Select Utility Law Issues Affecting Landlords and Tenants

PBI - Representing Residential Landlords and Tenants in Pennsylvania 2020

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(PowerPoint created by and courtesy of Pennsylvania Utility Law Project)
Today’s session:
• Regulated v. Unregulated Utility Providers
• Tools for Preventing Termination and Restoring Service
• Tenant Protections
• COVID-19 Updates

Introductory Note:
• Housing and utility issues are uniquely intertwined
• Tenants facing eviction often forego paying their utility bills in favor of paying rent
Regulated v. Unregulated Utility Providers

- **Pa. C.S. Title 66** (for PA Public Utility Commission-regulated utilities)
- **Pa. C.S. Title 68** (for unregulated utilities)
- **Utility Service Tenants Rights Act ("USTRA")** codified at 68 P.S. §§399.1 - 399.18 - applicable to municipal utilities providing service within their corporate limits (not subject to the jurisdiction of the “PUC”)
- **Discontinuance of Service to Leased Premises ("Subchapter B")** codified at 66 PA. C.S. §§1521-33 - applies to utilities under PUC jurisdiction
- Although there are some differences between the two, they provide almost identical protections for tenants
- These laws apply to the vast majority of utility companies and municipalities providing electric, gas and water service in PA
Tools for Avoiding Termination and Restoring Service
Tools and for Avoiding Termination and Restoring Service

- COVID-19 Moratorium
  - *Not a guarantee to have service restored if already off*
- Utility-Run Assistance Programs
- Utility-Issued Payment Arrangements
- PUC-Issued Payment Arrangements
- Medical Certificates
- Security Deposit Prohibition
- 4-year Rule
  - Arrears over 4 years old cannot form the basis of termination.
- Protections for Customers with PFA or Other Court Order
  - Cannot be charged for debt accrued in someone else’s name – even if they lived at the home when debt accrued.
  - Additional / longer payment arrangements
  - Additional notice of termination
- Dispute Process – File a complaint
- Bankruptcy
Authorized Termination

66 Pa. C.S. §1406(a) – Non-Immediate Terminations

- Nonpayment of *undisputed* delinquent account.
- Failure to:
  - comply with terms of payment agreement
  - complete security deposit / provide guarantee / establish credit
  - permit access to meters, service connections, or other property of the utility to maintain, repairing, replace the property or to read a meter
Terminations

Authorized Termination
66 Pa. C.S. § 1406(c)(1) – Immediate Terminations

• Reasons:
  • Unauthorized use
  • Fraud or material misrepresentation of identity
  • Tampering with meters or equipment
  • Violation of tariff that endangers life or property

• Notice & Timing of – 1406(c)(2)
  • Only required to make a good faith post-termination notice
Termination Rules

- Terminations may only occur Monday – Thursday
  - *No Friday Terminations*

- Notice Requirements
  - *Written Notice* - at least 10 days before termination.
    - Notice effective for 60 days.
  - *Personal Contact* - 3 days prior to termination, utility must *attempt* to contact customer in person, by phone, or electronically through email/text.
    - Customer must **AFFIRMATIVELY CONSENT** to receive notice electronically. (*consent is often obtained when the customer signs up for service.)*
  - *Knock Rule* – must attempt personal contact at the residence immediately prior to termination
Termination Rules

- Winter Moratorium
  - Households with income at/below 250% of the Federal Poverty Level cannot be terminated Dec. 1 – March 31.
    - Note: Winter protections for water service only apply for heat-related service.
  - Not a guarantee of restoration if already off!
  - See 66 Pa. C.S. 1406(e) / 52 Pa. Code 56.100
An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.

- Customers should not admit liability unless they know what they owe
- Customers should not agree to a payment arrangement that they cannot afford to pay

**Utility Issued**

- Utilities have discretion to offer as many payment arrangements as they want for any length of time.

**PUC Issued**

66 Pa. C.S. § 1405 –

- Current customers (including within 30 days of service term)
- <150% FPL = 5 year payback timeframe
- The PUC cannot require a utility to enter into a second payment arrangement absent extraordinary circumstances.


