
Coates' Canons Blog: Who's Responsible for the Utility Bill?: Collection Remedies for Non-Payment by Tenant

By Kara Millonzi

Article: <https://canons.sog.unc.edu/whos-responsible-for-the-utility-bill-collection-remedies-for-non-payment-by-tenant/>

This entry was posted on February 04, 2010 and is filed under Finance & Tax, Public Authority Finance, Public Enterprise / Utility Finance, Solid Waste Finance

A tenant signs up to receive water or sewer utility services and then falls delinquent on her payments. The tenant moves out and the local utility provider is left with an unpaid bill (or series of unpaid bills). What can (and should) the local utility provider do? Can it proceed against the property owner for the delinquent amount? Can it refuse future service to the tenant at a new location? Can it stick the tenant's new roommate with the bill? Or, must it write-off the amount owed as a cost of doing business? Finally, could the local utility provider have prevented, or at least mitigated, this type of situation in the first place?

This is not an uncommon scenario facing many local utility providers (defined broadly to include local government utilities, water and sewer districts, sanitary districts, metropolitan districts and water and sewer authorities). In fact, at least anecdotally, it appears to be increasingly common due to the current economic climate. What debt collection remedies, though, does a local utility provider have in this situation? And, on the flip side, what actions by a local utility provider are legally prohibited?

Who's the Contracting Party?

When assessing its debt collection options if a tenant fails to pay his utility bill, the first question a local utility provider must ask is who is the *contracting party*? Under current law, with limited exceptions, the only party liable for a utility bill is the contracting party. The contracting party is the individual or entity that established the utility account.

Thus, unless one of the exceptions applies (discussed below), if tenant A is the contracting party, the only legal recourse the utility has is against tenant A. It may not proceed against the property owner, another person currently residing at the property, or a future tenant. If the property owner is the contracting party, the only legal recourse the utility has is against the property owner. It may not proceed against any current or future tenant.

The analysis appears fairly straight-forward, but the identity of the contracting party is not always easy to discern. And, even when the legal liability is clear, the parties involved may not always see it that way. For example, who is the contracting party if a property owner establishes the initial account for service, but directs that the utility bills be mailed to the successive tenants occupying the property? Legally, the property owner is the contracting party, but that may not comport with the property owner's or tenant's perception of who is liable for the utility service payments. What if one tenant (tenant A) signs up for service and then sub-lets to another tenant (tenant B) who proceeds to make all the payments until the delinquency occurs? Again, legally, tenant A is the responsible party. Tenant A is unlikely to understand it this way, though. An even more complicated scenario occurs when a tenant establishes the initial account for service, moves out without notifying the local utility provider, and the utility continues to furnish services to the vacant property? In this case, who is legally liable for the utility charges incurred while the property was vacant is less clear. And, as a practical matter, neither the property owner nor the former tenant is likely to claim responsibility for payment.

There are a few exceptions to the general rule that only the contracting party is legally liable for utility debts. Note that these exceptions only apply to utilities owned or operated by counties or cities under their public enterprise authority. Regardless of who is the contracting party, local government utility fees are the legal obligation of the owner of the property served under two circumstances—specifically, if the property is leased or rented to more than one tenant but the services are measured by a single meter; or if the charges for sewer services are billed separately from the charges for water services. See **G.S. 160A-314**; **G.S. 153A-277**.

Authorized Collection Remedies

Once a local utility provider determines the individual or entity that is legally liable for the delinquent amounts owed, what collection remedies are at its disposal?

1. The utility provider generally may disconnect utility services at the property where the delinquency occurred. A city- or county-owned or operated utility must wait ten days from the date the account becomes delinquent to suspend service. See **G.S. 160A-314(b)**; **G.S. 153A-277(b)**. A water or sewer authority must wait 30 days. See **G.S. 162A-9(c)**. (Note: If a delinquent customer has filed for bankruptcy, a utility provider may not disconnect service, at least for a period of time. See **11 U.S.C. 366**.)
2. The utility provider may institute a civil suit against the debtor to recover the amounts owed. The statute of limitations to collect delinquent water payments is four years. See **G.S. 25-2-725**. The statute of limitations for collecting delinquent sewer payments is three years. See **G.S. 1-52**.
3. The utility provider may submit the claim to the state's debt set-off program (under **G.S. Chapter 105A**) for recovery against the debtor's state income tax return or state lottery winnings, if any. The amount owed must exceed \$50 to be eligible for debt set-off, and the utility must follow the detailed statutory procedural requirements to participate in the program.
4. Under very limited circumstances, summarized in a previous **post**, a local government utility (city- or county-owned or operated utility only) may add the amount owed by the delinquent former customer to the utility bill for services provided at a new property (and disconnect services at the new property for nonpayment) if the former customer resides at the new property receiving the services, even if the former customer is not the "contracting party" for services at the new property. See **G.S. 160A-314**; **G.S. 153A-277**.

Unauthorized Collection Remedies

There are some collection actions that a local utility provider is legally prohibited from taking.

1. The local utility provider generally may not refuse service to the delinquent former customer at a new property or premises. Although there is very little case law addressing this issue, a utility provider may be able to refuse future service if it has adopted a detailed written policy stating that the utility service is conditioned on satisfaction of all previously owed (and still legally collectible) utility debts to the local utility provider.
2. The local utility provider may not refuse service to a new property owner or tenant at the property where the delinquency occurred. This action would be akin to holding the new property owner or tenant liable for the former occupant's utility debt, which is not allowed.

Preventing or Mitigating Against Defaulting Non-Property Owner

Finally, what actions can a utility provider take to try to prevent the scenario described at the beginning of this post from happening in the first place? Perhaps a utility provider's best defense is to adopt a detailed, written policy that both anticipates and addresses many of the common payment problems. Such a policy could include one or more of the following provisions:

1. Require Property Owner to be the Contracting Party

If "delinquent tenants" is a chronic problem for a local utility provider, it may require that only property owners contract for utility services. Or, it likely could establish a policy that after X number of delinquencies at a particular property, only the owner of that property may contract for future services. (Several utilities in North Carolina have adopted such policies. Some couple the policies with customer-friendly practices of sending courtesy bills to tenants, lessening the administrative burden on property owners.)

2. Assess a Higher Deposit Fee if a Tenant is the Contracting Party

As long as the deposit fee is reasonable, a local utility provider may assess a higher deposit fee on non-property owner customers. The fee is justified by the higher risk to the local utility provider of default by tenants.

3. Require Property Owner and Tenant to Co-Sign Application for Utility Services

A local utility provider may specify that both the owner and the occupant of a particular property are jointly and severally liable for payment of all fees and penalties. In the event of a delinquent payment, the utility provider could proceed against either the tenant or the property owner (or both). Such a requirement also may be helpful if services are provided while a property is vacant because the default responsible party is the owner.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-314.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-277.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_162A/GS_162A-9.html
- www2.law.cornell.edu/uscode/html/uscode11/usc_sec_11_00000366---000-.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_25/GS_25-2-725.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_1/GS_1-52.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_105A.html