

# Tax Foreclosures: An Overview

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## CONTENTS

Introduction ... 1

What Are the Two Types of Tax Foreclosures Available to Local Governments? ... 2

What Questions Should a Local Government Ask Before Starting a Foreclosure? ... 2

May Foreclosure Be Employed Against Exempt Taxpayers or  
Taxpayers Who Have Been Through Bankruptcy? ... 5

What Taxpayer Obligations Should Be Included in a Foreclosure? ... 5

Who Is Permitted to Bid at a Tax Foreclosure Sale? ... 6

Does the Foreclosure Sale End After the Live Auction? ... 7

When Does the Property Owner Lose the Right to Stop the Foreclosure  
and Retain Ownership of the Property? ... 7

How Are the Foreclosure Sale Proceeds Distributed? ... 8

What Happens if the Government Is the High Bidder at the Foreclosure Sale? ... 9

## Introduction

Foreclosure is the process of enforcing a lien on real property by selling the property to the highest bidder. All local governments that levy property taxes automatically obtain liens on all taxable real property in their jurisdictions every year as of the listing date, January 1.<sup>1</sup> As a result, foreclosure is available as a collection remedy to all local governments once their property taxes become delinquent.<sup>2</sup>

This bulletin is not intended to provide readers with detailed instructions on how to complete a foreclosure. Other School of Government publications serve that purpose.<sup>3</sup> Instead, this bulletin provides an overview of the foreclosure process and answers questions that often arise when local governments use this remedy.

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1. Chapter 105, Section 355(a) of the North Carolina General Statutes (hereinafter G.S.).

2. Nondeferred taxes on real property and taxes on personal property other than registered motor vehicles become delinquent when interest begins to accrue on January 6 of the year in which the taxes were levied. G.S. 105-365.1(a)(1). Deferred taxes become delinquent when a disqualifying event occurs. G.S. 105-365.1(a)(2). Note that under the circuit-breaker exclusion (G.S. 105-277.1B), deferred taxes do not become delinquent until nine months after the death of the owner. G.S. 105-365.1(a)(3).

3. See Christopher B. McLaughlin, In *Rem Foreclosures: Forms and Procedures* (UNC School of Government, 2016), and William A. Campbell, *Property Tax Lien Foreclosure: Forms and Procedures* (UNC School of Government, 2003), both available at [www.sog.unc.edu/publications](http://www.sog.unc.edu/publications).

## What Are the Two Types of Tax Foreclosures Available to Local Governments?

The first is the mortgage-style procedure created by Chapter 105, Section 374 of the North Carolina General Statutes (hereinafter G.S.), which involves a standard civil action filed in state court. It requires assistance from an attorney, either outside counsel hired by the local government or in-house counsel already on staff. The second is the *in rem* procedure created by G.S. 105-375, an expedited procedure that permits a local government to docket a judgment against the property in state court and proceed with a foreclosure sale three months later.

Both foreclosure procedures require diligent title searches to ensure that the local government can provide adequate notice of the foreclosure to all parties with potential interests in the property.<sup>4</sup> Both foreclosure procedures also lead to the same outcome, which is the sale of the property to the highest bidder, free and clear of all liens included in the foreclosure.<sup>5</sup>

One major difference between the two procedures is the ability to charge staff costs and attorney fees to the taxpayer. In a mortgage-style foreclosure, the local government is permitted to add a “reasonable” attorney fee to the taxes and interest owed by the taxpayer.<sup>6</sup> That fee will vary depending on the complexity of the case but typically ranges from \$2,000 to \$5,000. In contrast, an *in rem* foreclosure permits the local government to charge only an “administrative” fee of \$250. Even if the local government does not retain an attorney to help with an *in rem* foreclosure the value of the staff time involved in the title search and court proceeding will almost certainly exceed \$250.

## What Questions Should a Local Government Ask Before Starting a Foreclosure?

### Is There a Consistent Foreclosure Policy and Program in Place?

The tax office should work with the manager and board to develop an objective plan for how foreclosure will be employed. How long must taxes be delinquent before foreclosure is initiated? Is there a minimum amount of delinquent taxes that will trigger a foreclosure? Will foreclosure be used on occupied residences or only on vacant properties?

Consistency is key to maximizing the deterrent effect of foreclosure on other taxpayers and minimizing complaints of inequitable tax enforcement.

