

1975 S.C. Op. Atty. Gen. 97 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4023, 1975 WL 22320

Office of the Attorney General

State of South Carolina

Opinion No. 4023

April 24, 1975

\*1 When property is sold for delinquent taxes the purchaser at the tax sale does the property free of any existing mortgages. The mortgagee is entitled under finery circumstances only to the excess over cost and taxes.

Mrs. Gayle P. Werts  
Saluda County Treasurer  
Court House  
Saluda, South Carolina 29138

Dear Mrs. Werts:

This is in reply to your request for an opinion of this office on the following questions:

'If property is sold for delinquent taxes, does the purchaser receive clear title after one year if the property has a mortgage against it? Is the mortgage holder only entitled to the excess over taxes and cost, or is the mortgage transferred to the purchaser?'

The lien for property taxes provided in Sections 65-2701 and 65-2702 is a first lien. In the 1889 case of [Shell v. Duncan](#), 10 S. E. 330, the South Carolina Supreme Court in discussing G. S. 170, the predecessor to Section 65-2701, stated:

'\* \* \*; but, as the broad terms used in the proviso might leave it at least doubtful whether the purchaser at the sale for taxes, having bought only the interest of the delinquent tax-payer, which interest would be subject to any liens that might have been previously fixed upon the land, would not take his title subject to any previous lien, the second proviso was added, declaring 'that nothing herein contained shall prevent the priority of the lien for taxes over any incumbrance created by or against the owner of the property listed for taxation,' for the manifest purpose of enabling the purchaser to obtain a title for all the right, title, and interest of the former owner, free from any lien which may have been previously fixed upon the property, either by the owner himself or by operation of law. \* \* \*.'

The rights of real estate mortgagees in the area of enforced collection of taxes are covered in Article 4 of Chapter 22 of Title 65 of the Code. Section 65-2748 provides that under certain special circumstances a mortgagee's rights are not affected by a tax sale. It is assumed that these special circumstances do not exist. Section 65-2766, which gives the mechanics for seizure and sale, provides in Subsection 5 for the payment of the excess of the sales proceeds, less taxes and costs, to the mortgagee. Section 65-2772 grants a right of redemption to a mortgagee or judgment creditor as well as to the owner of the property sold.

It therefore appears from the Sections above (1) that the lien for property taxes has priority over mortgages given by the owner of the property; (2) that only in special circumstances are mortgagees' rights not affected by a tax sale; (3) that the net sales proceeds under proper circumstances are to be paid over to the mortgagee and, (4) that a mortgagee is granted a right of redemption. Although not explicitly stated, it is implicit in these code provisions that the property passes to the purchaser free of any existing lien. It is therefore the opinion of this office that the mortgagee's interest attaches to the proceeds of the sale, after taxes and costs, and is not transferred with the subject property.

Very truly yours,

\*2 John C. von Lehe  
Assistant Attorney General

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