

§10205. Commercial PACE assessments; collection; priority

1. Collection of assessments. A commercial PACE assessment constitutes a lien on the qualifying property until it is paid in full and must be assessed and collected by the trust, a 3rd-party administrator contracted by the trust, a municipality or an agent designated by the trust or a municipality in any manner allowed under the commercial PACE program, consistent with applicable laws. If the trust or a 3rd-party administrator contracted by the trust collects commercial PACE assessments on behalf of a municipality, the trust shall periodically report to the municipality on the status of the commercial PACE assessments in the municipality and shall notify the municipality immediately of any delinquent commercial PACE assessments. Upon receiving notification from the trust of a delinquent commercial PACE assessment, a municipality shall notify the holder of any mortgage on the property of the delinquent assessment.

[PL 2021, c. 142, §1 (NEW).]

2. Notice; filing. A notice of a commercial PACE agreement must be filed in the appropriate registry of deeds. The filing of this notice creates a commercial PACE lien against the property subject to the commercial PACE assessment until the amounts due under the terms of the commercial PACE agreement are paid in full. A notice filed under this subsection must, at a minimum, include:

A. The amount of funds disbursed or to be disbursed pursuant to the commercial PACE agreement;

[PL 2021, c. 142, §1 (NEW).]

B. The names and addresses of the current owners of the qualifying property subject to the commercial PACE assessment; [PL 2021, c. 142, §1 (NEW).]

C. A description of the qualifying property subject to the commercial PACE assessment, including its tax map and lot number; [PL 2021, c. 142, §1 (NEW).]

D. The duration of the commercial PACE agreement; [PL 2021, c. 142, §1 (NEW).]

E. The name and address of the entity filing the notice; and [PL 2021, c. 142, §1 (NEW).]

F. Written verification of mortgage lender consent, if there is a mortgage on the property. [PL 2021, c. 142, §1 (NEW).]

[PL 2021, c. 142, §1 (NEW).]

3. Priority. A commercial PACE lien secures payment for any unpaid commercial PACE assessment and, together with all associated interest and penalties for default and associated attorney's fees and collection costs, takes precedence over all other liens or encumbrances except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts. From the date of recording, a commercial PACE lien is a priority lien against a property, subject only to liens set out in section 6111-A, Title 36, section 552 and Title 38, sections 1050 and 1208, except that the priority of such a commercial PACE lien over any lien, except a lien for real property taxes of the municipality or a lien of a municipal sewer, sanitary or water district, that existed prior to the commercial PACE lien is subject to the written consent of such existing lienholder.

[PL 2021, c. 142, §1 (NEW).]

4. Mortgage lender notice and consent. Any financial institution holding a lien, mortgage or security interest in or other collateral encumbrance on the property for which a commercial PACE assessment is sought must be provided written notice of the commercial property owner's intention to participate in the commercial PACE program and must acknowledge in writing to the commercial property owner and municipality that the financial institution has received such notice. A commercial PACE assessment may not be approved until the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property has provided written consent to the commercial property owner and municipality that the borrower may participate and enroll the collateral property in the commercial PACE program. This written consent must be filed in the registry of deeds

and must include a written acknowledgement and understanding by the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property:

- A. Of the priority status provided to commercial PACE liens pursuant to subsection 3; [PL 2021, c. 142, §1 (NEW).]
- B. Of the foreclosure process applicable to properties subject to commercial PACE liens under subsection 5; and [PL 2021, c. 142, §1 (NEW).]
- C. That the financial institution is not required to but has voluntarily elected to consent to the enrollment of the property in the commercial PACE program. [PL 2021, c. 142, §1 (NEW).]
[PL 2021, c. 142, §1 (NEW).]

5. Collection, default and foreclosure. A commercial PACE assessment for which notice is properly recorded under this section creates a lien on the property. The portion of the assessment that has not yet become due is not eliminated by foreclosure, and the lien may not be accelerated or extinguished until fully repaid.

A commercial PACE assessment and any interest, fees, penalties and attorney's fees incurred in its collection must be collected in the same manner as the real property taxes of the municipality in which the property is located. If a commercial PACE assessment is delinquent or in default and the borrower or property owner is delinquent in any tax debt due to the municipality in which the property is located, collection may occur only by the recording of liens and by foreclosure under Title 36, sections 942 and 943. Liens must be recorded and released in the same manner as liens for real property taxes.

If only a commercial PACE assessment is delinquent but the borrower or property owner is current on payment of all municipal taxes due to the participating municipality, then a commercial PACE lienholder shall accept an assignment of the commercial PACE lien, as provided in the written agreement between the participating municipality and the commercial PACE lender. The assignee shall have and possess all the same powers and rights at law as the participating municipality and its tax collector with regards to the priority of the commercial PACE lien, the accrual of interest and fees and the costs of collection. The assignee shall have the same rights to enforce the commercial PACE lien as any private party or lender holding a lien on real property, including, but not limited to, the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of the commercial PACE lien. The assignee shall recover costs and reasonable attorney's fees incurred as a result of any foreclosure action or other legal proceeding brought pursuant to this subsection, which may be collected by the assignee at any time after the assignee has made demand for payment.

[PL 2021, c. 142, §1 (NEW).]

6. Judicial or nonjudicial sale or foreclosure. In the event of a judicial or nonjudicial sale or foreclosure of a property subject to a commercial PACE lien by a lienholder that is not a commercial PACE lienholder, the commercial PACE lien must survive the foreclosure or sale to the extent of any unpaid installment, interest, penalties or fees secured by the lien that were not paid from the proceeds of the sale. All parties with mortgages or liens on that property, including without limitation commercial PACE lienholders, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established in this chapter and by applicable law. A commercial PACE assessment is not eliminated by foreclosure and cannot be accelerated. Only the portion of a commercial PACE assessment that is in arrears at the time of foreclosure takes precedence over other mortgages or liens; the remainder transfers with the property at resale.

Unless otherwise agreed upon by the commercial PACE lender, all payments on a commercial PACE assessment that become due after the date of transfer by judicial or nonjudicial sale or foreclosure must continue to be secured by a lien on the property and are the responsibility of the transferee.

[PL 2021, c. 142, §1 (NEW).]

7. Release of lien. A municipality shall discharge a commercial PACE lien created under subsection 2 upon full payment of the amount specified in the commercial PACE agreement. A discharge under this subsection must be filed in the appropriate registry of deeds and must include reference to the notice required under subsection 2.

[PL 2021, c. 142, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 142, §1 (NEW).

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