### Have All Other Collection Remedies Been Exhausted?

The start of a foreclosure (filing a mortgage-style complaint or docketing an *in rem* judgment) eliminates all other Machinery Act remedies for property tax collection.<sup>7</sup> If the tax collector believes that another remedy (such as levy and sale or attachment and garnishment) is likely to satisfy the tax debt, the best approach is to try those 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 the tax collector

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4. G.S. 105-374(c) and G.S. 105-375(c).

5. G.S. 105-374(k) and -375(i).

6. G.S. 105-374(i).

7. G.S. 105-366(b).

begins the foreclosure process, all other remedies must be terminated. No collection remedies will remain available to the local government if the foreclosure fails to produce sufficient funds to pay off all debts owed on the property.

### **Will the Property Attract Bids High Enough to Cover the Taxes and Costs?**

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, foreclosure may not make sense. Knowing this, the tax office should investigate the potential market value of the property before taking any other steps toward foreclosure.

This process might involve physically inspecting the property, identifying relevant comparable sales, and consulting with local real estate professionals. In some cases, the size and location of the property make it likely that the only bidders would be neighboring property owners. Contacting these individuals is helpful before any sale, and in some cases may be the key factor in determining whether foreclosure is even viable.

### **Is the Local Government Willing to Sell the Property at Cost to a New Buyer or Assume Ownership?**

At the foreclosure sale, the local government conducting the foreclosure has a choice to make. Will it open bidding at the total taxes, costs, and interest owed on the property by submitting a bid at that amount? Or will it allow the bidding to start at a lower amount? The risk with the first option is that no one else bids, and the government wins the auction and must purchase the property. The risk with the second option is that someone buys the property for less than the amount owed on it, and the government does not recover all taxes, costs, and interests included in the foreclosure.

There is no perfectly correct answer to this question. It involves a policy choice. Does the government want to temporarily own foreclosed properties in the hope of selling them for more later? (Remember that during this period of government ownership, the property remains off the tax roll, and the government is responsible for all maintenance costs.) Or is the government willing to lose money on a foreclosure in order to place the property in the hands of a more responsible taxpayer?

### **Does the County Wish to Jointly Pursue Foreclosure with the City (or Vice Versa) if Both Are Owed Taxes on the Property?**

At a minimum, a local government must name the other local government that is owed taxes on the property as a defendant in the foreclosure. But it may make sense for the two local governments to work together as plaintiffs in the process. They could share the costs and jointly agree on a strategy concerning a possible initial bid, as discussed above.

### **Are There Other Liens on the Property That Are Senior to the Property Tax Lien?**

Senior liens are paid from foreclosure sale proceeds before junior liens.<sup>8</sup> The foreclosure of a senior lien extinguishes all junior liens on the same property.<sup>9</sup> As a result, liens senior to the property tax lien present obstacles to foreclosure. Junior liens do not.

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8. For more details about lien priority, see Christopher B. McLaughlin, "[The Property Tax Lien](https://www.sog.unc.edu/sites/default/files/reports/ptb150.pdf)," *Property Tax Bulletin* No. 150 (UNC School of Government, Oct. 2009), <https://www.sog.unc.edu/sites/default/files/reports/ptb150.pdf>.

9. *Dixieland Realty Co. v. Wysor*, 272 N.C. 172 (1967) (foreclosure of senior mortgage lien extinguishes junior mortgages and liens).

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.<sup>10</sup> The same is true for federal tax liens.<sup>11</sup>

The only lien that might give a tax collector pause is a state tax lien for income taxes or employers' unemployment contributions.<sup>12</sup> 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. State tax liens attach when recorded with the 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. 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 may not be a good option unless the local government believes there is a value simply in getting the property into the hands of a (hopefully) more responsible owner.

### **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 a 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 better 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, but that company absconded with the 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 it 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.

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10. G.S. 105-355(b)(1).

11. 26 U.S.C. § 6323(b)(6)(A).

12. G.S. 105-356(a)(1), as well as *Carteret County v. Long*, 349 N.C. 285 (1998) and G.S. 105-241(d).

## May Foreclosure Be Employed Against Exempt Taxpayers or Taxpayers Who Have Been Through Bankruptcy?

Yes.

First, exempt taxpayers. The fact that a taxpayer is generally exempt from property taxes does not make that taxpayer immune from foreclosure for delinquent taxes that arose prior to their ownership of the real property.<sup>13</sup> Foreclosure remains an option even if the property is owned by a religious or charitable organization, an independent school, or another private party that is exempt from property taxes.

