

---

## Coates' Canons Blog: Tax Foreclosures and Competing Liens

By Chris McLaughlin

Article: <https://canons.sog.unc.edu/tax-foreclosures-and-competing-liens/>

This entry was posted on September 13, 2012 and is filed under Finance & Tax, Property Taxes

---

When property owners stop paying their property taxes, it's a good bet that they've been ignoring other obligations concerning those properties as well. Weeds grow chest-high, houses slowly crumble, and neighbors begin to use the lots as informal trash dumps.

The properties become dangerous eyesores, forcing local governments to mow the weeds, demolish substandard housing, and remove the trash. The clean-up costs become liens on the properties that compete with property tax liens if the properties are sold at foreclosure.

I've described the legal requirements of tax foreclosures in past blog posts and bulletins, focusing in particular on the priority of competing liens. My colleagues have posted on the mechanics of nuisance abatement and demolitions of substandard housing.

Today's post focuses instead on the policy concerns that arise when a tax foreclosure involves competing liens held by different local governments—specifically, the decision by the foreclosing government to offer an opening bid and, if such a bid is offered, to set its amount.

While I know the black-letter law governing tax foreclosures, I've never litigated one myself. Recognizing that a man's got to know his limitations, I asked my friend and veteran tax foreclosure attorney Mark Bardill of Zacchaeus Legal Services to share his thoughts on setting an opening bid when competing liens are present.

Before we get to Mark's observations, here's a quick primer on competing liens in tax foreclosures. For the most part, local government liens have priority over other liens on real property such as private mortgage liens. This means local government liens get paid before those other liens if the property is sold at a tax foreclosure.

Property taxes liens are all "equal dignity": they share the same priority and get paid at the same time regardless of when or by whom the taxes were levied. A 2010 tax levied on Parcel A by Blue Devil City has the same priority as a 2011 tax levied on Parcel A by Carolina County. See GS 105-356.

Liens for nuisance abatements and demolitions arise automatically as a matter of law. Nuisance abatement liens, usually for mowing and trash removal costs, have the same priority as local property tax liens and can be collected using property tax remedies. See GS 153A-140 and 160A-193. Demolition liens, usually incurred while enforcing housing codes, can also be collected using property tax remedies but have the same priority as special assessments, which are junior to—and therefore paid after—local property tax liens. See GS 160A-443(6) and 160A-233(c).

When litigating a tax foreclosure, a local government is not required to offer an opening bid. Any party may open the bidding and possibly win the auction at any price level. If the highest bid is \$1, the property will be sold for that amount, free and clear of all liens included in the foreclosure. See GS 105-374 and 105-375. To avoid this result, many local governments will offer an opening bid at the amount of taxes, costs, and interest owed on the property. If no other bidder tops this opening bid, then the local government becomes the proud owner of the foreclosed property. See GS 105-376.

With these legal guidelines in mind, let's turn to the advice offered by Mark Bardill. Keep in mind that Mark's analysis assumes that the county does not have a contractual obligation to collect city property taxes, nuisance abatement costs, and demolition expenses. If it does, then the city may have a right to object to an opening bid that does not cover all of its liens.

---

*“The crux of the matter is how the county and city will coordinate the collection of lower-priority demolition liens along with the super-priority property tax and nuisance abatement liens.*

*It’s important to remember that both GS 105-374 and 105-375 require that when a county initiates a foreclosure, a city that holds liens on the property must be made a party to the litigation. The same is true in reverse. If not, the property would be sold subject to any liens held by local governments that were not parties to the foreclosure.*

*Naming all lienholders as parties protects not only the purchasers at our sales but the integrity of the foreclosure program itself. Otherwise, unsuspecting bidders will learn too late that the parcel they purchased is subject to additional liens. Public relations problems are sure to follow. Even if the purchasers are savvy enough to understand this nuance, the surviving liens will drive down the bids offered by potential purchasers and reduce the likelihood that the sale price will cover the property tax liens.*

