

## Municipal Liens - A Lien on Title that (Almost) Everyone has Missed



When I was in private practice, I began to notice that I got smarter over time. That is to say, I was a lot smarter at the end of year 7 than I was in year 1. There is no substitute for experience. Well, even after 15+ years of practice, I am still learning. . .

Municipal liens --sometimes called "grass cutting" liens -- have been a real eye opener for all of us in recent times. First, it is worth noting that like the lien associated with property taxes, these liens are entitled to "super-priority." In other words, they don't get extinguished by foreclosures. (I had to learn that one the hard way back in 2005, when I paid for one when I failed to have it satisfied at closing because I mistakenly believed it was wiped out by the foreclosure). Just when I thought these liens were pesky enough. . .

*(cont. from Newsletter. . .)*

Per the wording of the statute, these liens have the same priority as ad valorem property taxes. That means the lien is attached to the property once filed. . .regardless of whether the property has been transferred in the intervening time. In other words, if Seller S failed to cut the grass and the City subsequently files a lien after cutting the grass on the property, the lien attaches to the property even though, at the time of the filing, the property was owned by Buyer B. Whoa. . .

These liens also have the ability to attach to multiple properties under certain circumstances. Essentially, if the person or entity causing the lien owns multiple properties within the City Limits (or within 1 mile of City limits), the lien attaches to all those properties, except the person's primary residence. If the subject of the lien is the person's primary residence, then the lien attaches to all of their property owned within City Limits. The most obvious situation this applies to is a person with multiple rental properties. Traditionally, those are the folks we would be most concerned about. . .however, in today's day and age there are some other players that we need to be careful of. Fannie Mae. . .Freddie Mac. . .and a whole host of lenders who have begrudgingly become owners of multiple properties in larger cities.

If you find multiple liens against a property owner. . . **REPORT THEM ALL!** We have had some success convincing our underwriters to let the property owner (Fannie Mae and Omni Bank) pay the lien as they sell each property, but this must be evaluated on a case-by-case basis.

**NOTE:** One Final note about this statute bears examination. As you will see below, the statute has two parts. Sub part (a) references liens against the subject property. Sub part (b) speaks to liens that attach to multiple properties as a consequence of mutual ownership. So, for example, if I owned 5 properties within City Limits. . .Under this statute, when a lien is filed against one of my properties, the lien attaches to all five of my properties. The lien against the subject property is entitled to super priority, meaning it will not be extinguished by a subsequent foreclosure. However, the lien against the other four properties is **not** entitled to super priority. As to those other four properties, a foreclosure will essentially wipe out the lien as to that property. This is critical to any analysis of the legal implications of these types of liens. Particularly in light of the number of foreclosures in today's market place.

### **NCGS§ 160A-193. Abatement of public health nuisances.**

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises **where the nuisance occurred**. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

(b) The expense of the action is **also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence**. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another. (1917, c. 136, sub ch. 7, s. 4; C.S., s. 2800; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 20; 2001448, s. 1; 2002116, s. 3.)