

How to
maintain your
sanity and still
serve your
utility
customers!

Utility Billing and Collection Issues

September 12th 2013



INSLEE BEST
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Where We're Going Today

- Webinar Operation - John Carpita
5 minutes (+/-)
- Introductions - John Carpita
3 minutes (+/-)
- Presentation by Eric, Heidi and Cheryl
40 minutes (+/-)
- Questions from Webinar Participants
20 minutes (+/-)
- Wrap-up and Available Resources
5 minutes (+/-)

Introductions



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Introductions



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Conclusion and Questions



UTILITY BILLING ISSUES

Utility Billing Issues

1. Account Setup
2. Deposits
3. Landlord/Tenant Issues
4. Billing Adjustments Due to Leaks and Meter Failures
5. Overpayment and Underpayment of Utility Bills

Account Setup

- Accounts
 - ✓ Residential
 - ✓ Commercial
 - ✓ Mixed
 - ✓ Multi-Family

Deposits

Some utilities require deposits

- Amount
 - ✓ Typically 2 months of expected billings
- Length of time deposit is to be held
 - ✓ Some agencies until account closed
 - ✓ Others release after 12-18 months
- Re-imposition of deposit
 - ✓ New or additional deposit, if chronic delinquencies occur, or if the customer's credit rating changes for the worse.
- Disposition of unclaimed deposits
 - ✓ Uniform Unclaimed Property Act (Ch. 63.29 RCW)

Landlord/Tenant Issues

- Landlord/Tenant
 - ✓ Account Ownership
 - ✓ Billing
 - ✓ Tenant Delinquency
 - ✓ Evictions

Landlord/Tenant Issues

- Many utilities require that accounts be in the name of the property owner, who is primarily responsible for payment of the bill.
- Other utilities provide that tenants may establish their own utility account, with the owner's concurrence.
- RCW 35.21.217 (cities and towns) requires that the utility notify the landlord if a tenant is delinquent if requested to do so in writing.
- RCW 57.08.081(7) (w/s districts) addresses this same issue and duplicate bills.
- RCW 59.18.300 prohibits a landlord from requesting that a utility shut off a tenant's services to enforce an eviction.

Billing Adjustments Due to Leaks and Meter Error or Failure

- Maintenance and repair of water lines on private property is the responsibility of the private landowner, as well as any water lost due to leaks or breakage.
- When there has been a leak in pipes which are under the customer's control, some utilities do a one time adjustment to the billing if the customer had no knowledge of the leak and promptly notified the utility when it was discovered.
- Immediate repair of the broken pipe is required.
- Utility must adjust billings due to meter failure or error.
- Districts face possible issues under franchise agreements that make them responsible for private service lines.
- Notes on recent situations involving leaks and leak repairs.

Overpayment of Utility Bills

Overpayments must be refunded plus interest

➤ Statute of limitations is:

- ✓ 3 years from discovery [RCW 4.16.080(3) or (4)]
- ✓ Western Lumber vs. Aberdeen, 10 Wn App 325 (1973) allowed entire overcharge to be collected.
- ✓ 6 years from discovery if written utility services agreement is in place [RCW 4.16.040(1)]

Underpayment of Utility Bills

Collection of underpayments must be pursued

➤ Statute of limitations is:

- ✓ 6 years if there is a written utility services agreement [RCW 4.16.040(2)].
- ✓ 6 years if the utility charge constitutes an accounts receivable in normal course of business. [RCW 4.16.040(2)].
- ✓ 3 years if the utility charge is not considered an accounts receivable [RCW 4.16.080(3)]
- ✓ Possible claim of rate preference or discrimination if underpayment collection not pursued. [*Housing Authority vs. Northeast Lake Washington Sewer and Water District* 56 Wn App 589 (1990)]
- ✓ Possible gift of public funds issues [Wash. Const. Art VIII § 7]



UTILITY COLLECTION ISSUES

Utility Collection Issues

1. Penalties and Interest
2. Termination of Services
3. Payment Arrangements
4. Utility Liens/Foreclosure
5. Collection Agencies
6. Bankruptcy
7. Property Sales

Penalties and Interest

- Utilities can charge interest on delinquent account balances.
 - ✓ City - [Chapter 35.92 RCW](#)
 - ✓ Water and Sewer District - [RCW 57.08.081](#)
- Statutes set maximum interest rates that may vary for different utilities and agency types.
- A municipal utility may also establish a late charge or penalty, but the policy should specify:
 - ✓ whether a penalty is a fixed or flat amount; and
 - ✓ how it is applied to the delinquent utility bill.
- Policies should state whether penalties and interest are cumulative
- Fees may be imposed for shut-off and reconnection services.
 - ✓ Such fees should bear a reasonable relationship to the actual costs involved to the municipality.

