



When Utility Bills Aren't Paid-Who Can Be Pursued?

by Amanda R. Yurechko of Weltman, Weinberg, & Reis Co., LPA. Reprinted with permission.

Rules vary when dealing with commercial and residential utility services. The manner in which an account is established, however, doesn't differ much. Generally, in both situations, an account can be established via a telephone call, wherein certain information must be provided by the applicant/customer in order to commence service. For a residential account, the name, address and a social security number are required to set up an account. In addition, a phone number for contact purposes is required.

When establishing service for commercial use, however, the person who calls to request service may be any one of a variety of persons: the company owner, an officer of the company, or a mere employee. In each scenario, an account is established by providing the address location, the name for the account, if a different address is needed for billing purposes, a phone number, and hopefully a tax identification number[1]. Unfortunately, the case is often that the full name of the person calling to establish service is not noted, and the person's relationship to the business is unknown. These are

crucial pieces of information to obtain if the account later goes unpaid.

While most new accounts are paid timely for a period of time, inevitably, a portion of the claims will fall delinquent. After collection efforts through traditional means of billing and calls fail, an analysis must be made as to who can be held liable for the unpaid balance. In residential matters, normally the person who held the account is liable. There are, however, circumstances in which liability can be expanded beyond this one person.

In commercial matters, the analysis becomes more involved. At this juncture, the discovery is made that the person who established service for the business either isn't around, or had no ownership interest in the business. Secondly, it may also be determined at this stage that the business name provided for the account is not a legally recognized entity or a registered trade name of a legal entity. For example, the account may have been set up as "Joe's

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Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5252

Open Monday-Friday 7:30-4:30

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: Announcing a New Look to HCLL News and Topical Updates

Julie Koehne, Systems Librarian

We are switching to a new provider, Constant Contact, for our email notices to library subscribers. We need our subscribers to opt in to desired case and practice area updates. When you receive your HCLL Newsletter via email, you will see options at the bottom of the email, including Update Profile / Email Address. Click on that, and then you will be able to select the specific updates that you'd like to receive periodically.



HCLL
Professional legal information, resources, and services

Update Your Hamilton County Law Library Profile

You are seeing this message for one of the following reasons:

1. You are a current member of the mailing list for Hamilton County Law Library and would like to update your profile.

or

2. You are a previous member of the mailing list for Hamilton County Law Library and would like to re-subscribe to this list - Welcome back!

Please click the **Submit** button and instructions will be emailed to you.

Your email address: j*****@cms.hamilton-co.org [Click here if this is not you](#)

Hamilton County Law Library uses SafeUnsubscribe® which guarantees the permanent removal of your email address from its mailing lists.

Once you click on "Update Profile/ Email Address", an internet browser will open with the following message.

Mail Properties Personalize Message Source Discussion Thread

From: Hamilton County Law Library <mjenkins@cms.hamilton-co.org>
To: Koehne, Julie
Subject: Update your profile

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Hamilton County Law Library

Dear Julie,

For your security, please use the following link to change your interest categories and/or personal profile information:

[Update your profile](#)

If you have any questions or comments, feel free to contact us.

Sincerely,

Mary Jenkins

Hamilton County Law Library

email: mjenkins@cms.hamilton-co.org
phone: 513-946-5300
web: <http://www.hamilton-co.org/cinlawlib/>

After you click the Submit button, you will be sent an email with a link to unsubscribe, change your email address, or update what you would like to receive.



Update Your Hamilton County Law Library Profile

Your email address: jkoehne@cms.hamilton-co.org [[Update](#)]

At this point, select all you are interested in, then save your profile changes.

Your Interests

Let us know what kinds of emails you would like to receive from us.

- Unsubscribe me from ALL mailings.
- I wish to continue receiving occasional mailings based on my interests.

Select only the interests for which you DO want to receive occasional emails.

- Newsletters
- Solo and Small Firms
- Case Law
- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- Torts
- Workers' Compensation

Preferred email format

- HTML
- Text

A confirmation email will be sent. Then you will be able to enjoy the topics you signed up for in future mailings.

Mail | Properties | Personalize | Message Source | Discussion Thread

From: Hamilton County Law Library <mjenkins@cms.hamilton-co.org>
To: Koehne, Julie
Subject: New Interests ...

Change of Interests

Dear Julie,

We have recorded your changed interest preferences in our database. Please review your changes below:

- Newsletters
- Solo and Small Firms
- Case Law
- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- Torts
- Workers' Compensation

If these changes are not correct, please select the link at the bottom of this email to return to our Subscription Center and make the appropriate adjustments. In the future, the emails we send to you will reflect these changes.

Thank you for your continued interest in Hamilton County Law Library. Please feel free to contact us if you have any questions or comments.

