

PUTTIN' A WHUPPIN' ON DEADBEAT USERS

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Recently, a rural water provider complained that it had an unusually large delinquency from a commercial customer and it wanted to know its options for forcing the deadbeat to pay. In that case the customer did not own the real estate being served, but was merely a tenant. To make matters worse, the tenant, a limited liability company, had gone out of business and its owners denied that they owed any money to the utility. To protect against such a situation, water providers should consider the following options.

Sign a good water users agreement with customer. In order to have the best water agreement possible, at least from a collection standpoint, identify the customer and its creditworthiness. In other words, make sure at least one person signing the agreement executes it in his individual capacity, as opposed to his corporate capacity. This can make him personally liable for a delinquency. Also, determine if the water user is the owner or a tenant. If the user is a tenant, the landlord should sign the agreement and agree to be liable for a delinquency.

Next, ensure that the deposit at least equals or exceeds the average monthly amount billed to the last customer at that meter multiplied by the number of months that a delinquent user has to cure a delinquency. For example, if the average bill for the last customer at that address was say \$100, and the water user's agreement provides that a bill becomes delinquent 30 days after it is due and service will be terminated 30 days after a delinquency notice is sent, the deposit should equal at least \$300. This covers the \$100 bill that becomes delinquent, the \$100 bill for the next month during which the delinquency notice is outstanding and the next months between the delinquency and termination. If the customer does not cure the delinquency, the water provider is out \$300. Reducing the notice and cure periods and/or maintaining an adequate security deposit can reduce the risk of a substantial loss. The water user's agreement should grant a security interest in this deposit in favor of the water provider. Under Arkansas law, this enhances the creditor's right to foreclose on the deposit, which must remain in the creditor's possession or under its control (i.e. at its bank).

The water user's agreement may also ask for references for the water user. If the water provider wishes to pursue the delinquent through a collection action, and the user has "skipped town", having these additional contacts will assist in locating the deadbeat.

In 2003, the Arkansas General Assembly passed Act 769 which allows water systems to collect its attorney's fee and costs incurred in collecting on a delinquent water account. Some attorneys or collection agencies will even pursue delinquent accounts on a contingency basis so that it would not cost the utility anything to pursue the deadbeat. Act 769 also allows a water provider to refuse service to anyone who has an outstanding bill with another water provider. Water providers can use the water users agreement to determine a customer's prior provider and whether they have a delinquent bill.

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