Becker Becker & Poliakoff

Property Improvements Through Programs Such As PACE: Understanding the Issues – 2018

August 17, 2018

By: Hugo V. Alvarez

Property owners have often found that improving their property to make them more energy efficient or wind resistant is expensive. However, our legislators authorized Property Assessed Clean Energy (PACE) programs to help homeowners finance the cost of those home improvements.

PACE programs are specifically designed to assist both residential and commercial property owners to finance certain energy efficient and wind resistant improvements to their property. These loans are secured by financial agreements and paid by a non-ad valorem assessment through the property owner's real property tax bill. In other words, the loan is added to your tax bill and becomes part of your property tax obligation and the loan terms are spread out over time.

Even though PACE programs were authorized by the Florida legislature back in 2010, there were numerous legal challenges both in state and federal court which slowed down its implementation. However, the appellate courts finally resolved the legal challenges to the PACE program in late 2015. Shortly thereafter the program began to grow in popularity. Indeed, there are billboards advertising these programs all over South Florida today.

The advantage of these loans is that the money is fairly easy to secure and accessible pretty quickly too with very reasonable re-payment terms. The PACE program often works with pre-qualified contractors and payment is not made until the job is complete and all permits have been closed. The disadvantage is that the loan will be added to your tax bill thereby increasing your property tax obligation. You will also have to pay interest on that loan over the length of the loan.

But the question that is starting to pop up more and more at the closing table is – what do we do with that PACE loan? Here are some options:

- Some lenders will agree to take an exception to the PACE financed home improvement program.
- However, other lenders may require that the lien be satisfied at the time of the closing.
- Buyers may also agree to assume the lien if it is not paid off at the time of closing.

However, the FHA has grown increasingly concerned about the impact of the PACE liens. So much so that recently issued an opinion letter on the issue.

“FHA is concerned about the potential for increased losses to the Mutual Mortgage Insurance Fund due to the priority lien status given to such assessments in the case of default,” FHA said in its letter to mortgagees.

“FHA is also concerned with the lack of consumer protections associated with the origination of the PACE assessment, which are far less comprehensive than that of traditional mortgage financing products,” FHA continued. “FHA’s involvement with accepting properties with PACE assessments may indirectly help to overshadow potential consumer abuses.”

With this announcement, the FHA is no longer insuring mortgages on homes that carry PACE liens. Which means that the seller may end up owing more money than the seller originally anticipated when they decided to sell their property.

The issue of what to do with the PACE loan at the time of the closing will only grow in frequency with the anticipated increase in popularity of these PACE loans. **It is in the best interest of both the buyer and seller to address this issue at the time the contract is signed and not at the closing table.** Sellers and their agents should disclose this information as early as possible in an effort to be as transparent as possible to help ensure a smooth closing.