- Applicants for service (those who have been without service for 30 days or longer) trying to reconnect at same address
- Reconnection fee (cost-based)
- < 150% FPL = 24 months
Payment Arrangement Exceptions

• PFA / Other Order:
  • ...An outstanding residential account with the utility may be amortized over a **reasonable period of time**.
  • Factors to be taken into account include:
    • the size of the unpaid balance
    • the ability of the applicant to pay
    • the payment history of the applicant and
    • the length of time over which the bill accumulated
  • 56 Pa Code Section 56.285

• CAP Arrears
  • Arrears accrued on discounted bills while in CAP are not eligible for a payment arrangement from the PUC; however, the customer or applicant is typically able to pay MERELY their missed CAP payments to be reinstated into the program
  • Reinstatement in CAP should re-freeze the non-CAP debt and allow forgiveness over time
Customer Assistance Programs (CAPs)

Available to customers of regulated gas and electric companies. Some regulated water companies offer limited assistance programs as well.

- **Benefits:**
  - Reduced Rates / Lower Monthly Payments
  - Past Debt (arrearage) Frozen
  - Arrearage Forgiveness Earned Over Time

- **Eligibility Requirements:**
  - Annual gross household income is at or below 150% FPIG
  - Payment troubled
  - Periodic income verification

*May ask for Social Security #, but it is not required*
Hardship Fund Programs

- **Benefit**
  - Cash grant, typically up to $500 to resolve crisis

- **Eligibility and program terms vary by utility**
  - Typical terms include:
    - 200% FPL or below
    - Recent payments / Attempts to make payments
      - *utility may make exceptions, but you have to ask!
    - Temporary hardship
  - Some utilities prohibit current CAP customers from also receiving hardship fund grant assistance, but will make exceptions
Customer Assistance and Referral Evaluation Services ("CARES")

CARES

- The program is targeted to customers who:
  - Are having trouble paying their bill, and
  - Have short term problems that are causing the inability to pay

- Offer several types of services:
  - Referrals to social service agencies,
  - Budget counseling, and
  - Special arrangements for bill payment

Advocacy Tip: CARES is a little-used program, and the utility has wide discretion to resolve the customer issue.
Security Deposits

- A customer can be charged up to $\frac{1}{6}$th of the estimated annual bill (about 2 months).
- Utilities must provide customers with 90 days to pay the full deposit (50/25/25).
- Deposits may be held until “timely payment established” (paying “in full and on time for 12 consecutive months.” § 1404(c))
Security Deposit Exceptions / Waivers

- CAP-Eligible
  - Must provide proof of income
  - 66 Pa. C.S. 1404(a.1)

- PFA / Other Order:
  - Waiver if establish “creditworthy”
    - Employment, past residences, letters of reference, credit report.
    - 52 Pa. Code 56.282, 56.283

- Third Party Guarantor
Protections for Victims of Domestic Violence

- Must provide utility with a copy of PFA or other court order with evidence of domestic violence.
- A victim of domestic violence with a PFA or other court order may NOT be terminated for “nonpayment for residential service already furnished in the names of persons other than the customer...” 56 Pa. Code 56.323
  - Cannot charge victim arrears accrued in someone else’s name, even if they lived at the residence when the arrears were accrued.
- Flexible payment arrangements based on individual facts and circumstances.

**Additional Notice for Customers with PFA / Court Order**
- Attempted “personal contact” immediately preceding termination
  - If no personal contact, notice is posted at the property and termination is delayed for 48 hours.
Medical Certificates

A household may obtain a medical certificate to stop termination if a household member has a serious illness OR a medical condition which requires utility service to treat their illness.

- Examples: asthma requires air conditioning in summer / diabetes requires refrigeration for medication).
- A medical professional, not the utility, gets to decide which conditions qualify.

• A medical certificate stops termination for 30 days.
  • A customer may submit a new certificate every 30 days if she/he pays all current charges by due date.
  • A customer may renew medical certificates two times (90 days of protection) even if they do not pay current charges by due date.
Filing a Complaint with the PUC Stays Termination
• 52 Pa. Code 56.140 et seq.
• Informal Complaint
  • PUC Bureau of Consumer Services (BCS)
  • 1-800-692-7380
• Formal Complaint
  • Administrative hearing before ALJ
  • Appeals go to Commonwealth Court

Note: Must be licensed attorney to represent client before PUC, but can refer client to file pro se and provide information about rights.
PUC has a good Complaint Filing Information Packet(s) available on its Website: [http://www.puc.pa.gov/filing_resources/filing_complaints.aspx](http://www.puc.pa.gov/filing_resources/filing_complaints.aspx)

☑️ Checklist Before Filing a Complaint with the PUC

- □ Have you called your utility about this complaint?
- □ Are you the utility customer? Are the service and the home with service in your name? Or, do you have legal authority to act on behalf of the customer of record or applicant (i.e. power of attorney, legal guardian etc.)?
- □ Are you prepared to indicate whether you have a Protection From Abuse (PFA) Order when filing the complaint?
- □ Are you aware that, by filing a complaint, you are giving the PUC permission to contact the utility and review your account information?
- □ Do you know that you must still pay all of your current bills with the utility while your complaint is under review by the PUC?
- □ Do you understand that the PUC may be able to arrange a payment agreement between you and the utility, based on your income level, for the amount you owe that utility?
Informal Complaint process is simpler and less time consuming.

