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PACE programs, growth of green building due diligence take spotlight

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As green buildings become more common in the real estate sector and climate-change related regulation develops, two issues are arising in real estate transactions: new financing mechanisms and the need for green building due diligence. In a matter of a little more than 15 years, Property Assessed Clean Energy (PACE) programs have spread across the U.S. as a mechanism to finance renewable energy and energy efficiency upgrades for residential and commercial property owners. PACE programs that have been adopted by states as a tool to achieve their renewable energy and energy efficiency goals. In 2008, California started the trend by paving the way for local governments and 16 other states have followed suit, including Arizona, Florida, Illinois, New York and Texas. Michigan is considering similar legislation. H.B. 5946, introduced by Rep. Jehoshua Warriner, D-Anne Arbor. PACE programs expand the use of traditional land-secured financing historically used for financing public-interest projects such as buildings, parks, parking, water works, street lighting and parks.

Traditional land-secured financing initiatives typically create “special assessment districts” encompassing properties that are specifically benefited by the improvement. Property owners within the district pay back a prorated share of the improvement costs over a number of years. Assessments generally are included on the property tax bill. All properties within a special assessment district are subject to the assessment and the assessment runs with the land.

Currently, there are thousands of land-secured financing districts in the United States. They are familiar financing mechanisms in units of government, the lending industry and the real estate sector.

The PACE model, enables energy improvements to be financed in much the same way. Under the PACE model, properties that voluntarily consent to participate in the program are subject to a special assessment. States that have adopted legislation enabling PACE programs generally find that reducing energy consumption and adopting renewable energy is in the public interest and serves a valuable public purpose, and local government actions creating a PACE special assessment are based upon the same findings.

The legal mechanisms of PACE programs vary based on jurisdictional differences, but contain similar features. The programs authorize local units of government to issue bonds secured in the first instance by the pledge of special assessment payments, and secondarily by certain reserve funds. The capital raised from the bond sale is made available to consenting residential and commercial property owners within the PACE special assessment district to install renewable energy systems or make energy efficiency upgrades to their homes or businesses.

The costs of the improvements are repaid over a period of years on the property tax bill as a special assessment. Because the assessment runs with the land, it is transferred with the property and assumed by the subsequent owner in the event of a sale.

Local governments are obligated to follow procedural guidelines when setting up a program within their jurisdiction. Provisions differ for different types of renewable energy and energy efficiency upgrades. Generally, the payback periods, loan amounts and financing mechanisms vary by state and local unit of government.

Due diligence

A critical major development in real estate transactions is the growth of green building due diligence. There are a number of market drivers fueling this trend including mandatory transactional energy disclosure and labeling regulations that require disclosure of energy consumption prior to a building sale or lease. California, New York, Washington and several major cities across the country have adopted laws to require such disclosures. In addition, the funds disposed from American Recovery and Reinvestment Act (ARRA) came with “green strings” attached requiring that states accepting such funds agree to upgrade their building codes by adopting green building and energy efficiency requirements. Finally, various green building rating systems have emerged in the marketplace. LEED, Energy Star and the Green Value Score are different industry standards used to describe the energy efficiency and green qualities of a real estate asset.

With the growth in regulatory requirements related to energy use, changes in building codes requiring the adoption of green building practices, and industry rating systems for energy usage and building techniques, a need to standardize the information in transactional settings is rapidly increasing. The American Society of Testing and Materials (ASTM) has stepped in to fill this void with the anticipated passage by midyear of its new Guide for Building Energy Performance Disclosure. This will be an essential tool for PACE programs and the emergence of green building due diligence in the U.S., given the likely impacts in the near-term.

Passivhaus not sexy, but it works

By Monique Lee Hawthorne, Esq.

As a Leadership in Energy and Environmental Design (LEED) Accredited Professional, I, readily defend LEED’s standards and certification to critics who question its alleged greenwash and whether it lives up to its hype.

“You got points for including in any region, even though features’ impacts may be completely different. Builder professionals also heavily influence LEED points pursued. What Passiv House, however, either the standard is achieved or it isn’t. So, which is better? There is a strong area-