For example, assume that in February 2025, Tom Tarheel sells Parcel A to the Church of the Benevolent Blue Devil, a religious organization that will use the property for religious purposes and is therefore exempt from property taxes. Because Parcel A was owned by a taxable owner as of January 1, 2025, it should be listed and assessed taxes for the 2025–26 tax year even though it is now owned by an exempt organization.<sup>14</sup> If the 2025 taxes are not satisfied at closing and become delinquent as of January 6, 2026, the tax collector could enforce the lien against the church through attachment and garnishment, levy and sale, or foreclosure. The property can be exempt in the hands of the church starting with the 2026 taxes.

While there may be political or public relations concerns associated with the use of enforced collection remedies against religious organizations or other exempt entities, the tax collector is obligated to use all methods at his or her disposal to collect taxes for which these parties are responsible.

Second, taxpayers who had previously filed for bankruptcy. The automatic stay that arises immediately upon the filing of a bankruptcy petition prohibits foreclosures, attachments, and all other collection actions against the debtor while the bankruptcy is pending.<sup>15</sup> But after a bankruptcy proceeding ends via dismissal or discharge, tax collectors may enforce any remaining tax liens on real property through foreclosure.

## What Taxpayer Obligations Should Be Included in a Foreclosure?

The local government should take care to include in a foreclosure all debts owed by the taxpayer that are liens on the real property parcel in question. Failure to include these debts in a foreclosure may prevent the local government from enforcing them after a foreclosure sale.<sup>16</sup> These debts may include

- up to ten years of delinquent real property taxes on the parcel;<sup>17</sup>

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13. The only exception to this rule are governments (local, state, and federal), which are generally immune from foreclosure actions. See *Vaughn v. Bd. of Comm'rs of Forsyth Cnty.*, 118 N.C. 636 (1896) (government property exempt from seizure and sale by creditors).

14. See G.S. 105-285(d), which states that the ownership of real property for tax purposes is determined as of the listing date, January 1.

15. See Shea Riggsbee Denning and Robert E. Price Jr., “[Collecting Property Taxes in Bankruptcy](https://www.sog.unc.edu/sites/default/files/reports/ptb139.pdf),” *Property Tax Bulletin* No. 139 (UNC School of Government, Aug. 2006), <https://www.sog.unc.edu/sites/default/files/reports/ptb139.pdf>.

16. G.S. 105-374(k) and -375(i) both require that the property be sold at foreclosure “free and clear” of all liens, with limited exceptions. Accordingly, a local government’s failure to include one of its liens against the property might preclude later enforcement efforts for that lien.

17. G.S. 105-378(a) creates a ten-year limitation on the use of any property tax collection remedy. That said, statutes of limitations such as this one are generally considered “affirmative defenses” that must be



- real property taxes on the parcel for the current tax year that are not yet delinquent but are already a lien on the parcel as of the listing date, January 1;<sup>18</sup>
- real property taxes for future years (“subsequent taxes”) that will become a lien on the parcel if the foreclosure proceeding continues past future listing dates;<sup>19</sup>
- delinquent, current year, and subsequent taxes on personal property listed by the owner of the real property in the same county as the real property;<sup>20</sup> and
- other taxes and fees that are liens on the real property such as special assessments, housing code enforcement liens (“demo liens”), nuisance abatement costs, solid waste fees, and ambulance charges.<sup>21</sup>

## Who Is Permitted to Bid at a Tax Foreclosure Sale?

The only parties who are legally prohibited from bidding at a tax foreclosure sale are government officials and employees who possess non-public information about the property being sold<sup>22</sup> and attorneys representing the local government in the foreclosure.<sup>23</sup>

For obvious reasons and public relations concerns, the best practice is for local governments to bar all of their employees from bidding at foreclosure sales regardless of whether they possess non-public information. It is also best practice to bar local government elected officials (county commissioners or city council members) from bidding, but this would require action by the local government’s board to police its own conduct.

Note that even the current owner of the property being foreclosed upon is permitted to bid at the foreclosure sale. At first glance, this seems unfair, as the owner might be able to purchase the property at a price far less than the amount of taxes and interest owed. That owner would then take the property free and clear of all prior tax liens, essentially allowing them to satisfy their old taxes at a discount while retaining ownership of the property. This is one of the risks of the local government choosing not to enter an opening bid at the amount of taxes and interest owed on the property.

