



**ALLIANT**  
**NATIONAL**  
TITLE INSURANCE COMPANY

# **Code Enforcement, Municipal Liens, and PACE**

**Credit: 1 hour CE (Ethics) / 1 hour CLE (Specialties: Real Estate and  
General, City, County, and Local Government Law)**

Lindsay R. Hall Harrison, Esq.  
Alliant National Title Insurance Company  
2 pm – 3 pm, Friday, August 9, 2019

**UP!**

**Lindsay R. Hall Harrison, Esq.**  
**Underwriting Counsel Florida**  
**Alliant National Title Insurance Company**



Lindsay R. Hall Harrison is Underwriting Counsel at Alliant National Title Insurance Company's Oviedo office. Lindsay was born in Toronto, Canada, grew up in Portland, Oregon and received her B.A. in Social Sciences from Portland State University and then moved to Florida to attend Barry University School of Law in Orlando. Lindsay has practiced as a litigation attorney representing lenders and servicers in foreclosure proceedings throughout Florida's courts. She was managing partner of a boutique real estate law firm and title company, and was previously Associate General Counsel of a large, national mortgage lender.

Lindsay serves as Director At-Large for the Florida Land Title Association and Co-Chair of the FLTA Education Committee, and is also a member of the ALTA Real Property Records and Talent Committees. Lindsay is a past board member and committee chair of the Florida Association for Women Lawyers, and past board member of the Central Florida Association for Women Lawyers, the Women's Counsel of Realtors Central Florida Chapter, and A Gift for Music. Lindsay also serves as the Chair of the City of Maitland's Parks and Recreation Advisory Board. Lindsay was named as a past Nominee of the Orlando Business Journal's "Women Who Mean Business" and was also bestowed with the Florida Association for Women Lawyer's Class of 2015 Leaders in the Law award. Lindsay and her husband Andrew live in Maitland with their young daughter and enjoy scuba diving, kayaking, and traveling.

## OVERVIEW

**Name of Provider:** Alliant National Title Insurance Company

**Name of Course:** Code Enforcement, Municipal Liens, and PACE

**Targeted audience:** Florida Title Insurance Agents

### **Course Objectives:**

This course will give a broad overview of Florida law regarding code enforcement, municipal liens, and Florida's Property Assessed Clean Energy (PACE) program. Florida title agents must have easily accessible, at-hand knowledge in the areas of Code Enforcement and Municipal Liens so that they can properly insure real estate transactions, resolve common pitfalls, and efficiently and confidently respond to customer questions in these areas. PACE financing is becoming more common in Florida, so current knowledge on this subject is relevant for every Florida title agent.

**Course Relevance:** Florida title agents must deal with many and varied issues in connection with code enforcement, municipal liens, and PACE. Issues with code enforcement and municipal liens arise in near-daily transactions for many agents and oftentimes, it is difficult to discern whether these are title insurance issues or issues that the title agent should encourage the client to settle on their own. PACE is an increasingly popular way to finance environmentally friendly home improvements. Agents will come into contact with this type of lien more and more, so to insure real estate transactions and resolve issues for clients they need to be educated on the PACE program. In order to properly insure transactions involving these types of issues, Florida title agents must have a thorough understanding of Florida law, including both statutory and case law.

**Study Method:** Classroom

# OUTLINE

## Code Enforcement, Municipal Liens, and PACE (Classroom)

<b>I. Introduction</b>	<b>5 Min</b>
<b>II. Code Enforcement Liens – Chapter 162</b>	<b>15 Min</b>
a. Powers Granted	
b. How is the Lien Enforced	
c. Time Period for Enforcement	
d. Determining the ‘Superiority’ of a Lien	
<b>III. Municipal Liens – Chapters 153 and 159</b>	<b>15 Min</b>
a. Powers Granted & Enforced	
<b>IV. PACE Improvement Financing</b>	<b>15 Min</b>
a. What is PACE?	
b. What Types of Improvements qualify?	
c. Participating in a PACE program	
d. Lien Superiority	
e. Which Counties and Municipalities Participate in PACE?	
<b>Total Instruction Time</b>	<b>50 Min</b>
<b>Time for Break and Questions and Answers</b>	<b>10 Min</b>
<b>Total Time</b>	<b>60 Min</b>

# Code Enforcement, Municipal Liens, and PACE

## CODE ENFORCEMENT LIENS – Chapter 162

### *Powers Granted*

F.S. 162.02 grants counties and municipalities the power to impose fines for violation of codes and ordinances. Frequently, investors will acquire distressed property that may be subject to prior or ongoing code enforcement liens for safety or nuisance violations on the property. Title Agents should be aware that consulting with investor clients and recommending searches for these types of liens is highly recommended, especially if there is evidence that the property has sat unoccupied for an extended period of time, whether through foreclosure, probate, or other similar matters.

