

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## **NEW INFORMATION FOR** **PACE LENDERS**

As we discussed some time ago, AB 1284 (enacted in 2017) provides extensive protection for California home owners who finance improvements through the Property Assessed Clean Energy or “PACE” Program. The new laws authorize the DBO to conduct investigations and examinations, and bring enforcement actions – including suspensions or banishments from the industry – against PACE administrators, solicitors and solicitor agents.

The licensing requirements and enforcement of this program will be administered by the California Department of Business Oversight (“DBO”).

The statute requires program administrators to, among other measures:

- ✚ Determine that a property owner has a reasonable ability to pay the annual obligations of a PACE contract.

- ✚ Prohibit program administrators from making materially false or misleading statements or representations to a property owner about the terms or conditions of a PACE contract.
- ✚ Require PACE solicitors and solicitor agents to be licensed by, or registered with, the Contractors State Licensing Board, unless otherwise exempt.
- ✚ Prohibit PACE solicitors and solicitor agents from offering a PACE contract that omits terms, conditions or disclosures required by law.
- ✚ Prohibit a program administrator from approving an assessment contract if a property has outstanding liens of more than \$1,000, if the property owner has been subject to a bankruptcy hearing in the past seven years or if the property owner is behind on his or her mortgage payments.

Most of the consumer protections required of PACE program administrators, solicitors and solicitor agents took effect on April 1, 2018. The licensing and DBO regulatory authority take effect on Jan. 1, 2019.

Now the DBO has issued a few FAQs to further explain implementation issues. Because of their brevity, we have included these in full. They are:

*1. When will I be expected to comply?*

- ✚ AB 1284 was an urgency bill and some provisions, like the name change to the law, became effective immediately.
- ✚ Many provisions of AB 1284 and SB 242 became operative on January 1, 2018, and some underwriting provisions became operative on April 1, 2018.
- ✚ The requirement to be licensed by DBO is effective January 1, 2019.

- ✚ PACE program administrators must comply with the law and each new requirement as it is operative.
- ✚ Prospective licensees should comply with underwriting provisions on and after the operative date of those provisions.

***2. Will the DBO draft underwriting regulations before April 1, 2018? How am I supposed to comply with the underwriting requirements when the regulations are not yet drafted?***

- ✚ The DBO does not intend to promulgate regulations in this area in advance of other rulemaking.
- ✚ Prospective licensees should comply with the plain language of the underwriting statutes as they become operative, just as they would do had the underwriting requirements appeared in a part of the code that wasn't under the jurisdiction of a regulatory body with rulemaking authority.
- ✚ During regulatory examinations, the DBO will ensure that licensees are in compliance with the plain language of the statute as of the date it became operative. If a licensee is doing so, the DBO will not cite the licensee for a violation of the California Financing Law (CFL).
- ✚ However, when the Department's rules become effective, every licensee must comply with the regulations as of that date.

***3. Will the regulations be emergency regulations?***

- ✚ At this time, there is no plan to promulgate emergency regulations.

***4. What is the Federal Housing Administration's new policy related to PACE?***

- ✚ The Federal Housing Administration (FHA) has changed its policy on insuring home mortgages secured by properties with PACE liens. Under the Obama Administration, FHA would insure home mortgages on a property with an existing PACE lien, if the PACE assessment payments were current, and a default of a payment would not result in the entire principal amount of the assessment coming due. With the change to FHA's policy (effective January 1, 2018), a borrower will now have to pay off the entire PACE obligation and remove the PACE lien to be eligible for an FHA-insured mortgage (whether a refinance or a home purchase).

## ABOUT ALT & ASSOCIATES

Alt & Associates publishes the *Lenders Update* via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

- ✚ Regulatory assistance, both state and federal
- ✚ Compliance work
- ✚ Operational advice
- ✚ Transactional work Agreements such as Loan Officer
- ✚ Compensation Agreements etc.
- ✚ Various forms of employee, officer, and/or manager contracts
- ✚ Litigation representation

You may direct any questions or comments directly to:

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