

CHAPTER 173

FORECLOSURE OF MUNICIPAL TAX AND SPECIAL ASSESSMENT LIENS

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173.01 Foreclosure of municipal tax certificates authorized.—The lien of any and all taxes, except those ad valorem taxes collectible by the county tax collector, tax certificates, and special assessments imposed by any incorporated city or town in the state upon real estate may be foreclosed by such city or town by suit in chancery. The practice, pleading, and procedure in any such suit shall be in substantial accordance with the practice, pleading, and procedure for the foreclosure of mortgages of real estate, except as herein otherwise provided.

History.—s. 1, ch. 15038, 1931; CGL 1936 Supp. 3004(2); s. 31, ch. 73-332.

173.02 Proceedings in rem against the lands.—Suits for the foreclosure of tax liens and special assessments under this chapter shall be in the nature of proceedings in rem against the lands upon which said taxes or special assessments are a lien or liens, and it shall not be material that the ownership of said lands be correctly alleged in said proceedings or that parties having an interest or interests in or liens or claims upon said lands be made parties to such proceedings by name or description or be served with process therein, except as hereinafter provided. In any such suit as many lots, parcels or tracts of land, regardless of ownership, and as many tax liens, tax certificates and assessment liens may be included in one suit as the complainant may desire. Any judgment or decree that may be rendered in any such suit shall be enforceable only against such lands.

History.—s. 2, ch. 15038, 1931; CGL 1936 Supp. 3004(3).

173.03 Conditions determining when suit may be brought; lands and claims included.—

(1) Suit may be brought at any time after any one or more of the following events, respectively:

(a) After the expiration of 2 years from the date of any tax certificate issued and held by a city or town whose charter provides for or requires the issuing of tax certificates for delinquent taxes;

(b) After the expiration of 2 years from the date any tax becomes delinquent which was imposed by a city or town whose charter does not provide for or require the issuing of tax certificates; or

(c) After the expiration of 1 year from the date any special assessment or installment thereof becomes due and payable.

(2) There may be included in any suit all or any part of the lands upon which tax certificates have been outstanding or taxes have remained delinquent or any special assessment or installment thereof shall have been in default for the respective periods aforesaid, and there may be included therein all claims and demands of said city or town against said lands or any part thereof for taxes, tax certificates and special assessments or installments thereof which may be due and payable to such city or town at the time of the institution of such suit.

History.—s. 3, ch. 15038, 1931; CGL 1936 Supp. 3004(4).

173.04 Procedure for bringing foreclosure suit; certificate of attorney as to notice of suit; jurisdiction obtained by publication of notice of suit; form of notice.

(1) Any suit hereby authorized shall be commenced by bill in chancery in the circuit court of the county in which such city or town is situated, in the name of the city or town whose taxes, tax certificates and special assessments are sought to be enforced, as complainant, and against any or all lands upon which any taxes, tax certificates and special assessments are delinquent (as the case may be) for the period aforesaid, as defendant, in which bill there shall be briefly described the levy and nonpayment of taxes and special assessments which are delinquent for the period aforesaid, and of all other taxes and special assessments then due and payable to said city or town and sought to be recovered in such bill, the lands proceeded against and the amount chargeable to each parcel or tract. It shall be unnecessary to name in such bill or proceedings any person owning or having any interest in or lien upon such lands as defendants. At least 30 days prior to the filing of any such bill in chancery, written notice of intention to file the same shall be sent by registered mail to the last known address of the holder of the record title and to the holder of record of each mortgage or other lien, except judgment liens, upon each tract of land to be included in said bill in chancery; such notice shall briefly describe the particular lot or parcel of land, shall state the amount of tax certificate and special assessment liens sought to be enforced and shall warn said owner and holders of liens, mortgages or other liens that on or after the day therein named said bill in chancery to enforce the same will be filed, unless paid on or before said date.

(2) A certificate of the attorney shall be attached to the bill of complaint to the effect that said written notice has been given, and such certificate shall be prima facie evidence that the provisions of this section have been complied with. The complainant's counsel shall make diligent inquiry as to the address of the record title and holders of record liens other than judgments and the clerk of the circuit court shall mail by registered mail a copy of the notice hereinafter provided for, to such record owner and holders of record liens other than judgments at such last known address.

(3) Jurisdiction of any of said lands and of all parties interested therein or having any lien thereon shall be obtained by publication of a notice to be issued as of course by the clerk of the circuit court in which such bill is filed on the request of complainant, once each week for not less than 2 consecutive weeks, directed to all persons and corporations interested in or having any lien or claim upon any of the lands described in said notice and said bill. Such notice shall describe the lands involved and the respective principal amounts sought to be recovered in such suit for taxes, tax certificates and special assessments on such respective parcels of land, and requiring all such parties to appear and defend said suit on or before the day specified in said notice, which shall be not less than 4 weeks after the date of the first publication of such notice. Said notice may be in substantially the following form, with blanks appropriately filled in:

(Name City or Town)
Complainant,

vs.

