

# Legally (Relevant



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## Unpaid water bills and the sale of land: potential issues for RWDs and their customers

It happens more than you might think. A benefit unit owner of a rural water district with a large delinquent water bill sells the land that the benefit unit serves and doesn't inform his realtor or the purchasers about the bill. Just for good measure, the seller also fails to inform the RWD of the sale of the land and fails to get the district's approval for the transfer of the benefit unit. Once the property sale is completed, the district learns of the sale and the purchasers get an unpleasant surprise when told that they are liable for the unpaid bill.

What are the rules in these cases, and what can RWDs do to reduce the chances that these things happen? In this installment, we'll take a look at these questions and we'll look at the legal issues that arise when situations like this occur.

### Who is the customer?

Perhaps the first question to answer is, who is the customer? Usual practice under standard USDA-supplied by-laws is for the district to issue a certificate to the landowner-customer, who is then to assign that certificate to the buyer of the land at the time of sale. The assigned certificate is to then be delivered to the RWD, and assuming the unit is current in payment and everything else is in order, the district's board of directors will approve transfer of that unit to the new landowner.

That is the way it is supposed to work. In the real world, certificates get lost, or the seller forgets about the certificate and need to transfer the unit altogether. The real estate agents or the title company may remember (more on that later), but they may not. The RWD's first clue that there is even a change in customers is when the operator sees a moving van in the yard, or more likely when the billing clerk sees a new name on the check paying the bill. Some buyers know from experience that the water comes from a rural water district and that there is a benefit unit that needs to be transferred to them, but in many instances that is just not the case.

So what happens when the system breaks down and the buyer moves in with no benefit unit to transfer (and the sellers have moved to Arizona)? The by-laws contain a solution. They provide that benefit units "follow the title of the land unless the owner of the land designates otherwise." All the district needs to do is get a copy of the deed that transferred the land from the seller to the new owner (and to be perfectly certain, the contract for sale), and so long as there is no reservation of the benefit unit to the seller, the unit automatically follows the land to the new landowner.

### Liability for unpaid bills

This still leaves the problem of the unpaid bill. What happens to that in the case of sale of the property?

Those who own benefit units in RWDs become subject to the bylaws of their respective districts. Regardless of how the buyer becomes the owner, whether by signed certificate assignment or as a result of the by-law concerning title, the new owner becomes liable for payment of any charges on that unit, even if incurred by the previous owner.

Note that most all of this contrasts sharply with what happens with change of ownership of property having unpaid bills in cities. In most cities, there is no transfer of a "benefit unit". The new owner just applies for water service, pays a deposit (or not) and if there is an unpaid bill on the property the city applies the deposit and is stuck with any balance remaining. RWDs have a definite advantage in this part of the business.

#### **Notice to buyers of unpaid bills**

Most buyers of land go through a title company or attorney who reviews public records for information concerning the marketability of the land. Records on file at the county register of deeds office along with court files are checked for information on the land and the sellers that may affect that title. The problem is that there is no record on file for the title company or attorney to find that alerts them to the fact that there is an unpaid bill for water services to the property, or that this bill is in effect like a "lien" on the RWD benefit unit serving that property that will have to be paid for the buyer to continue to receive water service. Some districts have made a point of contacting area real estate agents and title companies to encourage them to get assignments

of benefit units at the time of sale and to warn them of the potential of this "lien" for unpaid water bills.

Some RWDs have taken the disclosure of non-payment information a step further. If customers' unpaid bills get above a certain level, those



districts file a notice document with their county's register of deeds formally notifying others that there are unpaid RWD bills relating to the property for which the bills are owed. The notices also state that non-payment may result in forfeiture of the benefit unit serving the property, inability to transfer the benefit unit and potential inability

to receive water from the district if not paid. Filing such notices means an abstractor preparing a title report before any sale of the property will note these provisions in its title report. Potential purchasers and their realtors will then be on notice that they should inquire further about the payment of amounts owed to ensure water service to the property. This process can be a lot of work, and involve some expense, and the district needs to be very certain of the accuracy of its information before filing anything of the sort, but it may be worthwhile in some instances.

#### **Disclosure of billing information by RWDs**

In most cases, there is only one way to find out if there is an unpaid bill on the property – call the district. So can a water utility provide this information? The Kansas Open Records Act prohibits disclosing some types of information. As to certain other types of information, the Act allows the utility to make its own decision whether

to disclose that information. In addition, there are some types of information that the Act requires be disclosed. Certain RWD billing information falls into this last category. Specifically, the Act provides that if a person requests "information concerning billings for individual customers," RWDs must disclose that information.

The meaning of this requirement to disclose is not entirely clear. For example, what if the caller knows the name of the "individual" customer, but not the address; must the utility provide the address as part of the "information concerning billings" for that customer? Couldn't that be used for some unexpected purposes, such as a creditor attempting to track down a debtor, or an ex-husband trying to find an ex-wife – or maybe worse? And does the requirement for disclosing of "information concerning billings" mean also information on whether the billings have been paid or not? And does disclosure of any of this run contrary to some right of privacy the customer may have against disclosure of such information?

The fact is, there are no clear answers to these questions. Make no mistake, there are penalties for failing to make records available that are required to be open, so the stakes are high. Persons requesting information like this can be required to do so in writing, and to sign a statement to the effect that the information obtained will not be used to solicit the sale of a product or services. Making this a requirement in all cases is probably good practice. In any event, it is advisable that some thought should be given to a standard response to this type of question. Consult with your attorney, and develop a standard procedure.

For rural water districts, it just makes no sense to tell prospective buyers that the district can not tell them whether there is an unpaid bill on the property. How else can the buyer protect himself from the seller's unpaid bill? If the caller has a bona fide interest in knowing about the status of the bill, he should know the name of the current owner and the address. In most instances, that should be sufficient to justify the request, and information including past usage/bills and the amount of any unpaid charges on the account should be provided. Other information, such as the owner's address (if different from the address receiving service), date of birth, place of employment or worse, social security number, should not be provided. This is not "information concerning billings"; and providing this type of information (especially the social security number) will get you in trouble. If the requester asks to see documents, make sure this type of information is not included in what you provide (or better yet, don't keep it in the first place!).

### Conclusion

RWDs are in an unusual, and in some respects, enviable position with their customers. A water benefit unit follows the title of the land to the new owner, and with it goes the obligation of paying any unpaid bills on that unit. The problem is that not everyone in the real estate game knows or remembers those rules, and some unpleasant surprises sometimes occur as a result. RWDs need to have a procedure for providing the necessary information to persons requesting it to be sure they are complying with the Open Records Act, protecting the privacy interests of their new customers and the financial interests of prospective buyers.



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