

# Sewer/Weed Liens

October 2011

# IC 36-9-23-25

- **Fees; factors used to establish; persons obligated to pay; disposition of certain fees; adoption of different schedules permitted**

- Sec. 25. (a) Subject to section 37 of this chapter, the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

- (b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;

- (2) provide the sinking fund required by section 21 of this chapter;

- (3) provide adequate money to be used as working capital; and

- (4) provide adequate money for improving and replacing the works.

- Fees established after notice and hearing under this chapter are presumed to be just and equitable.

- (c) The fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or

- (2) uses or is served by the works.

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- Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.
  - (d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:
    - (1) A flat charge for each sewer connection.
    - (2) The amount of water used on the property.
    - (3) The number and size of water outlets on the property.
    - (4) The amount, strength, or character of sewage discharged into the sewers.
    - (5) The size of sewer connections.
    - (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
    - (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
    - (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
    - (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

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- (10) Any other factors the legislative body considers necessary.
- Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.
- (e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:
  - (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
  - (2) the number of users in various locations.
- *As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.317, SEC.23; P.L.35-1990, SEC.70; P.L.114-2008, SEC.29.*

# IC 36-9-23-31

## SEWER LIENS

- **Fees; nonpayment; delinquency penalty; civil action to recover**

Sec. 31. If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. The amount of the fee, the penalty, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.136.*

# IC 36-9-23-32

- **Fees; nonpayment; creation of lien; priority; time of attachment; notice; subsequent owners; release**

Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

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- (c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent. A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:
    - (1) the owner of record of real property with a single owner; or
    - (2) at least one (1) of the owners of real property with multiple owners;at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.
  - (d) The municipality shall release:
    - (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
    - (2) delinquent fees incurred by the seller;upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.
- As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.131-2005, SEC.7; P.L.113-2010, SEC.153.*

# IC 36-9-23-33

- **Unpaid fees and penalties**

Sec. 33. (a) An officer described in subsection (b) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

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(b) Except as provided in subsection (l), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:

(A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

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- (2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.
- (c) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (f), shall be added to each delinquent fee that is recorded.
- (d) This subsection applies only to a county containing a consolidated city. Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall certify to the county auditor a list of the liens that remain unpaid according to a schedule agreed upon by the county treasurer and the officer for collection with the next cycle's property tax installment. The county and its officers and employees are not liable for any material error in the information on the list.
- (e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

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- (f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.
- (g) On receipt of the list under subsection (e), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.
- (h) After certification of liens under subsection (e), the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.
- (i) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

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- (j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.
- (k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.
- (l) A board may write off a fee or penalty under subsection (a) that is for less than forty dollars (\$40).

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.354-1987, SEC.1; P.L.45-1990, SEC.8; P.L.1-1993, SEC.249; P.L.57-1993, SEC.18; P.L.88-1995, SEC.11; P.L.236-1997, SEC.1; P.L.10-1997, SEC.36; P.L.98-2000, SEC.29; P.L.171-2002, SEC.2; P.L.174-2003, SEC.1; P.L.39-2008, SEC.6.*

# IC 36-9-23-34

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## **Liens; foreclosure; attorney's fees**

Sec. 34. (a) A municipality or board may foreclose a lien established by this chapter in order to collect fees and penalties. The municipality or board shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisement laws.

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(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

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*As added by Acts 1981, P.L.309, SEC.96.*

# WEED CUTTING ASSESSMENTS

- The legislative body of a municipality may by ordinance require the owners of real property located within the municipality to cut and remove weeds and other rank vegetation growing on the property. The term “weeds and other rank vegetation” does not include agricultural crops, such as hay and pasture.
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- An ordinance adopted must specify the following:
  - 1. The department of the municipality responsible for the administration of the ordinance.
  - 2. The definitions of weeds and rank vegetation.
  - 3. The height at which weeds or rank vegetation becomes a violation of the ordinance, specifying the appropriate heights for various types of weeds and rank vegetation.
  - 4. The procedure for issuing notice to the owner of real property of a violation of the ordinance.
  - 5. The procedure under which the municipality, or its contractors, may enter real property to abate a violation of the ordinance if the owner fails to abate the violation.
  - 6. The procedure for issuing a bill to the owner of real property for the costs incurred by the municipality or county in abating the violation, including administrative costs and removal costs. The cost of sending notice is an administrative cost that may be billed to the owner.
  - 7. The procedure for appealing a notice of violation or a bill issued under the ordinance. [IC 36-7-10.1-3]

# WEED CUTTING ASSESSMENTS

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- An ordinance adopted must provide that a notice sent to the property owner must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1. The notice must be sent to:
  1. The owner of record of real property with a single owner; or
  2. At least one (1) of the owners of real property with multiple owners;
- at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice.