

## **THIRD PARTY LIABILITY FOR UTILITY BILLS**

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## I. Introduction

In the majority of residences, the person receiving utility service is the person who applied for that service<sup>1</sup>. In some residences however a third party may have applied, or intends to apply, for utility service on the residential customer’s behalf.<sup>2</sup> When an application is made by a third party on behalf of the person(s) who would receive service the utility typically requires a written application and reasonable proof of the applicant’s responsibility for service at the premises to be supplied.<sup>3</sup>

Third parties who apply for service on the residential customer’s behalf are liable to the utility company and will be responsible for paying the residential customer’s utility bills.<sup>4</sup> Under

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<sup>1</sup> This person is called a “residential customer.” 16 NYCRR § 11.2(2). Note however that utilities refer to the meter as the customer.

<sup>2</sup> Public Service Law, art. 2, §§ 4(1), 30-51, 66, 80(1). 16 NYCRR § 11.2(3).

<sup>3</sup> 16 NYCRR § 11.3(a)(4)(v)(d), 16 NYCRR § 14.3(b)(4) (water service).

<sup>4</sup> *Id.*

New York’s Statute of Frauds, an agreement to pay someone else’s debt to a utility would be a “special promise to answer for the debt, default or miscarriage of another person,” which requires a written agreement.<sup>5</sup> The written application executed by a third party would constitute a written agreement to pay for the residential customer’s utility service.

The landlord-tenant relationship is an example of when a landlord (the “third party”) may apply for service on behalf of the tenants (the “residential customers”) living in an apartment and pay the utility directly for the service provided to all of residences in the building.<sup>6</sup> The landlord typically includes that amount in the rent charged those residents. When utilities are paid by the landlord on behalf of the residential customers living in the residence, there are certain responsibilities required of the utility company with regards to notice to the tenants, and also, certain rights that tenants have with regards to making complaints about their utility service. The landlord also has certain obligations towards the tenants as set forth below.

## **II. Utilities Paid by Landlord**

### **A. Notice Responsibilities of Utility Companies**

The utility must provide appropriate notice before it can terminate, disconnect or suspend service to an entire dwelling. First, the utility must give 15 days’ written notice of its intention to terminate, disconnect or suspend service by personally serving the landlord and superintendent of the dwelling<sup>7</sup>. Second, the utility must give written notice to the tenants by posting the notice in a public area of the dwelling at least 15 days prior to the date threatened termination and by

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<sup>5</sup> See, NY General Obligations Law § 5-701.

<sup>6</sup> Apartment buildings are called “multiple dwellings” in the Public Service Commission rules and regulations and are defined in the Multiple Dwelling Law or the Multiple Residence Law.

<sup>7</sup> 16 NYCRR §11.7(a)(1). The landlord is the owner of the dwelling affected or the person, firm or corporation to whom or which the last preceding bill was rendered, or from whom or which the utility has received payment. The superintendent is any person who is in charge of the building, if it can be readily ascertained that there is such a person in charge. If the utility decides to mail its notice and not personally serve it, then 18 days’ written notice is required. 16 NYCRR § 11.7(a)(2).

mailing notice to each occupant of each unit that the dwelling at least 18 days' prior to the date of threatened termination.<sup>8</sup> Third, the utility must mail written notice to the local health officer and director of the social services district for the political subdivision in which the dwelling is located at least 18 days prior to the date of threatened termination.<sup>9</sup> Additionally, the utility must sent duplicate notice to the local health officer and director of the social services district for the political subdivision in which the dwelling is located between four and two working days prior to the date of threatened termination. Finally, all notices mentioned above are extended during the cold weather period, of November to April.<sup>10</sup> During the cold weather period, all written notices to everyone must be provided at least 30 days before the date of threatened termination, disconnection or suspension.

**B. Provide tenants opportunity to avoid termination**

The utility may threaten termination of utility service whenever the landlord fails to pay for the service being supplied to the dwelling. If the occupants of the dwellings continue to make timely payments for the service, irrespective of the landlord's failure to pay, then the utility cannot terminate service.<sup>11</sup> In order to provide tenants an opportunity to avoid termination by paying for their services directly, the notices provided to them must advise the tenants of the amount due for service and provide the utility contact, including telephone number, who is responsible for arranging meetings with tenants in an effort to attempt to work out a mechanism to avoid termination of service.<sup>12</sup> The notice must also inform the tenants that they may seek the

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<sup>8</sup> 16 NYCRR §11.7(a)(3).

