

WHO IS LIABLE TO PAY THE MUNICIPAL ACCOUNTS OF DEFAULTING TENANTS?

While there is no explicit answer in the law, it follows from section 118(1) of the Municipal Systems Act that the owner of the property is liable to pay for outstanding municipal accounts. Section 118(1) of the Systems Act places a temporary restriction on the ability of an owner of property to alienate that property if there are outstanding charges (see LG Laws Amendment Bill, page 9). This section applies, irrespective of whether the charges were incurred by the owner or a tenant.

In *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (2) BCLR 150 (CC), the Constitutional Court emphasised the objective of section 118(1), which, is to act as a form of security to municipalities for the payment of all outstanding municipal accounts in relation to the properties concerned.

Therefore, when non-owner occupiers fail to pay consumption charges, section 118(1) effectively places the risk on the owner, rather than on the municipality.

While section 118(1) of the Systems Act is only applied when property owners wish to alienate their property, it only makes sense that if owners are aware of accumulating debt, they should be liable for the payment of that debt should a tenant disappear. Municipalities should therefore ensure that where the owner requests it, both the owner of the property as well as tenants receive monthly accounts for service charges (see page 10.) Owners should in addition, be vigilant in protecting their property and should co-operate with the municipality in ensuring that its credit control and debt collection policy is enforced. Importantly, it is clear from the application of section 118(1) that it is in the best interests of both the municipality and property owners to ensure effective debt recovery.

Practitioner's Helpdesk

Have your legal questions answered for free!

The law on local government is complex and legal advice is expensive, but subscribers to the *Bulletin* have access to a free telephonic legal advice service.

Project researchers are on hand to answer legal questions. For a question to qualify for free legal advice, it should relate to the content of the *Local Government Bulletin* or to the framework legislation for local government, i.e. the Municipal Demarcation Act, Municipal Structures Act, Municipal Systems Act, Property Rates Act or Municipal Finance Management Act. The advice is not a full legal opinion. It is verbal advice, or, if necessary, a short letter of up to 500 words.

The issues addressed through the Practitioner's Helpdesk that may benefit other readers will inform the writing of a regular Legal Briefs section in the *Bulletin* (see above).

Please note that the Practitioner's Helpdesk is available only to paid-up subscribers or councillors and officials whose municipalities are paid-up subscribers. To have your questions answered, please contact Valma Hendricks at vhendricks@uwc.ac.za or call 021 959 3707.

021 959 3707

