

§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(a) General Nature of Action. – The foreclosure action authorized by this section shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is situated and shall be an action in the nature of an action to foreclose a mortgage.

(b) Taxing units may proceed under this section, either on the original tax lien created by G.S. 105-355(a) or on the lien acquired at a tax lien sale held under former G.S. 105-369 before July 1, 1983, with or without a lien sale certificate; and the amount of recovery in either case shall be the same. To this end, it is hereby declared that the original attachment of the tax lien under G.S. 105-355(a) is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of a lien sale certificate to the taxing unit for lien sales held before July 1, 1983, is a matter of convenience in record keeping within the discretion of the governing body of the taxing unit, and that issuance of such certificates is not a prerequisite to perfection of the tax lien.

(c) Parties; Summonses. – The owner of record as of the date the taxes became delinquent and spouse (if any), any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the owner of record as of the date the taxes became delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action.

(c1) Lienholders Separately Designated. – The word "lienholder" shall appear immediately after the name of each lienholder (including trustees and beneficiaries in deeds of trust, and holders of judgment liens) whose name appears in the caption of any action instituted under the provisions of this section. Such designation is intended to make clear to the public the capacity of such persons which necessitated their having been made parties to such action. Failure to add such designation to captions shall not constitute grounds for attacking the validity of actions brought under this section, or titles to real property derived from such actions.

(d) Complaint as Lis Pendens. – The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest therein is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It shall not be necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this subsection (d).

(e) Subsequent Taxes. – The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes which are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the

complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property which have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and costs thereon. Immediately prior to judgment ordering sale in a foreclosure action (if there has been no redemption prior to that time), the tax collector or the attorney for the plaintiff unit shall file in the action a certificate setting forth all taxes which are a lien on the real property in favor of the plaintiff unit (other than taxes the amount of which has not been definitely determined).

Any plaintiff in a tax foreclosure action (other than a taxing unit) may include in his complaint, originally or by amendment, all other taxes and special assessments paid by him which were liens on the same real property.

(f) Joinder of Parcels. – All real property within the taxing unit subject to liens for taxes levied against the same taxpayer for the first year involved in the foreclosure action may be joined in one action. However, if real property is transferred by the listing taxpayer subsequent to the first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs (for which the property is ordered sold under the terms of this Subchapter) shall be prorated to such property in the same manner as if payments were being made to release such property from the tax lien under the provisions of G.S. 105-356(b).

(g) Special Benefit Assessments. – A cause of action for the foreclosure of the lien of any special benefit assessments may be included in any complaint filed under this section.

(h) Joint Foreclosure by Two or More Taxing Units. – Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior court, subject to appeal as provided in G.S. 1-301.1.

(i) Costs. – Subject to the provisions of this subsection (i), costs may be taxed in any foreclosure action brought under this section in the same manner as in other civil actions. When costs are collected, either by payment prior to the sale or upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no prosecution bond shall be required.

The word "costs," as used in this subsection (i), shall be construed to include one reasonable attorney's fee for the plaintiff in such amount as the court shall, in its discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure action and files answer therein, there may be included in the costs an attorney's fee for the defendant unit in such amount as the court shall, in its discretion, determine and allow. The governing body of any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to its attorney as a suit fee, and the governing body may allow a reasonable commission to its attorney on taxes collected by him after they have been placed in his hands; or the governing body may arrange with its attorney for the handling of tax foreclosure suits on a salary basis or may make any other reasonable agreement with its attorney or attorneys. Any arrangement made between a taxing unit and its attorney may provide that attorneys' fees collected as costs in foreclosure actions be collected for the use of the taxing unit.

In any foreclosure action in which real property is actually sold after judgment, costs shall include a commissioner's fee to be fixed by the court, not exceeding five percent (5%) of the purchase price; and in case of redemption between the date of sale and the order of confirmation, the fee shall be added to the amount otherwise necessary for redemption. In case more than one sale is made of the same property in any action, the commissioner's fee may be based on the highest amount bid, but the commissioner shall not be allowed a separate fee for each such sale. The governing body of any plaintiff unit may request the court to appoint as commissioner a salaried official, attorney, or employee of the unit and, when the requested appointment is made, may require that the commissioner's fees, when collected, be paid to the plaintiff unit for its use.

(j) Contested Actions. – Any action brought under this section in which an answer raising an issue requiring trial is filed within the time allowed by law shall be entitled to a preference as to time of trial over all other civil actions.

(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or as much as may be necessary for the satisfaction of all of the following:

- (1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs thereon.
- (2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may enter the judgment, subject to appeal as provided in G.S. 1-301.1.

(l) Advertisement of Sale. – The sale shall be advertised, and all necessary resales shall be advertised, in the manner provided by Article 29A of Chapter 1 of the General Statutes or by any statute enacted in substitution therefor.

(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a

Sunday or legal holiday when the courthouse is closed for transactions. (In actions brought by a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall door.) The commissioner conducting the sale may, in his discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of his bid, which deposit, in the event that the bidder refuses to take title and a resale becomes necessary, shall be applied to pay the costs of sale and any loss resulting. (However, this provision shall not deprive the commissioner of his right to sue for specific performance of the contract.) No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. – Within three days following the foreclosure sale the commissioner shall report the sale to the court giving full particulars thereof.

(o) Exceptions and Increased Bids. – At any time within 10 days after the commissioner files his report of the foreclosure sale, any person having an interest in the real property may file exceptions to the report, and at any time within that 10-day period an increased bid may be filed in the amount specified by and subject to the provisions (other than provisions in conflict herewith) of Article 29A of Chapter 1 of the General Statutes or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor. In the absence of exceptions or increased bids, the court may, whenever it deems such action necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. – At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be entered by the clerk of superior court subject to appeal as provided in G.S. 1-301.1.

(q) Application of Proceeds; Commissioner's Final Report. – After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

- (1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's fee, which costs shall be paid to the officials or funds entitled thereto;
- (2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered sold;
- (3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and costs thereon;
- (4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but which filed no answers therein;
- (5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but which filed no answers therein, together with interest and costs thereon;
- (6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of such directions, shall be paid into court for the benefit of the persons entitled thereto. (If the clerk is in doubt as to who is entitled to the surplus or if any adverse claims are asserted thereto, the clerk shall hold the surplus until rights thereto are established in a special proceeding pursuant to G.S. 1-339.71.)

Within five days after delivering the deed, the commissioner shall make a full report to the court showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds, accompanied by receipts evidencing all such disbursements.

(r) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by G.S. 105-376. (1939, c. 310, s. 1719; 1945, c. 635; 1947, c. 484, ss. 3, 4; 1951, c. 300, s. 1; c. 1036, s. 1; 1953, c. 176, s. 2; 1955, c. 908; 1967, c. 705, s. 1; 1971, c. 806, s. 1; 1973, c. 788, s. 1; 1981, c. 580; 1983, c. 808, s. 8; 1999-216, ss. 14-16; 2003-337, s. 11; 2006-106, s. 3.)