<sup>9</sup> *Id.* If the multiple dwelling is located in a city or village, then notice is sent to the mayor. If there is no mayor, then the notice is sent to a manager. If the dwelling is located in a town, then the notice is sent to a town supervisor and to the county executive of the county in which the dwelling is located. If there is no county executive, then the notice is sent to the chairman of the county's legislative body. If the dwelling is located in New York City, then all notices are sent to the Department of Housing Preservation and Development.

<sup>10</sup> 16 NYCRR §11.7(a)(4).

<sup>11</sup> 16 NYCRR § 11.7(b).

<sup>12</sup> *Id.*

assistance of the public service commission in negotiating an agreement with the utility to prevent termination. Finally, the notice must refer to provisions contained in subdivision (1) of section 235-a of the New York Real Property Law authorizing occupants to set off, against their rent, payment to utilities in such circumstances.<sup>13</sup>

The tenants in a multiple dwelling who choose to avoid termination of service to the dwelling by paying the utility directly, will only be responsible for the current charges incurred by the landlord that have not been paid.<sup>14</sup> Current charges means the amount properly bills the landlord for utility service used during the most recent service billing period covered by the first bill rendered on or after the date of threatened termination, disconnection or suspension notice is issued<sup>15</sup>. The current charges will not include any past debt for earlier billing periods that may appear on such bill<sup>16</sup>.

**C. Special Protections for Multiple Dwellings in Cities of More than One Million People (NYC)**

State law provides special protections for tenants who live in multiple dwellings in cities of more than one million people, such as New York City.<sup>17</sup> During the cold weather period of November to April, a utility must provide each tenant with a written notice at least 10 days prior to the date of threatened termination.<sup>18</sup> This notice must be prepared or approved by the PSC.<sup>19</sup> The notice must provide the contact information of the New York City Heatline, and advise that if any tenant in the apartment has a serious illness or medical condition that would result in a serious impairment to health or safety by the loss of heat service, that the person should call that

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<sup>13</sup> *Id.*

<sup>14</sup> 16 NCYRR § 11.7(c).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 16 NYCRR § 11.7(g)(1).

<sup>18</sup> 16 NYCRR § 11.7(g)(1)(i).

<sup>19</sup> *Id.*

Heatline immediately.<sup>20</sup> Additionally, if the utility is notified by the Human Resource Administration that a claim has been received that the loss of heat-related service is likely to result in a serious impairment to health or safety, then the utility must continue service to the building during the cold weather period, for at least 15 business days from the date of oral or written notification from the Human Resources Administration.<sup>21</sup> Further, the utility cannot terminate service after the 15 days expire without confirmation from the Human Resource Administration that appropriate alternative arrangements to preclude a serious impairment to health or safety have been made or that the claim of serious impairment is without merit.<sup>22</sup> Even after receiving such confirmation from the Human Resource Administration, the utility cannot terminate service until it provides the tenants in the dwelling with written notice five days prior to the date of threatened termination.<sup>23</sup> Finally, if service has already been terminated, the utility must reconnect heat-related service if advised by the Human Resource Administration that an occupant is likely to suffer a serious impairment to health or safety.<sup>24</sup>

**D. Special Protections for Multiple Dwellings outside Cities of More than One Million People**

If the dwelling is located in a city with a population of less than one million, then utilities have the following responsibilities during the cold weather period before terminating service to a multiple dwelling. During the cold weather period of November to April, a utility must provide each tenant with a written notice at least 10 days prior to the date of threatened termination.<sup>25</sup>

This notice must be prepared or approved by the PSC.<sup>26</sup> The notice must provide the contact

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<sup>20</sup> *Id.*

<sup>21</sup> 16 NYCRR § 11.7(g)(1)(ii).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* The notice should advise any tenant that filed a claim with the Human Resource Administration that the HRA determined that there was no merit in the claim for serious impairment and that she or he may seek further review by filing a complaint with the Public Service Commission.

<sup>24</sup> 16 NYCRR § 11.7(g)(1)(iii).

<sup>25</sup> 16 NYCRR § 11.7(g)(2)(i).

<sup>26</sup> *Id.*

information of a utility contact person. If a tenant notifies a utility of such impairment, then the utility must conduct an on-site interview for the purpose of ascertaining whether the occupant is likely to suffer a serious impairment to health or safety.<sup>27</sup> The utility must refer cases of likely serious impairment to the local department of social services and request the agency to investigate the cases in accordance with established procedures<sup>28</sup>.