Certain lands upon
which _____
which (here insert
the word "taxes,"
or the words "special
assessments" or both,
as the case may be)
are delinquent,
Defendant.

IN THE CIRCUIT
COURT FOR _____
COUNTY, FLORIDA.

IN CHANCERY.

NOTICE

To all persons and corporations interested in or having any lien or claim upon any of the lands described herein:

You are hereby notified that (name city or town) has filed its bill of complaint in the above named court to foreclose delinquent _____ (here insert the words "tax liens, tax certificates or special assessments," as the case may be) with interest and penalties, upon the parcels of land set forth in the following schedule, the aggregate amount of such _____ (here insert the words "tax liens, tax certificates or special assessments," as the case may be) interest and penalties, against said respective parcels of land, as set forth in said bill of complaint, being set opposite such parcels in the following schedule, to wit:

DESCRIPTION OF LANDS

Amount of _____ (here insert the word "taxes," or the words "special assessments" or both, as the case may be).

In addition to the amounts set opposite each parcel of land in the foregoing schedule, interest and penalties, as provided by law, on such delinquent taxes and special assessments, together with a proportionate part of the costs and expenses of this suit, are sought to be enforced and foreclosed in this suit.

You are hereby notified to appear and make your defenses to said bill of complaint on or before the _____ day of _____, and if you fail to do so on or before said date the bill will be taken as confessed by you and you will be barred from thereafter contesting said suit, and said respective parcels of land will be sold by decree of said court for nonpayment of said taxes and assessment liens and interest and penalties thereon and the costs of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said court, this _____ day of _____.

(Clerk of said court.)
By _____
(Deputy clerk.)

(4) Proof of publication of said notice, as herein required, shall be by affidavit of the publisher or some agent or employee thereof filed in said cause.

History.—s. 4, ch. 15038, 1931; CGL 1936 Supp. 3004(5); s. 32, ch. 71-355, s. 18, ch. 90-279.

173.05 Parties; time for appearance.—Every person interested in or having any lien upon any parcel of land described in the bill of complaint shall be deemed a party to said cause and may appear and defend said cause within the time specified in such notice. Any person not appearing and defending within such time shall be deemed to have confessed said bill, but the court may in its discretion and for cause shown enlarge the time within which any such person may appear and defend said cause.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.06 Affidavits and certificates as prima facie evidence; proof of validity or invalidity.—

(1) An affidavit or affidavits of the tax collector or other officer of complainant having the duty of issuing or collecting such taxes, special assessments or tax certificates, as to the existence of delinquent taxes, tax certificates and special assessments upon any parcel of land and the time when the same became due, the amount due thereon, including interest and penalties, and the nonpayment thereof, shall be received in evidence as prima facie proof of the facts so certified and of the validity of all proceedings in and about the levying and assessment of such taxes and special assessments and the issuing of such tax certificate or certificates.

(2) Tax certificates shall be admissible in evidence and shall be prima facie valid.

(3) No tax certificate shall be held invalid except upon proof that the property was not subject to taxation or that the taxes had been paid previous to any tax sale or prior to the institution of the suit.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.07 Tender of correct amount as condition precedent.—If any person shall claim that any tax, tax certificate or assessment is improper or illegal, and seek to contest the same, then such person at the time of filing an answer resisting the foreclosure of any tax lien, tax certificate or assessment lien shall tender into the registry of the court such amount as he or she claims was properly assessable or for which the property of such person was properly assessable.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6); s. 917, ch. 95-147.

173.08 Judgment for complainant; amounts included; attorney's fee.—

(1) In all cases where the cause may be decided for complainant, the judgment for delinquent taxes, tax certificates and special assessments against any parcel of land shall include the principal of, and interest and penalties on such taxes, tax certificates and special assessments, the costs of the suit and a reasonable attorney's fee; such costs and attorney's fee to be apportioned among and charged against the various parcels of land involved in proportion to the amount of taxes, tax certificates and special assessments adjudged against such respective parcels of land.

(2) In fixing the fees of complainant's attorney the court shall take into consideration the use which the complainant has made of the privilege hereby given of including in one suit divers taxes, tax certificates and assessment liens, and if the court be of the opinion that there has been an unnecessary separation of causes of action on the same or different parcels of land which might have been joined in the same action, it shall not allow an attorney's fee greater than would have been allowed if the action had been combined.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.09 Judgment for complainant; special master's sale; complainant may purchase and later sell.—

(1) Any such decree shall direct the special master thereby appointed to sell the several parcels of land separately to the highest and best bidder for cash (or, at the option of complainant, to the extent of special assessments included in such judgment, for bonds or interest coupons issued by complainant), at public outcry at the courthouse door of the county in which such suit is pending, or at such point or place in the complainant municipality as the court in such final decree may direct, after having advertised such sale (which advertisement may include all lands so ordered sold) once each week for 2 consecutive weeks in some newspaper published in the city or town in which is the complainant or if no such newspaper, in a newspaper published in the county in which the suit is pending, and if all the lands so advertised for sale be not sold on the day specified in such advertisement, such sale shall be continued from day to day until the sale of all such land is completed.

