

1975 S.C. Op. Atty. Gen. 91 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4020, 1975 WL 22317

Office of the Attorney General

State of South Carolina

Opinion No. 4020

April 21, 1975

***1 1) There is no statutory requirement that lienholders or mortgagees be notified when personal property is levied upon and sold for nonpayment of taxes generated by reason of such property.**

2) A purchaser of personal property takes free and clear of other mortgages or liens when such property is sold for nonpayment of taxes generated by such property.

3) Personal property that customarily and generally constitutes a part of a mobile home may be levied upon and sold as a part of the mobile home for nonpayment of the taxes on the mobile home.

4) Section 65–2815.10 prescribes the form to be given the purchaser of personal property when such property is sold under the provisions of Article 5.1 of Chapter 22 of Title 65.

5) The purchaser is to be given possession of personal property when sold for nonpayment of taxes.

Attorney at Law
Camden, South Carolina

Your letter of April 15, 1975 has been handed this writer for attention and reply. You advise that Kershaw County is to levy and sell mobile homes for unpaid property taxes due thereon pursuant to the provisions of Article 5.1 of Chapter 22 of Title 65 and request the opinion of this office concerning several matters.

The responses to your questions are based upon the presumption that the mobile home is personal property and that the County is not to rely on any other statutory provision as provided for in Section 65–2815.14. The questions will be treated individually as follows:

1. First, in reviewing the provisions of Section 65–2821, I do not find any requirement for notification of any lienholders, or mortgagee. Since most mobile homes are mortgaged, the questions arises: Must a mortgage or other lienholder be notified prior to the tax sale?

We find no statutory requirement to give an actual notice to any lienholder or mortgagee. Notice of the taxes is given such person by reason of the tax levy statutes, the lien statutes and the actual execution and levy. While there is no statutory requirement for such notice, it may be a good practice to give notice in that the lienholder may voluntarily pay the taxes, which is in actuality the desired end result.

2. Secondly, would the purchaser at the tax sale take free and clear of any mortgage or other lien?

Section 65–2701 provides:

‘All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by the person against whom they shall be charged and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed, the lien to attach at the beginning of the fiscal year during which the tax is levied. Such taxes shall be first paid out of assets of any estate of deceased persons or held in trust as assignee of trustee or the proceeds of any property held on execution or attachment. The county treasurer may enforce such lien by execution

against such property or, if it cannot be levied on, he may proceed by action at law against the person holding such property.’

*2 The lien on the property that generates the tax is a first lien superior to those of other lienholders and mortgagees.
3. Third, when a mortgaged home is sold for delinquent taxes, what categories of furnishings contained therein would be considered to have been sold along with the mobile home?

- a) personal items and clothing
- b) furnishings and furniture
- c) appliances
- d) window air-conditioners
- e) tires and other accessories

Your attention is called to Section 65–1522(32) that exempts from the tax the following:

‘All household goods and furniture used in the home of the owner of such goods and furniture, but this exemption shall not apply to household goods and furniture used in hotels, rooming houses, apartments or other places of business;’

It is assumed that the mobile home with only those articles or items that are an integral part thereof is of sufficient value to pay the taxes. Personal items and clothing, furnishings and furniture, appliances, if not built in, and window air-conditioners are probably not a part of the mobile home. The tires and other accessories that are permanently attached to the mobile home would generally constitute a part of the mobile home.

4. Fourth, what would be the form and type of title the county would give to the purchaser? Section 65–2815.10 governs and provides:

‘For personal property, there shall be no redemption period subsequent to the time that such property is struck off to the successful purchaser at the delinquent tax sale. Upon payment therefor by the successful purchaser and delivery of the duplicate warrant (i.e. tax receipt) with description thereof and notation thereon by the person officially charged with the collection of delinquent taxes ‘Sold to —— at Delinquent Tax Sale on — (date) —— (Person officially charged with collection of —— to the successful purchaser of personal property delinquent taxes) shall be considered the successful purchaser’s bill of sale and right of possession.’

5. Fifth, Section 65–2826 says the Sheriff or Tax collector shall deliver possession of ‘it’ to its successful purchaser. As a practical matter in the case of a mobile home, a commercial mobile home mover would be required to transport the mobile home. I would envision the process as one whereby the Sheriff, or Tax Collector would deliver possession of the mobile home as situate, and would remain there while a transporter procured at the purchaser’s expense, was readied and moved off the mobile home. I would appreciate your opinion as to whether or not this is a proper procedure.

Section 65–2815.3 contemplates two different conditions, one when the notice is delivered, subparagraph (a) and the other when the notice is not delivered (b). Under the latter, exclusive possession of the mobile home would be in the office charged with the responsibility and the purchaser would normally take possession from that point. Under (a) possession would be given at the on-site location and the procedure set forth appears to be reasonable.

*3 Joe L. Allen, Jr.
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