



2021-2022 General Assembly

SENATE BILL 762: North Carolina Farm Act of 2022, Sec. 4: Preserve Conservation Easements After Property Tax Foreclosures

Committee:
Introduced by:
Analysis of: Sec. 4 of S.L. 2022-55

Date: July 15, 2022
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Staff Attorney

OVERVIEW: Section 4 of S.L. 2022-55 provides that conservation agreements survive real property tax foreclosure sales.

This section became effective July 8, 2022.

CURRENT LAW: Chapter 105 provides two means to foreclose on real property tax liens: mortgage-style foreclosure under G.S. 105-374, and in rem foreclosure under G.S. 105-375. Both statutes provide that property in a property tax foreclosure sale be sold in fee simple, free and clear of all interests, rights, claims, and liens except for certain enumerated obligations which survive beyond the foreclosure. In mortgage-style foreclosures, taxes which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property are currently listed as surviving the foreclosure sale. For in rem foreclosures, liens of other taxes or special assessments not paid from the sale and not included in the judgment are currently listed as surviving the foreclosure sale.

BILL ANALYSIS: Section 4 of S.L. 2022-55 provides that conservation agreements¹ survive real property tax foreclosure sales.

BACKGROUND: A recent Superior Court case extinguished a conservation easement after a tax foreclosure sale. See, *Pham v. Blair Pointe, LLC, Coastal Hunting Land Conservation Group, Inc., and Carteret County (defendants) and The State of North Carolina ex rel. Attorney General Josh Stein (defendant-intervenor)*, 18 CVS 1289 (Carteret County Superior Court), Order Granting Motion for Summary Judgment entered September 30, 2020.

EFFECTIVE DATE: This section became effective July 8, 2022.

¹ A conservation agreement is "a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas." See G.S. 121-35(1).

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