(2) Such sales shall be subject to confirmation by the court, and said special master shall, upon confirmation of the sale or sales, deliver to the purchaser or purchasers at said sale a deed of conveyance of the property so sold; provided, however, that in any case where any lands are offered for sale by the special master and the sum of the tax, tax certificates and special assess-

ments, interest, penalty, costs and attorney's fee is not bid for the same, the complainant may bid the whole amount due and the special master shall thereupon convey such parcel or parcels of land to the complainant.

(3) The property so bid in by complainant shall become its property in fee simple and may be disposed of by it in the manner provided by law, except that in the sale or disposition of any such lands the city or town may, in its discretion, accept in payment or part payment therefor any bonds or interest coupons constituting liabilities of said city or town.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.10 Judgment for complainant; court may order payment of other taxes or sale subject to taxes; special master's conveyances.—

(1) In the judgment or decree the court may, in its discretion, direct the payment of all unpaid state and county taxes and also all unpaid city or town taxes and special assessments or installments thereof, imposed or falling due since the institution of the suit, with the penalties and costs, out of the proceeds of such foreclosure sale, or it may order and direct such sale or sales to be made subject to such state and county and city or town taxes and special assessments.

(2) Any and all conveyances by the special master shall vest in the purchaser the fee simple title to the property so sold, subject only to such liens for state and county taxes or taxing districts whose liens are of equal dignity, and liens for municipal taxes and special assessments, or installments thereof, as are not directed by the decree of sale to be paid out of the proceeds of said sale.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.11 Distribution of proceeds of sale.—The proceeds of any foreclosure sale authorized by this chapter shall be distributed by the special master conducting the sale according to the final decree and if any surplus remains after the payment of the full amount of the decree, costs and attorney's fees and any subsequent tax liens which may be directed by such decree to be paid from the proceeds of sale, such surplus shall be deposited with the clerk of the court and disbursed under order of the court.

History.—s. 6, ch. 15038, 1931; CGL 1936 Supp. 3004(7).

173.12 Lands may be redeemed prior to sale.—

Any person interested in any lands included in the suit may redeem such lands at any time prior to the sale thereof by the special master by paying into the registry of the court the amount due for delinquent taxes, interest and penalties thereon and such proportionate part of the expense, attorney's fees and costs of suit as may have been fixed by the court in its decree of sale, or by written stipulation of complainant, and thereupon such lands shall be dismissed from the cause.

History.—s. 7, ch. 15038, 1931; CGL 1936 Supp. 3004(8).

173.13 Procedure under this chapter optional.—

The exercise of the power and provisions conferred in this chapter shall be optional with the municipalities and shall not be mandatory upon any municipality of the state. Any municipality desiring to proceed hereunder

may elect to proceed hereunder by formal action of its governing authority and by proceeding as described herein.

History.—s. 8, ch. 15038, 1931; CGL 1936 Supp. 3004(9).

173.14 Chapter supplemental to other law.—This chapter shall not repeal any other statute relating to the subject matter hereof, but shall be deemed to provide a supplemental, additional and alternative method of enforcement of tax liens and special assessments for the benefit of all incorporated cities or towns of the state of Florida, whether organized under special act or general laws, and shall be liberally construed to effectuate its purpose.

History.—s. 9, ch. 15038, 1931; CGL 1936 Supp. 3004(10).

173.15 Parties and subject matter; tax liens of equal dignity.—

(1) In the foreclosure of municipal tax and special assessment liens by suit in the nature of proceedings in

rem, as provided by this chapter, for the purpose of adjudicating therein all tax liens against the lands being proceeded against, or any portion thereof, and receiving from the proceeds of any foreclosure sale in such proceedings a proper and proportionate share of such proceeds in satisfaction of tax liens so adjudicated, the owner, holder, or assignee of any tax lien, however evidenced, of equal or inferior dignity with those of the complainant on or against the lands being proceeded against, or any portion thereof, may be included as and made a party defendant in such proceeding by the service of process on such party defendant in the manner provided by law for service of process on defendants in chancery.

(2) This section is intended to broaden the scope of the foreclosure proceedings authorized by this chapter, so as to permit the adjudication of tax liens of equal dignity in said proceedings, and shall be liberally construed to effectuate such purpose.

History.—ss. 1, 2, ch. 22021, 1943.