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## Coates' Canons Blog: Priority of Local Government Liens

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Article: <https://canons.sog.unc.edu/priority-of-local-government-liens/>

This entry was posted on October 29, 2009 and is filed under Finance & Tax, Property Taxes

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Assume you are a county attorney who gets a call from the tax collector asking your advice on whether the tax office should start foreclosure proceedings on Parcel A. The property is valued at \$25,000 and the county holds a tax lien of \$4,000, so at first glance a foreclosure action looks promising. But then the tax collector lets you know that her staff did a quick title search and learned that the local bank has a \$10,000 mortgage on Parcel A. What's more, two years ago the I.R.S. recorded a \$30,000 lien for unpaid federal income taxes, and just last week the N.C. Department of Revenue recorded a lien for \$8,000 of unpaid state income taxes. Do you tell the tax collector that this foreclosure would be a waste of time?

Not necessarily. The priority of competing liens is a notoriously complicated issue, with a wide variety of liens and lien holders potentially competing for the same funds. A local government's lien can include multiple obligations with varying priorities relative to other liens that can change based on the type of property (real or personal) subject to the lien. Liens for real property taxes, personal property taxes, solid waste fees, special assessments, nuisance abatement costs, and housing demolition costs can all be collected through the same enforced collection procedures, even though different priority rules apply to the different obligations.

I'm hopeful that this new **Property Tax Bulletin** will serve as a useful reference guide for tax officials and attorneys facing complex priority problems. The bulletin summarizes the relevant rules in separate tables for liens on real and personal property. A tax collector or attorney deciding whether to move forward with a foreclosure action can quickly refer to these tables to determine whether other lien holders will be paid before the local government if the property is sold.

What do these tables tell us about the potential tax foreclosure on Parcel A? I think the county attorney should give the tax collector a green light.

The bank's mortgage lien is not a concern, because local government liens for property taxes and other obligations collectible as property taxes—think solid waste fees, special assessments, nuisance abatement costs, and housing demolition costs—are *always* senior to private liens, regardless of when the liens attach to the property.

Similarly, state and federal laws combine to give local real property taxes super-priority over federal tax liens on real property. To the extent that the county's tax lien represents taxes on Parcel A rather than taxes on *personal* property owned by the same taxpayer, the county's lien should have priority over the federal government's \$30,000 lien.

The county should also have priority over the state. Local tax liens are first-in-time, first-in-right when competing with state tax liens. A county property tax lien attaches automatically on January 1 of each year, while a state tax lien doesn't attach until it is recorded in superior court. Because that occurred only last week, almost certainly the county's lien attached first and has priority.

All in all, Parcel A appears to be an excellent foreclosure target for your tax office.

## Links

- [www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb150.pdf](http://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb150.pdf)