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The Quill – June 2020



THE QUILL ARTICLE:

Property Tax Foreclosures and Related Issues

Tax Foreclosures represent an interesting risk profile for us insurers. At the heart of the matter, it is a Government-taking, and our system of jurisprudence has long favored property owners when it comes to real property matters involving a Government-taking. Consequently, when there is a Tax Foreclosure in the Chain of Title, we are going to take a good hard look at it. There are two statutes in North Carolina that provide procedures for Tax Collectors to foreclose on property tax liens. The first method is conducted under the provisions of Section 105-375 which is entitled the “In Rem Method.” The In Rem Method is intended to be a simple and inexpensive method of enforcing payment of taxes. It requires notice, but no hearing. Essentially, it is the equivalent of an Execution Sale by Sheriff. The Statute also contains this very curious language:

“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...”

So, it is clear that the drafters of the statute understood that having a Government taking without a hearing could be, let's say... problematic. In my experience, the In Rem Method is more likely to be utilized by smaller counties. Tax Foreclosures utilizing the In Rem Method ARE NOT INSURABLE FOR AT LEAST 7 YEARS.

That brings us to the second method, which Commentators refer to as the “In Personam Method” (NCGS 105-374). The In Personam Method is intended to be very similar to the provisions of Chapter 44 which permit Power of Sale Foreclosures. The Statute requires notice to “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 lien holders of record, and all persons who would be entitled to be made parties to a court action...” The In Personam Method is essentially a lawsuit in District Court, so it meets the Constitutional requirements of a Hearing. Since all parties with an interest in the parties are noticed of the lawsuit, the result of the action is a property that is sold free and clear of all liens. Mecklenburg County utilizes the procedures of NCGS 105-374.

While the In Personam Method generally represents less risk for us Insurers, it is still a Government-taking. NCGS 105-377 indicates that a Tax Foreclosure cannot be challenged after one year has passed from the recording of the Deed from the Commissioner assigned to conduct the Tax Foreclosure Sale. So again, written right into the General Statutes, is an acknowledgment that our system of jurisprudence disfavors these types of transactions. Consequently, it is very unlikely that we would be willing to insure before the statute of limitations for challenging the foreclosure has passed. Moreover, often in these cases when the taxpayer passes, the legal owners are his or her Heirs at Law whom may not even know they have an ownership interest in real property. They may not discover that ownership interest until years later. This creates a potential argument in favor of the Heir at Law that he or she never received proper notice. While they are likely to lose that claim, we Insurers would still have to defend and the costs of defense would almost certainly exceed the cost of the premium we received to insure. If you are representing a potential buyer at a Tax Foreclosure, you should advise your client that the property will likely not be insurable until the passage of seven years. Why seven years, you ask?... Because of the body of law pertaining to obtaining property under Color of Title.

If you are representing a client who seeks to buy property that has delinquent property taxes, verify that there is not a pending Tax Foreclosure sale. If there is, ask for the payoff from the Law Firm handling the Tax Foreclosure Sale and NOT the Tax Collector's Office. If you obtain a payoff from the Tax Collector, that payoff may not

include costs and Attorneys Fees. If the Attorneys Fees and costs are not paid, the Law Firm can continue with the Foreclosure to collect those costs and fees.

Lastly, many of you know that property taxes older than 10 years are unenforceable. If you send a check to the Tax Collector you have to make sure that they do not apply the payment to the taxes older than 10 years and leave a balance for taxes that have been assessed more recently. You may have to go to the Tax Collector's office in person to make sure that they apply the payment in the manner you intend. If you have any questions about any of this, please feel free to contact me at sal@barristerstitle.com.

sb

BT QUARANTINE: Reading + Podcast Recommendations

It seems like everyone has a little extra time on their hands during the quarantine and the BT Sales Team weighs in on some of their favorite books and podcasts they've enjoyed. (Click the title for the link)

In the Dark Podcast, Season 2

"In the Dark, Season 2. It is an investigative podcast that looks into a murder case in rural Mississippi. The main suspect has been tried for the murder six times and has maintained his innocence. It is well investigated and produced as well as eye opening." ~ *Christine Bruns*

Conan O'Brien Needs a Friend Podcast

"During Coronavirus I have really enjoyed listening to Conan O'Brien Needs a Friend. He talks to friends who are mostly comedians and it is hilarious. I have needed some good lighthearted listening these past couple of months." ~ *Jennifer Conrad*

Crime Junkie Podcast

"Crime Junkie Podcast or Dateline. I love anything true crime! ~ *Keairra McGuire*

The Universal Christ by Richard Rohr

"I've been reading Richard Rohr's 'The Universal Christ: How a Forgotten Reality Can Change Everything We See, Hope For and Believe.' There are SO MANY beautiful eye opening concepts about love & faith in this book. If you don't have time to read it, check out his podcast 'Another Name for Everything' with Richard Rohr. It's truly changing my heart in all the best ways."

~ *Landis Sinnott*

This Tender Land by William Kent Krueger

“I’ve been really into historical fiction lately and I loved this story of four orphans who escape from a horrible Native American boarding school during The Great Depression and find themselves on an incredible journey. Lots of twists and turns!”

~ *Summer Hogan*

Black Box Thinking by Matthew Syed

“I just finished *Black Box Thinking* by Matthew Syed. It discourages having a culture of blame in organizations and instead encourages businesses to learn and improve from their missteps.” ~ *Sal Balsamo*

ANYONE NEED A LAUGH?

Over the past couple months I’m sure you’ve all had some pretty funny Zoom moments, I know we have! Check out this ‘Ode to Zoom’ video from the ever hilarious Holderness Family for a little pick-me-up!



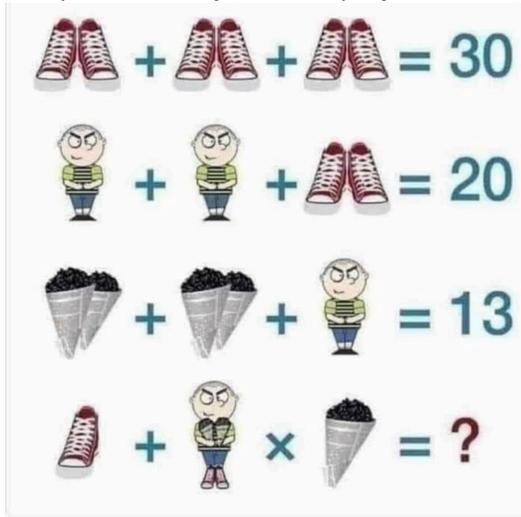
HELLO SUMMER.

You sure are going to be interesting...



THE QUILL RIDDLE

This month we've got a fun math problem for you so put on your algebra hats and make sure to look at the picture closely (blow it up if you have to)! Good Luck!



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