



“WHERE THE CUSTOMER
IS OUR FIRST PRIORITY.”

PACE Liens Detailed Financial Disclosure and 3-Day Rescission Right Effective 1/1/17

A property owner may not participate in a PACE lien program without delivery of a detailed financial disclosure document received before contractual consummation. The disclosure document contains a variety of notices and warnings including a notice that the property owner may not be able to refinance or sell without paying off the PACE obligation. The property owner also retains a 3-day rescission right detailed in a statutory form. Statements as to increased value of the property cannot be made unless based on a valuation as specified.

Existing law requires home loans to be accompanied by the Truth in lending RESPA Integrated Disclosure (TRID), which is intended to allow an “apples to apples” comparison shopping of various loan products. However, PACE transactions are technically not loans and are not required to be accompanied by a TRID disclosure. Current law gives delinquent PACE assessments “super-priority” status, as part of the tax bill, over other recorded obligations; lenders require these “super liens” to be paid off before any new financing can be obtained.

This measure will require a TRID-like disclosure be provided to a property owner participating in a PACE program, a 3 day right of rescission, and notice that the property owner may not be able to refinance or sell without paying off the PACE obligation.

This law prohibits making monetary or percentage representation of increased value to a property owner regarding the effect the financed improvements will have on the market value of the property unless the estimate of market value is based upon either “an automated valuation model.” a broker price opinion or an appraisal by a licensed appraiser.

AB 2693 codified as Government Code 53328.1 and Streets and Highways Code 5898.15, 5898.16 and 5898.17.

This law goes into effect on January 1, 2017.

FHA permits properties encumbered with a Property Assessed Clean Energy (PACE) obligation to be eligible for FHA-insured mortgage financing, whether for new purchased or refinancing, under certain circumstances. If the PACE lien is to remain, then property sales contract must include all terms and conditions of the PACE obligation by closing. Effective September 17, 2016.

Under FHA guidance, for a property to be eligible for FHA-insured mortgage financing, PACE obligations may be superior or subordinate, but may not fully accelerate. The FHA guidance stresses that PACE obligations must be treated as and follow the same rules as other special tax assessments levied by municipalities. In that vein, FHA will allow that only delinquent payments may take priority over a mortgage. A delinquency on a PACE obligation cannot trigger acceleration of the entire loan. In the event of a sale, including a foreclosure, the PACE obligation will run with the land, and new homeowner will be responsible for payments on any outstanding PACE amounts.

For PACE-encumbered property to be considered for FHA-insured mortgage financing, the mortgagee must verify that the following requirements are met:

- Must be treated like a special assessment
- Only delinquent special assessment payments may take priority over a mortgage.
- PACE obligations must freely and automatically transfer upon sale.
- PACE obligations must be recorded on the land records
- Outstanding PACE obligations must run with the land

New Disclosure and Appraisal Requirements

Under the FHA guidance, when a PACE-encumbered property is sold, the property sales contract must indicate whether the seller will satisfy the PACE obligation at or before closing or where the obligation will remain with the property. If the obligation will remain with the property, the property sales contract must include and incorporate all terms and conditions of the PACE obligation. Additionally, if the obligation will remain with the property, the appraiser must analyze and report the impact of the PACE-related improvements on the value of the property.

Based on guidance from the Federal Housing Administration issued in Mortgagee Letter 2016-11. This guidance went into effect on September 17, 2016.

