing and in arrears at the time of giving the notice. The department in charge of the utility shall furnish the treasurer with a list of the lots or parcels of real estate for which utility service charges are in arrears, and the notice shall be given by the treasurer, unless the governing body of the city, village, or town authorizes notice to be given directly by the department. The notice shall be in writing and shall state the amount of arrears, including any penalty assessed pursuant to the rules of the utility; that unless the amount is paid by November 1 a penalty of 10 percent of the amount of arrears will be added; and that unless the arrears, with any added penalty, are paid by November 15, the arrears and penalty will be levied as a tax against the lot or parcel of

real estate to which utility service was furnished and for which payment is delinquent. The notice may be served by delivery to either the owner or occupant personally, or by letter addressed to the owner or occupant at the post-office address of the lot or parcel of real estate.

(b) On November 16, the officer or department issuing the notice shall certify and file with the clerk a list of all lots or parcels of real estate, giving the legal description, for which notice of arrears was given under par. (a) and for which arrears remain unpaid, stating the amount of arrears and penalty. Each delinquent amount, including the penalty, becomes a lien upon the lot or parcel of real estate to which the utility service was furnished and payment for which is delinquent, and the clerk shall insert the delinquent amount and penalty as a tax against the lot or parcel of real estate.

(c) All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes apply to the tax under par. (b) if it is not paid within the time required by law for payment of taxes upon real estate.

(d) Under this subsection, if an arrearage is for utility service furnished and metered by the utility directly to a manufactured home or mobile home unit in a licensed manufactured and mobile home community, the notice shall be given to the owner of the manufactured home or

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

mobile home unit and the delinquent amount becomes a lien on the manufactured home or mobile home unit rather than a lien on the parcel of real estate on which the manufactured home or mobile home unit is located. A lien on a manufactured home or mobile home unit may be enforced using the procedures under s. 779.48 (2).

(e) This subsection does not apply to arrearages collected using the procedure under s. 66.0627.

(f) In this subsection, "metered" means the use of any method to ascertain the amount of service used or the use of a flat rate billing method.

SECTION 3. 66.0809 (3m) of the statutes is created to read:

66.0809 (3m) (a) If sub. (5) applies and a notice of arrears under sub. (3) (a) is given or past-due charges are certified to the comptroller under s. 62.69 (2) (f), on the date the notice of arrears is given, or the past-due charges are certified under s. 62.69 (2) (f), the municipality has a lien upon the assets of each tenant of a rental dwelling unit who is responsible for arrears in the amount of the arrears, including any penalty assessed pursuant to the rules of the utility.

(b) The department in charge of the utility shall provide a notice to each tenant against whom the municipality has a lien. The notice shall be in writing and shall state the amount of arrears including any penalty assessed pursuant to the rules of the utility, that the tenant is subject to a lien upon his or her assets for arrears for which he or she is responsible, that the lien will transfer to the owner of the rental dwelling unit if the owner pays the arrears, and that the lien will be enforceable upon the filing of the lien with the clerk of courts.

(c) If par. (a) applies, prior to December 17, the municipality shall file with the clerk of courts a list of tenants of rental dwelling units responsible for arrears and against whom the municipality continues to have a lien. No action to enforce a lien under par. (a) may be maintained unless a notice of lien is filed under this paragraph.

(d) If par. (a) applies and the owner of the rental dwelling unit has paid the municipality the amount provided in the notice of arrears given under sub. (3) (a), or certified to the comptroller under s. 62.69 (2) (f), or the amount placed as tax against the real estate under sub. (3) (b) or s. 62.69 (2) (f), the lien under par. (a) transfers to the owner of the rental dwelling unit and the municipality no longer has a lien against the tenant.

(e) An owner of a rental dwelling unit who has a lien under par. (d) may file a notice of lien with the clerk of court of the county in which the rental dwelling unit is located not more than 6 months after the date the lien arose under par. (a). The clerk of courts shall file and enter the notice of lien in the judgment and lien docket. No action to enforce a lien under par. (d) may be maintained unless a notice of lien is filed under this paragraph.

(f) Within 7 days after a lien established and filed under this subsection is satisfied, the lienholder shall file with the clerk of courts a notice of lien satisfaction.

