



This page provides information on a municipal utility's legal rights in relation to customers in bankruptcy. *Note: Since bankruptcy is a very complex area of the law, MRSC recommends seeking legal advice before taking any action.*

Providing Service

A utility customer who files for bankruptcy receives protection from creditors, including utilities. Because filing for bankruptcy gives the customer what amounts to a fresh start, utilities must stop all collection activity on pre-filing account balances and delinquencies. In most cases, utilities must provide service as if the customer were signing up for the first time. Customers who enter bankruptcy must still pay for the service they use while in bankruptcy.

Because the remedies available to collect payment for services differ depending on whether the charges were incurred before or after filing, MRSC recommends establishing separate accounts for bankrupt customers' post-filing charges.

Ensuring Payment

The [Bankruptcy Code](#) provides two tools utilities may use to guard against delinquencies that may be incurred by a customer after filing for bankruptcy:

- **Adequate Assurance of Payment** – Utilities may request adequate assurances of payment from a bankrupt customer to ensure their ability and willingness to pay for utility service. If a utility requests adequate assurance of payment and the customer does not provide the utility may terminate service, but only after 20 days from filing for bankruptcy (30 days for Chapter 11 filings). Examples of adequate assurance include cash deposits, letters of credit, certificates of deposit, surety bonds, and prepayment of utility charges.
- **Administrative Expense Claims** – Utilities may file administrative expense claims with the bankruptcy court for utility charges and fees incurred after the customer files for bankruptcy. Administrative expense claims are not always a reliable means of ensuring payment because they take second priority. This means that when the court distributes the filer's assets to pay off creditors, administrative expense claims for utility charges are only paid if there are any assets left after higher priority claims have been satisfied.

Shutting Off Service

The Bankruptcy Code prohibits discrimination against utility customers who enter bankruptcy. As a result, utilities terminating service to customers in bankruptcy must use the same policies and procedures used for all other customers. However, commencement of bankruptcy does not require that a utility reconnect service to an already-disconnected customer.

When a utility customer who has not paid his or her bill enters bankruptcy and continues to be delinquent, the period of delinquency resets to begin on the day customer filed for bankruptcy. Therefore, if a utility's shutoff policy specifies a number of days an account must be delinquent before termination, it may not use the first day of a customer's delinquency as its starting point if, in the interim, the customer filed for bankruptcy. This is because filers get what amounts to a fresh start on their utilities. All prior delinquencies are treated separately from those incurred after filing.

The Bankruptcy Code requires that utilities shutting off service to a customer in bankruptcy follow these three basic steps:

1. When a customer files for bankruptcy, the customer's creditors, including the utility receive notice and must cease all collection activities.
2. Upon receiving notice that its customer has filed for bankruptcy, the utility may demand adequate assurance of payment.
3. If adequate assurance of payment is not received and 20 days have passed following the commencement of bankruptcy (30 days for Chapter 11 filings), the utility may disconnect service.

It is important to remember that utility customers in bankruptcy who are facing disconnection or termination of service must receive the same process applied to those not in bankruptcy. That process must include proper notice and opportunity for a hearing. (See Collection Practices for Delinquent Utility Accounts.)

Liens

Utilities may not file or foreclose a lien against the property of a customer in bankruptcy. When a utility customer files for bankruptcy, the court imposes an “automatic stay” that prevents, among other things, filing liens against the customer’s property to secure the utility’s claims for debts the customer owes. The automatic stay applies to liens for charges incurred before and after filing.

Deposits

The Bankruptcy Code treats customer deposits received prior to filing differently than those received after filing. This is another reason why it may be helpful to establish a separate account for a customer’s post-filing utility service.

- **Pre-Bankruptcy Deposits** – Once a customer files for bankruptcy, deposits received before filing may not be used to offset any delinquencies.
- **Post-Bankruptcy Deposits** – Deposits received after the customer files for bankruptcy may not be used to offset pre-bankruptcy delinquencies but may be used to offset post-bankruptcy delinquencies.

Additional Resources

- [Bankruptcy Code](#), U.S.C. Title 11
 - 11 U.S.C. § 366 - Utility service

*DISCLAIMER: This document meant to provide summary information on basic agency rights and obligations under state and federal law; it is not intended to be regarded as specific legal advice. Consult with your agency’s legal counsel about this topic as well.