



VML Guide to collecting unpaid water and sewer bills

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Introduction

New rules for how local governments and water & sewer authorities collect unpaid water and sewer bills – especially overdue bills owed by tenants – take effect July 1. A bill passed by the General Assembly this year resolved a decade-old legislative dispute of the issue. Rental property owners had fought the authority of local governments to place liens on a landlord's property for a tenant's unpaid water / sewer bill. VML was instrumental in negotiating [HB 567](#), which ensures that local governments retain the power to place a lien on a landlord's property for a tenant's unpaid water bill.

(NOTE: This guide uses the term "water service," but the same rules apply to sewer bills and combined bills.)

This guide will help you create a checklist so that your city, town, county or water / sewer authority can continue to collect unpaid water bills effectively.

HB567 rewrites Va. Code §15.2-2119, the code section that regulates how local governments charge customers for water, what rates may be charged and how localities collect unpaid bills, including those of tenants. (In this guide references to the section will be in the form of §2119.A, etc., instead of repeating the Title 15.2 reference). While HB567 rewrites the rules for new customers, the existing rules apply to existing water customers – see section I, below.

For new customers who are tenants, the biggest change is that a security deposit must be collected from the tenant in order to be able to place a lien on the landlord's property for the tenant's unpaid water bill.

1st Step – Retain or decline the authority to place a lien on the landlord's property for a tenant's unpaid water bill

Section 2119 addresses the collection of water bills from 1. persons applying for water service, 2. from the owner/occupant customer and 3. from tenants and their landlords.

In the case of tenant water accounts, §2119 gives localities two options for dealing with the tenant's unpaid water bills.

1. The locality may collect unpaid water bills by placing a lien on the landlord's property by establishing the rules set out in §2119 and explained in this guide.
2. Alternatively, the locality may forego the ability to place a lien on the landlord's property "by adoption of a resolution, that water and sewer services may be provided to a lessee or tenant pursuant to provision (iii) without obtaining an authorization form from the property owner." – §2119.A. However, if the locality adopts that resolution, it may not place a lien on the landlord's property for the tenant's unpaid water bill – §2119. F

Procedures for collecting unpaid water accounts if the locality retains the authority to place a lien on the landlord's property

Note: for customers who are the owner of the property or who contract for water service for other reasons, the locality may place a lien on the customer's property if the water bill is unpaid and the steps below generally are not required.

A. Steps to take when a new tenant applies for a water contract.

1. Authorization form. The landlord is to send the locality an authorization in the form prescribed by §2119.A before a water contract for service is entered into with the tenant.

The locality can send a notice to all landlords it is aware of to advise them that the authorization forms will be needed when the tenant applies for water service. Alternatively, the locality may give the form to each tenant when he applies for water service and require him to return the completed form before turning on the water. (Authorization form attached as Appendix 1)

2. Notice of lien authority. The locality must notify the landlord in writing that a lien may be placed if the tenant defaults on his bill - §2119.F(i). If the landlord has provided an email address, this notice may be accomplished by sending an email. This may be done on a one-time basis, instead of for every tenant.
3. Security deposit. The locality must collect a security deposit in the amount of 3 to 5 months of typical water and sewer bills - §2119.F.(iii) (VML recommends using a basic scale – for example, if experience shows that one-bedroom units typically have a water bill of \$50 per month, then the deposit for a one-bedroom would be \$150 to \$250, depending on what length of time the locality chooses.)

Note that there is a needs-based exception to the security deposit rule: "if such lessee or tenant presents to the locality a landlord authorization letter which has attached documentation showing such lessee or tenant receives need-based local, state, or federal rental assistance." - §2119.H.

B. Steps to take when the tenant's water bill remains unpaid.

1. Cut off water service 60 days after the water bill becomes delinquent - §2119.D. Under § 2119.E, if the water is not cut off 60 days after it becomes delinquent, no lien for the water used after the 60 days may be placed on the landlord's property.

It is useful to identify in the local regulations the time when a water bill becomes due and therefore when it is considered delinquent. This is because the 60 day clock starts only when the bill is delinquent. For example, if the bill is due 30 days after it is sent, then the water bill would become delinquent 90 days after the bill was sent.

There is an exception to the cut off provision – if the local health officer certifies that cutting off the water would endanger the health of the tenant, it shall not be cut off.

2. Mail or email the landlord the tenant's final bill. The locality must have “mailed by first-class mail to the owner of the property, or sent electronically if requested by the owner, at the address listed in the written authorization from the owner of the property (or such other address as the owner may provide), a duplicate copy of the final bill sent to the lessee or tenant at the time of sending the final bill to such lessee or tenant” - §2119.F.(ii).

