

Keeping up with PACE Liens



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Property Assessed Clean Energy (PACE) financing is a tool for property owners to finance renewable energy and energy-efficient improvements to their property. The loan is secured by a

lien (a PACE lien) and is repaid as an annual non-ad valorem assessment on the property's tax bill. The lien is evidenced by a recorded memorandum containing the maximum amount of funds available to the owner for the improvements, which, at the owner's request, may be amended to reflect the actual amount of funds borrowed.

While they can be beneficial to property owners while they own the property, PACE loans can have a number of unintended consequences when the property is sold. And we are seeing more and more PACE loans at closing as they gain popularity in Florida. Here are a few ways Realtors® can look out for their clients' interests when a property is affected by a PACE lien.

CONTRACT DISCLOSURE

How do you know if the seller has a PACE loan? While the seller is statutorily required to inform a potential buyer in writing that the property is subject to PACE financing, the seller may not know of this requirement. If the title work reveals a PACE lien affecting the property, and the contract does not contain the statutory disclosure, the contract should be amended to include the required language.

ASSUMPTION AT CLOSING

And what happens to the PACE loan at closing? The obligation to repay the PACE loan goes with the property, so the loan must either be assumed by the buyer or paid off. If the PACE loan is being assumed, a buyer should confirm that the PACE loan is factored into the purchase price, otherwise, the buyer will end up paying twice for the improvements – first with the purchase price, and second with each annual assessment.

A buyer's Realtor® should also point out that the buyer's tax bill will increase if the PACE assessment is not yet shown on the prior year's tax bill. There is generally a lag between project completion and the PACE assessment appearing on a bill.



PAID OFF AT CLOSING

PACE liens have priority over even first mortgages, so it is nearly impossible for a buyer financing their purchase to assume a PACE loan. In most cases, PACE loans will be paid off at closing. Even though PACE assessments appear on the tax bill as a non-ad valorem assessment, the FR/BAR contract does not address which party pays off a PACE loan. To avoid any doubt, the contract should provide that the seller must completely payoff the PACE loan at closing, along with any servicing fees.

POST-CLOSING ESCROW

Depending on the time of year, if a payoff statement is ordered, the PACE annual assessment may have been allocated to the current year's tax bill. As a result, the payoff statement issued by the PACE loan servicer may not reflect the full amount needed to pay off the loan. Sellers should expect that the title agent may require a portion of the seller's sales proceeds to be held in escrow after closing until the PACE assessment does not appear on the property's tax bill.

These are just a few of the issues parties may face when buying or selling a property with a PACE lien, and Realtors® and their clients are encouraged to consult a real estate attorney during the contract and closing process. ▶

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