*The decision concerning the opening bid should be based on the relative amounts of the liens on the property and the property’s market value. The county and city tax liens are usually about the same. But in most cases the demolition liens—and sometimes the nuisance abatement liens—are much greater than the property tax liens. For example, it would not be unusual for a parcel in foreclosure to be subject to a \$2,000 county tax lien, a \$1,500 city tax lien, a \$2,000 city nuisance abatement lien, and a \$9,000 city demolition lien.*

*If the tax collector opens bidding at the total of all liens, that bid risks driving away potential purchasers because it may exceed the property’s market value. But if the tax collector excludes the larger demolition lien from the opening bid, it will compare more favorably to the property’s market value and the chances of attracting additional bids increase dramatically.*

*Using the example from above, assume that there are \$2,000 in attorney fees, guardian ad litem fees, and out-of-pocket costs in connection with the foreclosure and that the parcel in question has a \$8,000 market value.*

*In Scenario 1, the tax collector opens the bidding at the total amount of everything owed on the property: \$16,500. That is more than twice the fair market value of the parcel. The county will almost surely be the high bidder and wind up buying the property, thereby removing it from the tax rolls.*

*In Scenario 2, the tax collector opens the bidding at the amount of all fees and costs, all property tax liens, and the nuisance abatement lien—in other words, everything except the demolition lien—for a total of \$7,500.*

*This opening bid will be comparable to the property’s market value, making it much more likely that a third party will submit a higher bid. If so, then the sale will provide the funds needed to satisfy the county and city property taxes, the city nuisance abatement lien, and the costs of the foreclosure. The county will hold one less parcel on its surplus property inventory that is exempt from property taxes. However, the property will be sold free and clear of the junior demolition lien, meaning the city will never recoup those costs.*

*By opening the bidding at the lower amount, the tax collector is taking reasonable measures to increase the chances that the property will be sold to someone other than the county, that the higher priority property tax and nuisance abatement liens will be collected for both the county and the city, and that the fees and costs associated with the foreclosure action and sale will be borne by the purchaser rather than the county.*

*The downside, of course, is that the city is not repaid for its demolition liens. But the city would not be paid for any of its liens under Scenario 1. If the city wishes to protect its demolition lien, it has the authority to bid and purchase the property itself.”*

I generally agree with Mark’s observations, with a couple of caveats.

First, while it’s true that the liens will not be paid immediately if the county purchases the property at the foreclosure sale, they may be paid down the road if the county is able to sell the property to a private party. GS 105-376 permits a local government to “buy” the property at the foreclosure sale without paying off the tax and other governmental liens on the property. But it then holds the property for the benefit of all governments that have liens on it and will be required to use the sale proceeds to pay off those liens if the property is later sold. Of course, if the property didn’t sell at the original



---

auction due to lack of buyers there's no guarantee that a buyer will be found at some later date. And those liens will be extinguished even if the eventual sale price is not sufficient to pay off all of them.

Second, as I mention above, if the attorney is collecting taxes and other liens on behalf both the county and city, the bid decision cannot be made unilaterally by the county. The city's interest may justify a higher opening bid when the county is contractually obligated to collect the city's debts.

## Links

- [canons.sog.unc.edu/?p=5089](https://canons.sog.unc.edu/?p=5089)
- [ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/ptb158.pdf](https://ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/ptb158.pdf)
- [www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb150.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb150.pdf)
- [canons.sog.unc.edu/?p=4747](https://canons.sog.unc.edu/?p=4747)
- [canons.sog.unc.edu/?p=6710](https://canons.sog.unc.edu/?p=6710)
- [www.zls-nc.com/Pages/default.aspx](https://www.zls-nc.com/Pages/default.aspx)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-356](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-356)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-140](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-140)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-193](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-193)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-443](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-443)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-233](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-233)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-374](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-374)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-375](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-375)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-376](https://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-376)