

TO: MEUW Member Utilities

FROM: David J. Benforado, Executive Director

DATE: October 4, 2011

RE: Follow-up Materials from the 2011 MEUW Accounting & Customer Service Seminar.

Attached are copies of excellent presentations by City of Manitowoc Assistant City Attorney Kathleen McDaniel (*Foreclosures/Bankruptcies*) and Boardman Law Firm Attorney Anita Gallucci (*Legal Potpourri*) from the recent 50th Annual MEUW Accounting & Customer Service Seminar that was held on September 29, 2011, in Wisconsin Dells. Additional resources that were mentioned and discussed at the seminar are:

Federal Bankruptcy Court

Eastern District in WI - <http://www.wieb.uscourts.gov/>

Western District in WI - <http://www.wiwd.uscourts.gov/>

Bankruptcy Court info in general - <https://ecf.wiwb.uscourts.gov/>

Phone number to check on bankruptcy - (877) 781-7277

Wisconsin Circuit Court Access - <http://wcca.wicourts.gov/index.xsl>

Your County Website - in Manitowoc County, foreclosed properties are listed at <http://www.manitowoc-county.com/departments/sheriffsale.asp?ID=25>. Once you see a property on the county site (i.e. foreclosure), you can reference that case on the CCAP (Wisconsin Circuit Court Access) site to find out who the bank is and potentially where the customer is now living. Check to see if your County has a similar listing.

Wisconsin Tenant Complaint - (800) 422-7128 (you may want to refer customers who are having an issue with a landlord).

Department of Defense (to check whether someone is on active military duty) - <http://www.dmdc.osd.mil/appj/scra/scraHome.do>

Many thanks.

Attach.

Foreclosures, Bankruptcies, and Utilities...Oh My!



MEUW Accounting and Customer Service Seminar
September 29th, 2011

Bankruptcies

- Most utility customers file under Ch. 7 or 13
- Chapter 7
 - Straight bankruptcy
 - No assets (generally)
- Chapter 13
 - Reorganization of debts
 - Requires assets/ability to pay
- Wisconsin Chapter 128



How many bankruptcies can you file?

- As usual, the legislators made it very difficult to count
- In general, you need 8 years from filing date to filing date in a Chapter 7
- Remember this doesn't stop them from filing and invoking the automatic stay

The Automatic Stay

- Starts when order for relief is entered
- DO NOT VIOLATE
 - It's been said this stops everyone but God
 - You may get \$anctioned
- Temporarily stops all lawsuits and collections
- Can be lifted, but not without effort

Filing a Proof of Claim

- Not often in 7s, but almost always in 13s
- If your attorney will do this, great, but if not, you can
- Fill out the proof of claim and have documentation to back it up!
 - Previous bills
 - Bounced checks
 - Account documentation

Shutoffs – Can we do it? How?

- A utility “may not alter, refuse, or discontinue service to...” customer based solely on a bankruptcy case.
- Close out the old account and start a new account as soon as you receive notice of the bankruptcy.
- Demand a deposit!



Deposits

- PSC guidelines allow you to ask for two months
 - Take the highest two of the previous 12
 - This can be modified by a bankruptcy court
- Defendant has 20 days to provide that adequate assurance
- After that you can shut off

Deposits and the Poverty Guidelines

- If the customer is at or below 200% of the Federal Poverty Guidelines, they are eligible for a waiver of deposit

Family Size	Gross Annual Income
1	\$21,660
2	\$29,140
3	\$36,620
4	\$44,100
5	\$51,580
6	\$59,060
Each additional person +\$7,480	

Bankruptcy Practical Tips

- Make sure a bankruptcy has been filed
- Close the old account and open a new one
- Ask for a deposit!
- Document everything you can
- When in doubt, check with your legal staff



What happens in a foreclosure?