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raised by the taxpayer in order to be effective. *See* N.C. Rules of Civil Procedure, G.S. 1A-1, r. 8(c). One North Carolina court has held that a taxing unit may proceed with a foreclosure action regardless of when the taxes originally came due unless the taxpayer raises the statute of limitations as a defense. *Iredell County v. Crawford*, 262 N.C. 720 (1964). Given this legal background, it would not be inappropriate for a local government to include more than ten years of delinquent property taxes in a foreclosure action and to put the burden of raising the ten-year statute of limitations on the taxpayer.

18. G.S. 105-355(a).

19. G.S. 105-375(e).

20. G.S. 105-355(a) includes these taxes on personal property in the real property tax lien.

21. For more details, see Christopher B. McLaughlin, “[Beyond the Property Tax: Collecting Other Taxes and Fees](https://www.sog.unc.edu/sites/default/files/reports/20171048%20PTB%20174%202022-01-05.pdf),” *Property Tax Bulletin* No. 174 (UNC School of Government, Jan. 2018), <https://www.sog.unc.edu/sites/default/files/reports/20171048%20PTB%20174%202022-01-05.pdf>.

22. G.S. 14-234.1.

23. N.C. State Bar, [2006 Formal Ethics Op. 5](https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-5/) (Apr. 21, 2006), <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-5/>.

## Does the Foreclosure Sale End After the Live Auction?

Under either foreclosure method, the foreclosure sale must be a public auction held at the county courthouse or city hall.<sup>24</sup> Foreclosure sales cannot be held via the Internet, as permitted for other types of government property sales.<sup>25</sup> The sale is to the high bidder, for cash, with the local government having flexibility as to how much time the high bidder will be afforded to produce the full amount of the bid in cash or certified check.<sup>26</sup>

Even after the high bidder submits their payment, the auction is not over. A ten-day initial “upset bid” period then begins, during which anyone can “upset” the high bid by submitting a higher bid.<sup>27</sup> If an upset bid is submitted, then a new ten-day upset bid period begins. The auction does not end until ten days go by without a new upset bid. This process can go on indefinitely if new upset bids keep arriving.

## When Does the Property Owner Lose the Right to Stop the Foreclosure and Retain Ownership of the Property?

Any party, whether the owner of the property or a third-party, may “redeem” the property and terminate a foreclosure by paying all taxes, interest, and costs—including attorney fees for a mortgage-style foreclosure—owed on the property. This opportunity ends when the court confirms a mortgage-style foreclosure sale<sup>28</sup> or when the upset bid period ends in an *in rem* sale.<sup>29</sup>

Regardless of who makes the payment, ownership remains in the name of the party that owned the property at the time the foreclosure was initiated. A third party cannot take ownership of property under foreclosure simply by paying the amount owed on the property.

The fact that the high bid might exceed the amount owed on the property does not affect the amount that must be paid to redeem the property. Assume that Parcel A is being foreclosed upon for \$10,000 in taxes, interest, and costs. After the initial auction and several upset bid

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24. G.S. 105-374(m) (mortgage-style foreclosures) and G.S. 1-339.44 (from the execution sale provisions made applicable to *in rem* foreclosures per G.S. 105-375(i)).

25. G.S. 160A-270(c).

26. The local government could require bidders to produce the full amount of the bid at the time the bid is submitted, but that is not practical and would likely dissuade potential buyers from participating in the auction. It is up to the tax office to decide whether a deposit is required at the initial auction. The mortgage-style tax foreclosure provisions in G.S. 105-374 state that the attorney conducting the sale (the “commissioner”) may require a deposit of up to 20 percent. The *in rem* tax foreclosure provisions in G.S. 105-375 do not mention deposits, nor do the execution sale provisions that apply to *in rem* foreclosures. One experienced mortgage-style tax foreclosure attorney reports that his practice is to require the high bidder to provide a 20 percent deposit in cash or certified check within thirty minutes of the conclusion of the auction. If the bidder fails to do so, the attorney will reopen the bidding on the property. The Orange County tax office, which has conducted many *in rem* foreclosure sales over the years, holds its foreclosure auctions at noon and requires payment of the full winning bid amount in cash or certified check by 3:00 p.m. If the bidder fails to do so, the county will readvertise and hold another sale of the property at a later date.

