
Coates' Canons Blog: Repairing unfit houses—and then recouping the costs

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Article: <https://canons.sog.unc.edu/repairing-unfit-houses%e2%80%94and-then-recouping-the-costs/>

This entry was posted on March 09, 2010 and is filed under Administration & Enforcement, Affordable Housing & Minimum Housing Codes, Collections & Foreclosure, Community & Economic Development, Finance & Tax, Land Use & Code Enforcement

[2011 UPDATE: For more detail on this topic, see the following 2011 book: *Housing Codes for Repair and Maintenance: Using the General Police Power and Minimum Housing Statutes to Prevent Dwelling Deterioration*]

An earlier post on minimum housing ordinances (MHOs) explained how MHOs can be employed by a local government for the purpose of ordering owners to repair unfit dwellings. When an owner fails to comply with a repair order, the local government may proceed to effectuate the repairs itself. The costs to the local government for making the repairs become a lien on the property. What mechanisms are available to local governments to collect on these liens?

Liens for minimum housing costs, pursuant to G.S. 160A-443(6), “shall be filed, have the same priority, and be collected as the lien for special assessment.” In other words, these are not lowly mechanics liens (the type of lien applied for enforcement of most police power actions under G.S. 160A-175 for cities and G.S. 153A-123 for counties). Rather, special assessment liens are senior to all liens except other tax liens (see G.S. 160A-233) and therefore survive bank foreclosure actions.

Additionally, special assessments are “collected in the same manner as property taxes” pursuant to G.S. 160A-228. This makes available some rather robust enforcement mechanisms. For example, authorized collection methods include levying upon personal property, attaching rents, and garnishment (G.S. 105-366), making claims through the Setoff Debt Collection Act (G.S. Ch. 105A), and foreclosure upon real property (G.S. 160A-233, 105-374, 105-375).

These are fairly robust collection methods, but will they work? Local government repair authority was boosted by the General Assembly only a few months ago (Session Law 2009-279), so we don’t have much experience collecting repair liens. Up to now, most of our experience with applying collection mechanisms in the minimum housing context involves demolition liens, and those liens are notoriously difficult to collect. It isn’t hard to see why. When a dwelling is demolished, the property is no longer producing rental income, so there are no rents to attach for collection purposes. The neglectful owner may not have a sufficient income stream to garnish. Even if a local government forecloses on the property, unimproved land is unlikely to attract buyers willing to pay off the demolition lien, purchase the land, and then pay for constructing a new, income-producing structure.

But the equation may change when a dwelling is *repaired* rather than demolished. Following repair, a dwelling can be rented out, and the rent can be attached to pay off the repair lien. Additionally, in the event foreclosure proceedings are initiated to collect on a lien, a repaired dwelling will fare significantly better in the foreclosure market, because it can immediately begin producing rent for the new owner. So at first glance collection seems feasible, but we don’t have good data to inform our expectations. We know that property tax collection rates are fairly impressive in North Carolina: during the difficult year of 2009, it was 97.98% for counties and 98.28% for municipalities. However, most of that success is attributable to voluntary compliance. Delinquent taxes are collected at rates closer to the 50-60% range. I would be interested in hearing from tax collectors across the state about their success (or otherwise) employing the above-described collection mechanisms against habitable rental dwellings.

If these collection methods are sufficiently robust, then a local government could feasibly establish a revolving fund—perhaps synthetically implemented on the books without actually establishing a separate fund—for the repair of unfit homes that are vacant or abandoned. Funds could be expended for the purpose of making repairs to strategically-selected dwellings (before the dwellings get to the point that demolition is required) and then replenished as costs were recouped using any of the methods described above. Thinking more comprehensively, a repair program could be one component of

a broader effort to register and monitor vacant and abandoned homes, as described in my article on vacant property registration programs. Are you aware of any programs like this being employed by local governments in North Carolina?

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-443.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-175.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-123.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-233.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-228.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-366.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_105A.html
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- law.campbell.edu/lawreview/articles/32-1-1.pdf