

Pensioners Exempt from having to put down Deposits at COJ

By Chantelle Gladwin-Wood (Partner)

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INTRODUCTION

HBGSchindlers has received numerous enquiries recently as to the legality of the City of Johannesburg (“the CoJ”) charging deposits (or dramatically increased deposits) by debiting these deposits to pensioner consumers’ monthly municipal accounts. Many of these consumers, all pensioners, are unable to pay what can be very significant deposit amounts.

In this article (which is an update of our article from June on deposits called for by COJ generally), we explain how and why pensioners are exempt from having to pay a security deposit at the COJ.

PURPOSE OF A DEPOSIT

In the same way that a landlord would call for a deposit in respect of a lease for damages that a tenant might cause to the property, municipalities (as service providers) are given the power in law to call for deposits in order to secure payment in the event of default by the consumer.

On default, the deposit will be applied to any amounts owing to the municipality in reduction of the debtor’s liability to the municipality.

WHERE ON MY INVOICE WOULD I FIND THE DETAILS OF MY DEPOSIT (IF I HAVE ONE)?

Computer generated
TAX INVOICE
CHANTELLE LOUISE GLADWIN
66 SHELLEY ROAD
LOMBARDY EAST
2090

VAT NO. CITY OF JOHANNESBURG: 4760117194 VAT NO. FRUITJIP: 4760191202
VAT NO. JOHANNESBURG WATER: 4270191277 VAT NO. CITY POWER: 4710191162

Date	2018/08/03
Statement for	August 2018
Physical Address	51 BYRON ROAD
Stand No./Portion	00000163 - 00001 - 00
Township	LOMBARDY EAST

Stand Size	Number of Dwellings	Date of Valuation	Portion	Municipal Valuation	Region
2024 m2	1	2018/07/01	E1	Market Value R 1,127,000.00	Region E WARD 81

Invoice Number: 76003506422 Next Reading Date: 2018/08/20
Client VAT Number: Deposit: R 1,285.38

Account Number: 550241930 PIN CODE: 233296

Another place in which you might find a deposit, is in the block directly underneath the red arrow illustrated above. It might be “hidden” in the amounts that appear on the front page of your invoice, as a debit (an amount that increases your liability to the COJ).

Account Number: [REDACTED]

Previous Account Balance	
Less: Incoming Payment (Last Payment Made 2024/05/07)	
Sub Total	
Current Charges (Excl. VAT)	
VAT @ 15%	
Deposit Request	←
Deposit Released	←

In short, if you see an amount for a “deposit” or a “deposit request” where the blue arrows indicate, this is evidence that the COJ does not already hold that amount as a deposit but it is now calling for payment of that amount, which it will then later “ringfence” and move to the spot just above where the red arrow is pointing to.

DEPOSITS HELD IN RING FENCED ACCOUNT

Deposits are usually indicated on a municipal invoice as having been separated from the rest of the bill and they are (at least theoretically – what in fact is done with deposit funds is unknown at this stage) allocated to a separate “ring fenced” account. This means that (ordinarily speaking) amounts that are debited or charged to the account will not be taken from the deposit and payments made into the account will not increase the deposit. The amount of the deposit will thus remain the same (note that no interest is earned on the deposit) while the outstanding balance on the account will change from month to month depending on charges and payments debited and credited in the ordinary course.

IS THE MUNICIPALITY ALLOWED TO REQUEST A DEPOSIT, IF I HAVE NEVER BEEN ASKED TO PAY FOR ONE IN THE PAST?

Provided that you are not a customer exempt from having to pay a deposit (for example, pensioners who have applied for and been granted the pensioner’s rebate are exempt within the jurisdiction of the COJ), then yes, you can be required to pay a deposit even if you have never before been asked for one.

IF I PREVIOUSLY PUT DOWN A DEPOSIT BEFORE I WAS A PENSIONER, AND I AM NOW A PENSIONER, CAN I ASK FOR PAYMENT OF MY DEPOSIT BACK?

Unfortunately not. When you sell your property, your deposit should be credited to any amount owing on your account. If your account is in credit or there is nothing owing on it, when you sell your property, your deposit should be refunded to you. This is known as your deposit being “released” back to you.

CAN A DEPOSIT BE CALLED FOR, FOR RATES AND TAXES?

Yes, in terms of the Policy, it can. It can be called for in relation to any charge that would go onto a customer’s account.

IS VAT PAYABLE ON A DEPOSIT?

No.

WHAT LAWS AFFECT THE LEGALITY OF HOW MUCH, WHEN AND HOW COJ RAISES A DEPOSIT?

The CoJ’s Credit Control and Debt Collection Policy of 2022 (“the Policy”) and Credit Control and Debt Collection By-laws in 2005 (“the By-laws”) are the most important pieces of legislation that govern this important issue, but there are other subsidiary laws that might come into play depending on the facts of each case.

In the case of pensioners, it is section 8 of the Policy, and in particular, 8.8, that exempts pensioners who are receiving a pensioner’s rebate (for rates) from having to pay deposits.

- 8.7. All account holders who are ESP beneficiaries should be exempt from paying a security deposit.
- 8.8. All customers who receive PENSIONER’S rebate should also be exempted from paying a security deposit.
- 8.9. All customers with a property market value not exceeding R500 000 should also be exempt from paying a security deposit.

You might need to consult an attorney if you require further information about your particular case.

CAN I BE REQUIRED TO “TOP UP” MY DEPOSIT AS A PENSIONER?

It is not 100% clear from the wording of the Policy, but most probably the answer is ‘no’. Just as you cannot be required to put down a brand new deposit as a pensioner, you (by parity of reasoning) ought not to be liable for increasing any deposit already held if you are already receiving a pensioners’ rates rebate. This is not crystal clear, however, so we cannot provide conclusive answers to this question at this time.

WHAT ARE THE CONSEQUENCES OF DOING NOTHING TO DISPUTE A CHARGE FOR A DEPOSIT THAT SHOULDN’T BE THERE?

Failure to pay the charges levied for a deposit can lead to interest charges accruing thereon (which theoretically ought not to happen, but it sometimes does) and even to a termination of services (including electricity and water supply) if a dispute is not properly raised and the incorrect deposit charges removed from the account.

CONCLUSION

Unfortunately the COJ has received, but not yet processed, several thousand pensioner rebate applications flowing from the 2023 General Valuation Roll, and because it is behind in its data-capturing of these applications, its invoicing run in July 2024 calling for deposits will be incorrect in respect of pensioners who have applied for and are waiting for their rebate applications to be “loaded” onto the system.

This puts this category of persons (who are already vulnerable) at a greater risk of being cut off for non-payment of amounts which ought never to have been billed in the first place.

There is another complication, however. The exemption from having to pay a security deposit only applies to customers who are receiving a rates rebate for pensioners – if you have not yet applied for this rebate at all, you will first need to apply for, and be granted approval to receive, this rebate, before you will qualify for not having to put down a security deposit. As there is already a data-capturing backlog, this could take several months (or potentially even years).

In desperate cases, it is sometimes necessary to approach a court to compel a municipality to decide an application urgently – if you find yourself in this situation you can contact the Public Law Department at HBGSchindlers for legal assistance: public@hbgschindlers.com.



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