Note that §2119.I also applies: “If the property owner provides the locality a request to be notified of a tenant's delinquent water bill and provides an email address, the locality shall send the property owner notice when a tenant's water bill has become 15 days delinquent.”

3. Apply the security deposit to the bill - §2119.F(iv).

4. Use “reasonable collection efforts” to collect the water bill from the tenant. This includes filing a claim in the set-off debt collection program, but only if the locality is in the program. The locality is not required to have collected the amount from the tenant prior to placing a lien, but, it may not simply do nothing. §2119.F.(v). A significant improvement in the law is that there will no longer be a requirement to obtain a judgment against the tenant in court.

5. Send another written notice to the landlord at least 30 days prior to filing the lien against the real estate – §2119.F.(vi) – and include a copy of the final bill.

If the landlord doesn't pay the amount due within 30 days after receiving the notice, the lien may be placed against his property.

C. Lien amount.

The lien may be no more than the amount of three months water bills, “applicable penalties and interest on such delinquent charges” and up to 20% of the delinquent charges for attorneys fees and collection costs - § 2119.E. On the other end, no lien may be placed for less than \$25 – §2119.E.

D. Subrogation.

If the landlord pays the unpaid amounts, the locality must sign any documents necessary to allow the landlord to step into the locality’s shoes for collecting against the tenant - §2119.F.

E. May the landlord or other owner be required to be the contracting party for water service?

There are three situations where the tenant-based collection rules do not apply.

1. For an individual water service to a tenant, if the landlord fails or refuses to submit the tenant authorization form (A.1 above), the locality may require the landlord to contract for the water service and/or to pay a security deposit for the tenant - §2119.G.
2. If the water meter serves multiple units, the landlord will be the customer and will be required to contract for service and pay any applicable security deposit.
3. For owner/occupants and other circumstances where the owner applies for the water service, the owner is the contracting party and is responsible for any security deposit.

F. May a new tenant obtain water if the prior tenant’s bill remains unpaid?

The rule remains unchanged on this – only if the lien has been recorded against the landlord’s property may the locality deny service to a new tenant - §2119.I.

G. What if the landlord sells the property?

If the landlord sells the property and the buyer does not have actual notice of the lien, the lien continues in force against the property only if the locality has recorded the lien in the circuit court clerk’s office - §2119.K.

H. Releasing a lien

If the landlord pays off the lien and accumulated interest, the locality must execute a lien release within 10 days of receiving the payment. (The form of the release is in §2119.L and attached as Appendix 2.)

I. Do the new rules apply to existing water customers?

No – HB567 has an enactment clause that provides that it applies “for any water and sewer services contracted for after July 1, 2012.” This means that for all the existing customers, the rules in place before July 1, 2012 continue to apply. So, if a tenant was a customer prior to July 2012 and then fails to pay in 2015, the rules in place before HB567 became law will apply. VML recommends keeping a copy of the 2011 version of the law. The sections are attached as Appendix 3.

J. How does a locality adopt the new rules?

Each locality will need to review its code to see if any of the rules for water customers are in the code. If they are, those sections would need to be amended by ordinance. (A search of a large number of local government codes identified that some localities set a security deposit in the locality’s code and some have chapters regulating everything related to water customers.)

If your city, town or county enacts the rules by a resolution or motion or simply by administrative rules adopted by the chief administrative officer or by the utilities department, then the changes would be made by those same actions.

No matter how the changes are effected, the locality should consider keeping two sets of rules on the books – one for customers who signed up prior to July 2012 and one for customers who sign up for service after July 1, 2012.

K. Water and sewer authorities

A goal of HB567 is to create one set of rules for collecting unpaid water and sewer bills for cities, towns, counties and water / sewer authorities that provide services. Va. Code §15.2-5139, which contains the rules for water and sewer authorities, was rewritten to provide that all the rules of § 15.2-2119 apply to authorities as well as local governments. For existing customers of a water and sewer authority, the existing rules set out in §15.2-5139 will continue to apply.

Appendix 1 – Landlord Authorization Form

DATE: _____

[INSERT NAME OF WATER AND SEWER SERVICES PROVIDER AND ADDRESS]

RE: [INSERT FULL TENANT NAME AND ADDRESS]

To Whom It May Concern:

[INSERT TENANT NAME] has entered into a lease for the property located at [INSERT ADDRESS] and is authorized to obtain services at this address as a tenant of [INSERT PROPERTY OWNER NAME].