Termination of Service

- Combined Accounts
 - ✓ Codes/ordinances should establish the order in which payments will be applied, with the most current water billing as the last priority.
 - ✓ Apply payments to sewer (and other utilities) first, as it is easier and most effective to terminate water service.
 - ✓ Prioritization helps to clarify amounts owed in case of a billing dispute.
- Termination of services is a utility's most effective means of enforcing collections, but ...
 - ✓ ... is also the most frustrating and distasteful.
- No agency wants to shut off water and/or electricity ...
 - ✓ ... and no agency wants to shut off sewer and garbage collection with attendant health risks.
- Notice must be given (in alternate language if needed) that services will be terminated as of a given date and time.

Termination of Service

- Notice should include:
 - ✓ Opportunity and procedures for protesting the bill.
 - ✓ Name, address and telephone number of the person to contact.
- Should "door hangers" be used as the last step in the process?
- How much time should be allowed?
- What if the customer only pays part of the bill?
- Medical conditions/treatment impacted by shutoff?
- W/S Districts can shut off water/sewer after 30 days delinquency [RCW 57.08.081(5)].
- Cities can shut off water after four months delinquency [RCW 35.21.290 & 300].

Payment Arrangements

- Under [RCW 35.21.300\(4\)](#) all municipal utilities (cities and towns) are to offer residential customers the option of a budget billing or equal payment plan.
 - ✓ The statute also provides that a plan must be offered to low income customers eligible under the state's program for [Low Income Home Energy Assistance](#).
- Budget payment plans typically compute the monthly bill based on the average use for the past 6 or 12 months.
 - ✓ At the end of every budget payment period, the bill is adjusted so that the customer pays the full amount due for the previous 6 or 12 months.
 - ✓ Then a new average is computed for the ensuing budget payment period.
- Payment plans can help to avoid more expensive collection efforts.

Utility Liens/Foreclosure

- By type of utility service:
 - ✓ Water
 - ✓ Sewer
 - ✓ Stormwater
 - ✓ Garbage Collection
 - ✓ Electrical
- By agency type:
 - ✓ City
 - ✓ County
 - ✓ Water/Sewer District
 - ✓ PUD
 - ✓ Other
- Statutes generally provide for recovery of foreclosure costs:
i.e. attorneys fees, title reports, etc.

Collection Agencies

- Utilities may use collection agencies to recover delinquent charges. (see RCW 19.16.500)
- Utilities may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.
- There must have been a notice to the debtor at least 30 days before the account is assigned to a collection agency that states.
 - ✓ The existence of the debt.
 - ✓ That the debt may be assigned to a collection agency.
- Be aware of the Fair Debt Collection Practices Act (15 USC § 1692)
 - ✓ Contract attorneys considered debt collectors
 - ✓ Must comply with statutory requirements.

June 24, 2013

SAMPLE NAME
SAMPLE ADDRESS
ISSAQUAH WA 98027

Re: **NOTICE OF INTENTION TO SEND ACCOUNT TO COLLECTIONS**

Dear Sample Name:

The City's records indicate your stormwater account #40-1234-00 for Sample Address is delinquent for stormwater charges from November 01, 2012 through May 31, 2013. The last payment was made on October 27, 2012 and covered billing through September 30, 2012.

If payment in the amount of \$101.38 is not received by the City by July 20, 2013, the City of Issaquah will proceed to send your information to AllianceOne Receivables Management for collections.

Please remit your payment promptly to the City at:

City of Issaquah
Utility Billing
130 E Sunset Way
Issaquah WA 98027

It would be unfortunate to send this account to collections. We look forward to receiving your payment. If you have any questions, please call 425-837-3063 between 9:00 a.m. and 5:00 p.m.

