

Frequently Asked Questions about Tax Foreclosures

Presenter:

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Introduction

- The Problem: Delinquent real property taxes
 - Tax Office has made numerous attempts to collect by several methods
 - Over \$1,500,000 remains uncollected
- The Solution: Zacchaeus Legal Services Comprehensive Tax Foreclosure Program

Today's Agenda – FAQ's

- About Our Firm
- Stages of a Tax Foreclosure
- Costs
- General Questions
- What to Expect

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About Our Firm

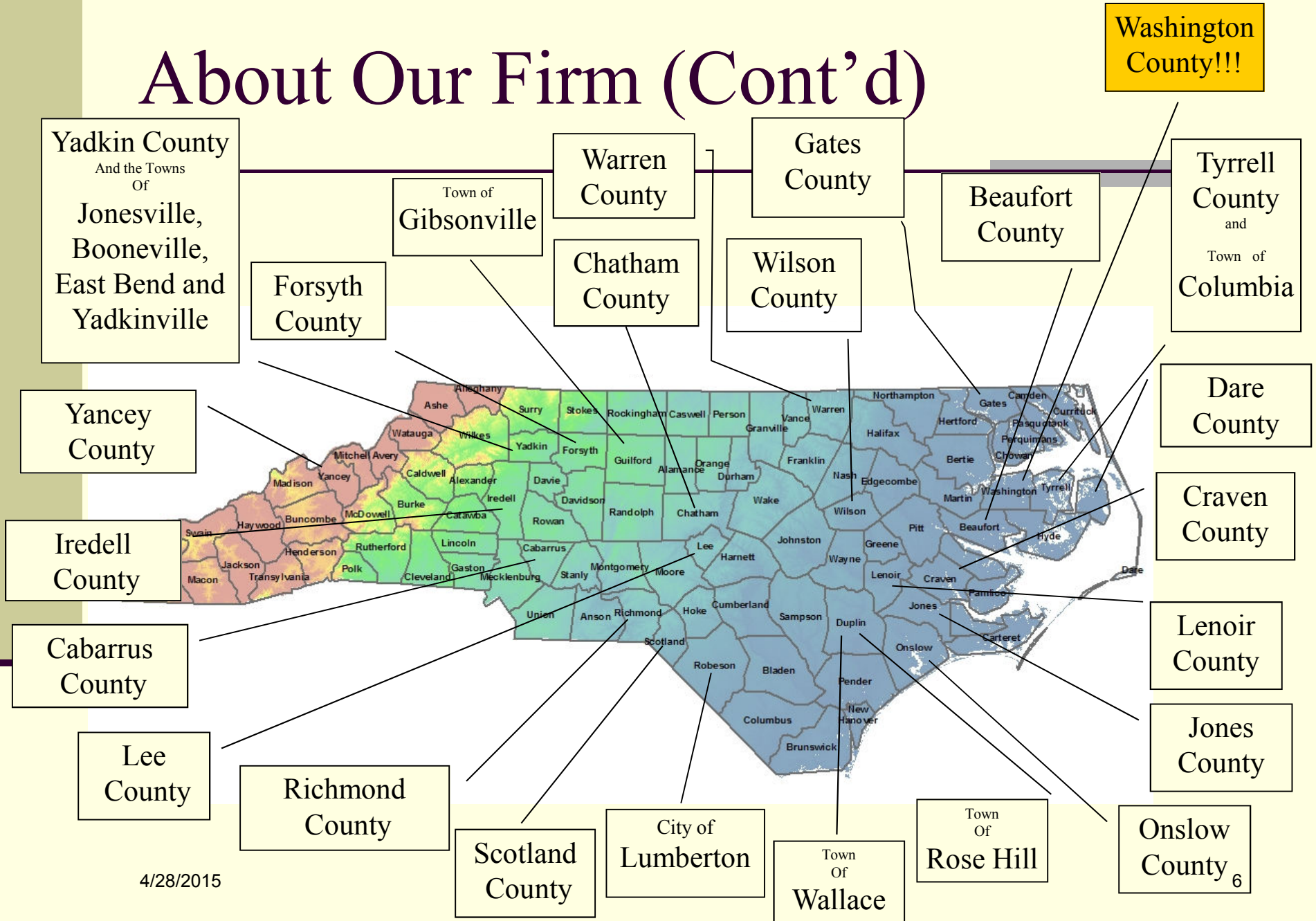


4/28/2015

Zacchaeus Legal Services

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About Our Firm (Cont'd)



4/28/2015

About Our Firm (Cont'd)

- Zacchaeus Legal Services was formed to provide property tax foreclosure services for local government. The firm's office is in Trenton and currently serves Onslow, Jones, Craven, Lenoir, Beaufort, Wilson, Warren, Chatham, Lee, Cabarrus, Scotland, Tyrrell, Forsyth, Yadkin, Yancey, Iredell, Gates, Dare, Richmond and Washington Counties and the Towns of Jonesville, Yadkinville, East Bend, Booneville, Columbia, Wallace, Rose Hill, Gibsonville and the City of Lumberton.
- Its principal, Mark D. Bardill, has served local government as a Special Tax Attorney for more than 28 years. During this period, he has collected the delinquent taxes on thousands of parcels.

