



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87-107

Richard M. Smith
Linn County Attorney
Linn County Courthouse
Mound City, Kansas 66056

Re: Taxation--Tax Assessments--Undivided Interests in
Real Estate

Synopsis: The county may foreclose upon undivided interests
in real estate which have been placed on the
county's tax rolls as individual interests.
Additionally, it lies within the discretion of the
county clerk to assess these interests either
jointly or individually. Cited herein: K.S.A.
79-426; K.S.A. 79-2801 et seq.

* * *

Dear Mr. Smith:


As Linn County Attorney, you request our opinion concerning
taxation. Specifically, you inquire whether undivided
interests in real estate which are offered for sale under the
terms of the Land Sales Practices Act, and which have been
placed on the county's tax rolls as individual units may be
foreclosed upon by the county for unpaid real estate taxes.
In addition, you ask whether the county clerk must place those
undivided interests on the tax rolls of the county
individually; and if not, is it within said county clerk's
discretion to place said interests on the tax rolls either
individually or as a single unit.

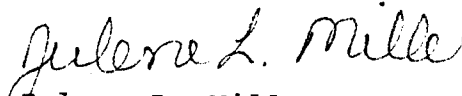
As to your initial inquiry, in our opinion the county could foreclose upon these undivided interests for unpaid taxes. Assuming these interests are taxable and have been placed on the tax rolls separately, the county would follow the same foreclosure procedure on the undivided interest as if foreclosing on a whole tract of land owned by one person. However, any subsequent sale of the interest for delinquent taxes would not affect any of the other cotenants or their respective rights, since the taxes assessed on the undivided interest would not be a common burden or liability on the property. As an analogy, foreclosures of undivided mineral interests, when assessed separately, are carried out through ordinary foreclosure procedure, pursuant to K.S.A. 79-2801 et seq. See also Jesberg v. Klinger, 187 Kan. 582 (1961) (judicial sale of undivided mineral interest does not affect remaining cotenants' rights).

As to your second inquiry, our examination of Chapter 79 revealed no language requiring the county clerk to list undivided fractional interests either jointly or individually. K.S.A. 79-426 does provide for a lien on the interest(s) of the remaining owner(s) when one owner pays off the delinquent taxes of jointly assessed property. However, we found no language suggesting that jointly owned property must be assessed in this way. See Nichols, T.S., Real Property Taxation of Divided Interests in Land, 11 U. Kan. L. Rev. 309, 311, 312 (1963). For this reason it is our opinion that the method of assessment is discretionary with the county clerk. In the scenario you describe, individual assessment would seem to be the preferable course of action, both for the taxpayers and the county.

In conclusion, the county may foreclose upon undivided interests in real estate which have been placed on the county's tax rolls as individual units. Additionally, it lies within the discretion of the county clerk to assess these interests either jointly or individually.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General