



The Property Tax Lien

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1. What is a property tax lien?

A property tax lien is the tool a tax collector uses to collect a tax obligation from a taxpayer's property. In technical terms, a lien is "the right to have a demand satisfied out of the property of another."¹ A property tax lien allows the tax collector to satisfy unpaid taxes by selling the taxpayer's real property (through foreclosure) or tangible personal property (through levy and sale) or by collecting intangible property due to the taxpayer (through the attachment of bank accounts, wages, and rents).

2. When does a tax lien attach to property?

A property tax lien is not enforceable against a particular piece of property until it *attaches* to that property. Note that a tax lien attaches to *property*, not to a taxpayer. Once a tax lien attaches to a specific property, it generally remains attached to that property until the taxes that gave rise to the lien are satisfied, regardless of who owns the property at that time. Please see Question 7 for a detailed discussion of how tax liens are discharged or extinguished.

A property tax lien on *real* property attaches on January 1 of the year the tax is levied.² For example, the 2009 property tax liens on real property arose on January 1, 2009, even though those property taxes are levied for the fiscal year that runs from July 1, 2009 to June 30, 2010.

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1. *Thigpen v. Leigh*, 93 N.C. 47 (1885).

2. N.C. GEN. STAT. (hereinafter G.S.) § 105-355(a). This is also true for property annexed by a city or town. Annexations cause the municipal tax lien on the annexed property to relate back to January 1 preceding the fiscal year in which the annexation occurred. G.S. 160A-58.10(b). For example, if Blue Devil City annexes property in Carolina County on March 1, 2010, the lien on the annexed territory for 2009 taxes (which cover the period July 1, 2009 to June 30, 2010) relates back to January 1, 2009. The 2009 municipal taxes will be prorated for the annexed properties. The 2010 municipal taxes will be levied in full with the lien attaching as of January 1, 2010.

This occurs automatically and no further action by a local government is required to make the lien enforceable. However, a property tax lien on *personal* property attaches only if and when the tax collector levies upon or attaches that property for delinquent taxes.

Consider the situation of Tina Taxpayer. She resides in the fictional Carolina County and lists for taxation in that county real property (Parcel A) and personal property (a boat). The lien for 2009 Carolina County property taxes attaches to Parcel A on January 1, 2009. Although the property taxes on Tina's boat also arise on January 1, 2009, there is no tax lien on that boat unless and until the Carolina County tax collector levies upon and seizes it for delinquent property taxes.

3. What taxes are included in the property tax lien?

This depends on the type of property being attached.

a. Tax liens on real property

A tax lien on real property and related improvements³ includes taxes payable in the fiscal year of levy as well as deferred taxes that are not yet due and payable under such programs as the homestead circuit breaker and the present-use value program.⁴ This lien also includes property taxes on all *personal* property owned by the same taxpayer in the taxing unit, excluding registered motor vehicles.⁵

Consider again Tina Taxpayer, who lists in Carolina County a parcel of real property (Parcel A), a boat, and a registered motor vehicle. The tax lien on Parcel A will include the taxes on the real property itself and taxes on the boat but not taxes on the vehicle.

What if Tina listed in Carolina County two parcels of real property (parcels A and B) as well as her boat and vehicle? Because taxes on personal property create a lien on all real property owned by the same taxpayer in the same taxing jurisdiction, the property taxes on Tina's boat would be a lien on *both* parcels of real property listed by Tina. The boat taxes may be collected only once, of course, but the tax collector would have the option of enforcing the lien on either parcel of real property.

However, taxes on Parcel A will not create a lien on Parcel B, or vice-versa. Taxes on one parcel of real property do not become a lien on other parcels of real property owned by the same taxpayer in the same jurisdiction. If Tina pays the 2009 taxes on Parcel A and her boat, the entire tax lien on Parcel A is extinguished. If the taxes on Parcel B become delinquent, the tax collector may foreclose on Parcel B but has no lien and therefore no remedy against Parcel A to collect taxes on Parcel B.

When determining which taxes should be included in the real property tax lien, tax collectors must be careful to distinguish between separate taxpayers. Confusion often arises when spousal, corporate, and partnership taxpayers are involved. Property owned jointly by hus-

3. Taxes on improvements to and separate rights in real property are a lien on the real property regardless of whether those improvements and separate rights are owned and listed by another party. G.S. 105-355(a)(2).