You can file an informal complaint by any of the following means:

1. Calling 1-800-692-7380
2. Writing a letter or complaint addressed to Pa PUC Pennsylvania Public Utility Commission, Bureau of Consumer Services, PO Box 3265, Harrisburg, PA 17105-3265
Formal Complaints can be filed using the PUC’s website: http://www.puc.pa.gov/filing_resources/online_forms.aspx

Can come either as an appeal from an informal decision or directly without informal complaint.

Begins formal process with hearings before ALJ:
- Hearings are typically telephonic and follow the rules of evidence.
- Do not need an attorney, but ....

Hearings result in:
- An Initial Decision which becomes final, unless a party files “Exceptions” which then don’t become final until PUC issues a “Final Order”
  - Appeal is to Commonwealth Court after Final Order
Tenant Protections
A tenant’s rights under USTRA & Subchapter B (DSLPA) arise when:

- a utility company makes the decision to terminate utility service to leased premises due to nonpayment by the landlord ratepayer.
  
  - 66 Pa. C.S. §1523; 68 P.S. §399.3.
  
  - USTRA/Subchapter B also applies when landlord voluntarily relinquishes service (requests to discontinue service).

The following must ordinarily be true:

- The landlord is the utility’s named customer.
  
  - USTRA: Does not matter whether lease says it is the tenant’s responsibility
  
  - DSLPA: Landlord must be responsible for service under terms of lease.
  
  - Both: No requirement to produce *written* lease.

- The tenant took possession while utility service was active.

- The proposed termination of service is due to nonpayment (as opposed to unsafe conditions, need for repairs, meter tampering, etc.).
Tenant’s Right to Notice and Continued Service

- If landlord requests utility provider terminate service, provider must: “Notify each residential unit reasonably likely to be occupied by an affected tenant of the proposed discontinuance in writing “at least 30 days before any such discontinuance of service.” 68 P.S. § 399.3(a)(3) & 66 Pa. C.S. § 1523(a)(3)

- Affected tenants have the right to continued utility service if:
  - **USTRA:** They pay an amount equal to “to the bill of the landlord ratepayer for the 30-day period (USTRA § 399.7) / billing month (DSLPA § 527(b)) preceding the notice to the tenants.”
  - **Subchapter B:** “[A]n amount equal to the bill of the landlord ratepayer for the 30 day period preceding the notice to the tenants.” Thereafter, affected tenants must pay bills for the future “billing month[s]” or “30 days or less” period in order to receive continued service.

- Payments must be made “within 30 days of the delivery of the notice to the tenants.”
Foreign Load

- If a tenant’s meter is connected to a shared/common area, **the landlord is responsible for the FULL BILL** for that residence going forward until he/she removes the load from the shared/common area
  - *If foreign load suspected, can request utility to conduct foreign load investigation*
- Protection from retaliation/defense against eviction/attorneys fees/fines
- The tenant only resumes responsibility for the utility bills going forward, **after** the foreign load issue is resolved and verified by utility
- Only applies for PUC regulated utilities, pursuant to DSLPA, 66 Pa. C.S. 1529.1(b)
Additional Tenant Protections

- **Right to deduct payments from rent owed**
  - Affected tenants who have made payments to a utility on account of nonpayment by the landlord have the right to deduct these payments from rent owed. **68 P.S. § 399.9 and 66 Pa. C.S. § 1529**

- **Retaliation by landlord prohibited**
  - Landlords prohibited from retaliation against affected tenants who exercise rights. **68 P.S. § 399.11 and 66 Pa. C.S. § 1531**

- **Protection from constructive eviction**
  - Protections apply when a landlord ratepayer voluntarily requests that the utility terminate service to rental units. **68 P.S. § 399.3(b) and 66 Pa. C.S. § 1523(b)**

- **Waiver prohibited**
  - Both USTRA and Subchapter B expressly provide that a waiver of tenants’ rights are void and unenforceable. **68 P.S. § 399.10 and 66 Pa. C.S. § 1530**
Water Services Act, 53 P.S. § 3102.101 et seq.