Sincerely,

Heidi Nagler
Utility Manager
City of Issaquah
425-837-3063

Bankruptcy

- The date a bankruptcy petition is filed is important to know, as it establishes an automatic stay on debt collection.
- A utility cannot bill or enforce liens for delinquent charges before that date.
- A utility should create a new billing account for the customer to clearly separate pre-filing charges versus post-filing charges.
- If service was terminated for non-payment before the filing date, the utility must restore service.

Bankruptcy

Collecting Pre-Petition Debt

- File Your Lien Notice
- Do Not Call/Write Debtor (send notices to debtor's attorney and the bankruptcy trustee)
- File Your Claim
 - ✓ Get the claim form from the court web site: <http://www.wawb.uscourts.gov> & follow the form instructions.
 - ✓ Show the agency's claim as a "secured" claim.
 - ✓ Attach back up materials to the claim form.
- Send trustee a letter indicating the utility's intent to foreclose its lien.

Bankruptcy

Collecting Post-Petition Debt

- Close pre-petition utility account
- Open a new utility account for post-petition debt
- Track developments in the case by using PACER account.
- Demand assurance of payment deposit, but remember:
"A utility may not alter, refuse or discontinue service to or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due." [11 U.S.C. § 366(a)]
- And:
"Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor within 20 days after the date of the order for relief furnishes adequate assurance of payment, in the form of a deposit or other security for service after such date."
[11 U.S.C § 366(b)]

Bankruptcy

Assurance of Payment Means:

- A cash deposit;
- A letter of credit;
- A certificate of deposit;
- A surety bond;
- A pre-payment of utility consumption; or
- Another form of security that is mutually agreed on between the utility and debtor or the trustee. [11 U.S.C. § 366(c)(1)]

Bankruptcy

Other Assurance of Payment Issues:

- When and To Whom?
 - ✓ Send a letter to the debtor's attorney or the debtor if no attorney is involved.
- How much?
 - ✓ 2-3 months of average bills.
- What does the utility do with the assurance deposit?
 - ✓ Keep in a separate account and account for separately.
- What does the utility do when the deposit is not made after demand?
 - ✓ Send a shutoff notice.

Property Sales

- Chapter 60.80 RCW requires the seller in a real estate transaction to satisfy any liens for delinquent utility bills.
- The seller is to provide a list of utility providers to the closing agent.
- Closing agent is to make written request for final utility billings.
- Final billing includes all outstanding charges as of the stated closing date and average daily utility charges.
- If utility fails to provide final billing info within 7 business days, then it loses the right to collect the billings.



Additional Billing and Collection Issues

1. Identity Theft Red Flag Rules
2. Senior and Low Income Utility Rate Discounts
3. Voluntary Discontinuance of Utility Services (Snow Birds)

Identity Theft/Red Flag Rules

- The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, ("Red Flags Rule") requires utilities to adopt an identity theft prevention program.
 - ✓ Program is to identify, detect, respond to and mitigate patterns, practices or specific activities which could indicate identity theft.
- Red flags categories:
 - ✓ Notification and warnings from credit reporting agencies.
 - ✓ Suspicious documents.
 - ✓ Suspicious personal identifying information.
 - ✓ Suspicious account activity or unusual use of account.
 - ✓ Alerts from customers.

Senior and Low Income Utility Rate Discounts

- RCW 74.38.070 authorizes municipal utilities to offer reduced utility rates for low-income senior citizens and other low-income citizens.
- Methods of defining low-income include:
 - ✓ Use some percentage of the median income estimates from HUD;
 - ✓ Use some percentage of the U.S. Department of Health and Human Services Poverty Guidelines;
 - ✓ Use the income level set by the statutes in RCW 84.36.381(5)(b) to qualify for a property tax exemption; or
 - ✓ Use some other number set by the council/commission.

Voluntary Discontinuance of Utility Services (Snow Birds)

- Many cities and water-sewer districts provide for a temporary and voluntary discontinuance of utility services for "snowbirds" or those who will not be occupying their residence for an extended period of time.
- Almost all cities charge a shut-off/turn-on fee no matter how long the service is to be turned off.
- The only other question is whether they charge a minimum monthly fee to maintain the account while the service is turned off.
- A minimum 30 day temporary disconnection period seems to be most common.



CONCLUSIONS AND QUESTIONS

Utility Billing and Collection Issues



Thank you



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