



How To Collect Water and Sewer Bills

Currently the Mayor and the City Council are at loggerheads on the question of how to collect water and sewer bills in the City of New York. While the standoff continues, thousands of accounts are in default, an estimated \$589 million of badly needed revenue is uncollected, and the City's ability to sell real estate tax liens, has expired. While the Mayor insists on the authority to sell water and sewer tax liens, the Council wants billing errors to be corrected prior to any such sale. It appears that a perfectly workable straight-forward answer exists but has been ignored. It requires no legislation and could be put into practice tomorrow.

The Water and Sewer System

Since 1984 New York City's water and sewer system has been financed by the New York City Municipal Water Finance Authority (WFA). The system is operated by the Department of Environmental Protection (DEP) and rates are set by the Water Board.

The WFA was created because the City, still recovering from the 1970's fiscal crisis, did not have the credit to borrow the amount of money that was needed to pay for the capital investment that was required. As well as the needed third water tunnel, massive investment in sewage treatment, and strategies and facilities to protect the drinking water supply had become necessary following federally mandated standards for sewage and drinking water treatment.

The WFA, to meet payments to bondholders pledged revenues from collection of water and sewer charges to the payment of bonds. The system worked well to fund the needed repairs and construction of the water and sewer system.

The Water Meter and Its Discontents

This new process, however, did not come without problems. One of the main strategies for avoiding the construction of new reservoirs

was the introduction of water metering for all users. Metering water was designed to relate cost to usage and thus encourage people to use less. However at its initiation in the early 1990s it was beset by numerous implementation problems which resulted in many inaccurate bills. Horror stories of bills that charged homeowners and small businesses tens of thousands of dollars in error became rampant, undermining efforts to collect proper bills. While DEP has devoted tremendous efforts to correcting the problem, reports of overcharges still persist.

The City's New Collection System

This became even more of a problem in 1996 when the City revamped the methods it used to collect real estate taxes as well as water and sewer liens. Prior to 1996, the City had used the method of foreclosing (*in rem*) against all owners who were delinquent in payment of water and sewer liens and real estate taxes. This method was labor intensive. But even worse, for those properties that failed to pay, the City took over the ownership and operation of large numbers of distressed residential property at great cost.

By the early 1990's the City had effectively implemented a *de facto* moratorium on *in rem* actions in order to reduce the tremendous costs that the Department of Housing Preservation and Development was incurring to operate the distressed properties. This left no enforcement against the owners who were failing to pay their real estate taxes and water and sewer bills. Delinquencies started to rise.

To change this process the City moved to a bifurcated collection model. The first strategy was the tax lien sale process for properties without significant housing problems, and the second strategy was a modified *in rem* action, redesigned to dramatically reduce the City's costs of taking title to foreclosed property.



A New York City water meter.

Citizens Housing & Planning Council

Founded in 1937, CHPC is a non-profit policy research organization dedicated to improving housing and neighborhood conditions through cooperative efforts of the public and private sectors.



Third Water Tunnel

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The system was put into place for real estate taxes *and* for water and sewer liens only where there was also an unpaid real estate tax lien. It was tremendously successful for the City. The sale of the tax liens put immediate cash into the City's budget far more easily and quickly than the old *in rem* foreclosure process. For properties that were deemed too distressed for their tax liens to have value in the open market, the City retained *in rem* foreclosure, now redesigned to operate at much lower costs.

However, because of the history of inaccurate water bills, the Council refused to allow the sale of water and sewer liens where there were no real estate tax liens. These so-called *free standing* water and sewer liens were thus left in a free floating state. Without the tax lien sale process available to them DEP, billed without real enforcement.

DEP's proposed alternative, massive water shut offs, is highly problematic. Shut offs frequently require street excavation, limiting the number that can be done. For multiple dwellings with tenants, shutting off the water raises health problems that may force those who were never responsible for paying the water bills in the first place to vacate their apartments. Some of them may well wind up homeless and in City shelters.

The Administration has now sought to amend the tax lien sale statute and give the Water Board the right to sell its free-standing water and sewer liens in the tax lien sale. The Council, still hearing stories of inaccurate water meter bills, has balked at giving this authority. The Council's reluctance is understandable. Essentially the City is selling to a private party the right to foreclose on water and sewer liens that may still have errors. Adjusting these errors after the lien has been sold is awkward and difficult.

As a result the City's authority to sell real estate tax liens has lapsed effective August 2006, temporarily impairing the City's enforcement of both real estate taxes and water and sewer liens.

Lost in this fight is the fact that there still exists a method of enforcing and collecting water and sewer bills that is effective and does not sell what are perceived to be questionable liens to a private collection effort.

How to Collect the Bills

Quite simply, water bills can still be enforced by bringing *in rem* actions. Since the advent

of tax lien sales, the popular view of *in rem* actions has been that it is the method the City uses to get control of distressed buildings for rehabilitation. However, it has been little noticed that for the last five years or so, that better than 70 percent of owners in *in rem* proceedings actually *pay their bills* rather than letting the City complete the foreclosure, since New York City property is far more valuable today than it was in the 1980's.

Although free standing water liens may not be sold, they can be collected through the *in rem* foreclosure process. The concept has already been proved. A small pilot using five delinquent water and sewer accounts in multiple dwellings was run several years ago and resulted in a startling 100% collection rate for the test buildings.

The process is well known and all its key elements are in place. Nothing new needs to be created. Once a year, or more often if desired, the Department of Finance (DOF) and DEP forward their unpaid liens to the New York City Law Department. Multiple notices are sent to the building owners giving them a chance to pay. If they fail to do so the Law Department initiates legal action against the property to pay the bills or have the City foreclose.

If there are claims that bills are in error, they can be worked out between the Law Department, DEP and the building owner. This can be done much more easily in an *in rem* action than if the questioned lien has been sold.

For most *in rem* actions over the last several years, owners have paid their outstanding bills. If an owner fails to pay then their property would be taken by the City. For this reason the City should restrict this form of enforcement to multi-family dwellings, mixed use buildings, commercial and utility properties which represent 63 percent of the outstanding amount (1-3 family dwellings represent the remaining 37 percent).

This technique will result in effective water collection while the City retains the ability to adjust any bills that are disputed. It directly addresses the problem of how to enforce water bill collection and has been proven in multiple dwellings. It can, and should, be done tomorrow.