4. See G.S. 105-277.1B(h) (circuit breaker) and G.S. 105-277.4(c) (present-use value). For a detailed discussion of the collection of deferred taxes, please see Christopher B. McLaughlin, "Collection of Deferred Taxes," *Property Tax Bulletin* No. 149 (August 2009), online at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb149.pdf

5. G.S. 105-330.4(c) provides that taxes on registered motor vehicles do not become a lien on real property owned by the same taxpayer.

band and wife is listed separately from property owned individually by either the husband or the wife.⁶ Taxes on personal property owned individually by either a husband or a wife do not become a lien on real property listed by the husband and the wife as tenants by the entirety. Similarly, taxes on personal property listed by a corporation or partnership do not become a lien on real property listed by a shareholder of the corporation or partner in the partnership—even if the corporation or partnership is owned and controlled exclusively by that one shareholder or partner.

A local government's tax lien on real property also may include other debts owed by the taxpayer that for collection purposes are granted a status similar to that of property taxes. These debts may include special assessments,⁷ solid waste fees,⁸ and costs incurred by the local government to eliminate public nuisances⁹ or violations of minimum housing standards¹⁰ on the taxpayer's property. Different attachment rules apply to these liens, which are discussed in more detail in Question 6.

b. Tax liens on personal property

A tax lien on personal property may include any and all property taxes owed by the owner of the property as well as other debts with similar collection status such as special assessments.

Return to the example of Tina Taxpayer, who lists in Carolina County two parcels of real property, a boat, and a registered motor vehicle for 2009 property taxes. There are no property tax liens on either the boat or the vehicle unless and until the Carolina County tax collector levies upon and seizes them under Section 105-312 of the North Carolina General Statutes (hereinafter G.S.) to satisfy delinquent taxes. If the 2009 property taxes on Tina's boat become delinquent and the tax collector were to levy upon and seize Tina's vehicle to satisfy those taxes, the tax collector would have a lien on the vehicle as of the date of seizure. The tax collector would have no lien upon Tina's boat even though the boat was the property that generated the unpaid taxes.

4. What happens to the tax lien if the property changes hands?

Transfers of ownership do not extinguish tax liens. With few exceptions, once a lien attaches to property it remains attached to that property until either the underlying taxes are paid or the tax collector sells or forecloses upon the property. See Question 7 for a complete list of situations in which the tax lien is discharged or extinguished.

Because personal property must be either physically secured or seized by the tax collector for a tax lien to attach, it is rare for the ownership of the property to change after the lien attaches. If personal property were transferred after being levied upon by the tax collector, the tax lien would remain attached to the property in the hands of the new owner.

However, real property often changes hands when it is already subject to a lien, because the tax lien on real property arises as a matter of law on January 1 of each year. If the lien is not satisfied at transfer, it remains attached to that property in the hands of the new owner. The

6. G.S. 105-302(c) (rules for listing real property) and G.S. 105-306(c) (rules for listing personal property).

7. G.S. 153A-200(c) (counties) and G.S. 160A-233(c) (cities).

8. G.S. 153A-293 (counties) and G.S. 160A-314.1 (cities).

9. G.S. 153A-140 (counties) and G.S. 160A-193 (cities).

10. G.S. 160A-443(6) (covers both counties and cities).

transfer of real property cannot extinguish an existing tax lien. But there is one circumstance in which a transfer can *create* a tax lien. This occurs when real property that is completely or partially exempt from property tax as of January 1 is transferred prior to July 1 (the start of the tax year) to an owner who does not qualify for an exemption. In such a situation, the property is taxable in the hands of the new owner for the entire year and the resulting tax lien relates back to January 1.¹¹

The reverse is not true. Property that is taxable as of January 1 remains taxable for the entire tax year even if it is sold to an exempt owner before the tax year begins. The tax lien is not extinguished simply because the new owner is exempt from property taxes. The tax lien remains enforceable against that new owner unless that new owner is a government or related agency. In such a case, the tax lien is not enforceable against the governmental owner but remains attached to the property and enforceable against subsequent nongovernmental owners.¹² Although a tax collector may not enforce a tax lien against a governmental owner, under G.S. 105-385(c) governments and related agencies are obligated to satisfy all outstanding tax liens whenever they purchase real property. This obligation is triggered only by a purchase, not by a gift or by a transfer by will, and can be enforced through a civil lawsuit against the governmental owner.¹³

A few examples might help illustrate these principles. Assume that as of January 1, 2009, Parcel A is owned by the Very Expensive School for Rich Kids, an educational organization exempt from property taxes. If the Very Expensive School sells Parcel A to Tina Taxpayer prior to July 1, 2009, the property is taxable for the entire 2009 tax year and the tax lien attaches and relates back to January 1, 2009. If the sale to Tina occurs on or after July 1, 2009, Parcel A is exempt from property taxes for the entire 2009 tax year.

