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## Coates' Canons Blog: The Nuts and Bolts of Property Tax Liens

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I've blogged recently about the importance of record ownership as of January 1 and January 6 for property tax listing and collection. Today I continue this New Year's theme and discuss the property tax liens on real property that arise each January 1.

### What taxes are included in the real property tax lien?

If you've attended any of my property tax collection courses, you've heard me repeat this mantra incessantly:

*The property tax lien on real property includes all taxes on the real property itself **plus** all taxes on personal property listed by the same taxpayer in the same jurisdiction **except** registered motor vehicles. (G.S. 105-355(a))*

The Machinery Act defines "real property" as land and improvements (in other words, buildings) on the land including mobile homes that meet certain requirements. G.S. 105-273(13).

An example: Tommy TarHeel owns real property Parcel A and Parcel B in Carolina County, where he also owns and lists a boat and a registered motor vehicle, a Ford Mustang. He also owns a vacation home on real property Parcel C in Wolfpack County.

Which property taxes are included in the real property tax lien on Parcel A? The taxes on Parcel A, of course, plus the taxes on the boat that Tommy lists in the same county as Parcel A. But not the taxes on the Mustang (taxes on registered motor vehicles are never a lien on real property). And not the taxes on Parcel B or Parcel C, because taxes on one parcel of real property never create a lien on another parcel of real property even if they are both in the same county.

What taxes are included in the real property tax lien on Parcel B? Similar answer as above: the taxes on Parcel B itself and the taxes on the boat.

That's right, the boat taxes are included in the lien on **both** parcels A and B. The county can't collect double taxes on the boat, of course, but the taxes on the boat are a lien on every parcel of real property owned by Tommy in the same county. If those boat taxes became delinquent, the county could collect them in a foreclosure action against either Parcel A or Parcel B. If Tommy wants to clear the tax lien on either parcel, he would be required to pay the taxes on that parcel as well as the taxes on the boat.

What taxes are included in the real property tax lien on Parcel C? Only the taxes on the Parcel C, because the boat is listed by Tommy in a different county.

Identifying the taxpayer is crucial to determining what taxes are part of a real property tax lien, especially so when corporations or partnerships are involved. If the taxpayer listing the personal property is not identical to the taxpayer listing the real property, the taxes on the personal are not a lien on the real.

Assume ABC Corp. owns business personal property that is located in a building owned by Billy Blue Devil. The taxes on ABC's business personal property are not a lien on Billy's real property, even if Billy Blue Devil is the sole shareholder and incorporator of ABC Corp.

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### **When does the tax lien on real property arise?**

Automatically as of January 1, the listing date. G.S. 105-355(a). The taxing jurisdiction is not required to record the lien with the Register of Deeds or file notice of the lien with the courts.

It follows that for taxes on personal property to be included in a real property tax lien, both the real and personal property must be owned (and therefore listed) by the same taxpayer as of January 1.

If I buy a boat on January 2, 2015 then I don't need to list that boat in my name for property taxes until January 1, 2016. As a result, the taxes on the boat are not a lien on my real property in that same county until 2016.

Note that a property tax lien on *personal* property does not arise unless and until a local government levies on a particular piece of personal property. G.S. 105-355(b).

### **What happens to the tax lien if real property is subdivided after January 1?**

This is a common and confusing situation. Assume Parcel A is subdivided in March 2015 into Parcels A1 and A2. Without the subdivision, the 2015 taxes on Parcel A would have been \$10,000. What taxes must be paid for the 2015 tax lien to be extinguished on Parcel A1?

Under G.S. 105-362(b)(2), the tax collector has the discretion either to require payment of all taxes owed on the parent parcel or to require payment only of taxes on the assessed value of the newly subdivided parcel. This discretion exists only if the assessor has valued the newly subdivided parcels; if not, then the tax collector must obtain payment of all taxes owed on the parent parcel before releasing the tax lien on any subdivided parcel.

In the example above, assume that the assessor has valued subdivided parcels A1 and A2 for 2015. The 2015 taxes on Parcel A1 are \$5,000 and the 2015 taxes on Parcel A2 are \$6,000 (it's not unusual for the total value of the subdivided parcels to be greater than the value of the undivided parent parcel).

If a buyer later wants to extinguish the lien on Parcel A1, the tax collector has a choice. She can require payment only of the \$5,000 2015 taxes on Parcel A1. Or she can require payment of the entire \$10,000 taxes owed on the parent parcel.

I think most collectors would choose the first option and release the subdivided parcel from the tax lien in return for taxes owed on that subdivided parcel. But that is not required of the tax collector; if there were questions about the likelihood of payment on the remaining subdivided parcel then the collector might choose to demand payment of all of the taxes on the parent parcel before releasing the lien on the subdivided parcel.

### **How is the property tax lien paid at foreclosure?**

That's a complicated topic that I tackle here and here. But the bottom line is that property tax liens have "super-priority" and are paid before almost all other liens on the same real property, including mortgage liens. The only type of lien that is paid before a property tax lien is a previously existing lien for state income or sales taxes. G.S. 105-356. For more on tax liens generally, see this bulletin.

For more on the foreclosure process generally, click [here](#).

## **Links**

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