



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

April 8, 2011

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The Honorable John Barrett Chappell, Jr.  
Clerk of Court, Dinwiddie County Circuit Court  
Post Office Box 63  
Dinwiddie, Virginia 23841

Dear Mr. Chappell:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You inquire whether the Dinwiddie County Water Authority (“DCWA”) may record liens on real property for unpaid services used by a tenant without first obtaining a court judgment or attempting to collect the debt from the former tenant to whom services were provided. You also ask whether, prior to recording liens in the judgment book, the clerk’s office should require proof that a judgment has been obtained and proof that attempts have been made to collect such debt from the former tenant.

## Response

It is my opinion that the DCWA may record its liens prior to obtaining a judgment and without first seeking to collect such debt from any tenant who received services from the authority, provided DCWA follows appropriate statutory requirements. It therefore is my further opinion that the clerk’s office has no need to require proof of any such judgment or collection efforts.

## Applicable Law and Discussion

The DCWA, as a water authority created pursuant to § 15.2-5102,<sup>1</sup> is governed by the Virginia Water and Waste Authorities Act.<sup>2</sup> As “an instrumentality exercising public and essential governmental functions to provide for the public health and welfare,”<sup>3</sup> DCWA is authorized to fix, charge and collect

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<sup>1</sup> See Dinwiddie County Code, Appendix A.

<sup>2</sup> VA. CODE ANN. §§ 15.2-5100 through 15.2-5158 (2008 & Supp. 2010).

<sup>3</sup> Section 15.2-5114 (Supp. 2010).

rates, fees and charges for the use of, or for the services furnished by . . . any facilities or systems owned, operated or financed by the authority.”<sup>4</sup> Such fees and charges are chargeable to and collectable from “any person contracting for any such services and/or [] the owners or tenants who own, use or occupy any real estate . . . served by . . . such facilities or systems[.]”<sup>5</sup>

Section 15.2-5139 provides that “[t]here shall be a lien upon real estate” for any delinquent fees or charges assessed against the owner, lessee or tenant of the real estate for the use of services on that property “from the time when the fees, rents or charges are due[.]” The statute further provides that a lien “may be placed by an authority” for up to three months of unpaid charges if the authority

(i) has advised the owner of such real estate at the time of initiating service to a lessee or tenant of such real estate that a lien will be placed on the real estate if the lessee or tenant fails to pay any fees, rents or other charges when due for services rendered to the lessee or tenant; (ii) has mailed to the owner of the real estate a duplicate copy of the final bill rendered to the lessee or tenant at the time of rendering the final bill to such lessee or tenant; and (iii) employs the same collection efforts and practices to collect amounts due the authority from a lessee or a tenant as are employed with respect to collection of such amounts due from customers who are owners of the real estate for which service is provided.<sup>6</sup>

In another part of the Code addressing public utilities,<sup>7</sup> § 15.2-2119 requires service authorities attempting to collect unpaid fees and charges for services rendered to “obtain a judgment in a court of competent jurisdiction against the lessee or tenant who contracted for such services for the amount of any delinquencies” prior to recording a lien against the property owner. The lien may be recorded only after the authority has used reasonable efforts to collect the judgment from the tenant and has thereafter given the property owner 30-days written notice of the recordation.<sup>8</sup>

Although DCWA is a service authority, the provisions of § 15.2-2119 do not apply to its enforcement powers. The Virginia Water and Waste Authorities Act “constitute[s] the full and complete authority, without regard to the provisions of any other law for the doing of the acts [t]herein authorized, and shall be liberally construed”<sup>9</sup> Moreover, “[n]o power . . . granted [in Title 15.2, Chapter 21] shall alter or amend the powers or the duties of any present or future authority created pursuant to the Virginia Water and Waste Authorities Act[.]”<sup>10</sup> Therefore, I conclude that the lien created in § 15.2-5139 may be recorded without a requirement that the authority take the additional steps found in § 15.2-2119.

### Conclusion

Accordingly, it is my opinion that the DCWA may record its liens without obtaining a judgment and first seeking to collect such debt from a delinquent tenant who received services from the authority,

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<sup>4</sup> Section 15.2-5114(10).

<sup>5</sup> *Id.*

<sup>6</sup> Section 15.2-5139(A).

<sup>7</sup> Title 15.2, Chapter 21, art. 2.

<sup>8</sup> Section 15.2-2119.

<sup>9</sup> Section 15.2-5100.

<sup>10</sup> Section 15.2-2111.

Hon. John Barrett Chappell, Jr.

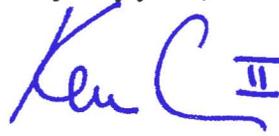
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provided DCWA follows appropriate statutory requirements. It therefore is my further opinion that the clerk's office has no need to require proof of any such judgment or collection efforts.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II  
Attorney General