# Coates' Canons Blog: 5 Myths About Tax Foreclosures

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With taxpayers across the state still suffering financially, local governments may be forced to rely on foreclosures more than ever to generate vital property tax revenue.  Here are five persistent myths about tax foreclosures that deserve debunking.

**1.   Taxpayers have one year to redeem their property and reverse foreclosure sales.**

A taxpayer's right to "redeem" his or her property and stop the foreclosure process ends when the foreclosure sale is confirmed.  After the sale is confirmed, the taxpayer has one year to challenge the validity of the title obtained at foreclosure through a court action. See GS 105-377. But unlike in many other states, North Carolina taxpayers cannot reverse confirmed foreclosure sales simply by paying the taxes that were owed on the sold property.

At any point prior to confirmation of sale, the taxpayer can stop the proceedings by paying all taxes, interest, penalties and costs owed on the property.  Confirmation of sale cannot occur until the 10-day upset bid period ends without submission of a new, higher bid.  However, even if redemption occurs during the upset bid period, the taxpayer need only pay the amount owed on the property and is not required to match the highest bid.  These redemption rules apply to both the "mortgage-style" procedures of GS 105-374 and the "in rem" procedures of GS 105-375.

**2.   At foreclosure, the minimum bid must be set at the total amount of taxes, interest, fees and costs owed on the property.**

The Machinery Act does not authorize minimum-bid requirements at foreclosure sales. Under both mortgage-style and in rem foreclosures, property must be sold to the highest cash bidder. If the government conducting the foreclosure sale chooses not to enter an opening bid, then *any* bid will be sufficient to purchase the property even if it does not cover the outstanding taxes.

If the government wants to ensure that the property is not sold for less than the amount it is owed, then it must enter its own bid in that amount.  If no one else bids on the property, then (after the upset bid period) the government will become the owner of the property.

Once purchased at foreclosure sale, the property may be sold according the rules that apply to other government property, subject to two important exceptions created by GS 105-376.  First, the government that purchased the property at foreclosure holds the property for the benefit of all other taxing jurisdictions that were parties to the foreclosure sale, meaning that if it eventually sells the property it must use the sale proceeds to satisfy all tax liens that were included in the foreclosure sale.  Second, if the government sells the property to the taxpayer who owned the property up until the foreclosure, the sales price cannot be lower than the total taxes, interest, penalties and costs originally owed by that taxpayer.

**3. If multiple local governments hold property tax liens on the property sold at foreclosure, the oldest taxes have priority and are paid first.**

All local government property tax liens are of equal dignity. This means that they all have the same payment priority, regardless of when they arose or which government initiated the foreclosure action. If the sale proceeds are not enough to satisfy all of the tax liens, they are paid proportionately.

For example, assume that Carolina County has a $1,000 property tax lien from 2005 on Parcel A. Blue Devil City has a $500 lien on the same parcel for 2007 property taxes. The fact that Carolina County's tax lien is older than Blue Devil City's tax lien is irrelevant to the priority of those liens: they both are of equal dignity and are paid at the same time. If Carolina County forecloses on Parcel A and the sale produces $600, then the two jurisdictions would split the proceeds proportionately: $400 (two-thirds) for Carolina County and $200 (one-third) for Blue Devil City. For more details about tax liens and their priorities, check out this previous blog post or this Property Tax Bulletin.

**4. If the foreclosure sale does not produce enough funds to satisfy the taxes owed, the local government may target the taxpayer's personal property to make up the difference.**

Foreclosure is the ultimate Machinery Act collection remedy. GS 105-366(b) prohibits tax collectors from pursuing remedies against a taxpayer's personal property after a foreclosure action is initiated. What's more, property is sold at foreclosure free and clear of all liens included in the judgment, meaning that new owner cannot be held responsible for the prior owner's unpaid taxes. For these reasons, most collectors will attempt to attach wages or bank accounts before pursuing foreclosure. Once foreclosure occurs, the tax collector is out of options under the Machinery Act. The only collection remedy that remains after foreclosure is the set-off debt procedure under Chapter 105A by which a local government can attach a taxpayer's state income tax refund or lottery winnings.

**5. Taxpayers who have been through bankruptcy are exempt from foreclosure actions.**

Most tax liens survive bankruptcy and can be the basis for foreclosure actions after the taxpayer's bankruptcy proceeding is discharged or dismissed. The automatic stay prohibits foreclosures, attachments, and all other collection actions while a bankruptcy is pending, of course. And often the taxpayer is no longer personally responsible for property taxes after discharge, meaning that the taxpayer's *personal* property may not be attached or levied upon. However, the taxpayer's real property is still subject to foreclosure for tax liens that survive bankruptcy. For more details, see this terrific Property Tax Bulletin by my colleague Shea Denning and bankruptcy expert Bob Price.

**Bonus Myth #6: The Tar Heels still have a chance to make the NCAA tournament.**

Okay, I admit that this myth has nothing to do with foreclosure. But I couldn't resist the opportunity to poke fun at the Heels, especially in light of the fact that my beloved Blue Devils haven't had the upper hand in this rivalry for quite a few years. Go Duke!

## Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-377.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-374.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-375.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-266.html
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