

# MEMO



To: Capital Providers in the Philadelphia C-PACE Program

From: Steve Wakefield, Deputy Solicitor, City of Philadelphia Revenue Department

CC: Philadelphia Energy Authority

Date: February 13, 2020

RE: Enforcement of a C-PACE Lien

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In the event that a Capital Provider wishes to enforce a C-PACE lien, the Capital Provider will instruct the Philadelphia Energy Authority (“PEA”) to enforce the lien through a Sheriff’s Sale process.

PEA will file a petition pursuant to Section 7283 of the MCTLA and will adhere to the updated service requirements of Section 7193.2 of the MCTLA.

As such, PEA will follow these steps to pursue such enforcement:

- 1) PEA will obtain a Tax Information Certificate on the property
- 2) PEA will file a petition with the Court of Common Pleas
  - The filed petition will include:
    - The Tax Information Certificate which will contain a list of all other liens on the property
    - Legal description of the property
    - A list of the delinquent C-PACE payment(s)
    - A notice that the C-PACE assessment stays with the property after the sale
- 3) The Court of Common Pleas will issue a rule date
- 4) PEA will serve the petition and the rule date in accordance with Section 7193.2 of the MCTLA:
  - PEA will post the rule date and petition on the most public part of the property and shall take a picture of the posting
  - PEA will mail copies of the rule date and petition to interested parties via first class mail and certified mail
  - PEA will file two affidavits of service – one for mailing the rule and petition, one for posting the rule date and petition

- 5) On the rule date, the Court will hold a hearing on the petition. Provided that the petition is not disputed by any parties, the Court will issue a decree that the Property should be sold at sheriff's sale.
- 6) PEA will submit the Decree to the Sheriff's Office
- 7) PEA works with Sheriff's Office to set the sale date and the minimum sale price
  - o PEA intends for the minimum sale price to be the sum of the outstanding City liens/claims, the C-PACE lien and the costs of collections
  - o Sheriff will advertise according to PA RCP/MCTLA requirements
- 8) The Sheriff's Office holds a sale of the property and announces the remaining C-PACE assessment at the sale
  - o Note: The C-PACE assessment stays with the property after the Sheriff's Sale and all future C-PACE payments become the obligation of the new property owner. This information will be announced at the sale.
- 9) Sale proceeds shall be distributed in order of priority
  - o Per Section 7 of the Philadelphia C-PACE Ordinance (Bill No. 190412), C-PACE Capital Providers shall be required to make the City whole for any shortfall on payment on any City liens based on any type of City claim, including tax claims, PGW, Water and demolition liens or any other similar liens, up to the full amount of payment of the lien based on any such C-PACE assessment.
  - o Pursuant to PA RCP 3136, the sheriff should order a title report. The sheriff will then publish a proposed distribution based on the priority of claims. All creditors have 10 days to file exceptions. Pursuant to local statute, Municipal Claims shall be satisfied before C-PACE claims. Then, as a practical matter, C-PACE liens will be satisfied, and then all remaining proceeds will be distributed to remaining lienholders.

If the City has already initiated a sale of the property to satisfy an outstanding City claim or lien, PEA is advised not to pursue enforcement of the C-PACE lien until the City's process has concluded. Any C-PACE lien that existed on the property prior to the City initiating its enforcement will be paid to the extent that there are excess proceeds available, and if not satisfied will remain on the property to the extent that monies are still due. The Revenue Department encourages PEA to file C-PACE liens as soon as possible (the January after the missed payment in the previous March) to be included in the recovery of funds if another party enforces action against the property first.

Sincerely,

Steve Wakefield  
Deputy Solicitor  
Revenue Department  
City of Philadelphia