- Requires a water utility (regulated and unregulated) to shut off water service to a premises if customer fails to pay, a municipal sewer bill within 30 days of the due date (upon request of the sewer utility). 53 P.S. § 3102.502(a)(1)

**Water Services Act requires:**

- Written notice before termination by the water utility. 53 P.S. § 3102.502(b)(1)
- Opportunity to contest charges – Good faith disputes must be judicially determined
- Cannot hold current lessee responsible for failure to pay bill of previous lessee. 53 P.S. § 3102.502(b)(2)
**Landlord Shut-Off / Constructive Eviction**

- **Landlords who contact utility to request disconnection**
  - USTRA and DSLPA both require that the utility obtain a notarized form swearing under penalty of perjury that the unit is unoccupied
  - For units that the utility is unaware were tenant occupied, the utility should reconnect upon being informed that the unit is occupied by a tenant

- **Landlords who tamper/cut lines**
  - This is akin to an illegal lockout/constructive eviction under the landlord tenant code.
  - Emergency injunction may be necessary. Many county courts are open for emergency filings
  - Helpful to get information from the utility to confirm that the utility did not shut off the service – the tenant may need that information to file an injunction
COVID-19 UPDATE
COVID-19 Update

Regulated Utilities

- PUC Emergency COVID-19 Order:
  - Terminations halted for pendency of Governor’s Proclamation of Disaster
    - Currently set to expire on September 2, 2020, unless the PUC amends its Order
  - Utilities encouraged to reconnect those who have already been terminated

- **THIS DOES NOT MEAN THAT ALL HOUSEHOLDS ARE CONNECTED.**
  - Unregulated utilities (municipal authorities / electric cooperatives) are not required to stop terminations (but have done so voluntarily).
  - No utilities (regulated or unregulated) are required to turn household back on - though they are strongly encouraged to do so.
Regarding PUC informal complaints:

- BCS is accepting cases from customers whose regulated utilities have been terminated where the utility or supplier has first been contacted and is refusing to restore service.
- BCS is also taking in cases that are safety related or which may be deemed an emergency situation or exigent circumstance.
- BCS is NOT taking unregulated utility "off" cases but is referring them to 211, Attorney General Bureau of Consumer Protection, Office of Consumer Advocate, and referring small business cases to the Office of Small Business Advocate.
- BCS is investigating, mediating, and issuing decisions on the cases it takes in.
- Decisions are primarily being served electronically to the parties via email. There are some verbal decisions that are queued to be followed up by letter as soon as US mail service becomes available. All decisions are being electronically delivered to the utilities and/or suppliers.

**PLEASE LET US KNOW RIGHT AWAY IF YOU ARE WORKING WITH A CLIENT WHOSE SERVICE IS OFF AND WHO CANNOT GET THROUGH TO THE PUC TO FILE AN INFORMAL COMPLAINT.**
COVID-19 Update

Municipal Water Authorities

- Pennsylvania Municipal Authorities Association (PMAA) Guidance to municipal water utilities
  - Placing moratorium on shutoffs
  - Restoring service if previously shutoff
  - Suspending or waiving late fees
  - Instituting payment assistance plans

- Guidance is non-binding, but they have a lot of influence. Available information indicates most authorities are voluntarily complying.
Philadelphia Water Department:

- Agreed not to shut off for nonpayment prior to June 1.
- Have made first attempt to restore all off customers. Some customers cannot be restored due to defective plumbing condition.
- Customer should call to request restoration if service is still off.
- Suspension of late payment fees
- Suspension of collection activity
- TAP eligibility: under 150% FPL OR up to 250% FPL if there is a “special hardship”
COVID-19 Update

Low Income Home Energy Assistance Program (LIHEAP)

• LIHEAP season is closed, BUT
• LIHEAP Recovery Crisis Program:
  • Program is open May 18 to August 31 or until funding runs out
  • Eligible households responsible for the primary or secondary heat source directly or as an undesignated component of rent without service / facing an imminent loss of service
• Up to $800 Crisis Grant
• If household received LIHEAP Crisis in PY 2019-2020:
  • $100 Automatic Supplemental Crisis Grant
  • Goes to utility where grant was last applied, unless the applicant requests that it go to a different utility.
  • Additional Crisis dollars also available up to $800 maximum