# Coates' Canons Blog: The Tax Foreclosure Decision

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**Article: https://canons.sog.unc.edu/the-tax-foreclosure-decision/**

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Tax collectors are obligated to "use all lawful means" to collect their local governments' property taxes. G.S. 105-350(1). This provision implicitly obligates local governments to use the foreclosure remedy when available and necessary.

Despite this legal obligation some local governments remain hesitant to use foreclosure. They might be worried about the administrative and financial aspects of the process or about the negative publicity that might arise if they wind up evicting residents from their homes.

Those concerns are understandable but outweighed by the harm caused by the government's refusal to use what might the only effective remedy to collect certain taxes. The property tax system becomes less equitable when some taxpayers are permitted to ignore their tax obligations with no negative consequences. Collection rates and public confidence in the tax system are sure to drop as a result.

Taken together, the statutory guidance and the public policy interests lead to only one reasonable conclusion: local governments should at least consider the use of foreclosure on every property subject to a tax lien when other collection remedies fail. That said, there are a few legitimate reasons—most of them financial—why a local government might choose not to foreclose on a particular property.

Here are a few questions for tax officials and their governing boards to ask as they consider moving forward with a foreclosure.

1. **Have all other collection remedies been exhausted?**

Foreclosure eliminates all other Machinery Act remedies for property tax collection. G.S. 105-366(b). If the tax collector believes that another remedy (levy and sale or attachment and garnishment) is likely to satisfy the tax debt, the best approach is to try those other remedies first. A tax collector can use those remedies as many times as needed and as practical to satisfy a particular tax debt. Multiple levies and attachments may be in place simultaneously for a single tax. But once a tax collector begins the foreclosure process, she must terminate all of those other remedies.

2. **Will the property attract bids high enough to cover the taxes and costs?**

Allow me to play Captain Obvious for a minute: if a property is of such marginal value that it's unlikely to attract bidders willing to pay at least as much as is owed on the property, foreclosure may not make sense. Knowing this fact, the tax office needs to investigate the potential market value of the property before taking any other steps toward foreclosure. This process might involve physically inspecting the property, finding relevant comparable sales, and consulting with local real estate professionals. In some cases, the size and location of the property make it likely the only bidders would be the owners of neighboring properties. Contacting these individuals is helpful prior to any sale but in some cases it may be the key factor to determine whether foreclosure is even viable.

3. **Is the local government willing to sell the property at cost to a new buyer or to take ownership of the property?**

If pre-foreclosure market research suggests that a sale of the property won't produce enough funds to cover the taxes and costs owed, foreclosure still might make sense. First, the local government might be willing to sacrifice the delinquent taxes to get the property in the hands of a new owner who is more likely to stay current on future taxes. Second, the local government might be willing to purchase the property at the foreclosure sale with a bid at the amount of taxes and costs owed on the property. If nobody else tops that bid, then the local government becomes the owner. It can keep the property for public use or can sell it later under the rules governing the disposal of surplus real property. See G.S. 105-376.

4. **Are there other liens on the property that are senior to the property tax lien?**

Senior liens get paid from foreclosure sale proceeds before junior liens. The foreclosure of a senior lien extinguishes all junior liens on the same property. Senior liens present obstacles to foreclosure. Junior liens do not.

Happily for local tax collectors, local government property tax liens are generally senior to all other liens on real property. Mortgage liens, the most common lien found on real property besides property tax liens, are always junior to real property tax liens and therefore should never be a barrier to pursuing foreclosure. G.S. 105-355(b)(1). The same is true of federal tax liens. 26 U.S.C. 6323(b)(6)(A).

The only lien that might give a tax collector pause would be a state tax lien for income taxes or any other state-levied tax. Local government property tax liens are "first-in-time, first-in-right" with state tax liens, meaning whichever lien attaches to the property first is senior and gets paid first. ( See *Carteret County v. Long*, 349 N.C. 285 (1998), G.S. 105-356(a)(1), and G.S. 105-241(d).) State tax liens attach when recorded with registrar of deeds or docketed with the appropriate superior court. Real property tax liens arise and attach on each January 1.

As a result, a state tax lien is likely senior to a local property tax lien if the state recorded or docketed its lien prior to January 1 of the earliest year for which delinquent property taxes are owed on the foreclosure property. In this case, foreclosure may not make sense for a local government if the state tax lien exceeds the likely sale price of the property. Some local governments have had success negotiating with the N.C. Department of Revenue to relinquish its lien priority so that sale proceeds can be shared more equally. But if that is not possible, foreclosure will not be a great option for the local government because it is extremely unlikely the sale will produce enough funds to satisfy the delinquent property taxes.

5. **Would a foreclosure sale of the property create unusual public relations concerns?**

Tax collection is meant to be an objective and equitable process in which all similarly situated taxpayers are treated similarly. Local governments should not avoid foreclosure simply because they feel bad for the taxpayers involved.

But very occasionally subjective concerns might make foreclosure a less-than-ideal option for the local government. The facts involved with a particular delinquent tax account might lead a reasonable tax collector to conclude that the local government would be best served by avoiding foreclosure, at least temporarily.

Perhaps the tax office had been mailing the tax bills to an incorrect address. Perhaps the taxpayer had been escrowing tax payments with her mortgage company and that company absconded with that money and left the taxpayer in the lurch. One could imagine a variety of scenarios in which foreclosure is legally and financially feasible but not the wisest course of action at the present moment.

Instead, the tax office might want to consider a payment plan with the taxpayer even if that plan extends beyond the usual time period for such plans. The local government might have to wait longer to get paid than it would in a foreclosure action, but the public relations benefits could outweigh the minor financial loss.

For more on the tax foreclosure process, click here, here, or here.

## Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-350
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-366
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-376
- www.law.cornell.edu/uscode/text/26/6323
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-356

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-241
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