



# WATER RULES

*Your FAQ on water and wastewater utility services billing answered.*

FOR A NUMBER of years, apartment owners have been billing for water and wastewater utility services on a submetered or allocated basis. The good news is, Texas law allows an owner to bill back a great deal of a community's water bill to the residents. However, billing for water and wastewater is heavily regulated with rules and potential penalties. If violations occur, claims against owners and managers in the apartment industry can be expensive. Let's take a look at some of the most common questions that arise with respect to compliance with the rules.

## **Where are the requirements that apply?**

The requirements regarding water billing are covered by both statute and regulations. Subchapter M of chapter 13 of the Texas Water Code provides most of the statutory requirements. Subchapter H of chapter 24 of the Texas Administrative Code contains rules. Subchapter K of chapter 13 contains certain statutory provisions regarding penalties and enforcement.

## **Am I required to register before billing for water service?**

Yes. The rules require that an owner who intends to bill residents for a submetered or allocated utility service, or who changes the method used to bill residents for service, must register with the Public Utility Commission of Texas (PUC) in a form prescribed by the PUC. Each apartment owner should confirm that the proper registration documents were filed either with the PUC or its predecessor (the Texas Commission on Environmental Quality, formerly Texas Natural Resource Conservation Commission). Registration documents should be kept handy so that they can be referred to if necessary.

## **Am I required to make records available to residents?**

Yes. The owner is required to make certain records available for inspection by the resident at the on-site manager's office during normal business hours. If the records are not routinely maintained at the on-site manager's office, the owner is required to provide copies of the records to the on-site manager within 15 days of receiving a written request from the resident. If there is no on-site manager, the owner is required to make the records available at the resident's unit within 30 days of receiving a written request from the resident.

## **What records are required to be provided to residents?**

Upon request, the rules provide that the owner will make the following records available to residents:

- a. A copy of Subchapter M of Chapter 13 of the Texas Water Code.
- b. A copy of the water billing rules.
- c. A copy of the retail public utility's rate structure applicable to the owner's bill.
- d. Information or tips on how residents can reduce water usage.
- e. The bills from the retail public utility to the owner.
- f. For allocated billing, the formula used to calculate the resident bills including occupancy factors and square footage, if relevant to the allocation formula.
- g. For submetered billing, the calculations used to calculate the resident's bills including submetered reading and test results.
- h. The total amount billed to all residents each month.
- i. Total revenues collected from the residents each month to pay for water and wastewater service.

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- j. Any other information necessary for a resident to calculate and verify a water and wastewater bill.

## **For how long am I required to retain records?**

The records must be maintained for the current year and the previous calendar year, except that all submetered test results are required to be maintained until the submeter is permanently removed from service.

## **Is it important to fill out the water addendum accurately?**

Yes. The water rules has a number of requirements that must be met in a rental agreement. The TAA water addendum is designed to incorporate many of these requirements. However, these addenda must be filled out completely and accurately. For example, if not submetered, there must be a clear description of the formula used to allocate utility services. The TAA form addendum has a box that must be checked with the correct allocation formula. All you have to do is check the correct box! Additionally, the rules requires that the average monthly bill for all dwelling units in the previous calendar year in addition to the highest and lowest months bills for that period must be identified. This is also a blank in the TAA water addendum that must be filled in.

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As courts render opinions in pending lawsuits, we will find out more about how a court interprets the rules. However, the prudent approach now is to be familiar with the rules and understand how to comply to **avoid any unnecessary problems.**

### **How can I get a copy of the water rules?**

Look at the attachment to your TAA water addendum. At the time the addendum is discussed, the owner is required to provide a copy of the water rules to the resident to inform the resident of the resident's rights and the owner's responsibilities under the rules. Both you and the resident have the opportunity to read the document to know and understand applicable rules.

### **Which charges are allowed to be billed back to residents?**

The rules provides that charges to residents for submetered or allocated service may only include bills for water or wastewater from the retail public utility. Charges must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment or other similar fees. If you charge administrative billing fees or similar fees, the resident should specifically agree to pay those fees, and those fees should not be used to offset water or wastewater billing costs. With the exception of a service charge associated with submetered billing, if any fees are charged on a water bill, they should be associated with a non-water item on the bill, such as trash pursuant to the TAA trash addendum.

### **What service charge is permissible?**

The rules provides that an owner may charge his or her residents a service charge in an amount not to exceed 9 percent of the residents' charge for submetered water and wastewater service. A service charge is not permitted to be assessed to a resident who resides in a tax credit property or a Section 8 resident. Service charges are also not permitted to be assessed when the water bill is allocated to residents.

### **Can I charge a late fee when residents fail to timely pay the water bill?**

Yes. However, be careful! A one-time penalty not to exceed 5 percent may be applied to a delinquent account. If a penalty is applied, the bill must indicate the amount due if the late

penalty is incurred. No late penalty may be applied unless agreed to by the resident in a written lease that states the percentage amount of such late penalty. The TAA water addendum provides for the late penalty. However, be careful that you are not charging the late fee associated with the late payment of rent, or other charges under the lease, as the late fee for water payments. The late fee in the lease for late payment of rent will typically be much higher than the permissible late fee for water bills.

### **Who is responsible for compliance with the water rules?**

Typically, the owner of the property will be responsible for compliance with the water rules. However, this has been the source of some confusion with the courts. The courts have used a number of different definitions to decide who is an appropriate "owner." The term "owner" is defined in the rules as the legal titleholder of the property or any individual, firm or corporation that purports to be the "landlord" of residents.

Chapter 92 of the Texas Property Code provides for a couple of different definitions of the term "landlord." The definition of "landlord" is generally defined in the residential chapter of the Texas Property Code as the owner, lessor or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor or sublessor in an oral or written lease. The definition of "landlord" with respect to obligations pertaining to security devices is an owner, lessor, sublessor, management company or managing agent including an on-site manager.

No matter what definition is used by a court, it is important not to hold yourself out as the owner or landlord unless you are as-

suming the obligations of the owner or landlord. Typically, the owner of the property should be named as the "owner" under the TAA lease, even though the managing agent will sign the lease as the owner's agent. In most cases, the management company should not be named on the first page of the lease as the "owner."

### **What are the potential penalties for failing to comply with the water statute and rules?**

Subchapter M of chapter 13 of the Texas Water Code provides that, in addition to the enforcement provisions contained in subchapter K, if an owner violates a rule of the utility commission regarding submetering of utility service or non-submetered master metered utility costs, the resident may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees and court costs from the owner. An owner is not liable for civil penalty if the owner proves the violation was a good faith, unintentional mistake. Subchapter K provides for certain remedies that the utility commission, with the assistance of the attorney general, has if a person engaged in or is about to engage in any act in violation of chapter 13 or of any order or rule of the utility commission. These include lawsuits filed by the attorney general, civil penalties, administrative penalties or even criminal charges.

There has been much concern in the apartment industry over the last few years about compliance with water rules. As courts render opinions in pending lawsuits, we will find out more about how a court interprets the rules. However, the prudent approach now is to be familiar with the rules and understand how to comply to avoid any unnecessary problems. 



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