- Bank or other mortgagor files an action for foreclosure
- Everyone who has a lien or judgment against the homeowners gets brought in
- We start arguing about who is owed what and in what order
- And the lawyers start racking up \$\$\$\$



What can cause hiccups?

- Death
 - Who is the rightful owner of the house now?
 - Is there a will? Will there be a fight over the will?
- Bankruptcy
 - Everything must STOP!
 - Often the action is dismissed and later is refiled
- Divorce
 - Who owns the house?
 - Who is living in the house?
 - How angry are the spouses?

What happens when there are tenants?

- They are notified of the suit just like anyone else with a claim
- Their lease generally survives the foreclosure because it's an assignable contract
- If utilities are in tenant's name and tenant is paying, why change it?
- John Doe/Jane Doe mailings

What should our goals be?

- Service that is delivered
 - Safely
 - Legally
- Making sure the utility gets paid
- Remembering that foreclosure is a difficult situation for everyone involved

Resources for You

- [CCAP](#)
- The bank's attorney
- [Sheriff's Sale Website](#)
- City Building Inspection
- City Police Department

Working with Foreclosed Homes

- Make sure the person requesting service has a legal interest in the property
- Notify parties of rules and regulations
- Protect the interest of the utility
 - Bills get paid
 - Liability is covered?
- Document everything!

Questions or comments?

Final advice = document everything and when in doubt, ask your lawyer!

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LEGAL POTPOURRI

MEUW ACCOUNTING & CUSTOMER SERVICE SEMINAR

September 29, 2011

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OPEN RECORDS BASICS & LEGAL UPDATE

Public Records: The Basics

- Making the Decision to Release or Withhold a Public Record:
 - Is request for a “record?”
 - Does a statute or court case prevents disclosure?
 - If no relevant law or court case, then apply the Public Records Balancing Test.

Public Records Balancing Test

If neither a statute nor common law creates a blanket exception, the custodian must decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure.

Woznicki v. Erickson, 202 Wis. 2d 178, 192-93 (1996).

Basics (con't)

- Who/what is an "authority?"
 - An elected official, agency, board, commission or public body corporate and politic created by constitution, law, ordinance, rule or order; governmental or quasi-governmental corporation; court of law; state assembly or senate; certain non-profit corporations
- Who is a "legal custodian?"
 - Should have ordinance that specifies who the legal custodian is for particular records – e.g., city clerk, department heads

Basics (con't)

- Who can be a "requester?"
 - Any "person" can make a request except incarcerated/committed persons, who have limited request rights
- The request for records:
 - Does not need to be in writing
 - No specific form is required
 - Does not need to state the purpose of the request
 - Request must be reasonably specific (length of time and subject matter involved)
 - Can be anonymous

Basics (con't)

- Responding to the request.
 - A response is mandatory
 - Response must be “as soon as practicable and without delay”
 - Denial or partial denial must be in writing, if request is in writing
 - Must provide specific and sufficient reasons for denial
 - May need to provide part of a record, and redact parts that are not to be disclosed
 - Remedies for improper denial may include award of attorney fees and damages

Recent Cases/Opinions

- **Website Content**

Website content “is more likely than not a public record subject to the Wisconsin public records law” where website content relates to duties and functions of a public official who creates, maintains or keeps website.

Informal Opinion of Wis. Att’y Gen. to Ms. Gail A. Peckler-Dziki, OAG I-06-09 (Dec. 23, 2009).

Recent Cases/Opinions

- **Personal E-mails**

Purely personal e-mails sent or received by employees or officers on an authority's computer system, evincing no violation of law or policy, are not subject to disclosure in response to a public records request.

Schill v. Wis. Rapids Sch. Dist., 2010 WI 86, ¶ 4.

Customer Information

- How should you handle a request for names, addresses, and phone numbers of your customers?
- A request for customer arrearages?
- A request for customer consumption data?
 - What if such data is a trade secret?