Signed: _____
PROPERTY OWNER

Appendix 2 – Release of lien form

Prepared By and When: _____

Recorded Return to:

Tax Parcel/GPIN Number: _____

CERTIFICATE OF RELEASE OF WATER AND SEWER SERVICE LIEN

Pursuant to Va. Code Annotated § 15.2-2119 (L), this release is exempt from recordation fees.

Date Lien Recorded: _____ Instrument Deed Book No.: _____

Grantee for Index Purposes: _____

Claim Asserted: Delinquent water and sewer service charges in the amount of \$_____.

Description of Property: [Insert name of property owner and tax map parcel/GPIN Number]

The above-mentioned lien is hereby released.

BY: _____

TITLE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

Acknowledged, subscribed, and sworn to before me this ____ day of _____,
by _____ as _____ of the [Insert
Water/Sewer Provider Name] on behalf of [Insert Water/Sewer Provider Name].

Notary Public

My commission expires: _____

Notary Registration Number: _____

Appendix 3 – 2011 version of Va. Code §§15.2-2119, 15.2-5139

The 2011 version of §§15.2-2119 & 15.2-5139 will not appear in the code after July 1, 2012. However, as described in item I in the VML guide, the 2011 rules will apply to water customers who had contracted for service prior to July 1, 2012, so the 2011 language will need to be retained.

§ 15.2-2119. Fees and charges for water and sewer services

For water and sewer services provided by localities, fees and charges may be charged to and collected from: (i) any person contracting for the same; (ii) the owner, lessee or tenant, or some or all of them who use or occupy any real estate (a) which directly or indirectly is or has been connected with the sewage disposal system and (b) from or on which sewage or industrial wastes originate or have originated and have directly or indirectly entered or will enter the sewage disposal system; or (iii) any user of a municipality's water or sewer system with respect to combined sanitary and storm water sewer systems where the user is a resident of the municipality and the purpose of any such fee or charge is related to the control of combined sewer overflow discharges from such systems. Such fees and charges shall be practicable and equitable and payable as directed by the respective locality operating or providing for the operation of the water or sewer system. Such fees and charges, being in the nature of use or service charges, shall, as nearly as the governing body deems practicable and equitable, be uniform for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowances for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate or any other factors determining the type, class and amount of use or service of the sewage disposal system, or any combination of such factors, or on such other basis as the governing body may determine.

Such fees and charges shall be due and payable at such time as the governing body may determine, and the governing body may require the same to be paid in advance for periods of not more than six months. The revenue derived from any or all of such fees and charges is hereby declared to be revenue of such sewage disposal system.

Water and sewer connection fees established by any locality shall be fair and reasonable. Such fees shall be reviewed by the locality periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders which are in conflict with any of the foregoing provisions.

If the fees and charges charged for the use and services of the sewage disposal system by or in connection with any real estate are not paid when due, a penalty and interest shall at that time be owed as provided for by general law, and the owner, lessee or tenant, as the case may be, of such real estate shall, until such fees and charges are paid with such penalty and interest to the date of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by discharge thereof directly or indirectly into the sewage disposal system. If such owner, lessee or tenant does not cease such disposal within two months thereafter, the locality or person supplying water for the use of such real estate shall cease supplying water thereto unless the health officers certify that shutting off the water will endanger the health of the occupants of the premises or the health of others.

Such fees and charges, and any penalty and interest thereon shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. However, prior to recording a lien against the property owner, the locality or service authority shall obtain a judgment in a court of competent jurisdiction against the former tenant who contracted for such services

for the amount of any delinquencies. After obtaining judgment against the former tenant as contracting party and using reasonable efforts to collect on the judgment, if the locality or service authority is unable to collect the balance due on the money judgment, the locality or service authority shall provide the property owner with 30 days' written notification to allow the property owner a reasonable opportunity to pay the amount of the lien and avoid the recordation of a lien against the property. If the property owner fails to pay the amount of the outstanding judgment within the 30-day period, the locality or the service authority may record a lien in the amount of the outstanding judgment against the property owner. Upon payment of the outstanding judgment, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant but for which judgment has not been obtained, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the locality or the service authority in the amount paid by the property owner. The locality or service authority shall execute all documents necessary to perfect such subrogation in favor of the property owner. Such amounts, plus reasonable attorney's or collection agency's fees which shall not exceed 20 percent of the delinquent tax bill, may be recovered by the locality by action at law or suit in equity. In any city with a population greater than 390,000, such fees and charges, along with delinquent water and sewer connection fees, and any penalty and interest thereon shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. Such amounts, plus reasonable attorney's or collection agency's fees which shall not exceed 20 percent of the delinquent fee or charge, may be recovered by such city by action at law or suit in equity. Unless a lien has been recorded against the property owner, the locality or service authority shall not deny service to a new tenant who is requesting service at a particular property address based upon the fact that a former tenant has not paid any outstanding fees and charges charged for the use and services in the name of the former previous tenant. In addition, the locality or service authority shall provide information relative to a former tenant or current tenant to the property owner upon request of the property owner. If the property owner