Continuing with the same example, assume Tina Taxpayer lists Parcel A for taxation in Carolina County for 2010 but then sells Parcel A to the Slightly Less Expensive School for Upper-Middle-Class Kids, another educational organization exempt from property taxes, in March 2010. The property would remain taxable for the 2010 tax year and the lien for 2010 property taxes would remain attached to Parcel A and enforceable against the Slightly Less Expensive School if the 2010 taxes are not paid by their delinquency date of January 6, 2011.

If Tina instead sells Parcel A to the North Carolina Department of Revenue (DOR) in March 2010, the property still remains taxable for the 2010 tax year and the tax lien remains attached. Under G.S. 105-385(c), the DOR is obligated to satisfy the 2010 tax lien at closing. If the DOR fails to satisfy this obligation, the tax collector's only remedy against the DOR would be a civil lawsuit. The tax lien could not be enforced against the DOR, although it would remain attached to the property if the taxes remain unpaid and enforceable against subsequent nongovernmental owners.

11. G.S. 105-285(d).

12. See *Vaughn v. Board of Commissioners of Forsyth County*, 118 N.C. 636 (1896) (government property exempt from seizure and sale by creditors).

13. Nor does G.S. 105-385(c) apply when the federal government seizes property in a forfeiture action. Thankfully for local governments, federal marshals have a policy of paying all outstanding local taxes on property seized in forfeiture actions. See Letter from Walter B. Edmisten, United States Marshal, Western District of North Carolina, to Mecklenburg County Tax Assessor, January 8, 1999.

5. What if the property loses value or is destroyed after the tax lien attaches?

The taxable value of all property, both real and personal, is determined as of January 1 of each year.¹⁴ Changes in value after that date have no effect on the tax obligation relating to that property even if the entire property is destroyed before the tax year begins. Because the underlying tax obligation is not affected by a subsequent change in value of the property, the related tax lien is also unaffected and remains enforceable even if the property subject to the lien is completely destroyed.

Here are two examples demonstrating these rules. First, assume that Carolina County assigns Parcel A a 2010 tax value of \$200,000, representing \$50,000 for the land and \$150,000 for a house on that land. If the house is completely destroyed by fire on March 1, 2010, the listing taxpayer remains responsible for the tax owed on the entire \$200,000. Carolina County retains a lien on the real property for the entire tax bill.

Second, consider a boat listed for taxes in Carolina County that sinks to the bottom of the ocean twenty miles off the coast of North Carolina on March 1, 2010. Despite the fact that the boat is unrecoverable, the listing taxpayer remains obligated for the 2010 taxes. The tax collector had no lien on the boat, because the boat had not been levied upon—and could not have been levied upon because the 2010 taxes were not yet delinquent. But if the taxpayer also listed real property in Carolina County, the tax collector would still have a lien on that real property for the taxes on the boat. And if those taxes become delinquent, the tax collector could foreclose on the real property or seize or attach the taxpayer's personal property to satisfy the taxes on the boat, despite the fact it now rests on the bottom of the Atlantic Ocean.

Similar questions arise when a parcel of real property is subdivided after the tax lien attaches. Which tax liens should attach to the subdivided parcels? Under definition of “responsible taxpayer” in G.S. 105-273-(17), the owner of one subdivided parcel could be held responsible for the entire tax lien on the undivided parcel. However, in practice, most tax offices would seek to enforce only a portion of the entire lien on the undivided parcel, based on the relative tax values of the subdivided parcels.

6. Are tax liens paid before other liens on the same property?

Often but not always.