Trade Secret

Information, including a formula, pattern, compilation, program, device, method, technique or process to which:

- Derives independent economic value from not being generally known to persons who can obtain economic value from its disclosure or use.
- The information is the subject of efforts to maintain its secrecy.

Record Retention

- Generally public records must be retained for 7 years, except for:
 - 2 years for: water stubs, receipts of current billings, and customer ledgers for municipal utilities
 - Records whose retention is otherwise indicated by specific statute.
 - Other records where a shorter period has been set by the state Public Records Board.
 - Utility records where a longer retention is required by Public Service Commission
- Must first adopt a “destruction ordinance” before obsolete records may be destroyed



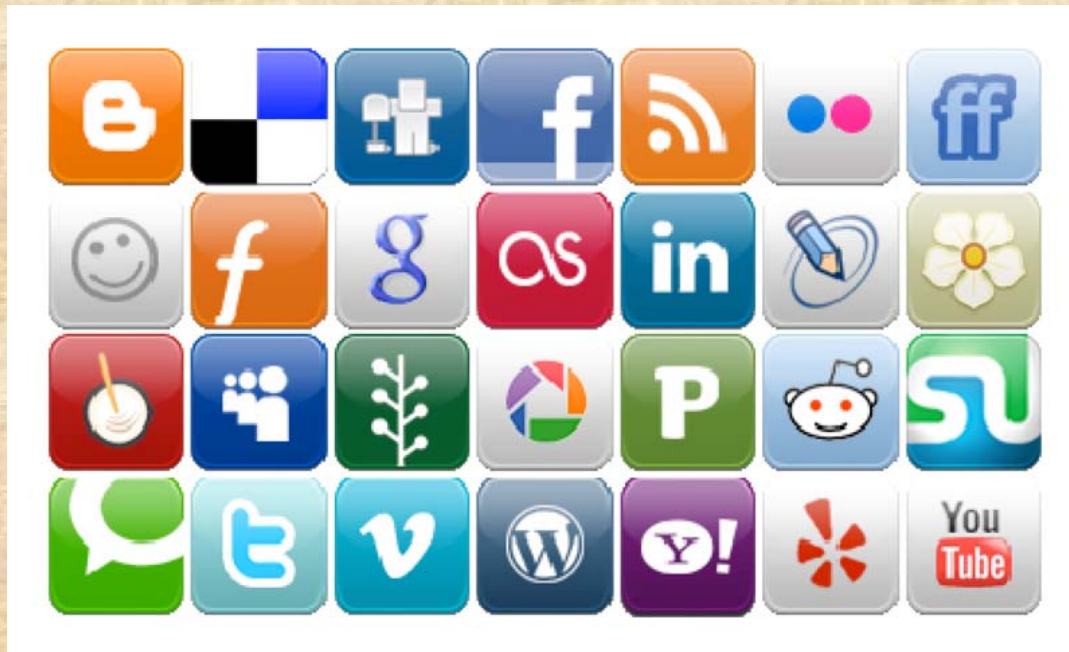
SOCIAL MEDIA & MUNICIPAL GOVERNMENTS

What is Social Media?

The term **Social Media** refers to the use of Internet-based and mobile technologies to turn communication into an interactive dialogue and that allow the creation and exchange of user-generated content.

From Wikipedia

Common Social Media Used by Municipalities



- Facebook
- Twitter
- Flickr
- YouTube
- RSS feeds
- Blogs



facebook

50% of the 79 cities Fels surveyed had no official Facebook presence as of July 2009

1 in 7 had at least one department on FB (e.g., public safety)

Only 13 cities (16%) had an official FB presence with more than 500 fans

From Fels Institute for Local Government



Roughly half (44%) of the 79 cities surveyed did not have a twitter presence in July 2009, though 1 in 7 had at least 1 department active on twitter

Only 7 (9%) had a twitter presence with more than 500 followers

From *Fels Institute for Local Government*

Madison's FB Comments Policy

- The purpose of this site is to present matters of public interest to City of Madison residents, businesses, visitors and other interested parties.
- You may submit your comments, but please note this is a **moderated online discussion site and not a public forum.**
- City reserves the right to delete comments that contain vulgar language, personal attacks of any kind, or offensive comments that target or disparage any ethnic, racial, or religious group.

