

EIC C-PACE Advisory Committee Meeting
September 19, 2019

Susan Morth/EIC: I have Anna Lee from Norton Rose Fulbright on the phone and I think she is joined by a couple of her colleagues to discuss, again, the foreclosure process. There are no major changes but there were a few questions raised by Michael Yaki and some of other members on the last call. I'll turn it over to you Anna.

Anna Lee/Norton: Thanks, I just want to introduce who else is here with me, Steve Nelson is here with me and Elvira Kirilko, two real estate attorneys to talk about your concerns regarding foreclosure. I guess the question was posed by Michael Yaki or maybe a municipality whether or not a municipality has any obligation to make the PACE assessment payment in the case where the PACE lender does not step in and redeem the senior liens including property taxes. In the case where the borrower does not make the assessment, the PACE lender does not step in and they are delinquent and they are also delinquent on property taxes, let's say there is no mortgage, so no mortgage lender and the PACE lender does not step in to exercise its rights with respect to redeeming the senior liens and foreclosing on the property what's the obligation of the municipality at that point to make any kind of PACE assessment payments. I think that is the question. Michael Yaki, did I frame that correctly?

Michael Yaki: Yeah, that's about it. Apparently, there is some situation where if it is foreclosed and not sold and goes into the land bank. What responsibility does a county have while it's in the land bank before they try to sell it again or it's purchased again in the future?

Anna: Right, so I guess I'll let Steve Nelson talk to this, he's a real estate attorney here and so basically the way we set it up under the local law is there is a lien placed on the property for the full amount but the lien is really broken up into annual installment liens so every year the amount due, let's say there is a project repayable over ten years. Let's say it's a million dollars, a \$100,000 each year. Every year the \$100,000 becomes an installment lien on the lien date under the statute, its usually January 1st, but like we found out that Suffolk County has another date which is December 1st, so depending on whatever the lien date is in that municipality. In each year the annual installment amount becomes a lien on January 1st or December 1st depending on the municipality and liens that are delinquent when the property is in a foreclosure proceeding will be wiped out if the capital provider doesn't step in to exercise its rights to pay off the senior liens and redeem and foreclose on the property itself but the future annual installment liens which are not yet liens, they are not yet due, will stay on the property, this is under the law so the next owner of the property would be obligated to pay those annual installment liens similar to a property tax. Did I say that right Steven?

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Steve Nelson/Norton: Yes, I don't have anything to add to that.

Anna: So, does that answer your question?

Michael: I just wanted to clarify in the case where the county land bank, because there is no new owner other than the county, is the county on the hook for the annual payments or because it's not on the tax rolls, because it is technically county land, there is no annual installment lien that would become due?

Anna: The annual installment liens don't stop because you are in the foreclosure process but they are not going to be paid by the municipality at that point or the land bank because they probably won't even pay property taxes. The annual installment liens continue but they won't be paid.

Michael: The new buyer of the property would have to pay that going forward.

Anna: Going forward, but not going backwards. The capital provider would need to step in and pay off the senior liens so they can get paid.

Michael: No, I understand that, but the I'm just trying to explain this to a county, so if for example you have a twenty year term and in year five the property owner becomes delinquent and let's just say that for some reason or another the capital provider has a brain seizure and does not step in, the county goes into foreclosure process and the county puts it into the land bank for an additional two years the term still runs during that time, right? It isn't held while it's in the county land bank so you're basically forfeiting those annual payments during the time that it is held in the land bank, correct?

Anna: Yes, unless the land bank decides they want to pay it, they have no obligation to do it. The senior lien does not have to pay off the PACE lien.

Michael: I get that. I just have to be able to explain this to this one county that thinks it has to dig into its own pocket. Okay, thanks.

Susan: Thank you, I have approximately 24 callers on the line, does anyone else have further questions? We would be happy to review what we said about the foreclosure process. Don't feel like you're being repetitive. It is an opportunity for people to take advantage of our attorneys while they are on the line. Are there any questions about the foreclosure process?

Ethan/PACE Equity: Hi, I have a clarifying question, you said that the PACE lien can be wiped out if the taxes are not paid but not the future installments. What is the process for that, is there a notice, how long? Can you give more details about how that would work?

