Legally merging municipal accounts

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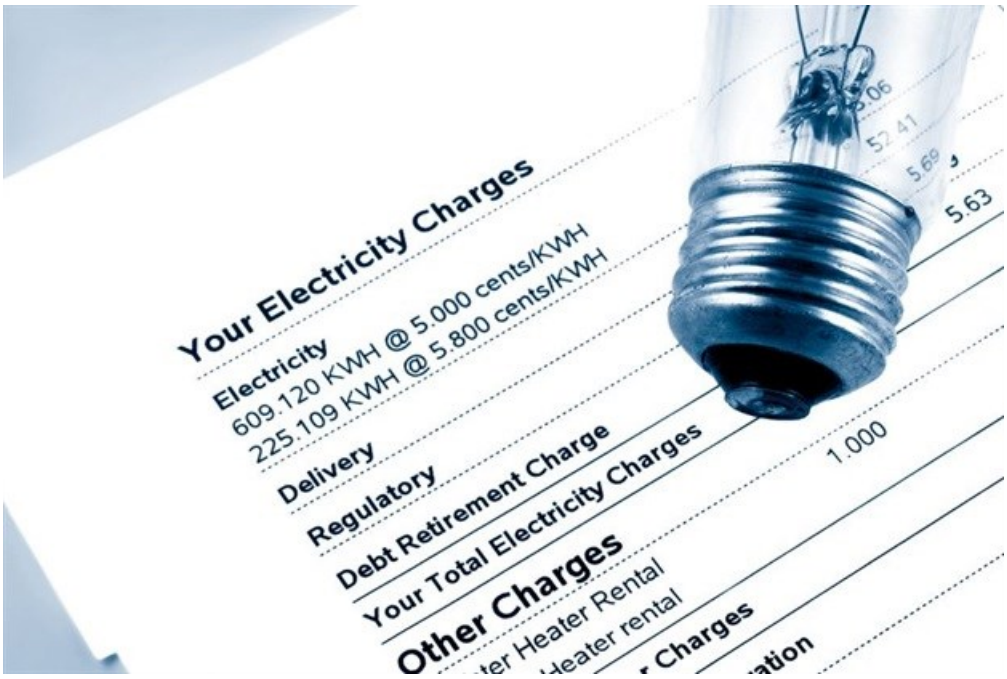
Section 102 of the Local Government: Municipal Systems Act 32 of 2000 prescribes that a municipality is entitled to consolidate the accounts of 'persons'. The wording of section 102 in question reads, 'A municipality may consolidate any separate accounts of persons liable for payment to the municipality.'



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What precisely does this mean in relation to municipal account holders, and owners and occupiers of property, when it comes to charges billed to, and payments made to, and credit control action exercised in relation to, their municipal accounts?

Same person, same property

It is accepted law that a municipality is entitled to consolidate any accounts of the same person relating to a property. Indeed this is what is contemplated by the plain wording of section 102 of the Act.

For example, if you have a separate account number for rates and for water, the municipality could at any time consolidate or merge these two accounts. What this means is that the municipality could transfer all debits and credits from one account to the other and hence forth only charge you on one account rather than two, or it could open a new account number, and transfer both the debits and credits on both accounts into the new (third) account.

This is relatively uncontroversial but can be difficult for a property owner, occupier or account holder, when a municipality decides to consolidate accounts where there is a dispute in relation to charges on the one account (and arrears on that account) and the other account is fully paid-up or even in credit. In situations like these, what will inevitably happen is that the municipality will allocate the credit available on the undisputed account to settle the disputed charges (ie the arrears) on the other account.

This is lawful, if the municipality does not re-allocate any payments already allocated.

Same property, different persons

In the case of Anzotrax t/a Topbet Germiston v Ekurhuleni Metropolitan Municipality (unreported as of yet), the court held that the law pertaining to consolidation of accounts could not be interpreted to allow a municipality to consolidate the municipal accounts of different persons in relation to the same property. For example, where a landlord owed money to the municipality, for rates in respect of an account in its own name, this could not be consolidated with the tenant's account (which was held in the tenant's name) in relation to electricity charges.

The authors disagree, however, that this is the correct interpretation of section 102, as the section refers to 'persons' and not 'a person', which (in our view) was intended to convey an entitlement on the municipality's behalf to combine the accounts of different persons in relation to the same property.

The Anzotrax judgment will serve as authority for the principle that a municipality cannot consolidate the accounts of separate consumers in relation to a property, unless set aside by a higher court. We welcome this status quo, however, as in our opinion the wording of section 102 that allows for the combining of the accounts of different persons in relation to the same property, is unlawful and should be amended by the legislature, because (in the words of the court in Anzotrax) the ability to combine accounts of different persons in relation to the same property creates 'apparent anomalies and glaring absurdities' (paragraph 7).

Same person, different properties

The Constitutional Court held in the Constitutional Court case of Rademan v Moqhaka Local Municipality and Others, that it was lawful for a municipality to consolidate not only separate accounts of the same person in relation to a property, but also for a municipality to consolidate 'two or more accounts relating to different properties' (paragraph 30).

Most people have interpreted the wording of this judgement to mean that it is lawful to consolidate the accounts of one consumer in relation to different properties. For example, if you owned property A and property B, the municipality could consolidate any or all of the accounts in the name of the owner in relation to these two different properties (on this interpretation of the Rademan judgement).

The authors hereof agree that this is the correct interpretation of section 102, but we disagree that this is lawful, as it leads to even more complex and prejudicial anomalies and absurdities than any other interpretation of section 102 does. We are of the view that the ability to combine the accounts of consumers should be limited to the power to combine accounts of the same consumer, in relation to the same property. In our view, the legislature needs to address this urgently by amending the wording of section 102 to make this very clear.

Consider what prejudice the owner and occupants of property A would suffer if the accounts of the owner of property A (all being paid up) were consolidated with the accounts of the same owner of property B (which accounts are in arrears due to incorrect municipal billing, or due to non-payment by the owner or by the occupants concerned). In a case like this, it could potentially render both properties A and B subject to termination because of the arrears sitting on the consolidated account, when in fact all charges in respect of property A have been paid in full. For this reason, it is submitted that it is not

lawful for a municipality to consolidate accounts of an owner across different properties.

Conclusion

The power of the municipality to consolidate accounts for the same person in respect of a single property is a powerful one, which must be used by the municipality concerned for legitimate purposes (in order to collect amounts legitimately owed to it which are not disputed). There are, however, certain limits to this power, which a municipality must respect and abide by, failing which an order of court can be obtained to prevent the municipality from taking unlawful and prejudicial action in respect of the property concerned.

At present the plain wording of section 102 has been interpreted by different courts in different ways (some of which are, in our opinion, incorrect or otherwise create absurd consequences) and this makes it difficult for industry stakeholders to obtain any clarity on how a municipality should be exercising this far-reaching power. Contact your attorney if you require assistance in dealing with this issue further, as it is likely that we will see further judicial scrutiny of this section in the near future.

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