

Stemming the Tide *of Outstanding Municipal Debt Collections*

Implement procedures to maximize delinquent accounts

By Michael G. Crotty, Esq. & Eric M. Brown, Esq.
Siana, Bellwoar & McAndrew, LLP



Outstanding collections are often the albatross around the necks of municipal budgets. There is no one-size-fits-all approach that will guarantee you reach a 100 percent collection rate. However, with persistence and using the full range of tools available to boroughs, there are steps that municipal officials can take to maximize collections in order to minimize the need to cut services or raise taxes to make up for collection deficits.

Assess the Problem.

The first key to developing your approach to collecting outstanding charges is to understand the nature and extent of the amounts outstanding. What amounts and types of charges and fees are outstanding (e.g., sewer, water, dilapidated property maintenance services, land development professional consultant review fees, and taxes)? How stale are the amounts? What documentation is there to support the charges? What are the sources for payment (e.g., property owner, property, and escrow fund)? Knowing these answers will help guide you in establishing a game plan for how to structure your collection efforts and the extent of the resources that you devote, based on your particular assessment of whether certain amounts are collectible.

Establish a Debt Collection Policy.

A written, approved debt collection policy is the cornerstone of efficient collection efforts, and serves a number of functions. Foremost, a policy, adopted by resolution, highlights your borough's priority in collecting outstanding accounts. Doing so sends a signal that the borough is committed to using its full authority to collect the outstanding accounts and will do so in a way that is respectful to the debtors, but also recognizes the burden that those debts place on the borough and the residents who make timely payments.

The policy should establish an outline for borough staff as to initial contact with a debtor, the approaches, and parameters by which it can consider written payment plans, a structured approach to liening delinquent properties, addressing landlord/tenant situations, and spelling out the increased penalties for non-payment, including interest, attorneys' fees, and the pursuit of water shutoffs, if applicable. In addition to guiding staff, a well-crafted policy is the front-line defense for a debtor who accuses the borough staff of treating him or her unfairly or who may want special treatment.

Communicate Early and Often.

The effectiveness of collection efforts is greatly enhanced by

early, consistent, and persistent communication by the borough. By letter, phone, email, or mail, directly discussing an outstanding amount with the debtor enhances your ability to attack the debt. Doing so can help to highlight that the debt is not a problem that the debtor can simply ignore and breaks down trepidation by certain debtors in dealing with "the big, bad government."

Moreover, consistent and respectfully persistent contact with the debtor eliminates the individual's ability to argue that he or she is being blindsided by an outstanding invoice that has ballooned over time with late fees, charges, and interest. In too many circumstances, officials have encountered accounts with high balances where an initial invoice for a particular service was sent and ignored by the recipient, but no follow-up invoices or communications were made. And, of course, it is recommended that the borough not be abusive, threatening, or disrespectful, and to use the parameters for debt collection communications under the Fair Debt Collection Practices Act as a benchmark for contacts with the debtor.

Use Municipal Liens.

Municipal liens are often the most effective tool to ensuring that the delinquent accounts are paid. A lien is a filing authorized

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under the Municipal Claims and Tax Liens Act that is made with the county's judgment index and is designed to provide notice to the world of the outstanding municipal claim. While a lien is not a payment in hand, it greatly increases the potential that the debt will be paid because properly liened municipal claims will run with the property irrespective of whether the property is transferred to a subsequent owner.

Also, while the lien process is statutory and contains technical, legal requirements, the general process and training for doing so can be spelled out for staff in your written debt collection policy as a way to cut down on costs. Generally, prior written notice of a municipal lien is required to be provided to the debtor if the borough will be seeking the collection of attorney's fees. This written notice must be provided at least 30 days prior to filing. The charges associated with filing the lien, including collection and attorneys' fees, can be incorporated into the lien amount, and the lien will remain in place for a period of 20 years.

A lien is not a living document; additional liens for additional principal and interest amounts incurred by a debtor should be secured through subsequent lien filings. It is also important to recognize that a lien is not a *fait accompli*, meaning a debtor has the right and ability to challenge the lien and the lien process through a filing with the court.



During the life of a lien, the borough is afforded additional collection options either by waiting for the sale of the property or by executing on the lien and forcing a sheriff's sale (through a writ of *Sci Fi*). Liens also provide the borough with additional protections against a debtor who files a petition for bankruptcy.

