

**§ 105-375. In rem method of foreclosure.**

(a) Intent of Section. – It is hereby declared to be the intention of this section that proceedings brought under it shall be strictly in rem. It is further declared to be the intention of this section to provide, as an alternative to G.S. 105-374, a simple and inexpensive method of enforcing payment of taxes necessarily levied, to the knowledge of all persons, for the requirements of local governments in this State; and to recognize, in authorizing this proceeding, that all persons owning interests in real property know or should know that the tax lien on their real property may be foreclosed and the property sold for failure to pay taxes.

(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer as defined in G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold.

(c) Notice to Taxpayer and Others. –

- (1) Notice required. – The tax collector filing the certificate provided for in subsection (b) of this section, shall, at least 30 days prior to docketing the judgment, send notice of the tax lien foreclosure to the taxpayer, as defined in G.S. 105-273(17), at the taxpayer's last known address, and to all lienholders of record who have a lien against the taxpayer (including any liens referred to in the conveyance of the property to the taxpayer).
- (2) Contents of notice. – All notice required by this subsection shall state that a judgment will be docketed and the proposed date of the docketing, that execution will be issued as provided by law, a brief description of the real property affected, and that the lien may be satisfied prior to judgment being entered.
- (3) Service of notice. – The notice required by this subsection shall be sent to the taxpayer by registered or certified mail, return receipt requested.
- (4) Additional efforts may be required. – If within 10 days following the mailing of the notice, a return receipt has not been received by the tax collector indicating receipt of the notice, then the tax collector shall do both of the following:
  - a. Make reasonable efforts to locate and notify the taxpayer and all lienholders of record prior to the docketing of the judgment and the issuance of the execution. Reasonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.
  - b. Have a notice published in a newspaper of general circulation in the county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the taxpayer that a judgment will be docketed against the taxpayer.
- (5) Costs of notice added to lien. – All costs of mailing and publication, plus a charge of two hundred fifty dollars (\$250.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and

shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold.

(d) Effect of Docketing Certificate of Taxes Due. – Immediately upon the docketing and indexing of a certificate as provided in subsection (b), above, the taxes, penalties, interest, and costs shall constitute a valid judgment against the real property described therein, with the priority provided for tax liens in G.S. 105-356. The judgment, except as expressly provided in this section, shall have the same force and effect as a duly rendered judgment of the superior court directing sale of the property for the satisfaction of the tax lien, and it shall bear interest at an annual rate of eight percent (8%).

(e) Special Assessments. – Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this section, or the special assessments may be included in a separate judgment docketed under this section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the waiting period required by subsection (b) of this section does not apply to the foreclosure of special assessments.

(f) Motion to Set Aside. – At any time prior to the issuance of execution, any person having an interest in the real property to be foreclosed may appear before the clerk of superior court and move to set aside the judgment on the ground that the tax has been paid or that the tax lien on which the judgment is based is invalid.

(g) Cancellation upon Payment. – Upon payment in full of any judgment docketed under this section, together with interest thereon and costs accrued to the date of payment, the tax collector receiving payment shall certify the fact thereof to the clerk of superior court and cancel the judgment.

(h) Relationship between G.S. 105-374 and This Section. – If, before the issuance of execution on the judgment under subsection (i), below, the taxing unit is made a defendant in a foreclosure action brought against the property under G.S. 105-374, it shall file an answer in that proceeding and thereafter all proceedings shall be governed by order of the court in accordance with that section.

(i) Issuance of Execution. – At any time after three months and before two years from the indexing of the judgment as provided in subsection (b), above, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

- (1) No debtor's exemption shall be allowed.
- (2) In lieu of personal service of notice on the taxpayer, the sheriff shall send notice by registered or certified mail, return receipt requested, to the taxpayer at the taxpayer's last known address at least 30 days prior to the day fixed for the sale. If within 10 days following the mailing of the notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the sheriff shall make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution in accordance with subdivision (4) of subsection (c) of this section.
- (3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.
- (4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against

the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the taxpayer specified in connection with each.

The purchaser at the execution sale shall acquire title to the property in fee simple free and clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments not paid from the purchase price and not included in the judgment.

(j) **Attorney's Fee.** – The governing body of the taxing unit may make whatever arrangement it deems satisfactory for compensating an attorney rendering assistance or advice in foreclosure proceedings brought under this section, but the attorney's fee shall not be added to the judgment as part of the costs of the action.

(k) **Consolidation of Liens.** – By agreement between the governing bodies, two or more taxing units may consolidate their tax liens for the purpose of docketing a judgment, or may have one execution issued for separate judgments, against the same property. In like manner, one execution may issue for separate judgments in favor of one or more taxing units against the same property for different years' taxes.

(l) **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.

(m) **Procedure if Section Declared Unconstitutional.** – If any provisions of this section are declared invalid or unconstitutional by the Supreme Court of North Carolina, a United States district court of three judges, the United States Circuit Court of Appeals, or the United States Supreme Court, all taxing units that have proceeded under this section shall have five years from the date of the filing of the opinion (or, in the case of appeal, from the date of the filing of the opinion on appeal) in which to institute foreclosure actions under G.S. 105-374 for all taxes included in judgments taken under this section and for subsequent taxes due or which, but for purchase of the property by the taxing unit, would have become due; and such judicial decision shall not have the effect of invalidating the tax lien or disturbing its priority. (1939, c. 310, s. 1720; 1945, c. 646; 1957, cc. 91, 1262; 1971, c. 806, s. 1; 1973, c. 108, s. 52; c. 681, ss. 1, 2; 1983, c. 808, s. 9; c. 855, ss. 1, 2; 1987, c. 450; 1989, c. 37, s. 7; c. 682; 1999-439, ss. 2, 3; 2001-139, s. 9; 2006-106, ss. 4-6; 2011-352, s. 1.)