**From:** Joseph Napoli
**To:** Tedra Allen
**Cc:** Jenna Montoya
**Subject:** FW: Utility Account Inquiry
**Date:** Monday, February 14, 2022 4:23:18 PM

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Tedra – as discussed please add to Utility item.
Joe

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**From:** Jacob G. Horowitz <JHorowitz@gorencherof.com>
**Sent:** Monday, February 14, 2022 2:31 PM
**To:** Gabe Guerrero <GGuerrero@coopercityfl.org>
**Cc:** Joseph Napoli <JNapoli@coopercityfl.org>
**Subject:** Utility Account Inquiry



Gabe,
As a follow up to our discussion from Friday, the City Attorney's Office has examined whether the City may record a lien against a property to recover delinquent charges on an unpaid water or sewer account when the account was opened in the name of the tenant rather than the property owner.

Section 180.135, F.S., expressly provides, in part, that the City may not refuse or discontinue service to a property owner, tenant or prospective tenant as a result of the nonpayment of service charges incurred by a former occupant of the unit. Further, such unpaid charges incurred by a former occupant **may not** form the basis for a lien against the rental property or legal action against the present tenant or owner to recover such charges **except** to the extent that the present tenant or owner has benefited directly from the service provided to the former occupant. This applies when the former occupant of a rental unit contracted directly with the City for service.

The Third District Court of Appeal confirmed this conclusion, noting that "Section 180.135, F.S. forbids the imposition of a lien against rental property for unpaid service charges when the 'former occupant,' that is the previous lessee, has contracted for those services directly with the municipality." See Berke v. Miami Beach, 568 So.2d 108 (1990).

For reference, Section 19-84 of the City's Code states that the property owner is ultimately responsible for any charges pursuant to Section 19 of the City Code. Note that this provision was enacted and last amended in 1984. The operative provisions of Section 180.135, F.S., were adopted by the Florida Legislature **after** the adoption of the City Code provision. Further, the court's decision in the Berke was rendered in 1990.

Based on the foregoing, it is our opinion the City **may not** record a lien against rental property due to the tenant's failure to pay monthly service charges when the tenant

has contracted directly with the City for such service.

Note that the City retains the legal option of requiring all utility accounts to be opened in the name of the property owner; however, this policy decision would require an amendment to the City Code. See Jass Properties, LLC. v City of North Lauderdale, 101 So.3d (Fla 4th DCA 2012).

We are available to discuss further once you have had a chance to review.

Jacob G. Horowitz


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