27. G.S. 105-374(o) and G.S. 1-339.64 (from the execution sale provisions made applicable to *in rem* foreclosures per G.S. 105-375(i)). An upset bid must be at least 5 percent or \$750 (whichever is greater) above the existing high bid.

28. G.S. 105-374(e).

29. G.S. 1-339.57.

periods, the high bid sits at \$200,000. Terry Tarheel, the owner of the property, appears at the tax office on day 5 of the most recent upset bid period and asks what she needs to pay to stop the foreclosure. The answer is \$10,000, despite the high bid being \$200,000.

Does this mean that the county has lost \$190,000 in revenue? No. As discussed below, at the initial foreclosure sale the local government conducting the foreclosure is permitted to retain only the amounts it is owed. Any additional sale proceeds (such as the \$190,000 in this example) would be turned over to the clerk of court for distribution either to the original owner of the property or to other creditors of that owner.<sup>30</sup>

Tax offices should take care to communicate clearly with taxpayers and their attorneys throughout the foreclosure process. Taxpayers should be given clear guidance about what they need to pay to terminate a foreclosure and how they can do so. Poor communication can lead to litigation, botched foreclosures, and public relations disasters.<sup>31</sup>

In addition to limiting the timeframe for terminating a foreclosure through payment, the Machinery Act also limits the opportunity to challenge the title to property obtained in a foreclosure action. G.S. 105-377 sets a one-year limitation on such title challenges. However, taxpayers might be able to get around this restriction and pursue legal challenges to a foreclosure more than one year later by showing that they did not receive adequate notice of the foreclosure proceeding.<sup>32</sup>

## How Are the Foreclosure Sale Proceeds Distributed?

After the final upset bid period ends and the sale is confirmed by the court, the county must distribute the proceeds according to the priority of liens created by state and federal law.<sup>33</sup> Costs, including attorney fees, are paid first, followed by property taxes, then other local government obligations such as special assessments.<sup>34</sup> Any proceeds remaining after all those obligations are paid must be submitted to the clerk of court.<sup>35</sup> If there are not enough proceeds to satisfy all property taxes owed on the property, the proceeds must be shared pro-rata by the county and city.<sup>36</sup>

For example, assume Parcel A is sold at auction for \$11,000. Costs, including attorney fees, are \$2,000. The county is owed \$8,000 in property taxes, while the city is owed \$4,000 in property taxes and \$2,000 in special assessments. After the last upset bid period ends, the county should distribute the funds as follows: First, it should pay itself the \$2,000 for costs incurred pursuing

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30. G.S. 105-374(q)(6) (mortgage-style foreclosures) and G.S. 1-339.70 (from the execution sale provisions that apply to *in rem* foreclosure sales as per G.S. 105-375(i)).

31. See *Mecklenburg County v. Ryan*, 281 N.C. App. 646 (2022) (county held liable for failure to provide accurate information about taxpayer's right to redeem their property and failure to properly account for redemption payment).

32. See *Henderson County v. Osteen*, 292 N.C. 692 (1977) (holding that the one-year limitation on challenging a foreclosure did not apply to an effort by the administrator of a deceased taxpayer's estate to set aside *in rem* foreclosure sale for lack of notice).

33. For more details about lien priority, see McLaughlin, "[The Property Tax Lien](#)."

34. G.S. 105-374(q).

35. G.S. 105-374(q)(6) (mortgage-style foreclosures) and G.S. 1-339.70 (from the execution sale provisions that apply to *in rem* foreclosure sales as per G.S. 105-375(i)).

36. All property taxes are of "equal dignity" (G.S. 105-356(a)(2)), meaning that they share the same priority regardless of year or taxing unit.



the foreclosure. Second, the \$12,000 in county and city property taxes should be paid. Because only \$9,000 in proceeds remain, the taxes must be paid pro-rata. The county is entitled to two-thirds of the remaining proceeds (because it is owed \$8,000 of the \$12,000 total) while the city is entitled to one-third. The result is that the county receives \$6,000 in tax payments and the city receives \$3,000. No proceeds remain to pay any of the city's special assessments.