Write Out Payment Plans.

In recognizing that individual circumstances will prevent some delinquent account holders from immediately paying an overdue account, the law provides boroughs with flexibility in approving written payment plans to allow the individual to pay the debt over time. Generally, it is important that these policies be in writing, executed by the debtor; include an acknowledgment by the debtor of the amounts outstanding; establish realistic payment obligations to address the debt over a reasonable period of; authorize and acknowledge the filing of a lien and/or the

recording of the repayment plan against the property with the county recorder of deeds in order to establish security in the event of non-payment; and incorporate consent by the debtor for the municipality to contact third-party mortgagors related to the debts.

While it is not uncommon for these agreements to be breached by the debtor and to be amended as the debtor's circumstances change, these types of provisions are powerful in providing a structure for repayment, opening additional avenues for collection, either with an escrow, interest tolling, or through third-party mortgage providers, and in mitigating against the debtor later challenging the validity of the debt or the process.

Consider All of the Tools in Your Toolbox.

The Legislature has armed boroughs with a number of tools to enhance collection efforts – whether through municipal liens, water service shutoffs, or, more recently, permit denials for

non-essential work by a debtor under the Blighted Property Act. Consulting with your legal counsel as to the scope of each of these options is important.

Another trend is the enactment of vacant property ordinances. These ordinances are geared toward preventing vacant or abandoned properties going through a mortgage foreclosure process from incurring delinquent sewer charges or from becoming dilapidated through your borough's property maintenance code. Through these ordinances, mortgage companies are required to advise the municipality as to any foreclosure actions, to provide the name and contact information for a property maintenance/management company responsible for the property, and, in certain circumstances, to provide required financial security. There are no known legal challenges to these types of ordinances, and, in many instances, they were welcomed by mortgage company staff who appreciate the ability to address these issues before their asset (the property) is eroded.

Coordination between the borough staff collecting the debt and the borough zoning office, solicitor, and code enforcement office is also a key to efficient collection. Borough collections should not be seen as an island unto themselves. Often, a property with a delinquent sewer account will have property maintenance issues separately being addressed by the code enforcement office. Also, the internal coordination raises

awareness between departments and allows another avenue for communication with the debtor as to the amounts outstanding – whether they are appearing for a zoning/code/property maintenance notice of violation or are applying to construct an expansion on their property potentially triggering a permit denial under the Blighted Property Act.

Acknowledge Special Considerations.

Any discussion of municipal debt collection programs would be incomplete without reference to some of the frequent, special circumstances and considerations that WILL arise. Irrespective of whether you are handling collections internally or contracting out to a third party, your collection efforts cannot be a purely “set it and forget it” program. Borough staff should remain on alert for any legal filings related to an account, and communicate with your legal counsel as to: sheriff's sale notices; a writ of *Sci Fi* or other legal filings by the debtor in opposition to a lien; or a bankruptcy filing.

Bankruptcy filings, in particular, are critical as they raise affirmative obligations on the part of the borough to stay collection activities for pre-bankruptcy petition amounts, known as an automatic stay under the Bankruptcy Code. This does not necessarily mean that the amount is written off – and your lien amounts will remain in place unless the Bank-

ruptcy Court approves otherwise – but the automatic stay does impact how the debtor is invoiced going forward and the extent to which further liens are imposed. Often, however, the bankruptcy process provides an additional opportunity to communicate with the debtor to arrange for payment of the debt – attorneys generally being agreeable to do so out of the bankruptcy estate given that the debts will otherwise carry forward.

Outstanding municipal debts are a common issue and one that will not correct itself. While there are no silver bullets, there are, however, a variety of ways that your borough can best position itself to attack the problem in a systemic way to optimize your ability to collect.

About the authors: Michael G. Crotty, Esq., and Eric M. Brown, Esq., are partners with Siana, Bellwoar and McAndrew, LLP, which is a full service firm dedicated to serving the needs of municipalities throughout the Commonwealth. We enjoy the experience and know-how to effectively and zealously represent municipal clients in the areas of municipal collections, administration and management, labor and employment, land use and zoning, regulatory compliance, risk management, and ordinance drafting. Crotty and Brown can be reached at mgcrotty@sianalaw.com and embrown@sianalaw.com, or visit www.sianalaw.com. (B)