Property can be subject to multiple liens at the same time. These competing liens can arise from a number of different sources:

- deeds of trust on real property such as mortgage loans
- security interests in personal property such as motor vehicle loans
- judgment liens arising from private lawsuits against the taxpayer
- state tax liens
- federal tax liens
- other local government tax liens for property taxes or special assessments

When multiple liens exist, the order of payment is determined by the *priority* of the liens. Liens with higher priority—“senior” liens—are paid before liens with lower priority—“junior” liens. Typically, the Machinery Act makes property tax liens senior to other liens. But this is not always the case. Sometimes priority will be determined by the dates the competing liens

14. G.S. 105-285(b) and G.S. 105-285(d).

Table 1. Real Property: Priority of Local Government Liens

Type of lien	Other local real property taxes	Other local personal property taxes	Other local special assessments	State taxes ^a	Federal taxes ^b	Private
Real property taxes (G.S. 105-356(a))	Equal dignity	Equal dignity	Senior	First in time, first in right	Senior	Senior
Personal property taxes (G.S. 105-356(a))	Equal dignity	Equal dignity	Senior	First in time, first in right	First in time, first in right	Senior
Solid waste fees (G.S. 153A-293 or G.S. 160A-314.1)						
Nuisance abatement (G.S. 153A-140 or G.S. 160A-193)						
Special assessments (G.S. 153A-200(c) or G.S. 160A-233(c))	Junior	Junior	Equal dignity	First in time, first in right	Senior	Senior
Minimum housing standards repair/demolition ^c (G.S. 160A-443(6)(a))	Junior	Junior	Equal dignity	First in time, first in right	First in time, first in right	Senior

Note: Find the lien in the left-hand column and read across to determine its relative priority.

a. *Carteret County v. Long*, 349 N.C. 285, 507 S.E. 2d 39 (1998) and G.S. 105-241(d).

b. 26 U.S.C. § 6323.

c. This category refers only to liens on the specific real property that required repair or demolition. Under G.S. 160A-443(6)(b), a local government that incurs repair or demolition costs to enforce minimum housing standards is also granted liens on certain other real property owned by the same owner. However, these additional liens are not granted any preferential priority. They are junior to liens for local taxes and special assessments and first in time, first in right as to all other liens.

attached to the property, a situation described as “first in time, first in right.” In general, the earlier a lien attaches, the more senior it is.

When a lien holder enforces a lien, that lien and all junior liens are extinguished regardless of whether the property produces enough cash to satisfy those liens.¹⁵ Senior liens are not extinguished and remain attached to the property after the sale unless they are paid in full with sale proceeds.

15. For real property, see *Dixieland Realty Co. v. Wysor*, 272 N.C. 172, 158 S.E.2d 7 (1967) (foreclosure of senior mortgage extinguishes junior mortgages and liens) and G.S. 10339.68 (real property sold at execution subject only to senior liens); b for personal property, see G.S. 25-9-622 (acceptance of collateral in full or partial satisfaction of the secured obligations extinguishes all junior liens on the collateral.)

The following three tables summarize the priority rules that govern liens for taxes and other obligations that are treated like property taxes for collection purposes, such as special assessments and public nuisance abatement costs.

Table 1 covers liens on real property. To use this table, first find the type of lien held by the tax collector in the left-hand column. Then read across that row to determine the priority of that lien relative to other types of liens that might also be attached to the same property. Note that this table distinguishes between property tax liens representing taxes on the real property itself and property tax liens representing taxes on other personal property. These liens have different priorities relative to federal tax liens (discussed more below).

“Equal dignity” means that the two liens have the same priority, are paid at the same time upon foreclosure sale, and share proportionately in the proceeds if the sale does not produce enough cash to satisfy both liens entirely. All property tax liens have the same priority and are of equal dignity with all other property tax liens and liens for solid waste fees and nuisance abatement costs, which are granted the same collection status as property taxes.

For example, assume that Carolina County and Blue Devil City both have property tax liens on Parcel A—\$600 for the county and \$400 for the city. These two liens are of equal dignity and have the same priority regardless of when they arose. The county’s lien could be from 2009, and the city’s lien could be from 2001, or vice-versa; the two liens would still have the same priority. If the property is eventually foreclosed upon either by the city or by the county (or by both) for nonpayment of taxes, the two tax liens would be paid at the same time from the sale proceeds.¹⁶ If the foreclosure sale produced \$100 after costs and fees, the city and county will share these proceeds in proportion to their liens—\$60 for the county and \$40 for the city.

