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Amendments To California PACE Financing Statutes Become Effective January, 1 2017: Orrick

On January 1, 2017, certain amendments to California's current statutory schemes for authorizing Property Assessed Clean Energy (PACE) financing programs will become effective. The amendments primarily prescribe additional statutory requirements that must be met in order for PACE financing to be provided to the owners of residential properties with four or fewer units (Residential Properties). The additional statutory requirements enacted through the amendments apply whether or not the PACE financing is undertaken under the voluntary contractual assessment provisions of the California Streets and Highways Code (commonly referred to as Chapter 29 or the AB 811 version of PACE) or the special provisions of the Mello-Roos Community Facilities Act of 1982 (commonly referred to as SB 555 version of PACE).

With respect to Residential Properties, the additional statutory requirements enacted by the amendments consist of the following:

- The total amount of the annual property taxes and assessments (including the annual special taxes or assessments that result from the PACE financing) may not exceed 5% of the market value of the property, as determined at the time that the PACE financing agreement with the property owner is approved.
- The PACE financing recipients must be the legal owners of the property.
- The PACE financing recipients must be current on mortgage and property tax payments.
- The PACE financing recipients must not be in default or in bankruptcy proceedings.
- The PACE financing must be for less than 15% of the value of the property, up to the first $700,000 of the value of the property, and must be for less than 10% of the remaining value of the property above $700,000.
- The total mortgage-related debt and PACE financing on the property must not exceed the value of the property.
- If the improvements financed are energy efficiency improvements, the energy efficiency improvements must follow applicable standards of energy efficiency retrofit work, including any guidelines adopted by the State Energy Resources Conservation and Development Commission.
- The property owner must be given a three business day right to cancel the PACE financing agreement and must receive (in printed form unless the property owner agrees to an electronic copy) a statutorily prescribed form of right to cancel document or a substantially similar document that displays the same information in a substantially similar format.
- Prior to the consummation of a PACE financing agreement by a property owner, the property owner must be given (in printed form unless the property owner agrees to an electronic copy) a statutorily prescribed form of financing estimate and disclosure document or a substantially equivalent document that displays the same information in a substantially similar format.
- In addition, the amendments generally prohibit the making of monetary or percentage representations to property owners regarding the effect that the PACE financed improvements will have on the value of the property unless the estimate of value is derived through the use of an automated valuation model, a broker's price opinion from a state licensed real estate broker or an appraisal conducted by a state licensed real estate appraiser.

The full text of the amendments is contained in Assembly Bill No. 2693, which was approved by the Governor and filed with the Secretary of State on September 25, 2016, and Assembly Bill No. 2618, which was approved by the Governor and filed with the Secretary of State on September 29, 2016.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.