

§ 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 is in the nature of an action to foreclose a mortgage and shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is situated.

(b) Tax Lien. – Taxing units may proceed under this section on the tax lien created by G.S. 105-355(a).

(c) Parties; Summons. – Each of the following persons shall be made parties and shall be served with a summons in the manner provided by G.S. 1A-1, Rule 4:

- (1) The owner of record and the owner's spouse, if any.
- (2) All other taxing units having tax liens.
- (3) All other lienholders of record.
- (4) All persons that would be entitled to be made parties to a court action to foreclose a mortgage on the property in which no deficiency judgment is sought.

A trustee in a deed of trust shall not be made a party and shall not be served.

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

Persons that cannot be located, persons whose names and whereabouts are unknown, and all possible heirs or assignees of these persons may be served by publication; and these persons, their heirs, and assignees may be designated by general description or by fictitious names in the action.

(c1) Lienholders Separately Designated. – The word "lienholder" shall appear immediately after the name of each lienholder whose name appears in the caption of any action instituted under this section. This designation is intended to make clear to the public the capacity of these persons that necessitated their having been made parties to the action. Failure to add this designation to captions does not constitute grounds for attacking the validity of an action brought under this section or the title to real property derived from the action.

(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 in the property 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 is not necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this subsection.

(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 that 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 that have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and costs. 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 that 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.

(e1) Taxes Paid by Plaintiff. – Any plaintiff in a tax foreclosure action, other than a taxing unit, may include in the complaint, originally or by amendment, all other taxes and special assessments paid by the plaintiff that 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 this Subchapter shall be prorated to the property in the same manner as if payments were being made to release the property from the tax lien under 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 is not necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to the taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate of subsequent taxes provided for in this subsection, 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, is sufficient to pay the 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 the actions or such other disposition of the actions, including disposition of the costs, as it deems advisable. The order may be made by the clerk of the superior court, subject to appeal as provided in G.S. 1-301.1.

(i) Costs. – Except as modified by this subsection, 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, includes a 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 an answer, the court may include in the costs an attorney's fee for the defendant unit in an amount that the court, in its discretion, determines and allows. 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 the attorney. Alternatively, 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.

Any arrangement made between a taxing unit and its attorney may provide that attorneys' fees collected as costs in foreclosure actions shall 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 is 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.
- (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.

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 (i) taxes the amount of which cannot be definitely determined at the time of the judgment, (ii) taxes and special assessments of taxing units which are not parties to the action, (iii) in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property, and (iv) conservation agreements, as defined in G.S. 121-35(1).

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 the 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 and all necessary resales shall be advertised in the manner provided by Article 29A of Chapter 1 of the General Statutes.

(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.

(m1) Deposit from Bidder. – The commissioner conducting the sale may, in the commissioner's discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of the bid. In the event that the bidder refuses to take title and a resale becomes necessary, the deposit shall be applied to pay the costs of sale and any loss resulting. Nothing in this subsection deprives the commissioner of the commissioner's 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 of the sale.

(o) Exceptions and Increased Bids. – At any time within 10 days after the commissioner files the 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 of Article 29A of Chapter 1 of the General Statutes, except as otherwise provided by this section. In the absence of exceptions or increased bids, the court may, whenever it deems it 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 the report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner the commissioner may apply for a judgment of confirmation 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. This judgment shall bear interest at the same rate as a judgment entered under G.S. 105-375.

(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. The costs shall be paid to the officials or funds entitled to them.
- (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.
- (4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but that filed no answers in the action.
- (5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but that filed no answers in the action, together with interest and costs.
- (6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of directions, shall be paid into court for the benefit of the persons entitled to it. If the clerk is in doubt as to which person is entitled to the surplus or if any adverse claims are asserted to the surplus, the clerk shall hold the surplus until rights to it 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 the 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; 2021-91, s. 3(a); 2022-55, s. 4(a).)