ELDER LAW & ADVOCACY

Legal Services and Medicare Counseling & Advocacy for Seniors www.seniorlaw-sd.org

Serving San Diego and Imperial Counties

5151 Murphy Canyon Road, Suites 100, 110 San Diego, CA. 92123

TEL: (858) 565-1392 FAX: (858) 565-1394

OVERVIEW OF PACE/HERO ISSUES IN SAN DIEGO COUNTY

A number of clients have contacted Elder Law & Advocacy with issues related to solar panels, replacement windows and other energy upgrade products purchased through telemarketing and door-to-door sales. These purchases were made through PACE financing.

The PACE program was created in 2008 through legislation to encourage energy efficient upgrades and permit financing for those upgrades by adding the costs to a homeowner's property tax bill. Private entities appear to be training home-improvement contractors to sell PACE loans under the name HERO Program while reaping substantial benefits from these loans.

Elderly consumers have contacted us with reports of home improvement contractors using telemarketing and door-to-door sales to misleadingly negotiate the terms of PACE loans. The contractors then reportedly entered elderly consumers into PACE loans without the elderly consumers' knowledge and without providing documentation, and also without advising the consumers that first-position liens will be placed on their homes. Thereafter, the PACE loan proceeds were disbursed directly to the contractor without use of an escrow agent or joint check.

These PACE loans have relatively high interest rates, with annual percentage rates ranging up to about 10.3%, in addition to fees of around 7% of principal added to the loan. These rates are significantly higher than benchmarks like the prime lending rate and treasury yields. Moreover, the 2008 bill analysis for AB 811, which enacted PACE lending in California, specifically describes the intent to finance energy investments at low interest rates.

We have received complaints that elderly individuals with dementia, or who were on medication, were entered into electronic PACE loan contracts they never saw, on terms they did not understand, and were later told by private corporate PACE lenders that the loan was nevertheless binding. Several have reported that sales were made on cell phones or tablets. Some individuals were not provided any loan documentation until well after they were entered into a loan contract. We are concerned that these same individuals will eventually be at risk of foreclosure, terrible at any age but especially egregious for an 80 year old individual with minimal resources.

Additionally, we are aware that the California Contractors State Licensing Board (the "CSLB") recently reported receiving numerous reports of predatory home improvement sales tactics and specifically noted multiple instances of CSLB uncovering misinformation relating to a leading PACE lender. The CSLB specifically reported one egregious instance where an elderly man was told he was going to receive free solar panels from a government program. The elderly man found out many months later, after seeing an inflated property tax bill, that he was entered into a PACE loan without seeing any documentation.

As we encounter what may be a new evolution of predatory lending – in the form of "PACE" lending run by private corporations – we believe California consumers must be afforded all possible protections available under federal and state law. We are not aware of any official or binding statutory interpretation that declares PACE lending exempt from all consumer protections. Just because some PACE lending programs have apparently chosen to eschew consumer protections, we cannot assume they have done so legally.

PACE/HERO PROGRAM CASE EXAMPLES

Ms. J
Age: 80
Marital status: Married
Disabilities: Husband with dementia
The J's purchased a solar power system that was financed through the HERO program. Ms. J's understanding was that it was supposed to cost $170 a month. However, the subsequent mandatory payments were $337 a month. The solar salesperson set up the financing on a computer and electronically signed for Ms. J's husband, who has dementia. According to Ms. J, the salesperson should have been able to recognize her husband's condition and that he could not understand the e-contract.

Mr. G
Age: 82
Marital status: Married
Mr. G was convinced by HERO representatives to sign up for the HERO program for energy upgrades. However, they never advised him that he would not be able to refinance his home if he took part in HERO. He discovered that he would not be able to refinance his home when he attempted to get a loan through VA.

Mr. R
Age: 79
Marital status: Widowed
Mr. R received a phone call that explained he qualified for the HERO program. He was offered a deal for new energy-efficient windows that also reduced noise. There was to be 1.5% financing and no payoff penalty. However, the windows installed were extremely low quality, provided poor insulation, and amplified noise. Mr. R discovered that the interest rate is 26.99% and a lien has been placed on his home.

Mr. R
Age: 78
Marital status: Widowed
Mr. R wanted to get his windows replaced and expressed interest in the HERO program. A HERO representative signed him up and indicated there would be a fairly low monthly fee, but did not convey that there was to be a tax lien on the house. The details of the agreement were glossed over by the HERO

representative, with hidden costs and higher monthly payments embedded within the contract. The representative also requested an electronic signature from Mr. R, but did not inform Mr. R that the e-signature was going to bind him to a contract.

Ms. M
Age: 80
Marital status: Married
Ms. M contracted to get extensive remodeling done with HERO financing. She hired a local remodeling company to do various projects, including fixing her roof. The company promised to completely tear down and rebuild the roof. However, when they finished, Ms. M found they did not actually replace the existing wood. The new roof sagged and created a hazard for Ms. M and her husband.