“Senior” means that the lien in the left-hand column has priority over the other lien on the property. A property tax lien on real property always has priority over a special assessment lien and private lien such as a deed of trust (mortgage) even if one of these liens has attached to the real property before the property tax lien. For example, assume that in 2006, Blue Devil City levies a special assessment on Parcel A. If Carolina County forecloses on Parcel A for delinquent 2008 taxes, the county’s property tax lien has priority over the city’s special assessment lien despite the fact that the tax lien arose two years after the special assessment lien.

“Junior” means that the lien in the left-hand column has a lower priority than the other lien on the property. A special assessment lien always has a priority lower than that of local, state, and federal tax liens, regardless of which lien attached first.

“First in time, first in right” means that the first of the two liens to attach and become “perfected”—in other words, enforceable against other liens—has priority. For example, a local government property tax lien is first in time, first in right compared with a lien for unpaid state income or sales taxes.¹⁷ If Carolina County forecloses on Parcel A for delinquent 2008 property taxes, the county’s property tax lien would be senior to state tax liens that attached to Parcel A after January 1, 2008—the date on which the 2008 property tax lien attached to real property—and junior to state tax liens that attached before that date.

To determine which lien first attached and became perfected, use Table 2.

16. Although the details of the foreclosure process exceed the scope of this bulletin, note that this statement is true only if both the city and the county participate in the foreclosure action. G.S. 105-374 and G.S. 105-375.

17. *Carteret County v. Long*, 349 N.C. 285, 507 S.E. 2d 39 (1998).

Table 2. Real Property: Attachment/Perfection Dates for Liens

Type of Lien	Date of attachment/perfection
Real property tax lien (G.S. 105-356(a))	January 1 of the year in which the taxes or fees are levied
Personal property tax lien (G.S. 105-356(a))	(tax liens become “choate” on the date the local government adopts its budget ordinance, for purposes of determining priority of personal property taxes liens relative to federal tax liens)
Solid waste fee lien (G.S. 153A-293 or G.S. 160A-314.1)	
Special assessment lien (G.S. 153A-200(c) or G.S. 160A-233(c))	Date on which the governing board confirms the assessment roll
Nuisance abatement lien (G.S. 153A-140 or G.S. 160A-193)	Date on which costs are incurred
Minimum housing standards repair/demolition lien (G.S. 160A-443(6)(a) and (b))	
State tax lien (G.S. 105-241(d))	Date on which lien is recorded in the clerk of superior court
Federal tax lien (26 U.S.C. § 6323(f) and G.S. 44-68.12)	

Two unique aspects of federal and state tax liens bear discussion. First, unlike local property tax liens, state and federal tax liens must be recorded in the appropriate superior court in order to be enforceable against other liens.¹⁸ Second, when determining the priority of local tax liens as compared to a federal tax lien on real property, the local tax collector must distinguish between the lien for taxes on the real property itself and the lien for taxes on personal property owned by the same taxpayer. The lien for taxes on the real property always has priority over a federal tax lien, regardless of which lien attached first.¹⁹ However, the lien for taxes on personal property is first in time, first in right relative to a federal tax lien, based on a comparison of the date the federal tax lien was recorded in the appropriate superior court and the date the local tax lien became “choate”—when it became specific as to the property and the amount of taxes secured.²⁰ Local property taxes become specific when the local budget ordinance is adopted and the tax rate finalized, which is required to occur before July 1.²¹

For example, assume that the federal government records a tax lien against Parcel A in Carolina County Superior Court on February 1, 2009. Carolina County holds a 2009 property tax lien against Parcel A, consisting of \$600 in taxes on Parcel A and \$100 in taxes on a boat owned by the same taxpayer. The federal lien would be junior to the \$600 county lien for taxes on Parcel A but would be senior to the \$100 county lien for taxes on the boat, which were not choate on February 1, 2009, because the county had yet to adopt its tax rate.

Table 3 addresses the priority of tax liens on personal property. As with Table 1, find the type of lien held by the tax collector in the left-hand column. Then read across that row to determine

18. G.S. 105-241 and 26 U.S.C. § 6323(f)(1).

19. 26 U.S.C. § 6323(b)(6) and G.S. 105-346(a)(1).

20. *United States by and through Internal Revenue Service v. McDermott*, 507 U.S. 447, 449 (1993).