About Our Firm (Cont'd)

- **Mark D. Bardill** obtained his B.A. and J.D. degrees from the University of North Carolina at Chapel Hill and was licensed to practice law in 1985. Mark is a native of and resides in Richlands, North Carolina. He is a member of Richlands United Methodist Church and is Past President of the Richlands Rotary Club and the Richlands Chamber of Commerce.

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- Costs
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Introduction

- Why must we file these actions?

- Federal and State Constitution
Due Process Clauses

- Federal or State action

No person shall be deprived of life, liberty, or property, without due process of law

Introduction (Cont'd)

- What guides us as to procedure?
 - NCGS Section 105-374
 - NCGS Section 1-339.1
- Powerful lien counterbalanced by Notice required by law

Stages

- Pre-Filing Activities
- Filing the Action
- Serving the Parties
- Appointment of GAL and Attorney
- Hearings to Determine Fees and Costs
- Obtaining the Judgment of Sale
- Selling the Property
- Confirming the Sale/Final Report

\$\$\$ Settlement Spot \$\$\$

Throughout this presentation
there will be

\$\$\$ Settlement Spot \$\$\$

slides that will describe the
process of settling the case at
that certain stage of the tax
foreclosure suit

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Pre-filing activities – Tax Office

Example – 2014 taxes

- First Bill July, 2014
- Delinquent Notice February, 2015
- Pre-Foreclosure Letter February, 2015
- Advertisement of Parcel March, 2015
- Assigned to Attorney March, 2015

Pre-filing activities – Tax Office

- Minimum Number of Notices - 4
- Minimum Notice Period – 8 months
- For each additional year of taxes, add 3 to the Minimum Number of Notices and 1 year to the Notice Period
- At any time during the Notice Period, a Taxpayer can make a payment agreement or pay the taxes in full to avoid tax foreclosure and its costs.

Pre-filing activities – ZLS

- We search the title to ascertain those with an interest in the property
- We draw a complaint which sets forth: a) the legal basis of the County's right to foreclose, b) a description of the property, c) the parties who have an interest in it, d) the amount of the delinquent taxes and e) a notice regarding fees and costs
- We draw summonses for service of the parties who have an interest in the property

\$\$\$ Settlement Spot \$\$\$

At any time prior to filing our suit, a Taxpayer can pay the taxes in full to avoid tax foreclosure and its costs.

Stages

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Filing the Action

- Complaint filed, Summonses issued
 - Attorney fees and court costs “attach” – see next slide
- NCGS 105-374 allows for the deferral of the payment of filing fees and in-County Sheriff’s service fee
 - We note in our case file the then-current charge for all deferred payments
- We marked the summonses with “stickie” notes whether the Complaint will be served by certified mail or by in-County Sheriff or by out-of-County Sheriff

\$\$\$ Settlement Spot \$\$\$

At this point any defendant or lienholder can redeem the tax parcel from the suit by paying:

1. All taxes (including the current year's taxes even if they are not past due)
2. Costs, which include:
 1. Attorney fees (at the amount contracted between the County and ZLS, and ZLS's out of pocket expenses for such items as copy charges, USPS charges, etc.)
 2. Filing fees and in-County Sheriff service fees

Stages

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Serving the parties

- A tax foreclosure requires personal service of the foreclosure complaint on anyone with an interest in the property.
 - This means that all owners, judgment holders, deed of trust holders and other lien claimants have to be served by certified mail, by sheriff or by publication.
 - Only after the post office and sheriff's departments have been unable to obtain service are we allowed to serve the delinquent taxpayer by publication.
 - If we do so, we then must request that the Court appoint a legal representative (guardian *ad litem* or attorney) to stand in for incompetents, minors or active duty members of the military service. This requires additional service upon those representatives and an opportunity for them to respond to the action.

