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## Coates' Canons Blog: Property Taxes and Registers of Deeds

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Article: <https://canons.sog.unc.edu/property-taxes-and-registers-of-deeds/>

This entry was posted on April 05, 2012 and is filed under Finance & Tax, Property Taxes

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It's pop quiz time! Is the following statement true or false?

*No one can buy real property in North Carolina without first paying all of the property taxes owed on the property.*

Answer: False. Well, not entirely false. But not entirely true, either.

Here's why: G.S. 161-31 permits a county to prohibit its register of deeds from accepting for registration deeds that transfer ownership in real property unless the county tax collector certifies that there are no delinquent property tax liens on the property being transferred.

But this provision covers only *some* counties and *some* property taxes. And real estate attorneys can avoid the restriction by promising to pay the delinquent taxes at closing. (I know you'll be shocked to hear that sometimes attorneys do not make good on those promises.)

**Which counties?** G.S. 161-31 currently covers 73 counties, all of which have been added to that coverage by local bills since the provision was created in 2001. If the state's remaining 27 counties wish to employ this authority, they need to work with their local state representatives and senators to pursue local bills that add them to the list of covered counties. To learn if your county is already on this list, take a look at the most recent version of the statute [here](#).

The provision is not self-executing, meaning those counties covered by the statute must opt into the restriction by passing a resolution to that effect. Once adopted, the requirement will remain in place unless and until it is repealed by the board of county commissioners.

**Which property taxes?** G.S. 161-31 covers only *delinquent* taxes that are charged to the *county* tax collector. These limitations have several important consequences.

First, if a property tax is not delinquent, it does not need to be paid before a deed may be recorded. For example, assume Parcel A is sold in December of 2012 in a county that has opted into G.S. 161-31. The county property taxes on Parcel for 2012-2013 are unpaid. If all prior property taxes on Parcel A have been paid, then the deed for Parcel A may be recorded despite the unpaid 2012-2013 taxes. Those taxes will not become delinquent until January 6, 2013, so the provisions of G.S. 161-31 do not apply.

Second, municipal property taxes are covered by G.S. 161-31 only if the county collects the tax for the municipality. If a city collects its own taxes, G.S. 161-31 will not prevent a deed from being recorded due to delinquent taxes owed to that city. As far as I know, only one county (Duplin County) is subject to a local bill that extends G.S. 161-31's requirements to cover all municipal property taxes regardless of who collects those taxes.

Third, other debts owed to the county that are collected just like property taxes will not prevent deeds from being recorded. Special assessments are the most common of these "other debts" that can be collected like property taxes: they are liens on the affected properties, can be included in a tax foreclosure, and are usually charged to the tax collector for collection. The same is true of solid waste fees billed with property taxes, nuisance abatement costs, and minimum housing standard enforcement costs (aka "demo liens"). But these debts are not property taxes, meaning that G.S. 161-31 will not prevent a deed from being recorded solely due to unpaid special assessments, solid waste fees, or nuisance and demo liens.

Remember that the property tax lien on real property includes taxes on the real property itself as well as taxes on all personal property listed by the same taxpayer in the same jurisdiction (not including registered motor vehicles.) G.S. 105-355(a)

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. Assume I own Parcel A and a boat, both of which are listed for taxation in Carolina County. The taxes on both the boat and Parcel A are a lien on Parcel A. If I sell Parcel A when taxes on my boat are delinquent, G.S. 161-31 will prevent the deed from being recorded even if the taxes on the real property itself are all paid up.

**Those unenforceable promises.** G.S. 161-31(a1) creates a loophole to the tax certification requirement large enough to fit the egos of both John Calipari and Rick Pitino. (Sorry, I'm still bitter about my Blue Devils losing in the first round.) As mentioned above, this subsection eliminates the requirement that all delinquent county property taxes be paid before recording so long as the closing attorney promises to pay those taxes with the proceeds from the real estate sale.

And the county's ability to enforce this promise is . . . zip. Nada. Zilch. The statute creates no remedies against an attorney who fails to pay the delinquent taxes at closing. The tax lien remains on the property, of course, meaning the county retains the regular Machinery Act remedies against the owners (attachment/garnishment and levy/sale) and the property (foreclosure). But there is no authority to take action against the offending attorney, which makes the attorney's promise about as meaningful as my five-year-old son's promise never to antagonize his big sister again.

Some counties refuse to accept promises to pay from attorneys who repeatedly break these promises. This approach sounds reasonable but I'm afraid it lacks statutory support.

One method that would pass legal muster is to hand a notice of attachment on the closing proceeds to each attorney that submits a promise to pay the taxes from said closing. That way, if the attorney fails to pay the county can hold that attorney personally responsible for the delinquent taxes under the Machinery Act's attachment provisions. If you have any other creative ways to enforce this promise, please share them via the comment section below.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31)
- [www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2009-2010/sl2010-24.html](http://www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2009-2010/sl2010-24.html)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-355](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-355)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368)