21. G.S. 159-13(a).

Table 3. Personal Property: Priority of Local Government Liens

Type of lien	Other local real property taxes	Other local personal property taxes	Other local special assessments	State taxes	Federal taxes	Private
Personal property taxes on the property subject to lien (G.S. 105-356(b))	First in time, first in right	First in time, first in right	Senior	Senior	First in time, first in right	Senior
Personal property taxes on other property (G.S. 105-356(b))	First in time, first in right	First in time, first in right	Senior	First in time, first in right	First in time, first in right	First in time, first in right
Real property taxes (G.S. 105-356(b))						
Solid waste fees (G.S. 153A-293 or G.S. 160A-314.1)						
Nuisance abatement (G.S. 153A-140 or G.S. 160A-193)						
Special assessments (G.S. 153A-200(c) or G.S. 160A-233(c))						
Minimum housing standards repair/demolition (G.S. 160A-443(6)(a))	Junior	Junior	First in time, first in right	First in time, first in right	First in time, first in right	First in time, first in right

Note: Find the lien in the left-hand column and read across to determine its relative priority.

the priority of that lien relative to other types of liens that might also be attached to the same property. The terms “equal dignity,” “first in time, first in right,” “senior,” and “junior” have the same meanings as in Table 1.

Note that Table 3 distinguishes between a lien for taxes on the property that is the subject of the lien (in row 1) and a lien for taxes on other real or personal property (in row 2). The former is always senior to both state tax liens and private liens (such as those held by finance lenders). The latter is first in time, first in right to both state tax and private liens based on when it attaches.

Use Table 4 to determine the date of attachment for a lien on personal property that is first in time, first in right as to other liens.

Unlike a property tax lien on real property, a property tax lien on personal property does not attach automatically on January 1. Local property tax liens—and other liens collectible as property taxes—attach to personal property only when a tax collector levies upon the property (for tangible personal property like boats, motor vehicles, and equipment) or provides notice of

Table 4. Personal Property: Attachment/Perfection Dates for Liens

Type of lien	Date of Attachment/Perfection
Real property tax lien (G.S. 105-356(a))	Date on which <i>tangible</i> personal property is levied upon
Personal property tax lien (G.S. 105-356(a))	or Date on which <i>intangible</i> personal property is attached/garnished
Solid waste fee lien (G.S. 153A-293 or G.S. 160A-314.1)	
Special assessment lien (G.S. 153A-200(c) or G.S. 160A-233(c))	
Nuisance abatement lien (G.S. 153A-140 or G.S. 160A-193)	
Minimum housing standards repair/demolition lien (G.S. 160A-443(6)(a))	
State tax lien (G.S. 105-241(d))	
Federal tax lien (26 U.S.C. § 6323(f) and G.S. 44-68.12)	Date on which lien is recorded in the clerk of superior court

attachment and garnishment (for intangible property like bank accounts and wages). The same is true of state tax liens. A federal tax lien is perfected and enforceable against other lien holders when the federal government records its lien in the appropriate superior court.

An example might help illustrate the rules listed in tables 3 and 4. Assume that in 2010 the DOR levies upon the boat owned by Tina Taxpayer in Carolina County for unpaid 2007 state income taxes. While this boat is in the hands of the county sheriff awaiting sale, Carolina County levies upon the boat for delinquent 2009 property taxes owed by Tina. The county's lien represents taxes on Tina's real property as well as property taxes on the boat itself. When Tina purchased the boat in 2005, she financed it with a loan from Big Bank. The bank recorded a security interest in the boat to secure the loan. What are the relative priorities of these liens?

Applying the rules listed in tables 3 and 4, the county tax lien representing taxes on the boat itself has the highest priority, despite the fact that the county's liens were the last to attach. The county tax lien representing taxes on Tina's real property is first in time, first in right to both the state tax lien and Big Bank's lien. Both the state tax lien and Big Bank's lien have priority over the county tax lien for real property taxes because they attached before the county's tax lien. Between the state tax lien and Big Bank's lien, the first to attach has priority, meaning that Big Bank's lien is senior.²² Simply put, the relative priority of these four liens is:

1. Carolina County's lien for property taxes on the boat
2. Big Bank's security interest
3. DOR's lien for unpaid income taxes
4. Carolina County's lien for real property taxes

²² G.S. 105-241(d).

7. When is a tax lien discharged, extinguished, or made unenforceable?

This can occur in a number of situations, the most obvious of which is the payment of the taxes that gave rise to the lien. Below is a list of events that can cause a tax lien to “unattach” from property or become unenforceable. Numbers 1, 2, 3, and 4 discharge or extinguish the lien entirely; when one of these events occurs, the lien no longer exists. Numbers 5, 6, and 7 render the tax lien unenforceable against some or all parties with a legal interest; the lien still exists, but it has limited or no utility for a tax collector.