Madison's FB Policy

- Please note that the comments expressed on this site do not reflect the opinions and position of the City of Madison or its officers and employees.
- Activity on City of Madison Government Facebook pages is subject to public disclosure (Wis. Stat. §§19.31-19.39).

PROHIBITING GUNS
IN PUBLIC PLACES
2011 Wis. Act 35

Background

- The “concealed carry” law takes effect on November 1, 2011
- Allows qualified licensed residents 21 years and older to carry concealed weapons anywhere in Wisconsin **except** certain prohibited places
- “Weapon” includes a handgun, taser or other electric weapon, knives (but not switchblades) and billy clubs
- Some exemptions for law enforcement officers

Prohibited Places

A building or any portion of a building that is:

- A police station, sheriff's office, state patrol station
- A prison, jail, house of correction, or secured correctional facility
- A secured unit or secured portion of a mental health institution
- A county, state, or federal courthouse.
- A municipal courtroom if court is in session
- A place beyond a security checkpoint in an airport
- A school (not university/college) and within 1,000 feet of a school

Exceptions

The above prohibitions do not apply to any of the following:

- A weapon in a vehicle driven or parked in a parking facility located in a municipal building described above
- A weapon in a courthouse or courtroom if carried by a judge, DA or ass't DA or other licensee with judge's written permission

Municipal Buildings

It is unlawful for any person to enter or remain in any part of a **building** that is owned, occupied, or controlled by any local governmental unit if the local governmental unit **has notified** the person not to enter or remain in the building while carrying a firearm or a type of firearm.

Wis. Stat. § 943.13(1m)(c)4.

Municipal Buildings

- This provision does not apply:
 - to a person who leases residential or business premises in the municipal building or
 - if the firearm is in a vehicle driven or parked in a parking facility, to any part of the municipal building used as a parking facility

Municipal Grounds

- Local government units can't prohibit firearms on the grounds of municipal buildings, unless another provision authorizing such prohibition applies
- For example, if a special event is held on the grounds, the municipality may be able to prohibit firearms.

Prohibiting Firearms at Special Events

- An event that is open to the public
- Lasts not more than 3 weeks
- Requires admission OR
- Has designated entrances to/from the event that are locked when event is closed
- Signs must be posted to notify people of the prohibition

Signage Requirements

- Sign must be at least 5 x 7 inches
- Must say that carrying of firearms is prohibited in the building
- Must be posted in a prominent place near all of the entrances of the part of the building to which the restriction applies
- Must be reasonably visible
- If grounds are posted (i.e., where there's a special event), signs must be located near all probable access points to the grounds to which the restriction applies

SELLING MUNICIPAL PROPERTY

Sales to Employees Prohibited

No municipal department or member of a municipal governing body may sell or procure for sale any municipal article, material or product to a municipal employee; except meals, public services and special equipment necessary to protect the employee's safety and health.

Wis. Stat. § 175.10

Eagle River Ordinance

That pursuant to Section 175.10 of the Wisconsin Statutes it shall be **unlawful** for **any employee** of the City of Eagle River to purchase from the City of Eagle River **any article, material, product or merchandise, whatsoever** that the City of Eagle River may at different times post for sale.

This ordinance shall apply **to the sale of any personal property that is placed for sale by the City of Eagle River** regardless of from where or whom this article was purchased or given to the City of Eagle River or unclaimed and left in the City of Eagle River.

CUSTOMERS IN THE MILITARY

Customers in the Military

No state or federal law requires or allows municipal public utilities to treat military personnel any differently from other residential customers as to bill payments and disconnections.

Questions?