

# ***Public Utility Law Project of New York, Inc.***

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## ***Shared Meter Situations***

### **2019 LIFE Regional Meetings**

# Public Utility Law Project of NY, Inc.

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# What We Will Talk About. . .

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- ❑ What is a shared meter situation?
- ❑ What are a tenant's rights when it comes to a meter investigation?
- ❑ What can be done if the investigation determines that a shared meter situation exists?
- ❑ If a shared meter situation exists, what must the owner do?
- ❑ Can the tenant receive a refund?

# What does a utility meter track?

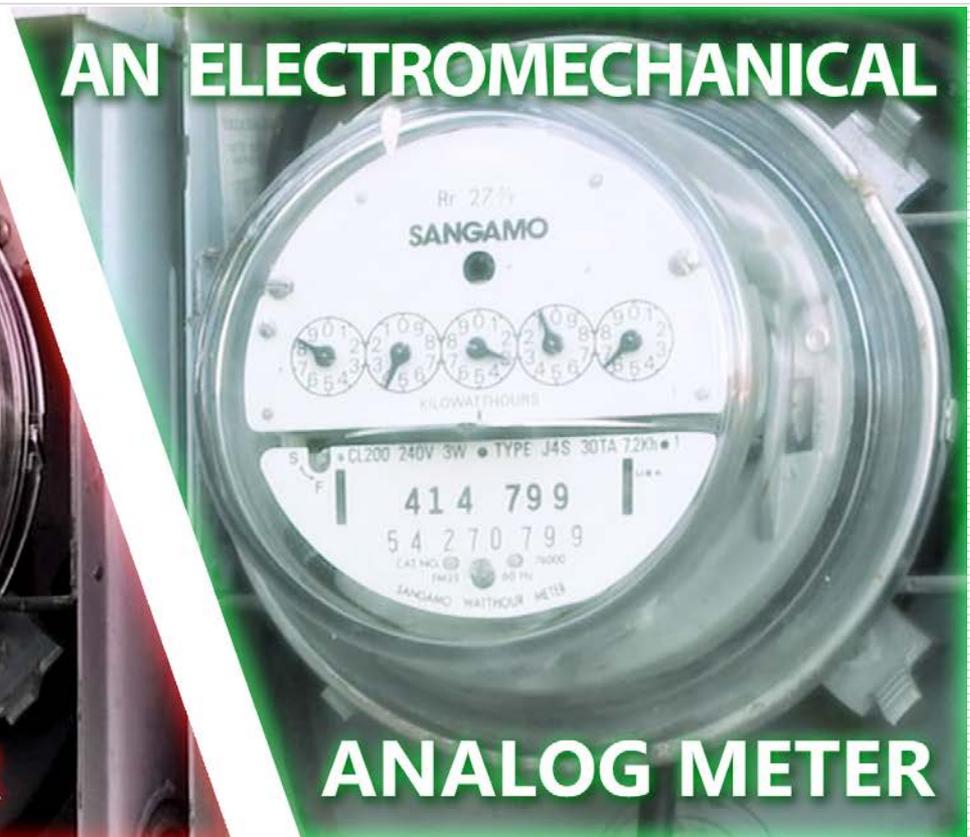
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- A utility meter measures gas, electricity or steam service in a tenant's dwelling.



# There are different types of utility meters

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# What is a shared meter

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- A “**shared meter**” is when the utility meter is measuring gas, electricity, or steam service in a tenant’s dwelling, **and** to areas outside the dwelling, with the tenant paying for service to more than one area.
- **Example:** a hot water heater or furnace may be located inside a tenant’s apartment, but it is also providing hot water and heat to other apartments or common areas of the building

# How does a "shared meter" situation happen?

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- **Accident-** Sometimes, shared meter conditions happen as a result of electrical wiring or gas pipes being attached to a tenant's meter when a building is renovated or when systems are upgraded.
  
- **Intentionally-** Sometimes someone in the building deliberately connects his or her usage to the meter serving another tenant.
  - Shared meter conditions frequently arise in buildings that are converted from single family homes to apartments, when separate meters are not installed for each apartment, or when a landlord's former apartment had heat or common lighting on its bill.

What rights do tenants have if they are worried they may be paying for a shared meter condition?

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- In 1991, the NYS Legislature passed a bill that says that rentals with shared meters where service is billed to the shared meter tenant are contrary to public policy
  
- This bill became the NYS "shared meter" law, which requires owners of rental dwellings to eliminate any shared meter condition, or to place the utility service in the owner's name
  - See, New York Shared Meter Law, N.Y. Pub. Serv. Law § 52(1)(b).

# A tenant who is worried they may have a "shared meter" situation can ask the utility to investigate

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- **Step 1:** the tenant should file a *written* or *oral complaint* with the utility;
  - **Step 2:** the utility must notify the building owner in writing that a shared meter complaint has been received and that the utility is required to investigate the complaint. This notice must also tell the landlord what their responsibilities are;
  - **Step 3:** the utility then investigates, which may include testing, examination of piping, wiring, meters and heating equipment, review of billing records, and preparing an estimate of the gas, electricity or steam used in inside and outside the shared meter customer's dwelling;
  - **Note:** in NYC, the Buildings Department may also investigate share meter complaints
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# What happens if my landlord refuses the investigation?