1. Payment of the taxes, interest, and costs that gave rise to the lien.²³
2. Release by the governing board of the taxes, interest, and costs under G.S. 105-381.
3. Sale through foreclosure or levy and execution by the taxing unit or by a senior lien holder.²⁴
4. By order of a federal bankruptcy court judge.²⁵
5. Reliance on a certificate of taxes owed and issued by the tax collector under G.S. 105-361 or a tax receipt for payment by check or electronic means under G.S. 105-357(b)(1) (unenforceable against the party that relies on the documents and against all subsequent innocent purchasers).
6. Transfer of the property to a government or related agency (unenforceable against the government or related agency).
7. Application of the Machinery Act’s statute of limitations, G.S. 105-378(a), which bars enforced collection actions more than ten years after the original due date of the underlying taxes (unenforceable against all parties).

Number 1 deserves special mention when it involves satisfaction of a tax lien on real property that includes both real and personal property taxes. Under G.S. 105-362(a), a taxpayer who wishes to discharge the tax lien on his or her real property must pay not only the taxes on that real property but also pay all personal property taxes that are included in that lien. However, if a prospective buyer or person with a legal interest in that same real property wishes to discharge the tax lien, that person must pay only the taxes on the real property plus a proportionate part of the personal property taxes included in that lien.

Here’s how it works. Assume Tina Taxpayer lists for 2009 taxes in Carolina County two parcels of real property (Parcel A and Parcel B) as well as a boat. Parcel A and Parcel B each have tax values of \$100,000. If Tina wishes to discharge the 2009 tax lien on Parcel A, she must pay the 2009 taxes on Parcel A plus *all* of the taxes owed on the boat. Now assume that Wanda Wolfpack is under contract to purchase Parcel A. If she wishes to discharge the lien on Par-

23. G.S. 105-362(a) (real property liens), G.S. 105-366, and G.S. 1-339.57 (personal property). Note that under 105-363, a co-owner of real property may release his or her share of the property from the tax lien by paying the appropriate percentage of the total taxes, interests, and costs that are a lien on the property.

24. *Supra*, n. 15.

25. A bankruptcy court judge can order that property subject to a local tax lien be sold “free and clear” of all liens, with the lien to attach to the proceeds. However, there is no guarantee that there will be proceeds to which a lien can attach, because often a creditor may be permitted to purchase the property by “bidding” and releasing its claims against the debtor. 11 U.S.C. 363(f) and (k). For a detailed discussion of how a bankruptcy filing affects the tax collection process, please see Shea, Riggsbee, Denning, and Robert E. Price, Jr., “Collecting Property Taxes in Bankruptcy,” *Property Tax Bulletin* No. 139 (August 2006), online at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb139.pdf.

cel A, Wanda must pay the taxes on Parcel A plus a *proportionate part* of the taxes on the boat. This proportion is calculated by dividing the assessed value of the real property in question by the assessed value of all real property listed in the county by the same taxpayer. In this situation, Parcel A represents 50 percent of the assessed value of all real property listed in Carolina County by Tina Taxpayer (\$100,000/\$200,000). Wanda, therefore, must pay 50 percent of the taxes on Tina's boat, in addition to the taxes on Parcel A, to discharge the tax lien on Parcel A.

8. Can a private party enforce a tax lien?

Yes, in limited circumstances.

Contrary to a persistent myth, a person cannot gain rights to real property simply by paying the taxes owed on that real property. That said, special rules apply to co-owners, lien holders, and other parties who *already* have a legal interest in a particular piece of real property. Under G.S. 105-363 and G.S. 105-386, if an interested party pays the outstanding taxes on the real property, that party "steps into the shoes" of the taxing authority and is entitled to enforce the tax lien through judicial proceedings. That party cannot, however, use Machinery Act remedies, such as attachment or garnishment, to enforce the lien.

For example, assume that Terry Tarheel holds a properly recorded mortgage lien on Parcel A, which is owned by Debbie Duke. If Terry pays the outstanding taxes on Parcel A, she will immediately possess an additional lien on Parcel A in the amount of taxes paid. However, if the taxes are paid by Debbie's brother or any other party who has no legal interest in the property, that person will not automatically gain a lien on Parcel A.

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