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## Coates' Canons Blog: When a Local Government Purchases Property at a Tax Foreclosure (Part I)

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Local governments are free to purchase property at any tax foreclosure auction, be it one of their own or one initiated by another government. This often occurs by default when a local government enters an initial bid at the amount of taxes and costs owed on the property and no other parties offer bids. Or it can occur intentionally when a local government wants to purchase the property being sold and successfully outbids another party.

Either way, the local government will become the owner of the property assuming that the government does not assign its bid to another party and that its bid is not topped during the upset bid period. The local government's ownership of the property will be governed by G.S. 105-376.

A few important points to keep in mind if a local government is the high bidder:

### Purchase Price

The local government is required to pay only that amount that would not be distributed to it and other local governments for taxes, interest, and costs.

In the common scenario where the local government bid only enough to cover those taxes, interest, and costs, the local government normally not be required to pay anything at the sale other than the court's filing fees if they were not paid at the beginning of the foreclosure.

If the local government bid more than what was owed on the property, that local government would be required to pay to the court the difference between its bid and all of the taxes, interest, and costs owed on the property.

Here are examples of each scenario:

Assume Carolina County forecloses on Parcel A and offers an initial ("minimum") bid of \$5,000, the amount of taxes, interest and costs owed on the property. \$2,000 of that amount is owed to Blue Devil City for its taxes, interests, and costs. If no other party bids on the property, then Carolina County is the winning bidder and is not required to pay anything other than perhaps the court's filing fee.

Now assume Carolina County forecloses on Parcel B and decides that it wants to purchase the property for use as an addition to a neighboring county park. The county submits an initial bid of \$5,000, the amount of taxes, interest, and costs owed on the property, \$2,000 of which is owed to Blue Devil City. Tommy TarHeel then offers a bid of \$7,000. The county ups its bid to \$7,500 and wins the auction. To finalize the sale, the county must pay \$2,500 (the difference between its winning bid and the taxes, costs and interest owed on the property) to the clerk, plus the court's filing fee if not previously paid. The clerk must then determine how to distribute those excess funds to either the taxpayer or to creditors holding junior liens on the property.

### "Hold for the benefit of all taxing units"

If the local government takes ownership of the property at the close of the foreclosure process, that government holds the property for the benefit of all local governments that were owed taxes or other debts collectible as taxes relating to the property (special assessments, nuisance abatement costs, etc.—see this bulletin for more details).

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This requirement obligates the purchasing government to reimburse the other local governments for their interests in the property if the property is later sold. (I'll share details on how to distribute sale proceeds in Part II of this post.)

If the local government chooses instead to hold the property for public use, G.S. 105-376(b) requires that local government to "make settlement" with the other governments "in such amount as may be agreed upon by the governing bodies." If the local governments cannot agree on how much the purchasing government should pay the others for their taxes and other debts owed on the property, the dispute must be resolved by the state superior court.

### **Subsequent sale: public or private?**

Most often the purchasing government wants to sell the foreclosed property as soon as possible. The same rules that govern the disposition of "regular" public property also govern the sale of property purchased by a local government at a tax foreclosure sale. Government property may be sold to the general public by (1) sealed bid, (2) upset bid, or (3) public auction. (For more details on the disposal of public property, check out my colleague Norma Houston's excellent book.)

If the purchasing government sells the property through any of these types of public sales, there are no restrictions on the selling price. Any party (including the former owner) may purchase the property for any price so long as the selling government follows the general requirements for the disposal of public property.

Property purchased by a local government at a tax foreclosure sale may also be sold by private sale to the former owner or to any other party who previously had an interest in the property (a mortgage lender, for example). G.S. 105-376(c).

In a private sale, the general public is not given the opportunity to bid on the property. This type of sale is permitted only if the sale price is equal to or great than the total amount of taxes, interests and costs (not including special assessments) owed to all local governments on the property. This amount must include taxes that have become a lien on the property (or would have become a lien on the property were it not owned by a local government) since the foreclosure sale.

Consider again the example above in which Carolina County purchases at its own foreclosure sale Parcel A, on which \$5,000 of taxes, interest and costs were owed. \$2,000 of those taxes, interests and costs were owed to Blue Devil City. The foreclosure began in late 2015 and the county finalizes the foreclosure sale in early 2016.

Wanda Wolfpack, the taxpayer who owned Parcel A before the foreclosure sale, contacts the county and asks what she can do to get her property back. Although it is too late to terminate the foreclosure, the county could sell the property back to Wanda at a private sale. The general public would not receive notice of the sale or the opportunity to bid on the property.

The minimum price for a private sale of the property back to Wanda would be \$5,000, the total amount of taxes, interest and costs owed to the county and the city, *plus* the estimated 2016 taxes for both the city and the county that are now a lien on the property. This is true regardless of whether the city participated in the foreclosure and regardless of what price Carolina County actually bid for the property at the foreclosure sale. The county could negotiate a higher price with Wanda, of course; the Machinery Act merely sets a floor for the private sale.

Coming in Part II (I know you can't wait!!): how to distribute the sale proceeds and what to do if those proceeds aren't enough to pay off all of the taxes owed on the property.

## **Links**

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-376](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-376)
- [sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf](http://sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf)
- [www.sog.unc.edu/publications/book-chapters/public-contracts-competitive-bidding-and-property-disposal](http://www.sog.unc.edu/publications/book-chapters/public-contracts-competitive-bidding-and-property-disposal)