**F.S. 162.02 Intent.**—It is the intent of this part to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

### *How is the Lien Enforced?*

Code enforcement liens are governed by Florida Statute and have specific procedures and requirements. First, the code inspector initiates enforcement proceedings against individuals who violate the county code. Then the code inspector notifies the violator and gives him or her a reasonable time to correct the violation. If the violation is still not remedied then the code enforcement board will schedule a hearing and notify the violator of the hearing. If the property is transferred then the violator must: (1) disclose in writing the nature of the proceedings to the buyer, (2) deliver a copy of the pleadings and other materials to the buyer, and (3) disclose in writing that the buyer will be responsible for compliance with the orders issued in the hearing. Failing to disclose the above things to the new buyer creates a rebuttable presumption of fraud. If the property is transferred before the hearing then the buyer will have a reasonable time to correct the violation before the hearing.

### **F.S. 162.06 Enforcement procedure.**—

(1) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(2) Except as provided in subsections (3) and (4), if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in s. 162.12 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in s. 162.12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(3) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 162.12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the code enforcement board retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the code enforcement board.

(4) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.

(5) If the owner of property that is subject to an enforcement proceeding before an enforcement board, special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(c) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(d) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

If the order that was issued at the code enforcement hearing then a certified copy of the order imposing a fine may be recorded in the public records and is then considered a lien against the land on which the violation exists and any other property owned by the violator. Under *Monroe County v. McCormick*, the recording is a self-authentication document. The court held that the order imposing the fine was “certified by the Code Board’s recording secretary as a true and correct copy of the original order of the Code Board. It is thus a self-authenticating document pursuant to section 90.902, Florida Statutes (1995), and is thus admissible to prove to the trial court that the fine was imposed, a necessary step in the foreclosure process.” *Monroe County v. McCormick*, 692 So.2d 214 (Fla.3d DCA 1997). After three months from the filing if the lien remains unpaid then the local governing body may foreclose on the lien or sue to recover a money judgment.

**F.S. 162.09 Administrative fines; costs of repair; liens.—**

(1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) An enforcement board may reduce a fine imposed pursuant to this section.

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

A very important technical aspect of this chapter that Title Agents need to be aware of is that a certified copy of a recorded lien against one property may attach to any other property owned in the same county by the same violator. This is also known as a bleeding lien. Example: John Smith and David Smith, father and son purchase an investment property together for cash. John Smith and David Smith each have a separate homestead property located within the same county as the investment property. David Smith's homestead falls into disrepair when David moves out of state for work. The county records a certified lien against this homestead for code violations on the property. If John and David later decide to sell their investment property, the code violations assessed against David's homestead will be subject to the outstanding code enforcement liens and must be paid prior to closing. However, code enforcement liens cannot create a foreclosure or a money judgment on a property that is deemed homestead.

**F.S. 162.09 Administrative fines; costs of repair; liens.—**

(3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may

execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

### ***Time Period for Enforcement***

The time period of enforcement for a lien is 20 years after the order imposing a fine has been recorded. Not good against creditors or subsequent purchasers for valuable consideration without notice unless a notice of *lis pendens* is recorded.

**F.S. 162.10 Duration of lien.**—No lien provided under the Local Government Code Enforcement Boards Act shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to s. 162.09(3) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney’s fee, that it incurs in the action. The local governing body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of *lis pendens* is recorded.

### ***City of Riviera Beach, FL v. J & B Motel Corp., 213 So.3d 1102 (Fla. 4th DCA 2017)***

When read in conjunction with section 162.09(3), the plain language of section 162.10 establishes that a local government has 20 years from the date a code enforcement lien is recorded to file a lawsuit seeking to foreclose or recover a money judgment on the lien.

### ***Determining the ‘Superiority’ of a Lien***

There is no statute on the priority of a code enforcement lien. However, in *City of Palm Bay v. Wells Fargo Bank, N.A.* the court determined that the city’s statute that declared code enforcement liens as co-equal with municipal taxes was invalid.