Despite the fact that the sale did not produce sufficient funds to satisfy all of the taxes and special assessments, the high bidder takes ownership of Parcel A free and clear of those liens. The county and city can use the insolvents list to "write off" the unpaid taxes on Parcel A.<sup>37</sup>

## **What Happens if the Government Is the High Bidder at the Foreclosure Sale?**

Local governments are free to purchase property at any tax foreclosure auction, whether it is one of their own or one initiated by another government. As discussed above, this often occurs by default when a local government enters an opening bid at the amount of taxes and costs owed on the property and no other parties offer bids. It can also 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 it 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.

There are 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 the amount that would not be distributed to it and other local governments for taxes, interest, and costs.<sup>38</sup>

In the common scenario where the local government bids only enough to cover those taxes, interest, and costs, it is normally not 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) and (in a mortgage-style foreclosure) the commissioner and attorney fees.

If the local government bids more than the amount owed on the property, it would be required to pay the court the difference between its bid and the total taxes, interest, and costs owed 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, it holds the property for the benefit of all local governments that were owed taxes or other debts collectible as taxes, such as special assessments or nuisance abatement costs.

This requirement obligates the purchasing government to reimburse the other local governments for their interests in the property if it is later sold (see below for more details).

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37. See G.S. 105-373(a)(2) and (g).

38. G.S. 105-376(b).

If the local government chooses instead to hold the property for public use, G.S. 105-376(b) requires it 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 property that it purchased at foreclosure as soon as possible. The same rules that govern the disposition of “regular” public property also apply to the sale of property purchased by a local government at a tax foreclosure sale.<sup>39</sup> In general, local government property may be sold to the general public by one of three competitive bidding procedures: (1) sealed bid, (2) upset bid, or (3) public auction.<sup>40</sup>

If the purchasing government sells the property through any of these public sale methods, 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.

However, 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).<sup>41</sup> 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 greater than the total amount of taxes, interests, and costs (not including special assessments) owed to all local governments on the property. The private sale price must also include any taxes that have become a lien on the property (or would have become a lien if the property were not owned by a local government) since the foreclosure sale.

For example, assume that Wanda Wolfpack owned Parcel A, which was foreclosed upon by Carolina County for \$10,000 in taxes, interest, and costs in 2025. In 2026, Carolina County negotiates to sell Parcel A back to Wanda. The sale price to Wanda must be at least \$10,000 plus the estimated 2026 county and city taxes on Parcel A that would have accrued had the county not owned the property as of January 1, 2026. The county is of course free to negotiate a higher sale price with Wanda; G.S. 105-376(c) only sets a floor for a private sale.

### **Distribution of Sale Proceeds**

Regardless of the sale method, when a local government sells property it purchased at a tax foreclosure, it must share the proceeds of that sale with other local governments that had liens on the property.<sup>42</sup> The process is the same as described above for the distribution of initial foreclosure sale proceeds, with two important differences.

First, additional property taxes should be added to the amount owed on the property for the period during which the local government owned the property after the initial foreclosure sale.<sup>43</sup> For example, assume that Carolina County purchases Parcel A at its own foreclosure sale

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39. G.S. 105-376(c).

40. See G.S. 160A-268 (sealed bids), -269 (upset bids), -270 (public auction).

41. G.S. 105-376(c).

42. G.S. 105-376(b).

43. *Id.*

in 2025. In 2026, it sells the property at public auction. The 2026 county and city property taxes that would have accrued on Parcel A had it not been owned by the county on January 1, 2026, should be added to the amount owed on the property when distributing the 2026 sale proceeds.

Second, the local government that purchased the property at the initial foreclosure sale can keep any surplus proceeds generated by a subsequent sale of the property.<sup>44</sup> That is not the case for the initial foreclosure sale, in which all surplus proceeds must be turned over to the clerk of court for distribution to other creditors or to the taxpayer who originally owned the property.

### What to Do with Any Unpaid Taxes?

Because property is sold free and clear of all liens included in the foreclosure, the local government has no remaining remedies against the real property to satisfy taxes not paid following the initial foreclosure sale or a subsequent sale of the property by the local government. The government also loses all Machinery Act collection remedies against the responsible taxpayer's *personal* property once a foreclosure action begins.<sup>45</sup> As a result, there are no collection remedies available for taxes remaining unpaid after the foreclosure process.

Most local governments will "write off" unpaid taxes following a foreclosure. Technically, the only way to do this is through the insolvents list described in the Machinery Act's settlement provision.<sup>46</sup>

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44. *Id.*

45. G.S. 105-366(b).

46. *See* G.S. 105-373(a)(2) and (g).