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Implementation of 2013 Wisconsin Act 274 Provisions Impacting the Tax Roll Process for Collecting Delinquent Tenant Utility Bills

-- Updated as of September 25, 2015 --

(Revised interpretation of Act 274 requirements **in yellow**)

Municipal Electric Utilities of Wisconsin, Wisconsin Rural Water Association, Municipal Environmental Group – Water Division, and the League of Wisconsin Municipalities are pleased to provide essential guidance on the provisions of 2013 Wisconsin Act 274 (Act 274) that affect the tax roll process for collecting delinquent tenant utility bills.

A tax roll working group was established to prepare educational materials for all utility collection and billing personnel. The working group met several times to prepare for changes to the tax roll process and we thank the following individuals for their time and commitment to this initiative:

- Shellie Benish, Village of Black Earth
- Tina Erickson, La Crosse Water Utility
- Diane Hermsen, Kaukauna Utilities
- Paula Maurer, Menasha Utilities
- Amber Peterson, Supreme Court of Wisconsin – Office of Court Operations
- Vicki Tessen, Wisconsin Municipal Clerks Association
- Zak Bloom, Municipal Electric Utilities of Wisconsin
- Lawrie Kobza, Municipal Environmental Group- Water Division
- Dave Lawrence, Wisconsin Rural Water Association
- Curt Witynski, League of Wisconsin Municipalities

This document does not cover the non-tax roll provisions of Act 274 currently in effect. Please contact your respective association for a copy of the FAQ document we distributed in May 2014.

The remainder of this document provides a step-by-step look at the new tax roll process, including sample documents for your use.

2015 TAX ROLL PROCESS

Act 274 contains provisions that alter the tax roll process for 2015 and beyond for certain properties and customers where the landlord has triggered the application of additional landlord/tenant requirements. These requirements apply if:

- Utility service is measured separately for a residential rental



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unit

- Landlord notifies the utility in writing of the name and address of the property owner and the tenant who is responsible for payment of the utility charges at the residential rental unit

Two provisions have raised significant questions and have created confusion. The first provision provides a municipal utility with a lien on the tenant's assets for any unpaid utility bills of the residential tenant customer. The second provision requires a municipal utility file a list of residential tenant customers with delinquent accounts placed on the property tax roll to the clerk of courts.

The primary question is what must be done with the list of residential tenant customers with delinquent accounts that is filed with the clerk of courts. Is the clerk of courts to simply file the list in a folder or must the clerk record the names on the list in the judgment and lien docket? If the latter, there are fees associated with the judgment and lien docket initial filing, transfer, and satisfaction.

After discussing the interpretation of Act 274 with the original legislation stakeholders and the Office of Court Operations, we are pleased to report that there is consensus that the filing of the list with the clerk of courts does not require the clerks of court to enter the names on the list in the judgment and lien docket. This means municipal utilities will not be required to file and pay for lien filings, transfers and satisfactions. Clerks of court will be instructed to merely place the lists received in a folder.

The lien on a tenant's assets will transfer to the landlord when the landlord pays the arrearages (either prior to November 15 or as part of a property tax payment). It is then up to the landlord to file the notice of lien with the clerk of courts. Once the clerk of courts receives the notice of lien, the clerk will then record the lien in the judgment and lien docket and that information will appear on CCAP.

The working group has prepared a step-by-step explanation of the new tax roll process.

Step One – Tax Roll/Lien Process Begins:

- If past-due charges of a tenant customer exist on October 15 for services provided prior to October 1, and
- If utility has given the landlord the required 14-day notices (Act 274 requires 14-day notice as of January 1. Previous requirement was 14 day notice or provision of duplicate bills)



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- Utility can start the tax roll process

If utility has not given the landlord the required 14-day notices, utility cannot use the tax roll process

Step Two – October 15 Notice of Tax Roll/Lien Process

- Utility or municipal treasurer must give notice to owner and tenant of:
 - The amount of arrears and penalty
 - Notice that the arrears and penalty must be paid by November 1 or a 10% penalty will be added
 - Notice that if that amount is not paid by November 15 it will be placed on the parcel's property tax bill
- Municipality must also give the tenant notice that:
 - a lien has arisen on the tenant's assets for unpaid arrears, and
 - that the lien will transfer to the landlord if the landlord pays the delinquent charges
 - Sample language for notice of lien to tenant included

The utility's lien on the tenant's assets for delinquent utility charges exists by statute. The lien arises as soon as the October 15 notice is sent. The utility does not need to do anything further for the lien to arise.