### ***City of Palm Bay v. Wells Fargo Bank, N.A., 114 So.3d 924 (Fla. 2013)***

The Palm Bay ordinance provision, “Liens created pursuant to a Board order and recorded in the public record shall remain liens coequal with the liens of all state[,] county[,] district [,] and municipal taxes, superior in dignity to all other liens[,] titles [,] and claims until paid, and shall bear interest annually at a rate not to exceed the legal rate allowed for such liens and maybe foreclosed pursuant to the procedures set forth in Florida Statutes, Chapter 173” establishes a priority that is inconsistent with the priority established by the pertinent provisions of chapter 695, “[t]he sequence of [official register numbers required under section 28.222] shall determine the priority of recordation” so that “[a]n instrument bearing the lower number in the then-current series of numbers shall have priority over any instrument bearing a higher number in the same series.”

Although the case does not definitively hold this, it is reasonable to believe that after *City of Palm Bay v. Wells Fargo Bank* “the lien takes its priority from the time it is recorded. If the code enforcement lien is recorded before the *lis pendens* in the foreclosure action, the local government should be named and served in the foreclosure suit. If the code enforcement lien is recorded after the *lis pendens* filed in the foreclosure action, the lien may be treated as eliminated by the *lis pendens* provided the foreclosure is completed through certificate of title.”

## **MUNICIPAL LIENS – Chapters 153 and 159**

Municipal Liens statutes are found in both F.S. Chapter 153 and Chapter 159. Ch. 153, F.S., deals with county water and sewer systems, especially the actual physical infrastructure (pipes, tanks, reservoirs, meters, facilities, etc.) as well as charges for water and sewer services provided by the county, while Ch. 159, F.S., deals in part with municipal water, sewer, and gas system service charges. A municipality is defined as any city, town, village, or port authority in the state.

Chapter 159 is known as the “Revenue Bond Act of 1953.” The Revenue Bond Act of 1953 gave any county or municipality in the state the power to acquire by purchase or to construct, improve, repair, reconstruct, own, operate and maintain (for the limited purpose of this article) any waterworks systems, sewer systems, and gas systems (hereinafter “systems.”) This act also gave any county or municipality the power to issue revenue bonds which are payable from earnings of the systems to pay the cost of the building or maintaining the systems. Those bonds are payable based on the service charges remitted for the use of the systems where the funding for construction was provided by these bonds.

### ***Powers Granted & Enforced***

F.S. 153.03 grants the counties the power to set and collect charges with the water system of the county. If the charges are not paid within 30 days then the county may disconnect services. They may also require a deposit to ensure payment of rates.

If water or sewer service fees are not paid then the unpaid balance may be made into the lien on the property. These liens are superior to all other liens besides county taxes (which they are equal to).

**F.S. 153.03 General grant of power. –**

(3) To fix and collect rates, fees and other charges for the service and facilities furnished by any such water supply system or water system improvements and sewage disposal system or sewer improvements and to fix and collect charges for making connections with the water system of the county.

**153.12 Collection of charges.—**

(1) Upon the construction of a sewage disposal system and the financing of such construction by the issuance of sewer revenue bonds under the provisions of this chapter, the owner, tenant or occupant of each lot or parcel of land within the county which abuts upon a street or other public way containing a sanitary sewer served or which may be served by such disposal system and upon which lot or parcel a building shall have been constructed for residential or commercial use and which lot or parcel shall not already be served by, or have available to it for service, a sanitary sewer, shall, if so required by the rules and regulations of the county commission or by resolution thereof, connect such building with such sanitary sewer and shall cease to use any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations which shall be adopted from time to time by the county commission.

(2) The county commission may provide in the resolution authorizing the issuance of water revenue bonds or sewer revenue bonds under the provisions of this chapter that the charges for the services furnished by any facility constructed or reconstructed by the county under the provisions of this chapter shall be included in single bills to be rendered for all the services furnished to the premises, and that if the amount of such charges so included shall not be paid within 30 days from the rendition of any bill, the county commission shall discontinue furnishing water to such premises and shall disconnect the same from the water supply system of the county. Any such resolution may include any or all of the following provisions, and may permit the county commission to adopt such resolution or take such other lawful action as shall be necessary to effectuate such provisions, and the county commission is hereby authorized to adopt such resolutions and to take such other action:

(a) That the county may require the owner, tenant or occupant of each lot or parcel of land within the county who is obligated to pay the rates, fees or charges for the services furnished by any facility purchased, constructed or reconstructed by the county under the provisions of this chapter to make a reasonable deposit with the county commission in advance to ensure the payment of such rates, fees or charges and to be subject to application to and payment thereof if and when delinquent.

