
Coates' Canons Blog: Subdivision and Property Tax Liens

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Subdivision can make for knotty property tax problems. Here's some help to untie them.

Assume Billy BlueDevil owns Parcel A in Carolina County. In February of 2018, he subdivides Parcel A into four subparcels, A1, A2, A3 and A4. Billy also owns Parcel B and a boat, all of which are listed Carolina County.

In March 2018, Billy sells subparcel A4 to Tommy Tarheel. Tommy also owns a small propeller plane he flies on weekends from Carolina County's small airport.

In December 2018 Tommy calls the county tax office and asks what he needs to pay to eliminate the lien on subparcel A4 because he wants to sell it to his brother.

What's the correct answer? Must Tommy pay all of the taxes on all four subparcels? What about the taxes on Parcel B? Or the taxes on Billy's boat? On Tommy's plane?

First, here's a quick refresher on tax liens.

If you've ever attended one of my property tax courses, you have heard me say this line roughly 100 times per day: "The real property tax lien includes taxes on the real property itself and taxes on all personal property listed by the same taxpayer in the same county in the same year other than RMV taxes." That line comes from GS 105-355, which also tells us that those real property tax liens arise automatically each January 1. (Remember that the tax office does not have a lien on *personal* property unless and until it levies upon that property.)

Second, look to GS 105-362 for the rules on when and how tax liens may be "discharged" (released) and what to do with subdivided property. That statute includes two provisions relevant here.

GS 105-362(b)(2) gives the tax collector the option to discharge the lien on a subdivided parcel "after the assessed valuation of the part to be released has been determined and certified to the tax collector by the tax supervisor." (Not sure who the "tax supervisor" is—let's assume that term refers to the assessor.) As a result, if the assessor has appraised the individual subdivided parcels then the tax collector may, but is not required to, release the lien on one of those subparcels if the taxes on that subparcel are paid even if the taxes on the other subparcels remain unpaid.

Keep in mind that this approach is optional. The tax collector may also refuse to release the lien on any of the subdivided parcels until all taxes owed on all of the subparcels are paid.

GS 105-362(b)(1) discusses how tax liens may be discharged when a taxpayer lists more than one parcel of real property in the same county and also lists personal property in that county.

If the taxpayer wishes to discharge the lien on one of her own parcels, the taxpayer needs to pay off all of the taxes owed on that parcel plus all of the taxes she owns on all personal property for that same tax year.

If a third-party wishes to discharge the lien on property owned by another taxpayer (in anticipation of purchasing that property or after doing so), then that third-party must pay off all of the taxes on that real property plus a percentage of the personal property taxes tax owed by the other taxpayer for that same year. The percentage is calculated as the value of the property being purchased by the third-party divided by the total value of real property listed in the county by the other taxpayer.

This calculation seems complicated but it is relatively simple in practice. Assume I own Parcels 1 and 2, each of which have tax appraisals of \$100,000. I also have a boat on which I owe \$100 of property taxes. If I want to clear the tax lien from Parcel 1, I would need to pay the taxes on Parcel 1 plus the full \$100 of taxes I owe on my boat. But if Aunt Betty and I enter into a contract for her to buy Parcel 1, then Aunt Betty could clear the lien on Parcel 1 by paying the taxes on Parcel 1 and 50% of the taxes owed on my boat. The 50% figure represents the percentage of my total real property tax value that I am selling to Aunt Betty (\$100,000 for Parcel 1 out of the \$200,000 total for Parcels 1 and 2).

With all of this in mind, let's return to the Billy BlueDevil scenario from above. What does Tommy need to pay to clear the lien on subparcel A4?

Under GS 105-362(b)(2), the Carolina County tax collector has a decision to make. One option is to require payment of all 2018 taxes owed on all four subparcels before releasing the tax lien on any one of them.

The other option is to agree to release the lien on subparcel A4 after it has been re-appraised by the assessor and the taxes on that reappraised value are paid. Under this option, the taxes on A1, A2, and A3 would not need to be paid before the lien on A4 could be released.

This decision is left to the discretion of the tax collector. My advice, as always, is to be consistent. Either always agree to release liens on subparcels when the taxes are paid on those reappraised values or always require payment of all taxes on the parent parcels before releasing those subparcel liens. Treat similarly situated taxpayers similarly.

Let's assume that the tax collector goes with the second option and permits Tommy to pay off the taxes on A4 after reappraisal. Then we need to apply the rule from GS 105-361(1) concerning the lien on real property for taxes on personal property owned by the same taxpayer. In this case, the taxpayer in question is Billy, because he was the owner of the real property in question as of January 1, 2018, the listing date for 2018 taxes.

To clear the 2018 lien from subparcel A4 under this approach, Tommy would need to pay the taxes owed on the reappraised value of A4 plus a percentage of the taxes Billy owes on his boat for 2018. That percentage will equal the reappraised value of subparcel A4 divided by the total tax value of all real property in Carolina County owned by Billy as of January 1, 2018 (in other words, the total tax value of subparcels A1, A2, A3, A4, and Parcel B).

What about the taxes owed on Tommy's plane? We don't need to worry about those taxes until next year. The taxes on Tommy's personal property (his plane) are not a lien on subparcel A4 for 2018 because he did not own A4 as of January 1; next year those taxes will be a lien on A4 assuming he still owns the real property and the plane as of January 1, 2019.

Links

- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-362.pdf