

Sample Letter

Request to Have Utilities Put in Tenants Name When Landlord is Behind on Bills

(utility company's name)
(utility company's address)

Re: Utility service for (your physical address)

To Whom It May Concern:

This letter addresses your refusal to place the utilities at ____ (your physical address) ____ in my name and bill me on a going-forward basis, unless and until I also pay the delinquent bills owed by my landlord, ____ (landlord's name) _____. This refusal is contrary to state and federal law. The law, summarized below, requires that you permit me to put the utility service in my name and that you immediately reinstate utility service to me, and bill me for use of the utilities on a going-forward basis, without requiring that I pay delinquent amounts owed by my landlord.

RCW 35.21.217(5)(a) provides:

(5)(a) If an occupied multiple residential rental unit receives utility service through a single utility account, if the utility account's billing address is not the same as the service address of a residential rental property, or if the city or town has been notified that a tenant resides at the service address, the city or town shall make a good faith and reasonable effort to provide written notice to the service address of pending disconnection of electric power and light or water service for nonpayment at least seven calendar days prior to disconnection. The purpose of this notice is to provide any affected tenant an opportunity to resolve the delinquency with his or her landlord or to arrange for continued service. ***If requested, a city or town shall provide electric power and light or water services to an affected tenant on the same terms and conditions as other residential utility customers, without requiring that he or she pay delinquent amounts for services billed directly to the property owner or a previous tenant*** except as otherwise allowed by law and only where the city or town offers the opportunity for the affected tenant to set up a reasonable payment plan for the delinquent amounts legally due. If a landlord fails to pay for electric power and light or water services, any tenant who requests that the services be placed in his or her name may deduct from the rent due all reasonable charges paid by the tenant to the city or town for such services. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a

tenant who deducts from his or her rent payments made to a city or town as provided in this subsection.

In addition to violating state law, a public utility's refusal to provide service to a customer unless the customer pays the delinquent bill of a third party relating to the customer's address violates the Equal Protection Clause of the United States Constitution.¹ In *Davis v. Weir*, the seminal case on this issue, service for the building in question was in the name of the landlord. The agreement between the tenant and the landlord provided that the tenant would pay rent to the landlord and the landlord would be responsible for paying for the water service. After a dispute arose between the landlord and the city, the landlord refused to pay the water bill. The city responded by terminating service to the building. The tenant offered to pay the city for water service on a going-forward basis, but the city refused unless the tenant also satisfied the back-due amount that the landlord owed the city for the property. The courts found in the tenant's favor, holding that "[t]he fact that a third-party may be financially responsible for water service provided under a prior contract is an irrational, unreasonable and quite irrelevant basis upon which to distinguish between otherwise eligible applicants for water service."² Since *Davis*, numerous courts, including the United States Court of Appeals for the Ninth Circuit, have reached the same result, as summarized in footnote one below.

"Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health or safety." *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978). See also *Davis v. Weir*, 359 F. Supp. 1023, 1027 (N.D. Ga. 1973) ("The Court . . . believes it beyond question, that water is an absolute necessity of life.). Accordingly, I request that you immediately put the utility service for ___(your physical address)_____ in my

¹ See, e.g., *Golden v. City of Columbus*, 404 F.3d 950, 960-63 (6th Cir. 2005) ("The critical issue is whether terminating a tenant's water service is a rational means of collecting the landlord's water service debt. We hold that it is not."); *O'Neal v. City of Seattle*, 66 F.3d 1064, 1066-68 (9th Cir. 1995); *Sterling v. Village of Maywood*, 579 F.2d 1350, 1355 (7th Cir. 1978); *Craft v. Memphis Light, Gas & Water Div.*, 534 F.2d 684, 689-90 (6th Cir. 1976), *aff'd*, 436 U.S. 1 (1978); *Davis v. Weir*, 497 F.2d 139, 143-46 (5th Cir. 1974); *Pilchen v. City of Auburn*, 728 F. Supp.2d 192, 202-04 (N.D.N.Y. 2010); *Freeman v. Hayek*, 635 F. Supp. 178, 183-84 (D. Minn. 1986); *Oliver v. Hyle*, 513 P.2d 806, 808-09 (Or. App. 1973).

² 497 F.2d 139, 141-46 (5th Cir. 1974), quoting 359 F. Supp. 1023, 1027 (N.D. Ga. 1973).

name, reinstate utility service to me, and bill me for use of the utilities on a going-forward basis. If you choose not to comply with RCW 35.21.217(5) and the United States Constitution, please advise me immediately of the identity of and contact information for counsel with whom I or my counsel may contact regarding scheduling of a hearing on a motion for a temporary restraining order.

Sincerely,

(Your signature)