(b) That if any rates, fees or charges for the use and services of any sewage disposal system or sewer improvements by or in connection with any premises not served by the waterworks system of

the county shall not be paid within 30 days after the same shall become due and payable, the owner, tenant or occupant of such premises shall cease to dispose of sewage or industrial waste originating from or on said premises by discharge thereof directly or indirectly into the sewer system of the county until such rates, fees or charges with interest, shall be paid; that if such owner, tenant or occupant shall not cease such disposal at the expiration of such 30-day period it shall be the duty of any district, private corporation, board, body or person supplying water to or selling water for use on such premises to cease supplying water to or selling water for the use on such premises within 5 days after the receipt of notice of such delinquency from the county; and that if such district, private corporation, board, body or person shall not, at the expiration of such 5-day period, cease supplying water to or selling water for use on such premises, then the county may, unless it has theretofore contracted to the contrary, shut off the supply of water to such premises.

**F.S. 153.67 Unpaid fees to constitute lien.**—In the event that the fees, rates or charges for the services and facilities of any water or sewer system shall not be paid as and when due, any unpaid balance thereof and all interest accruing thereon shall be a lien on any parcel or property affected thereby. Such liens shall be superior and paramount to the interest on such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of county taxes and shall be on a parity with the lien of any such county taxes. In the event that any such service charge shall not be paid as and when due and shall be in default for thirty days or more the unpaid balance thereof and all interest accrued thereon, together with attorneys fees and costs, may be recovered by the district in a civil action, and any such lien and accrued interest may be foreclosed or otherwise enforced by the district by action or suit in equity as for the foreclosure of a mortgage on real property.

**F.S. 159.17 Lien of service charges.**—Any municipality issuing revenue bonds hereunder shall have a lien on all lands or premises served by any water system, sewer system or gas system for all service charges for such facilities until paid, which liens shall be prior to all other liens on such lands or premises except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Such liens, when delinquent for more than 30 days, may be foreclosed by such municipality in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

## **PACE IMPROVEMENT FINANCING**

### ***What is PACE?***

Another way for property owners to finance certain energy efficiency and wind resistance improvements is through loans secured by financial agreements like special assessment liens that are paid by a non-ad valorem assessment through the property owner's real property tax bill.

**F.S. 163.08 Supplemental authority for improvements to real property.—**

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

### ***What Types of Improvements Qualify?***

Any system that uses electrical mechanical or thermal energy created by hydrogen, solar energy, geothermal energy, bioenergy, and wind energy qualifies as a PACE improvement. Also, wind resistance improvements qualify as PACE improvements. For example, strengthening roof deck attachments, barriers to prevent water intrusions, wind-resistant shingles, and storm shutters.

**F.S. 163.08(2)** Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:
  - a. Improving the strength of the roof deck attachment;
  - b. Creating a secondary water barrier to prevent water intrusion;
  - c. Installing wind-resistant shingles;
  - d. Installing gable-end bracing;
  - e. Reinforcing roof-to-wall connections;
  - f. Installing storm shutters; or
  - g. Installing opening protections.

### ***Participating in a PACE program***

Property owners sign a separate financing agreement and a lien agreement with the plan administrator. This lien agreement is usually recorded in the official records and may be entitled “agreement,” “memorandum,” “financing agreement,” or “notice of lien” and will state that the agreement is part of the PACE program. The repayment period can be up to 20 years. PACE loans are acquired through funding agencies such as Florida PACE Funding Agency or Ygrene Energy Fund Florida.

**F.S. 163.08 (5)** Pursuant to this section or as otherwise provided by law or pursuant to a local government’s home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

- (6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

- (7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.
- (8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.
- (9) Before entering into a financing agreement, the local government shall reasonably determine that all property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less; that there are no involuntary liens, including, but not limited to, construction liens on the property; that no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property.
- (10) A qualifying improvement shall be affixed to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.
- (11) Any work requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly certified or registered pursuant to part I or part II of chapter 489.
- (12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.
- (b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(14) At or before the time a purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

**QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.**—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

### ***Lien Superiority***

Since PACE loans are collected as a special assessment on municipal tax rolls, they have superiority akin to a tax levied on property. In addition, lenders will require PACE payoff at closing if the buyer is getting a new loan on the property.

**F.S. 163.08(3)** A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices

to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

### ***Which Counties and Municipalities Participate in PACE?***

PACE originally started in South Florida, so many of the cities and counties in the region participate in the PACE program. The program has since spread all over the state. Below is a list of all the counties and municipalities that have PACE programs according to [floridapace.gov](http://floridapace.gov) (not an exclusive list).