Once a case has been referred to the local department of social services, the utility must continue heat-related service to the multiple dwelling, or to the specific tenant likely to suffer a serious impairment, for at least 15 days after the referral, and cannot terminate service during the cold weather period, until it receives confirmation from the local department of social services that appropriate alternative arrangements to preclude a serious impairment to health or safety have been made or that the claim of serious impairment is without merit. Even after receiving such confirmation from the Human Resource Administration, the utility cannot terminate service until it provides the tenants in the dwelling with written notice five days prior to the date of threatened termination.<sup>29</sup> Finally, if service has already been terminated, the utility must reconnect heat-related service if advised by the local department of social services that an occupant is likely to suffer a serious impairment to health or safety.<sup>30</sup>

#### **E. Rights of Tenants**<sup>31</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> 16 NYCRR § 11.7(g)(2)(ii). The notice should advise that the local social services department determined that there was no merit in the claim for serious impairment and that she or he may seek further review by filing a complaint with the Public Service Commission.

<sup>30</sup> 16 NYCRR § 11.7(g)(2)(iii).

<sup>31</sup> Note that §235-a(1) of the Real Property Law provides that “[i]n any case in which a tenant shall lawfully make a payment to a utility company pursuant to the provisions of sections thirty-three, thirty-four and one hundred sixteen of the public service law, such payment shall be deductible from any future payment of rent.” And *see*, generally, § 33(5) of the PSL.

As mentioned above, if a landlord fails to pay for the utility service provided to tenants in a multiple dwelling, then, the utility must provide those tenants an opportunity to pay for current charges directly before terminating service. The PSC has the power to stay a threatened termination, disconnection or suspension of service to an entire multiple dwelling where it finds that good faith efforts are being made by the tenants to arrange for the payment of current bills.<sup>32</sup> In no circumstances; however, will tenants be required to pay for past debt incurred by the landlord.

If tenants in a dwelling located within a city with a population of more than a million people cannot reach an agreement with the utility to avoid termination, they can contact the Public Service Commission and request assistance in formulating an agreement.<sup>33</sup> When a request for assistance is received, a member of the PSC will attempt to work out an agreement between the utility and the tenants involved, and if necessary, will arrange a meeting.<sup>34</sup> A meeting is required if the PSC receives a written petition signed by at least 25 percent of the occupants in a dwelling.<sup>35</sup>

### **III. Other Situations Involving Third Parties**

#### **A. Voluntary 3<sup>rd</sup> party notice prior to termination of service**

A third party is also someone who may receive notifications relating to termination, disconnection, or suspension of service or other credit actions sent to a residential customer when that residential customer has designated the third party to receive such notices, and the third party has agreed in writing to receive such notices.<sup>36</sup> A third party's agreement to accept

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<sup>32</sup> 16 NYCRR § 11.7(e).

<sup>33</sup> 16 NYCRR § 11.7(d).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 16 NYCRR § 11.6.



such notices does not confer liability on the third party to pay for the residential customer's utility service.<sup>37</sup>

**B. Shared Meters (Article 2 § 52)**

A utility company may not terminate service to a shared meter account for nonpayment unless it complies with certain requirements under the Public Service Law and the Commission's rules and regulations. Those rules are discussed in Chapter 7 of this Manual and are applicable to third parties if the residences sharing a meter are paid for by a third party.

**C. Direct Voucher and Utility Guarantee Customers**

Direct vouchered customers are those on whose behalf the utility bill is paid directly by the New York State Office of Temporary and Disability Assistance (OTDA) or the local social services district because the customer is a recipient of public assistance, supplemental security income benefits or additional state payments, and the customer has applied for energy assistance.<sup>38</sup> Utility guarantee customers are those receiving benefits under Social Service Law (SSL) §131-s. SSL §131-s is emergency assistance which pays up to four months of utility arrears in full. A utility is obligated to provide service to direct voucher and utility guarantee customers.<sup>39</sup> For more information about temporary assistance offered for energy services in New York, see here: <https://otda.ny.gov/programs/temporary-assistance/>.

**D. Balance Transfers**

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<sup>37</sup> Public Service Law, art. 2, § 40, and 16 NYCRR § 11.6. Recall that a third party who applies for service on a residential customer's behalf in the form of a written agreement is liable to the utility company and will be responsible for paying the residential customer's bill. *See*, Section I, above.