Serving the parties

- This is different than the process used in foreclosures under deeds of trust when service cannot be obtained by certified mail or by Sheriff. In those cases, service is primarily obtained by posting. **This method of service is not allowed in tax foreclosures.**

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Appointment of GAL and Attorney

- Oftentimes ZLS discovers during the service stage of the proceeding that a party is deceased with no estate on file at the Clerk's Office
- With no estate file there is no reliable source of identifying exactly who are the decedent's heirs
- And no reliable way to identify whom among the decedent's heirs were infants, incompetents or servicemen

Appointment of GAL and Attorney

- ZLS must use the “shotgun” approach and serve the class of the heirs, assigns or devisees of the decedent by publication
- And for those of this class who may be infants, incompetents or servicemen, federal and state law requires that a representative be appointed to protect these parties’ interests – the Guardian ad Litem and Attorney

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2. Costs, which include:
 1. Attorney fees (at the amount contracted between the County and ZLS, and ZLS's out of pocket expenses for such items as copy charges, USPS charges, etc.)
 2. Guardian ad Litem and Attorney fees, if any, (at the rate agreed upon with ZLS [usually \$250 per representative], and the Guardian's and Attorney's out of pocket expenses for such items as copy charges, USPS charges, etc.)
 3. Filing fees and in-County Sheriff service fees

Stages

- Pre-Filing Activities
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Hearings to Determine Fees and Costs

- NCGS Section 105-374(i) provides any defendant or lienholder the right to apply to the Court for the determination of a reasonable attorney fee
- If ZLS is informed that a party wants to contest the fee set between the County and ZLS, ZLS will file a motion under 105-374(i) accompanied by a 2 page affidavit in support of our fee
- Judge can determine a fee more or less than that agreed between County and ZLS
- Because ZLS is North Carolina's high volume low cost provider of quality tax foreclosure services, it is unusual if our fee is higher than that offered by other firms that provide the same service. Consequently, the Court usually finds that our fee is reasonable.

\$\$\$ Settlement Spot \$\$\$

At this point any defendant or lienholder can redeem the tax parcel from the suit by paying:

1. All taxes (including the current year's taxes even if they are not past due)
2. Costs, which include:
 1. ZLS's attorney fees and out of pocket expenses, in the amounts set out in the Order re: Attorney's Fees and Costs
 2. Guardian ad Litem and Attorney fees, if any, in the amounts set out in the Order re: Attorney's Fees and Costs, if not decided as part of the hearing, at the rate agreed upon with ZLS [usually \$250 per representative], and the Guardian's and Attorney's out of pocket expenses for such items as copy charges, USPS charges, etc.
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Obtaining the Judgment of Sale

- After service of the complaint, we must show the Court how and when service was obtained. All parties with an interest in the property must be given an opportunity to respond to the allegations set forth in the complaint.
 - If a party responds by denying any allegations in the Complaint, then we prepare for a Summary Judgment hearing
 - If a party responds by admitting the allegations of the Complaint, then we prepare for a Judgment on the Pleadings hearing
 - If a party does not respond, then we prepare for a default judgment hearing.

Obtaining the Judgment of Sale

- The Judgment of Sale sets out:
 - The amount of the County's tax lien (and the County's lien)
 - The amount of the costs incurred to date including ZLS's attorney fees, ZLS's out of pocket expenses and fees for appointed guardians ad litem and attorneys appointed under the Servicemen's Civil Relief Act
 - The terms of the sale
 - The name of the Commissioner to hold the sale and the amount of the commission that can be earned

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At this point any defendant or lienholder can redeem the tax parcel from the suit by paying:

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2. Costs, which include:
 1. ZLS's attorney fees and out of pocket expenses, in the amounts set out in the Judgment, and any additional out of pocket expenses incurred by ZLS since the date of the Judgment
 2. Guardian ad Litem and Attorney fees, if any, in the amounts set out in the Judgment
 3. Filing fees and in-County Sheriff service fees

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Selling the Property

- A Notice of Sale must be drafted and posted at the courthouse, and a legal advertisement of the same must be published in a newspaper of general circulation in the county.
- On the date of the sale, the total costs must be calculated and added to the tax lien set forth in the judgment. This figure is used for the opening bid given by the County at the sale, and if anyone is interested, he or she can up the bid.
- After we hold the sale, a Report of Sale is then drawn and filed with the Clerk. The sale stays open for 10 days, and can be upset within this time period by filing the proper paperwork with the Clerk and making the proper deposit.