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Anna: Sure, let's say that under the local law the way we set it up, if EIC is billing on behalf of the municipality the PACE assessment and if there is a delinquency or if they don't pay, then the capital provider has to notify EIC and EIC will send out at least two notices that you are delinquent, you haven't paid. At that point the redemption period, the capital provider and other lien holders of record including any mortgage lender would have the right to step in and pay off delinquent property taxes assuming there are some and become the senior lien holder so you don't have to actually technically go into a foreclosure but then the capital provider would then be in the first senior position in order to enforce the loan against the property if necessary. But the extinguishment of the liens is when the capital provider has basically not stepped in to enforce its rights for two years at the minimum of the redemption period and so they just let it go and then the municipality takes steps to get repaid the property taxes and that also assumes the mortgage lender has not stepped in to pay off the senior loans. So the municipality would then be trying to foreclose on the property and during that period if nobody is stepping in to pay off the senior property taxes then the annual installment liens that accrue and become delinquent during this period will be wiped out if a municipality sells the property, because they don't have to respect junior liens but the future annual installment liens aren't actually liens yet they don't become liens until the year in which they are due they haven't actually become liens so they not wiped out only those that were past due and not paid, delinquent get extinguished.

Michael: So, Anna really briefly, so whatever the hold period is during the foreclosure period if it's in the land bank or whatever, a new buyer for the property essentially buys it free and clear of any existing lien but will be responsible for the annual installment lien that comes due when she buys the property so there's no recourse for the a capital provider for that period of time for the lost payments. They can't go after the new property owner because there's nothing on the property to go after?

Anna: The new property owner is only going to be responsible for liens going forward not going backward. Like property taxes they are responsible for property taxes going forward not backwards when they didn't own the property.

Susan: Thank you. Anyone else on the line have a question? Okay, if we have no further questions about the foreclosure process, we can move on to the next item on the agenda which is the look-back period. We had discussed on the last advisory call the idea of a look-back period and EIC had asked the group at that time what their thinking of an appropriate look-back period. We did do some additional research with some of you that are on the phone and we thank you. What we posted on our handbook is that EIC does have a look-back period and it's on a case by case basis and we are not trying to be coy, we are just trying to leave it as open

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to reason as possible. For example we have in our program, three years ago almost we got a pre-application in EIC's now closed make whole program from a property owner that was very interested in using PACE but the program at the time didn't work and the municipality wasn't going to become a member and this left this property owner sort of out in the cold. This person did want to use PACE but couldn't do so. So, we want to leave it open on a case by case basis. Clearly we had indication of tremendous interest from the property owner. So, we just like to ask capital providers to get a letter of interest from the property owner and using PACE in the case that either the municipality is not enabled, they all should be up and running shortly, or more importantly in the case of new construction, unfortunately we did not get new construction amended or included in Article 5L this past June. I can tell you we have every intention of working closely with NYSERDA who also very much supports new construction being included in Article 5L. So, if you are working on a new construction project, you will be able to use a look-back period to finance or to refinance CPACE once we do get that approved in New York. If there are any questions on that, we are happy to take them now or one on one.

No questions on that, we are going to move on to municipal membership and Sarah Smiley, Director of Municipal Membership, most of you know Sarah, is here to give you an update.

Sarah Smiley/EIC: Hi, everyone. Our list of municipalities that have fully activated the program are updated in current time on our website, so you can look at that. The ones that are most recent since the last Advisory call: we are excited about the City of Yonkers, Rockland County, Oneida County, and very recently the City of White Plains and the City of Schenectady have finalized the process. The ones that are coming up soon are the City of New Rochelle, Suffolk County, Broome County, City of Troy and Putnam County-they just have to finalize their paperwork, Nassau County we are hoping to get down in September but it is unclear yet, they have more of an extensive process for processing the municipal agreement. I have followed up with them, hopefully we will have an update soon. Other municipalities that have votes scheduled in September or early October are, just a reminder of the process each municipality has to adopt the local law as well as authorize the municipal agreement that they enter into with EIC. The ones that have votes coming up are the City of Kingston, the Town of Greenburgh, Sullivan County, the City of Syracuse should be done September 23rd, City of Niagara Falls, Madison County, Albany County, City of Canandaigua, Cayuga County and Ulster County and also the Town of Harrison just added it to their agenda in Westchester. So for any municipalities that you are particularly interested in and you have not heard me mention, please feel free to reach out to me individually and I can tell you how things are going there. A few of our municipalities have been reviewing Open CPACE but have been slow to move forward are looking to see interest from our property owners that want to use it. Mainly those are the City of Buffalo, Erie County and the

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City of Rochester. Of course, we never would share any information without express permission in terms of any potential projects but if there is information you may have even if it's just the amount of a project, the financing amount or type of project that is always helpful for us if we are able to share it with the municipality. That's all I have for now, thank you very much.

Susan: If anyone has any questions for Sarah, feel free to ask it here or again reach out to us. She has a lot of granularity on exactly dates, times people involved at the municipal level we are happy to share with you. If there are no questions for Sarah now, we can open this to any general questions people have on the phone. If we don't have any questions, then we can conclude. Okay, it sounds like we are all done so thank you so much again for your help with the program. We feel that we have a lot to work with now and we look forward to closing deals and of course answering any questions or concerns or like to hear any criticisms of what it is we are doing here. Thank you for helping us and we look forward to talking to you all again soon.