

Building Virginia's Future: How Commercial Property Assessed Clean Energy Act (C-PACE) Financing Is Energizing Green Real Estate Development

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In this article, the authors discuss how Virginia's Commercial Property Assessed Clean Energy Act program works, its key benefits and risks, and how it can be used to access additional capital for sustainable development.

Virginia's C-PACE program is unlocking new opportunities for "green" real estate development by providing property owners and developers with innovative financing solutions for energy-efficient upgrades. Established by the Virginia C-PACE Act in 2015, the program has expanded to over 20 localities, helping commercial and multifamily projects access long-term, fixed-rate capital for sustainable improvements. Recent financings in Prince William County, the City of Richmond, and Rockingham County highlight the program's growing success—leveraging C-PACE loans to upgrade buildings, reduce energy costs, and enhance property value across the Commonwealth. This article breaks down:

- (1) how Virginia's C-PACE program works;
- (2) its key benefits and risks; and

- (3) how it can be used to access additional capital for sustainable development.

THE COMMONWEALTH OF VIRGINIA'S C-PACE LOAN PROGRAM

In 2015, the Virginia legislature created the Commercial Property Assessed Clean Energy Act (the Virginia C-PACE Act), empowering each locality in the Commonwealth to implement a C-PACE program.¹ Since then, more than 20 Virginia localities have implemented C-PACE programs, including, among others, the cities of Alexandria, Charlottesville, Chesapeake, Danville, Fairfax, Falls Church, Harrisonburg, Hopewell, Martinsville, Petersburg, Richmond, Staunton, Virginia Beach, Waynesboro, Winchester, and the counties of Albemarle, Chesterfield, Fairfax, Henrico, Loudoun, Prince William, Roanoke, Rockingham,

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Shenandoah, and Sussex. Notably, transactions have recently closed in Prince William and Rockingham Counties, as well as the city of Richmond, demonstrating the program's growing impact across the state.

WHAT IS C-PACE?

First introduced in California in 2008, C-PACE legislation allows property owners to access financing from private participating lenders to fund certain green or energy efficient improvements. C-PACE loans are "secured" by a special assessment voluntarily imposed on the project's real property at the request of the owner, which allows the property to be bought and sold subject to the C-PACE assessment lien. Property owners repay C-PACE financing in installments as a line item on the property's tax bill, and these assessments are collected through the normal tax collection process. C-PACE financing offers long-term financing at fixed rates, with little or no equity due upfront. To date, over 35 states have enacted C-PACE legislation.

The loan proceeds may be used to fund a range of "green friendly" updates to buildings, including but not limited to: high-efficiency windows, water conservation measures, building resiliency measures, LED lighting, HVAC systems, and heat pumps. C-PACE financing is generally available for commercial, industrial, agricultural, and multi-family properties with five or more units. However, the types of improvements and owners that may take advantage of these programs vary across states and localities, as the state and local laws and policies are not uniform.

C-PACE financing is eligible for retrofit projects as well as new construction. By address-

ing deferred maintenance issues with a C-PACE loan, property owners can extend the life of the building and reduce energy costs, while simultaneously making the building more attractive to potential tenants.

Importantly, though, most C-PACE loans will only cover a portion of overall acquisition or other development costs, so owners and developers will stack C-PACE loans on top of mortgage or other forms of financing, often in lieu of mezzanine or preferred equity programs. Not all mortgage lenders permit C-PACE loans in their borrower's capital stack, so it is important to plan ahead.

HOW DOES VIRGINIA'S C-PACE LOAN FINANCING WORK?

The Virginia C-PACE Act provides basic parameters for local C-PACE programs, and allows for cities and counties to further customize at the local ordinance level.

The C-PACE loan program is administered by the Virginia PACE Authority. The Virginia PACE Authority works directly with local governments, property owners, commercial businesses and contractors to facilitate the financing of energy efficient improvements for both existing buildings and new developments in the Commonwealth. Here are a few key components to Virginia's program that developers and owners need to know:

1. Under the Virginia C-PACE Act, an owner may use C-PACE financing to fund the following kinds of improvements: energy efficiency improvements; water efficiency and safe drinking water improvements; renewable energy improvements; resiliency improvements; stormwater management improvements; environmental

remediation improvements; and electric vehicle infrastructure improvements.²

2. Eligible properties include "all assessable commercial real estate located in the Commonwealth of Virginia," including but not limited to developed and vacant land, and multifamily properties with no fewer than five units.³
3. The remedy for a property owner's failure to pay the tax assessment is a foreclosure action, but only in an amount equal to the unpaid installment.⁴ For this reason, a mortgage lender must consent to the implementation of a C-PACE loan, and borrowers interested in the program should confirm in advance that their mortgage lender is amenable to the program.
4. C-PACE financing allows a project to be capitalized in the pre, mid, or post-construction phases, making C-PACE financing not only in demand, but flexible too. Virginia's program is particularly adaptable, permitting improvements completed within three years of a locality's certificate of occupancy to qualify for C-PACE loans. This three-year "look back" feature enables both new financings and refinancings, enhancing the program's appeal to property owners and developers.

WHAT ARE THE BENEFITS OF THE C-PACE LOAN PROGRAM?

Some of the principal benefits of C-PACE financing include:

1. C-PACE debt cannot be accelerated. Therefore, as provided above, in foreclo-

sure, only delinquent assessment payments are collectable.

2. C-PACE loans are fixed-rate, long-term financings (with maturities typically extending up to thirty years in Virginia).
3. C-PACE loans are non-recourse; therefore, personal guarantees are not given or required.
4. Because little or no capital is due upfront, except to the extent required in connection with a mortgage loan, the increased leverage can result in increased cash flow.
5. Because a C-PACE lender has priority over a senior lender, C-PACE lenders can often offer lower costs of capital for a C-PACE loan than mezzanine or preferred equity.⁵

POTENTIAL RISKS AND PITFALLS OF C-PACE FINANCING

There are a couple of potential risks and pitfalls to C-PACE financing, including:

1. Not all jurisdictions in Virginia have adopted a C-PACE ordinance, so depending on where a developer is looking to build, the program may not be available.
2. As mentioned above, not all lenders will consent to allowing the C-PACE loan to have priority over a lien that was first-in-time.
3. Because the C-PACE lien runs with the land until the tax assessment is paid,⁶ a potential buyer upon resale may negotiate a credit for any outstanding amounts

due under a C-PACE loan, if those amounts are not already baked into the purchase price.

4. Most C-PACE lenders will only fund approximately 30–35% of overall project costs, so developers will need to find other sources of debt and equity to complete their capital stack.

NOTES:

¹See Va. Code Ann. § 15.2-958.3.

²See Va. Code Ann. § 15.2-958.3(A)(1) to (7).

³See Va. Code Ann. § 15.2-958.3(A).

⁴See Va. Code Ann. § 15.2-958.3(3).

⁵See generally Va. Code Ann. § 15.2-958.3(F)(1) (Virginia's statute requires the following in order for a C-PACE lender to have priority over a senior lender: (1) the senior lender must enter into a subordination agreement with the C-PACE lender; (2) the property owner provide evidence that it is (i) current on payments on loans secured by a mortgage or deed of trust lien on the property and on property tax payments, (ii) the property owner is not insolvent or in bankruptcy proceedings, and (iii) title to the property is not in dispute prior to the locality recording the special assessment lien).

⁶See generally Va. Code Ann. § 15.2-958.3(F)(2).