provides the locality a request to be notified of a tenant's delinquent water bill and provides an email address, the locality shall send the property owner notice when a tenant's water bill has become 15 days delinquent.

Notwithstanding any provision of law to the contrary, any town with a population between 11,000 and 14,000, with the concurrence of the affected county, which provides and operates sewer services outside its boundaries may provide sewer services to industrial and commercial users outside its boundaries and collect such compensation therefor as may be contracted for between the town and such user. Such town shall not thereby be obligated to provide sewer services to any other users outside its boundaries.

(Acts 1997, c. 587, eff. Dec. 1, 1997; Acts 1998, c. 223; Acts 2001, c. 13. Amended by Acts 2005, c. 912; Acts 2011, c. 529; Acts 2011, c. 580.)

§ 15.2-5139. Lien for charges

A. There shall be a lien upon real estate for the amount of any fees, rents or other charges by an authority to the owner or lessee or tenant of the real estate for the use and services of any system of the authority by or in connection with the real estate from the time when the fees, rents or charges are due, and for the interest which may accrue thereon. Such lien shall rank on a parity with liens for unpaid real estate taxes. An authority may contract with a locality to collect amounts due on properly recorded utility liens in the same manner as unpaid real estate taxes due the locality. A lien for delinquent rates or charges applicable to three or fewer months may be placed by an authority if the authority or its billing and collection agent (i) has advised the owner of such real estate at the time of initiating service to a lessee or tenant of such real estate that a lien will be placed on the real estate if the lessee or tenant fails to pay any fees, rents or other charges when due for services rendered to the lessee or tenant; (ii) has mailed to the owner of the real estate a duplicate copy of the final bill rendered to the lessee or tenant at the time of rendering the final bill to such lessee or tenant; and (iii) employs the same collection efforts and practices to collect amounts due the authority from a lessee or a tenant as are employed with respect to collection of such amounts due from

customers who are owners of the real estate for which service is provided. However, prior to recording any lien on the owner's property, the authority shall provide the property owner with 30 days' written notification to allow the property owner a reasonable opportunity to pay the amount of the lien and avoid the recordation of a lien against the property. If the property owner fails to pay the amount of the former tenant's obligations within the 30-day period, the authority may record a lien in the amount of such outstanding obligations against the property owner. Upon payment of any outstanding amounts due by a former tenant of the property owner, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the authority in the amount paid by the property owner. The authority shall execute all documents necessary to perfect such subrogation in favor of the property owner. Unless a lien has been recorded against the property owner, the authority shall not deny service to a new tenant requesting service at a particular property address based upon the fact that a former tenant has not paid any outstanding fees and charges charged for the use and services in the name of the former tenant. In addition, the authority shall provide information relative to a former tenant or current tenant to the property owner upon request of the property owner with the written notification to the property owner as otherwise provided herein. If the property owner

provides the authority a request to be notified of a tenant's delinquent water bill and provides an email address, the authority shall send the property owner notice when a tenant's water bill has become 15 days delinquent.

B. The lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien until the amount of such fees, rents and charges is entered in a judgment lien book in the office where deeds may be recorded in the locality in which the real estate or a part thereof is located. The clerk in whose office deeds may be recorded shall make and index the entries therein upon certification by the authority, for which he shall be entitled to a fee of two dollars per entry, to be paid by the authority and added to the amount of the lien. The authority shall give the owner of the real estate notice in writing that it has made such certification to the clerk.

C. The lien on any real estate may be discharged by the payment to the authority of the total lien amount, and the interest which has accrued to the date of the payment. The authority shall deliver a certificate thereof to the person making the payment. Upon presentation of such certificate, the clerk having the record of the lien shall mark the entry of the lien satisfied, for which he shall be entitled to a fee of one dollar.

(Acts 1997, c. 587, eff. Dec. 1, 1997. Amended by Acts 2009, c. 420; Acts 2011, c. 529; Acts 2011, c. 580.)