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- ❑ **Owners who refuse** the investigating utility's reasonable requests, or who do not cooperate with the utility by providing access to common areas in the building, *will receive a determination from the utility that a shared meter condition exists. See, PSL § 52(4)©.*

# What happens after the utility investigates?

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- Once the tenant's complaint is received, the utility has **30 days** to inspect and make a written determination. See, PSL § 52(4).
- **The written determination must include:**
  - A description of the areas outside the dwelling that are served by the shared meter;
  - The nature of the uses of the utility service used outside the dwelling;
  - The proportional amount of service measured on the shared meter that is provided to the tenant's dwelling and the areas outside the dwelling; and
  - The availability of Commission complaint handling procedures and the Commission's address and telephone number for filing objections to the determination

# How to correct a "Shared Meter" Condition

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- Within 120 days of a determination that a shared meter condition exists, the owner must have either:
  - Eliminated the condition by rewiring (Electric) or re-piping (gas) as needed; or
  - Entered into an agreement with the tenant for apportionment of the shared meter charges; or
  - Established an account in the owner's name for all shared area charges

# 3 Exceptions to repairing a shared meter situation

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- **The owner may enter into a written agreement with the tenant for apportionment of the cost of the shared meter service when:**
  - (1) There is the existence of a legal impediment**
    - Ex: zoning ordinances, landmark or historic preservation regulations, or other legal restrictions
  - (2) Extraordinary cost** (*See, PSL § 52(2)(a)*)
    - It exceeds four months rent; or
    - It exceeds two months rent, provided the amount of utility service used outside the tenant's dwelling is less than 20% of the average total monthly consumption shown on the meter for the preceding 12 months
  - (3) Minimal use** (*See, PSL § 52(2)(a)*)
    - Less than 10% of the total monthly consumption measured on the meter, based on the average monthly consumption for the preceding 12 months;
    - 75 kilowatt hours per month of electricity; five therms per month of gas, or one pound per hour per month of steam;
    - Whichever is greater.

# How are tenants protected if the "shared meter" is not corrected by the owner

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- ❑ Owners who are not required to physically eliminate a shared meter condition due to one of the exceptions may enter into a **mutually acceptable written agreement** with the shared meter tenant and any third parties (such as other affected tenants) (PSL § 52(2)(b)(i)).
- ❑ The written agreement will apportion the shared meter charges so that in the future, the complaining tenant pays only for service to their dwelling and third parties pay for their own usage.
- ❑ If the owner and tenant cannot come to an agreement the Commission may apportion the charges for service to the tenant and order a remedy

# What happens if the owner fails to do anything to correct the shared meter

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- **120 days** after the utility's written determination that a "shared meter" exists, the owner is **required to open an account in the owner's name for all shared area charges.**
  - *See, PSL § 52(2)(a)*

# If the owner has to open an account they will also be billed for the following charges, whichever is most recent

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- All shared area charges measured through the shared meter for six years before:
  - (i) the shared meter was discovered, or
  - (ii) the shared meter determination was made; or
- All shared charges from the first day of the tenancy, or
- All shared charges from the date the shared meter condition began, or
- All shared charges from the 60th day after the owner knew or should have known that third parties were involved; or
- All shared charges from the date the owner assumed title to the dwelling

# Refunds, Cancellation of Charges, Credits and Owner Billing

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Within **120 days** of the shared meter determination, the utility must

- ❑ Refund to the shared meter tenant all shared area charges already paid, and
- ❑ The utility must cancel all shared area charges billed but unpaid, for the period during which the shared meter condition existed or six years, whichever is shorter.
  - ❑ These charges are then billed to the owner
- ❑ If charges for utility service to a third party (tenant B) were billed to the shared meter, the utility must credit the shared meter customer (tenant A, who is paying for the shared meter) for the third party's (tenant B's) estimated charges.
  - If the shared meter tenant (tenant A) received any payments from the owner or from a third party (tenant B) for the shared utility service, the tenant (tenant A) must return a proportional amount of the refund to those parties (the owner and tenant B).
- ❑ If the shared meter condition affected a third party (tenant B) who received service on the shared meter, the utility will bill the third party (tenant B) for its portion of the charges

# Does the tenant have any recourse against 3rd parties?

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- Yes, The Public Service Law establishes a right of action for owners and shared meter customers against third parties, to recover charges billed to their respective utility accounts, upon a demonstration of the existence of third-party involvement.
  - See, PSL § 52(7)

# Tenants' protections from the landlord

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- ❑ Owners may not seek recovery from tenants of the shared charges that the owner was required to pay as a result of the shared meter determination.
- ❑ The owner cannot bill the tenant for any future charges the owner may incur as a result of the shared meter remedies
- ❑ The owner may increase future rents "to the extent otherwise permitted by law," but may not directly bill the tenant for electricity, because the owner is not authorized by the Commission to sell electricity
- ❑ \*For two-family and multiple dwellings- a tenant who makes lawful payments to a utility pursuant to PSL §§ 33 and 34 can deduct utility payments from their rent so that a shared meter customer can "seek and obtain relief for payments made for service not provided to his or her dwelling." See, Real Property Law § 235-a.

# The take-away

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- ❑ Read your utility bills every month
- ❑ If a bill seems disproportionate to the amount of utility service received for any given month, a rental customer should reach out to the utility provider and request a shared meter investigation (you should also check to make sure you are not being overcharged by an ESCO)
- ❑ The investigation will cost the tenant nothing
- ❑ If a shared meter situation is found the utility's involvement could prevent overpayment for service that may not actually be the customer's responsibility and you can receive a refund.

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