SECTION 4. 66.0809 (5) (b) (intro.) and 2. of the statutes are consolidated, renumbered 66.0809 (5) (b) and amended to read:

66.0809 (5) (b) ~~If this subsection applies, a~~ A municipal public utility may use sub. (3) or, if s. 62.69 applies, s. 62.69 (2) (f), to collect arrearages incurred after the owner of a rental dwelling unit has provided the utility with written notice under par. (a) only if the municipality complies with at least one of the following: ~~2. In order to comply with this subdivision, if a customer who is a tenant has charges for water or electric service provided by the utility that are past due, the municipal public utility shall serve~~ 2. In order to comply with this subdivision, if a customer who is a tenant has charges for water or electric service provided by the utility that are past due, the municipal public utility shall serve notice of the past-due charges on the owner of the rental dwelling unit within 14 days of the date on which the tenant's charges became past due. The municipal public utility shall serve notice in the manner provided in s. 801.14 (2).

SECTION 5. 66.0809 (5) (b) 1. of the statutes is renumbered 66.0809 (5) (am) and amended to read:

66.0809 (5) (am) ~~In order to comply with this subdivision, a~~ A municipal public utility shall send bills for water or electric service to a customer who is a tenant in the tenant's own name. Each time that a municipal public utility notifies a customer who is a tenant that charges for water or electric service provided by the utility to the customer are past due for more than one billing cycle, the utility shall also serve a copy of the notice on the owner of the rental dwelling unit in the manner provided in s. 801.14 (2). If a customer who is a tenant vacates his or her rental dwelling unit, and the owner of the rental dwelling unit provides the municipal public utility, no later than 21 days after the date on which the tenant vacates the rental dwelling unit, with a written notice that contains a forwarding address for the tenant and the date that the tenant vacated the rental dwelling unit, the utility shall continue to send past-due notices to the customer at his or her forwarding address until the past-due charges are paid or until notice has been provided under sub. (3) (a) or the past-due charges have been certified to the comptroller under s. 62.69 (2) (f).

SECTION 6. 66.0809 (5) (bm) of the statutes is created to read:

66.0809 (5) (bm) No earlier than 14 days after receiving a notice under par. (b) of a tenant's past-due charges for electric service, the owner of a rental dwelling unit may request that the municipal public utility terminate electric service to the rental dwelling unit. Except as provided under rules of the public service commission relating to disconnection of service and subject to the procedural requirements under those rules, unless all past-due charges are paid, the municipal utility shall terminate

electric service to the rental dwelling unit upon receipt of a request under this paragraph. This paragraph does not apply if a municipal public utility does not use the procedures under sub. (3) to collect the past-due charges.

SECTION 7. 66.0809 (5) (c) of the statutes is amended to read:

66.0809 (5) (c) A municipal public utility may demonstrate compliance with the notice requirements of par. (b) ~~1. or 2.~~ by providing evidence of having sent the notice by U.S. mail or, if the person receiving the notice has consented to receive notice in an electronic format, by providing evidence of having sent the notice in an electronic format.

SECTION 8. 66.0809 (5) (d) of the statutes is amended to read:

66.0809 (5) (d) If this subsection applies and a municipal public utility ~~is permitted~~ elects to collect arrearages under sub. (3) ~~or s. 62.69 (2) (f),~~ the municipal public utility shall provide all notices under sub. (3) ~~or s. 62.69 (2) (f) to the tenant and to the owner of the property or a person designated by the owner.~~

SECTION 9. 66.0809 (7) of the statutes is created to read:

66.0809 (7) A municipal utility may require a prospective customer to submit an application for water or electric service.

SECTION 10. 66.0809 (8) of the statutes is created to read:

66.0809 (8) A municipal public utility shall disclose to the owner of a rental dwelling unit, upon the owner's request, whether a new or prospective tenant has outstanding past-due charges for utility service to that municipal public utility in that tenant's name at a different address.

SECTION 11. 66.0809 (9) of the statutes is created to read:

66.0809 (9) A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement.

SECTION 12. 66.0809 (10) of the statutes is created to read:

66.0809 (10) A municipal utility may 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.

SECTION 13. 196.37 (5) of the statutes is created to read:

196.37 (5) 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.

SECTION 14. Initial applicability.

(1) The treatment of sections 62.69 (2) (g) and 66.0809 (3) and (5) (b) (intro.), 1., and 2. of the statutes first applies to arrearages incurred on the effective date of this subsection.

(2) The treatment of section 66.0809 (3m) of the statutes first applies to a notice of arrears given on the effective date of this subsection.

SECTION 15. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 62.69 (2) (g) and 66.0809 (3), (3m), and (5) (b) (intro.), 1., and 2., (bm), (c), and (d) of the statutes and SECTION 14 (1) and (2) of this act take effect on the first day of the 9th month beginning after publication.