<sup>38</sup> New York Social Services Law § 131-s(2).

<sup>39</sup> 16 NYCRR § 11.3(2)(iv).

Customers should always read their monthly account statements to verify that the amount charged is for services actually provided to his or her home during the time in which the person lived there. Unfortunately, sometimes a utility company transfers a balance from a prior account onto a customer's bill without proper advance notice or explanation. Consider the following scenarios:

New Customer Account - Public Service Law 31 requires the utility to provide service to an occupant who does not owe the company money for past service in his or her name. If there is an outstanding balance due on an account at the same residence where the new customer lives and is trying to establish a new account, the company may require this new applicant to make a written application and provide proof of identity.<sup>40</sup> This is so that the Company can attempt to see if there is a linkage to the previous account in arrears, and is referred to as attempting to clarify the "period of responsibility."<sup>41</sup> This practice is not contemplated under the Public Service Law.

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<sup>40</sup> There is a comment in the PSC's regulations 16 NYCRR 11.3 that says --

**Comment:** When a written application is permitted, a distribution utility may require the applicant to provide a copy of a lease (if one exists), deed, bill of sale or other documentation **to show the date the applicant became responsible for service**. A distribution utility must make a diligent effort to notify promptly an applicant who will be required to submit a written application. If a distribution utility is unable to contact the applicant orally, it must, not later than the second business day after the request for service is received, send a written notice to the applicant. Utility companies have reportedly taken this note to authorize them to transfer a balance to an applicant seeking to establish service that was living in the domicile during a period of service for which payment has not been received under a prior account.

<sup>41</sup> Consider, for example, a mother who has accumulated a utility bill totaling \$1000 but she is unable to pay the bill because she cannot afford. The service is terminated, and she convinces her adult son living in the same house for the past 5 years to apply to the utility to get an account established under his name. When the son applies for an account, the utility company will notice that the account residence has an outstanding balance due under a woman's name who they may or may not know is related to the new applicant, her son. The utility company may require the son to provide a written application with proof of occupancy. Service is available to an "occupant" whether or not they are named on a written lease. A lease is not a precondition to receiving utility service, but a utility may require reasonable forms of identification in certain circumstances and if you are on a lease it can be one way to provide evidence you are an occupant at the premises. If the son's proof shows that he has been an occupant at the house for the past five years then, the utility company will conjecture that the mother is using her son as a shield against paying her bill and may deny him service unless he agrees to pay the debt outstanding on the account. Alternately, if the son were simply applying to maintain service with no intent to aid his mother in avoiding payment, the Company appears to have no legal argument to lawfully sustain a transfer of arrears, but reportedly may do so anyway.

There is no legal authority under the Public Service Law allowing utilities to transfer someone else's balance to a new account. As a general matter, under the statute of frauds (NY General Obligations Law § 5-701), an agreement to pay someone else's debt to a utility would be a "special promise to answer for the debt, default or miscarriage of another person," which requires a written agreement. If no written agreement exists, then a utility company cannot legally require a person to pay for a debt of another person. If a customer suspects that the utility company has charged him or her erroneously for service charges that are not his or her responsibility, then, that customer should notify the utility company first, and then, file a complaint with the PSC if the issue is not rectified by the utility company immediately.<sup>42</sup>

Also, it is important to remember that there is a statutory limitation for collecting past debt under a contract.<sup>43</sup> When a customer agrees to pay for service provided by a utility company, a contractual relationship between customer and the utility company is established. Therefore, the PSC will not allow utilities to withhold essential utility service from a customer to collect stale charges more than six years after the charges allegedly incurred.<sup>44</sup>

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<sup>42</sup> See Public Utility Law Project Manual Chapter 6 on Complaint Handling and Processing.

<sup>43</sup> CPLR §213. The limitation also applies generally to Commission orders of refunds up to six years prior to the case at hand.

<sup>44</sup> See 2017 N.Y. PUC Lexis 497, \*16, Fn 10 stating that "Although the PSL does not impose a limitation on collecting debts owed to utilities, the statute of limitations for filing a debt collection lawsuit generally is six years from the date of the default (CPLR § 201 et seq.), with the date of the default occurring on or after the date of last payment. If no payments were made on this account after 2005, Central Hudson was also time-barred from collecting this debt." See also 1988 N.Y. PUC Lexis 39, \*23-24 stating "A six year period of limitations has been the period that the Commission has applied as a matter of general policy. "