Thank you,

Mary Jenkins
 Hamilton County Law Library

email: mjenkins@cms.hamilton-co.org
 phone: 513-946-5300
 web: <http://www.hamilton-co.org/cinlawlib/>

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Diner” only to find out, through a search of applicable secretary of state records, that no such entity exists. Then what?

In both cases, certainly the utility provider is entitled to be paid. The question is: by whom? In the simplest of cases, a suit can be filed against the person or business that established the account: Joe Smith, in the residential case, or Joe’s Diner, in the commercial matter. If Joe Smith is and has been deceased, the question to ask is who used and benefited from the utility service provided. If Joe’s Diner doesn’t exist, ask the same question. The second theory of liability, beyond an action on an account for services[2], is an equitable one: unjust enrichment.

Unjust enrichment is an action in equity where no contract exists, yet a service is conveyed and knowingly received by a party, which would be unjust to receive and not pay for[3]. What this means, in residential matters, is that those individuals who reside in the property where service was provided may be liable for the service balance, if the primary account holder, Joe Smith, is and was not alive during the time service was provided. In commercial matters, the business that knowingly received the utility service, without paying for the same, can be pursued.

In certain commercial circumstances, the law allows a utility provider to take liability a step further, and holds an individual liable, where the true identity of the entity was not disclosed, or not fully disclosed. In our example, where the name on the account was identified as “Joe’s Diner” and that name either is not a legal entity or a registered trade name of a legal entity, the individual who requested service (this is why its important to note the full name and relationship of that person), may be found to have “done business as” the entity, “Joe’s Diner.”[4]

This may be the case of liability, even if a valid entity was operating at the service ad-

dress, using the utility service, if that entity name is completely different than that name provided to establish the account. Where the person setting up the account does not disclose the proper name of a registered entity, that person can be held liable as acting on behalf of an undisclosed or partially disclosed principal[5]. These theories of liability are useful to pursue, when “Joe’s Diner” has otherwise gone out of business, with no remaining assets, and not paid its bills.

In analyzing the facts of an unpaid account, it is worthwhile to determine when a customer vacated the service address. If the customer was a mere tenant of the service address and moved without advising the utility provider, an action may be had against not only the customer, but also against the land owner, if the facts demonstrate the landowner knowingly used the services with an obvious benefit from those services. This goes back to the unjust enrichment theory, and is applicable in both residential and commercial matters.

These options are not meant to be all encompassing, but rather are alternative legal theories to recovery on an unpaid utility account. Various state laws may enhance or limit the actions available to utility providers. For more information on this topic, please contact our Utility Practice Group, at wwr-utilities@weltman.com.

Amanda R. Yurechko is an Associate in WWR’s Consumer Collections Practice: Utility, Governmental and Healthcare Collections Practice Groups and is based in the Cleveland office. She can be reached at (216) 685-1060 or ayurechko@weltman.com.

[1] Often a social security number for the business proprietor is given, or no TIN is provided at all.

[2] *Blanchester Lumber & Supply, Inc. v. Coleman* (1990) 69 Ohio App. 3d 263, 265.

[3] *Hambleton v. R.G. Barry Corp.* (1984) 12

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Ohio St. 3d 179.

[4] James G. Smith & Associates, Inc., v. Everett (1981) 1 Ohio App. 3d 118, 121.

[5] Id.

New Policy Regarding Unpaid Fees and Fines

The Law Library has long had a policy of suspending borrowing privileges for patrons with \$10.00 or more in overdue fines or fees. At its April 2011 meeting, the Library's board approved a revised policy, calling for the suspension of all subscriber privileges for individual patrons or firms that fail to pay an invoice for library fines and fees within 60 days of the date of the invoice. Unresolved matters will be referred to Hamilton County's Prosecuting Attorney for action. We hasten to add that very few people disregard our borrowing policies, but we do need this mechanism occasionally. If you have any questions about the Library's policies, see <http://www.hamilton-co.org/cinlawlib/about/default.asp> or speak with Mary Jenkins or Mary Ann Sweeney.



Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on Thursday, July 7, 2011 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at <http://www.hamilton-co.org/cinlawlib/about/trustees.html>.

Upcoming CLE

Prenuptial Basics

Thursday, May 19 (This program was previously scheduled for May 27.)

1:00-2:00

Just in time for wedding season, this presentation will cover the basics of drafting prenuptial agreements. Attorney Cathy R. Cook will discuss when they can be used, who should have a prenup, what issues should be spelled out, and what makes them vulnerable to attack.

Approved for 1.0 hour of general CLE credit in Ohio and Kentucky.

Free to law library subscribers: \$50 for nonsubscribers.

To register, contact Mary Ann at the law library or at 513.946.5300 or via email at masweeney@cms.hamilton-co.org

BNA Labor & Employment Resource Center Webinar*

Tuesday, June 8

1:00-2:00

Wondering where to turn for your labor and employment research? Join us for the BNA Labor & Employment Resource Center Webinar. The program will highlight features such as expert analysis, news, primary sources and practice tools as well as demonstrate effective search techniques.

