

2-19-10 Water Supply Challenges and Realities

The health agent's job is never dull. There's always something to learn and the job is so multifaceted that the topics are always across a broad spectrum of disciplines, including social and natural sciences, history and law. Sometimes we are faced with brand new topics. Emergency preparedness related to homeland security was a new aspect of the profession after 9-11. Most of the time, though, life delivers variations of a theme. How to respond to water shut-offs is the latest challenge. It is but one variation of the safe and sanitary housing theme. It is not a pretty tune.

Massachusetts' State Sanitary Code describes the minimum standards for safe housing. That's right: just the minimum. On the topic of water, here's what 105 CMR (Code of Massachusetts Regulations) 410.000 says:

In dwellings that are in compliance with the requirements of M.G.L. c. 186, § 22, the owner may charge the occupants for actual water usage in accordance with M.G.L. c. 186, § 22.

The owner must determine the actual water use of a tenant by metering the water to each rental unit. The landlord may not guess the use or simply divide the water bill "evenly" among tenants. That message applies to one recent housing inspection. I had to tell the owner to meter the water or, with the next lease, include the bill in the rent, but stop billing for water use based on a guess.

The code goes on to say: *An owner may not shut off or refuse water service to an occupant on the basis that the occupant has not paid a separately assessed water usage charge.*

The owners, or landlords, may not shut off the water service, even when they haven't been paid for the water. I know that may not seem fair but anyone who rents takes on a huge legal responsibility of keeping the housing up to code, including a water supply. There is a legal process for the owner to address non-payment and that is what must be pursued by the landlord.

A recent call to my office from a tenant asked about this situation specifically. I explained the process for my response to the owner as a time consuming one of certified letters and orders with deadlines and consequences. My response of notifications and orders was not going to provide immediate assistance to this woman who was scheduled to have her water shut off the next day. She decided to pay the local town Water Department \$85 in cash to prevent the termination of water supply.

I also explained that while the owner could not shut off the supply, the Water Department could. I discovered that the Department of Public Utilities makes those rules we've all heard of, such as heat and utilities may not be shut off in the winter or when there is a child or sick person. Most municipal water departments, however, are not under the DPU. Most stand alone and can make their own rules, including shut offs for nonpayment.

Halifax has been smart and reasonable about their notices of termination. They have been sending notices of shut offs in response to relatively small debts. That's smart for the town and for the person in debt. If you owe \$100, you might be able to come with \$50, borrow \$25 and make arrangements for the remainder. The Water Department will work with the resident in making a payment plan. I know of another case where the resident owes another town more than \$6,000. How is she ever going to get caught up on that?

This matter of non-payment is a real problem for towns all across the United States. It adds up to enormous amounts of money missing from their budget, yet they are expected to carry on with the costs of their department. I called the Housing Court specialists and the Registry of Deeds to see ask about towns placing liens on property and to see if a judge would issue an order to a town water department to restrain from shutting off the water. (I just want to know all options.) The disappointing answer was that neither issue would be handled inexpensively or by the Housing Court. Both would require town counsel and probably be handled in the Superior Court.

The Registry of Deeds told me that the lien on a property for owed payment could be asked of a judge but otherwise did not have "statutory authority". Well, that authority may exist in the near future, for voters will be asked his spring to accept a new by-law allowing the Town of Halifax to place liens on properties for owed fees, payments and fines.

I know the town needs to be paid for their services but do you know what I have to tell a homeowner without water? Here's a clue: The State Sanitary Code applies to owner occupied homes as well as rental properties. Safe and sanitary homes need water. I'll tell you next week about that conversation. I did tell you that the variation of this theme was not a pretty tune.

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