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At this point any defendant or lienholder can redeem the tax parcel from the suit by paying:

1. All taxes (including the current year's taxes even if they are not past due)
2. Costs, which include:
 1. ZLS's attorney fees and out of pocket expenses, in the amounts set out in the Judgment, and any additional out of pocket expenses incurred by ZLS since the date of the Judgment, which include publication of sale costs at this point
 2. ZLS's commission based on 5% of the highest bid amount
 3. Guardian ad Litem and Attorney fees, if any, in the amounts set out in the Judgment
 4. Filing fees and in-County Sheriff service fees

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Confirming the Sale

- Upon expiration of the upset bid period, a motion confirming the sale is filed and **an order confirming it is obtained from a District Court Judge. At this point the parcel can no longer be redeemed from foreclosure.**
- Upon confirmation, a deed is drawn conveying the property to the new owner and recorded in the Register of Deeds.
- Lastly, we file a Final Report setting forth the receipts and disbursements of the sales proceeds with the Clerk of Court.

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Costs

- **What costs are incurred in a foreclosure action?**
- **Who sets the amount of costs?**
- **How do these costs relate to the tax lien?**
- **Who advances these costs?**

What are the costs?

- Attorneys fees, service fees, copy fees, postal charges, publication fees and the like.

Who sets the costs?

- The Court sets all costs unless the taxpayer settles the case prior to obtaining the judgment authorizing the sale.
- In setting the amount of these costs, the Court generally relies on the fee guaranteed by the County for our services and the amounts that have been billed to us for service fees, copy fees, postal charges, publication fees and the like.

Costs and the tax lien?

- State law provides that all costs are to be paid before the tax principal and interest owed on the account. However, in most cases our program allows the County to receive its delinquent real property tax before we are paid.

Who advances these costs?

- We advance all attorney's fees, all service fees other than those furnished by the Sheriff for in-County service, all copy fees, all postal charges and all publication fees except those billed directly to the County. State law allows for us to pay the filing fee and in-County Sheriff's service fee when the case is closed.

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General Questions

- **Why can't you tell us when you are going to file a foreclosure action?**
- **Why can't you tell us when the property will be sold?**
- **Why can't you "hold off" on filing a foreclosure action?**

Why can't you tell us . . .

- **when you are going to file a foreclosure action?** As explained previously, we must complete many tasks before a foreclosure action can be filed. Only in rare cases are we compensated for any of this work unless we file the foreclosure action. If we inform the Tax Division Staff of a certain date in which the action will be filed, a taxpayer will likely use this date as a deadline to pay the delinquent taxes, and will pay them after we have completed part or all of our work but before we have filed the action. In this case, while having been the principal reason for the taxes to finally be paid, we would remain uncompensated for any of our work. Remember, by the time the case has been referred to us the taxpayer has already received many notices of the delinquency.

Why can't you tell us . . . (Cont'd)

- Also remember that although we can not give a date that the action will be filed, if a taxpayer pays the delinquent taxes before we file, there is not a fee, even if we have completed all the work necessary except delivering the papers to the Clerk of Court. In these cases, we are not compensated by anyone, including the County, unless the Tax Office has failed to notify us that the taxes have been paid in full after the case has been assigned to us. We accept this risk as part of the cost of doing business with the County, but we must limit our risk by keeping confidential the date in which a particular action will be filed.

Why can't you tell us . . .

- **when the property will be sold?** As explained previously, there are many tasks that must be completed after a foreclosure action has been filed and before a property can be sold. It is impossible to predict when all of these tasks will be complete, particularly as to service of all of the parties. With all of these time-consuming and unpredictable parts of the tax foreclosure process, we cannot accurately predict when the sale will be held until we post the Notice of Sale and the sale date is advertised.

Why can't you . . .

- **“hold off” on filing a foreclosure action? Our main goal is to collect as much delinquent tax on as many parcels in as little time as possible.** We are moving the cases through the process as quickly as we can. Individual requests to delay our efforts effect the time and resources we have on hand to prosecute the remaining cases. Only in rare cases can we delay prosecuting the County's right to collect delinquent taxes. If you have a special case, meet with your Tax Collector about it, and if she determines that the case deserves special attention, she can contact us to discuss the matter.

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What to Expect

- Of our telephone system
- Of our website

What to Expect: Of our telephone system

- Friendly automated attendant
- Informative narrative deals with every type of party
 - Taxpayers
 - Lienholders
 - Court Officials
 - Interested bidders
- Filed Suit = Adversarial Process; Avoids conflicts of interest
- Frees ZLS staff to cover many cases in short period of time
- Interested parties can reach us through our website or by mail

What to Expect: Of our website www.zls-nc.com

- ***Property for Sale Page:*** Use it to refer interested purchasers so as to avoid tying up staff time
- ***Settle Your Case Page:*** Same instructions as the taxpayer would receive from contact with our telephone system
- ***Contact Us Page:*** Where parties can contact us by e-mail