<b>Alachua County</b>	Dania Beach	<b>Citrus County</b>	Gretna (Commercial Only)
Alachua	Davie	Crystal River	Havana
Archer	Deerfield Beach	Inverness	(Commercial Only)
Gainesville	Fort Lauderdale	Unincorporated Area	Midway
Hawthorne	Hallandale Beach		(Commercial Only)
High Springs	Hillsboro Beach	<b>Clay County</b>	Quincy (Commercial Only)
La Crosse	Hollywood	Green Cove Springs	(Commercial Only)
Micanopy	Lauderdale Lakes	Keystone Heights	Unincorporated Area
New Berry	Lauderdale-by-the-Sea	Orange Park	(Commercial Only)
Unincorporated Area	Lauderhill	Penney Farms	
Waldo	Lazy Lake	Unincorporated Area	
	Lighthouse Point	<b>Collier County</b>	<b>Gulf County</b>
<b>Brevard County</b>	Margate	Naples	Port St. Joe
Cape Canaveral	Miramar	Unincorporated Area	Unincorporated Area
Cocoa Beach	North Lauderdale		Wewahitchka
Cocoa	Oakland Park	<b>Escambia County</b>	
Grank-Valkaria	Parkland	Century	<b>Hillsborough County</b>
Indialantic	Pembroke Park	(Commercial Only)	Unincorporated Area
Indian Harbor Beach	Pembroke Pines	Pensacola	
Malabar	Plantation	Unincorporated Area	<b>Hernando County</b>
Melbourne Beach	Pompano Beach	(Commercial Only)	Brooksville
Melbourne	Sea Ranch Lakes		Unincorporated Area
Melbourne Village	Southwest Ranches	<b>Flagler County</b>	Weeki Wachee
Palm Bay	Sunrise	Beverly Beach	
Palm Shores	Tamarac	Bunnell	<b>Holmes County</b>
Rockledge	Unincorporated Area	Palm Coast	Bonifay
Satellite Beach	West Park	Unincorporated Area	Esto
Titusville	Weston		Noma
Unincorporated Area	Wilton Manors	<b>Gadsden County</b>	Ponce De Leon
West Melbourne		Chattahoochee	Westville
	<b>Charlotte County</b>	(Commercial Only)	Unincorporated Area
<b>Broward County</b>	Punta Gorda	Greensboro	
Coconut Creek	Unincorporated Area	(Commercial Only)	<b>Jackson County</b>
Cooper City			Alford
Coral Springs			

Bascom	Dunnellon	St. Cloud	Palm Beach Shores
Campbellton	McIntosh	Unincorporated Area	Palm Beach
Cottdale	Ocala		Palm Springs
Graceville	Reddick	<b>Orange County</b>	Riviera Beach
Grand Ridge	Unincorporated Area	Apopka	Royal Palm Beach
Greenwood		Orlando	South Bay
Jacob City	<b>Miami-Dade</b>	Winter Park	South Palm Beach
Malone	<b>County</b>		Tequesta
Marianna	Aventura	<b>Palm Beach County</b>	Unincorporated Area
Sneads	El Portal	Atlantis	Wellington
Unincorporated Area	Miami	Belle Glade	West Palm Beach
	Miami Beach	Boca Raton	
<b>Jefferson County</b>	Miami Gardens	Boynton Beach	<b>Polk County</b>
Monticello	North Miami	Briny Breezes	Lake Wales
Unincorporated Area	North Miami Beach	Cloud Lake	<b>Seminole County</b>
	Pinecrest	Delray Beach	Oviedo
<b>Lee County</b>	Surfside	Glen Ridge	Sanford
Bonita Springs	Unincorporated Area	Golf	
Cape Coral	West Miami	Greenacres	<b>Suwannee County</b>
Fort Myers -		Gulf Stream	Branford
Commercial Only	<b>Monroe County</b>	Haverhill	Live Oak
	Islamorado	Highland Beach	Unincorporated Area
<b>Levy County</b>	Key Colony Beach	Hypoluxo	
Bronson	Key West	Juno Beach	
Inglis	Marathon	Jupiter	<b>Volusia County</b>
Unincorporated Area	Levy	Lake Clarke Shores	Edgewater
Williston	Unincorporated Area	Lake Park	New Smyrna Beach
		Lake Worth	
<b>Manatee County</b>	<b>Nassau County</b>	Lantana	<b>Walton County</b>
Bradenton Beach	Callahan	Loxahatchee Groves	De Funiak Springs
Longboat Key	Fernandina Beach	Magnolia	Freeport
Palmetto	Hilliard	Manalapan	Paxton
Unincorporated Area	Unincorporated Area	North Palm Beach	Unincorporated Area
		Ocean Ridge	
<b>Marion County</b>	<b>Osceola County</b>	Pahokee	
Belleview	Kissimmee	Palm Beach Garden	