

To: Members of the Energy & Technology Committee
From: Justin Ailes, American Land Title Association (ALTA)
Date: March 7, 2017
RE: S.B. 973, an act concerning a residential sustainable energy program

Founded in 1907, the American Land Title Association represents businesses and real estate attorneys who work in real estate settlement, abstract and title insurance industry. Our 6,200 member companies work with consumers across the country every day to ensure their property rights are protected. The core of our industry is searching records that affect property rights and examining these documents to provide consumers and their lenders a sense certainty when homes are purchased or refinanced.

ALTA supports efforts to encourage homeowners to increase the energy efficiency of their home. We encourage policymakers to consider laws, regulations and businesses practices that govern consumer credit offered in order to finance energy efficient improvements for residential real estate. Alternative financing for these energy efficient improvements are commonly known as Property Assessed Clean Energy (PACE) financing.

We are concerned that PACE should be studied and evaluated for the risk presented by these financing schemes to the solvency of banks, credit unions and other sources of mortgage credit and to consumers' property rights.

PACE programs allow local governments to finance energy efficiency upgrades (solar panels, energy efficient appliances, windows, etc.) and retrofits on real property for individual homeowners. While the funding for these loans come from private sources, the loans flow through local governments and are repaid via the homeowners property tax bill. This public-private partnership allows private lenders to obtain tax lien in the event the home owner defaults on their loan obligation. Tax liens give the private lender the right foreclose on the property, receive payment ahead of and potentially extinguish other lien holders with an interest in the property, including mortgages entered into before the PACE loan. This super priority lien is typically a right reserved only for extraordinary circumstances, such as government agencies.

These programs increase the amount of debt secured by the real property making it more likely that consumers will default on their loans. As our recent experience showed, home owners with increased debt service have an increased risk of default, especially if they face an adverse life event. Additionally, the extra debt level could make it difficult for owners to refinance or sell in a declining or stagnant real estate market.

There are also some concerns about the marketing of these programs potentially being misleading to consumers about the costs of the loan, the level of energy savings they will obtain and the their ability to transfer the PACE obligation to new homeowners. Additionally, despite obtaining the super priority rights through this public private partnership, most PACE lenders charge interest rates in excess of

prevailing rates offered by traditional lenders and the loans can come with prepayment penalties which in the past have been problematic for consumers.

Given the risks these programs can present to homeowner and mortgage holders, the FHFA established a policy that prohibits, Fannie Mae and Freddie Mac from purchasing mortgages subject to a PACE loan unless the PACE lender subordinates its rights.

We encourage policymakers to seek a review of the issues discussed above and the costs and benefits of this potential policy change in policy.

Attached are letters with additional information for the committee to consider:

1. Letter from U.S. Representative Brad Sherman to Consumer Financial Protection Bureau
Director Richard Cordray
2. Letter from California Association of Realtors to the Federal Housing Administration
3. Letter from consumer groups to the U.S. Department of Energy

If you have questions about this information, please contact me at 202.631.0061 or justin@alta.org.