



Filing a Lien

We hope the information provided will help answer some basic questions about statutory provisions adopted as part of 2013 Wisconsin Act 274 that became effective in 2015. These provisions provide a process by which a property owner (landlord) can obtain and file a lien against a residential tenant's personal assets for payments made from the landlord's funds for a tenant's past due utility charges.

This information was written based on our current knowledge of the law, and is not intended to be a thorough explanation of the law, or to be construed as legal advice. You should check with your attorney if you have questions about the law. Landlord associations may be another good resource for landlords.

If you learn anything through your efforts to implement the provisions of this law, please let us know.

BACKGROUND—Utility Bills, the Tax Roll and Residential Rental Property

As a municipal utility, CL&W is permitted by Wis. Statute § 66.0809(3) to place unpaid utility bills for service provided to a property on the tax bill as a lien. The statute applies to all types of property whether owner-occupied or rental property.

Although the statute is fairly broad, it is our practice here in Cedarburg to send a notice (and file a lien on the tax bill when past due charges are not paid by November 15) only in cases where a) an occupant has moved out and left an unpaid balance on the utility account, or b) a property has been sold and an unpaid balance remains on the utility account.

The authority to place unpaid charges on the property tax bill has existed for over 100 years and is based on the fact that municipal utilities are owned by the community. Rates charged by public utilities are not designed to earn a profit, and bad debts are not easily absorbed. Additionally, utilities cannot choose their customers nor can they typically require that customers pay a security deposit (according to Wis. Public Service Commission administrative code).

For these reasons, we strongly encourage landlords to collect a security deposit sufficient to cover utility bills and verify that utility bills have been paid in full before refunding security deposits.

When a utility customer vacates a rental property, we will determine the customer's unpaid utility bill, apply any deposit we may have to the customer's account balance, and send a final bill to the vacating customer.

We will also send a copy of the final bill to the landlord. If the landlord does not have proof that the tenant has satisfied the final balance due, we ask that the landlord submit payment from the tenant's security deposit and indicate the funding source with the payment. We also let the landlord know that if the balance is not paid, any past due charges outstanding as of November 15 will be included on the landlord's property tax bill. All unpaid charges are subject to a 1% late fee per month.

What happens if neither the vacating tenant nor the landlord pays the past due utility charges by October 15?

Each October 15, Wis. Statute § 66.0809(3) requires municipal utilities to notify landlords and tenants of past due utility charges that are subject to being included on the tax bill for the property that received utility service. *As mentioned previously, in Cedarburg's case, this only pertains to properties where an occupant has moved out or a property has been sold and past due utility charges remain unpaid.* The notice describes that payment of the past due utility charges needs to be made by November 15 to avoid the charges from becoming a lien on the property's

tax bill.

Ideally the tenant will pay the past due utility charges. However, if the landlord has sufficient funds remaining from the tenant's security deposit or another tenant source, the landlord should pay the bill on the tenant's behalf.

The Statute provides that the utility apply a 10% penalty on any past due amount remaining outstanding on November 1. CL&W opts **not** to charge the 10% penalty at the present time but asks that the amount due be paid before November 1 to avoid unnecessary preparations for the reporting of a lien to be filed on the property.

Can a landlord pay a tenant's past due utility charges from the landlord's own funds prior to November 15?

Yes—and it is important to keep the following in mind:

- Such a payment (made by the landlord) **before October 15:**
 - ⇒ Prohibits the landlord from being able to file a notice of lien against the tenant's personal assets.

- Such a payment (made by the landlord) directly to CL&W between October 15 and November 15:
 - ⇒ Avoids a tax lien being filed on the property.
 - ⇒ Affords the landlord the ability to file a notice of lien against the tenant's personal assets thereby assisting the landlord in seeking reimbursement from the tenant. See further information on that process below.

What happens if neither the landlord nor the tenant pays the past due charges before November 15?

If neither the tenant nor the landlord pays the past due charges, then on November 15, the charges will become a lien on the property and be included on the property's tax bill. Once the landlord pays the past due bill through payment of the property taxes, the landlord can file a notice of lien against the tenant's personal assets until April 15 of the following year.

In summary, if the landlord either pays the past due bill directly to the utility between October 15 and November 15, or pays the bill through the property taxes after November 15, the landlord will have the ability to file a notice of lien against the tenant's personal assets.

How does a landlord who pays a tenant's past due utility charges after October 15 "obtain a lien" on the tenant's personal assets?

When a landlord pays a tenant's past due utility charges from the landlord's own funds, whether this payment is made by the landlord directly to CL&W between October 15 and November 15, or through payment of the property taxes after November 15, the law provides the utility's lien on the tenant's personal assets to automatically transfer to the landlord. Nothing needs to be done to trigger the transfer. The landlord may wish to obtain documentation from CL&W to show that the landlord paid the tenant's utility charges before filing a notice of lien against the tenant's personal assets with the Ozaukee County Clerk of Courts.

How does a landlord "file a notice of lien" against the tenant's personal assets?

Although the lien automatically transfers to the landlord, the landlord will then need to file a notice of lien with the Ozaukee County Clerk of Courts in order to take action on the lien. To our understanding, this can be done for a small fee (\$5), and it is done outside of the courtroom. Landlords can download a "Notice of Lien" form off the internet, and can mail one copy to the tenant and one copy with a \$5 fee, to the Ozaukee County Clerk of Courts.

What happens once a landlord files a notice of lien against a tenant's personal assets?

As we understand the process, once a notice of lien is filed against the tenant's personal assets and it is recorded by the Ozaukee County Clerk of Courts, the lien will appear under the tenant's name in the Wisconsin Consolidated Court Automation Program (CCAP). Until the tenant reimburses the landlord for the past due utility charges paid on their behalf, the lien will continue to appear under the tenant's name on CCAP. This may prompt the tenant to reimburse the landlord when he/she tries to obtain a loan, a credit card, housing, etc.

Landlords may also be entitled to take legal action to "enforce the lien" (through the courts) against the tenant's personal assets. In order to enforce the lien, the notice of lien must first be filed with the Clerk of Courts by April 15. Landlords can seek advice from an attorney about what legal action would need to be taken to enforce the lien. Enforcing the lien would be a step above filing a notice of lien and getting the tenant's outstanding bill on CCAP.

What does a landlord need to do after filing a notice of lien, if a tenant reimburses the landlord directly?

After filing a notice of lien, should your tenant reimburse you directly, the law requires you file a "satisfaction of lien" with the Ozaukee County Clerk of Courts within seven days.

Interested in additional information on Wis. Statute § 66.0809(3m)?

The statute can be viewed on the Wisconsin State Legislature website at:
<http://docs.legis.wisconsin.gov/statutes/statutes/66/VIII/0809>