To register, call 513-946-5300.

***Note: this is not a CLE.**

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker Phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

You and the Legal System: Basic Estate Planning

The Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service, will present *You and the Legal System: Basic Estate Planning* on Friday, May 20, 2011 at 12:00 noon at the Law Library.

We're pleased to announce that Katrina Farley, an attorney with the law firm of Santen & Hughes, practicing primarily in the areas of tax planning and estate, trust and guardianship administration, will be the speaker. Ms. Farley is currently serving as President of the Estate Planning Council of Northern Kentucky. There will be time for questions from the audience.

This program is free and open to the public. It is not a CLE. Attorneys are welcome to attend but please note that the session is intended primarily for the non-lawyer citizen. It will last one hour. Please pass the information along to clients, friends, and colleagues as desired.

Please call 513.946.5300 at the Hamilton County Law Library or email masweeney@cms.hamilton-co.org to reserve a seat.

Looking ahead: On June 17, 2011, Thomas Geygan, Sr. will offer the next session in this series, focusing on bankruptcy.

Check Out Our Blog

If you haven't looked at the Law Library's blog recently, please visit. You may want to subscribe to the feed to help you stay up to date on legal issues, especially those facing Ohio. We also post news about upcoming events, including CLEs, at the Law Library. <http://www.hamilton-co.org/cinlawlib/blog/default.asp>

Library Resources: Estate Planning

Here are some of our more recent books on aspects of estate planning. We also offer online materials, including BNA Estates, Gifts, & Trusts, CCH Financial & Estate Planning Library, and Aspen treatises.

Choosing a domestic jurisdiction for a long-term trust / by Richard W. Nenno.
KF6289.A1 T352 no. 867

Divorce in the golden years : estate planning, spousal support, and retirement issues for clients at midlife and beyond / Leslie Ann Shaner. KF535 .S49 2010

Drafting wills and trust agreements / Michael L.M. Jordan. KF748.1 .J66 2009

Elder law answer book / Robert B. Fleming, Lisa Nachmias Davis. KF390.A4 F58 2010

Elder law handbook / Daniel P. Seink, editor. KFO91.A3 E42 2010

Estate planning and recovery for elderly clients [in Ohio] KFO91.A3 E78 2010

Estate planning for the unmarried adult / by Richard M. Horwood ... [et al.]. KF6289.A1 T352 no. 813-3rd

Multistate and multinational estate planning / Jeffrey A. Schoenblum KF750 .S34 2009

Ohio elder law / by Margaret H. Kreiner. KFO91.A3 O365 2010

Ohio elder law institute. KFO91.A3 O38 2010

Special needs trusts handbook / Thomas D. Begley, Jr., Angela E. Canellos. KF480 .S64 2008

Top 7 estate planning techniques [in Ohio] / [Authors Stacy Christman Blomeke ... [et al]]. KFO140. Z9 E8 2009

ALI-ABA Knowledge Portal and Forms

Law Library subscribers have on-site access to ALI-ABA's extensive collection of legal information and forms via its Knowledge Portal. From the computer lab desktops, click on Forms, CLE, Ethics and select ALI-ABA Topical Knowledge Portal with Forms. A librarian will need to enter the login information. You will find an excellent array of practice tools, including a collection of over 2,000 forms. Per ALI-ABA, forms are available in practice areas including Banking, Bankruptcy, Business Org/Corporate Law, Commercial Law/UCC, Elder Law, Employee Benefits/Pensions, Employment and Labor Law, Environmental, Estate Planning, Land Use, Real Estate, Securities, and Taxation. We also offer offsite access to a collection of ALI-ABA CLE materials and to *Practical Lawyer*. If you would like any assistance with this resource, just ask a librarian.

News Alerts: We Will Help!

Would you like to have news alerts sent to you automatically via email? If you are following a particular case or topic, we can help you set up alerts so that any updates will sent directly to you, with any frequency you would like, including digest format. These updates can come from Lexis, Google, or other online sources. It is also a good practice to search yourself online periodically; it can be surprising to learn where you crop up online! Besides individuals' names, we have generated automatic updates for patrons on specific legal issues, company names, legislative matters, and more. If you would like us to set up alerts for you or if we can offer any guidance, please ask a librarian or email

reference@cms.hamilton-co.org.

Upcoming Events

May 19: Prenuptial Basics CLE

May 20: You and the Legal System: Estate Planning

June 8: BNA Labor & Employment Law Library Training Webinar

May Holidays

The law library will be closed Monday, May 30 in observance of Memorial Day.



May 2011 Law Library Newsletter

INSIDE THIS MONTH

- Utility Bills Collections
- New Fines Policy
- Estate Planning Resources
- Free CLEs!

ADDRESS CORRECTION REQUESTED

Hamilton County Law Library
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202