Step Three – Handling Payments between October 15 and November 15

- If tenant pays before November 15
 - No delinquency owed to utility, so nothing goes to the property tax roll
 - Municipal lien against tenant's assets is satisfied
 - Since lien was not filed anywhere, nothing more needs to be done
- If landlord pays before November 15
 - No delinquency owed to utility, so nothing goes to the property tax roll
 - **The lien on the tenant's assets transfers by law to the landlord**



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- Upon the landlord's request, the utility should provide documentation of the transfer of the lien to the landlord (see sample document)
- Owner can file a notice of lien with the clerk of courts
 - Clerk is to file the lien in the judgment and lien docket
 - If the lien is filed, it will appear on CCAP
- If no one pays by November 15
 - Delinquent charges go to the property tax roll
 - Municipal lien on tenant's assets remains

Step Four - Tax Roll/Lien Process after November 15

- The utility certifies the list of parcels with delinquent utility bills to the treasurer on November 16.
- This amount is placed on property tax roll
- Prior to December 17, utility provides a list of residential tenant customers with delinquent accounts placed on the property tax roll to the clerk of courts (see sample document for details on what information should be filed)

Step Five – Handling Tenant Payments after November 15

- The last piece of the tax roll/lien process deals with payments received after November 15. Act 274 placed increased emphasis on the issue of whether and how to accept payments from tenants after November 15 due to the requirement that the lien on tenant's assets be transferred to the landlord if the landlord instead of the tenant pays the delinquent charges, and the potential for the landlord to file the lien with the clerk of courts and have the lien show up on CCAP. In order to avoid the transfer of the lien to the landlord and the potential for the lien to show up on CCAP, the working group recommends creation of an internal policy between the utility and the municipality that addresses how a tenant can pay delinquent utility bills after November 15. Issues to address include:
 - Will you (utility or municipality) accept payment from tenants after November 15?
 - If yes, how will the municipality ensure payment is credited to owner's property tax bill?



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Step Six – Handling Payments from Property Owner after November 15

- Under Act 274, if the property owner pays the delinquent utility bill incurred by the tenant customer, the lien on the tenant's assets transfers to the property owner and the owner may file a notice of the lien with the clerk of court. In order to facilitate the filing with the clerk of court, the owner may request documentation of the lien transfer from the utility. The workgroup prepared a sample lien transfer form for your use.

SAMPLE DOCUMENTS:

As alluded to earlier, the working group created sample documents for your use to comply with Act 274 provisions:

- **Exhibit A – October 15 Notice to Owner and Tenant**
 - This notice was created to present sample language that a lien has arisen on the tenant's assets for unpaid arrears and that the lien will transfer to the landlord if the landlord pays the delinquent charges.
- **Exhibit B – Certification to Municipal Clerk**
 - This document was created to help you comply with an existing requirement to provide a certified list to your municipal clerk of the unpaid arrears as of November 16.
- **Exhibit C – List to Clerk of Courts**
 - This document was created to provide you with the information required on the list to file with your county's clerk of courts by December 17.
- **Exhibit D – Lien Transfer Form**
 - This form was created to document the transfer of the lien from the utility to the owner.

You may have already revised existing or created new documents to comply with Act 274. Please be sure they are comparable to the samples provided.

In addition, tax roll working group members have shared internal documents they use that may be of assistance to members during the upcoming tax roll process. These documents include:



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- **Flow Chart – Delinquent Utility Bill Tax Roll Process**
 - The flow chart was created by Vicki Tessen from the Village of Kimberly and the Wisconsin Municipal Clerks Association
- **Inter-office Notice of Payment of Delinquent Utility Charges**
 - This notice was created by Vicki Tessen to track payments made by landlords after unpaid utility bills are transferred to the property tax roll.
- **Sample Landlord-Tenant Agreement**
 - Tina Erickson from the La Crosse Water Utility has shared their landlord-tenant agreement for your consideration. La Crosse has three universities and the water utility uses this form to obtain identifiable information for tenants and landlords.

SUMMARY

Act 274 changes a few things for the 2015 tax roll process for those rental properties where special landlord/tenant requirements have been triggered. These include:

1. Providing a residential tenant customer with the October 15 tax roll notice, including language that a lien may be placed on the tenant's assets and that the lien transfers to the landlord if the landlord pays the delinquent charges. Sample notification is attached.
2. **If the landlord pays the delinquent charges, upon the landlord's request the utility should provide documentation of the transfer of the lien to the landlord.**
3. The municipal utility must file a list with the clerk of courts of residential tenant customers with delinquent accounts placed on the property tax roll. Sample attached with information required on the list.

We believe the process has been clarified significantly since initial guidance was released and we hope this document is useful. Please contact your respective association with any questions.