

Handling Solar Equipment Installations

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Given the increased interest in home solar power generation, community associations will need to be prepared to process solar equipment applications. There is a myth that boards are powerless to control the placement of solar equipment in community associations. In reality, although, the statutory intent behind solar power is to promote green energy in individual residences, associations have the ability to regulate certain installations for the protection of the community, and in certain cases to shift the burden of maintenance over to the homeowner seeking to install solar equipment.

In general, California law provides that a homeowners' association may impose reasonable restrictions with respect to solar equipment, consistent with Civil Code Sections 714 and 714.1. A reasonable restriction is a restriction that does not "significantly" increase the cost of the system or "significantly" decrease its efficiency of specified performance. Civil Code Section 714(d)(1) defines "significantly" as follows: (A) For solar domestic water heating systems, significantly means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed. In other words, with regards to solar water heating systems, the association may not impose restrictions that will decrease efficiency or increase installation costs by more than 20%. But it may impose certain reasonable restrictions depending upon the proposed location of the application. And with respect to common area or exclusive common area applications the association may do the following:

- Restrict the installation of solar energy systems installed in common areas, as defined in Section 4095, to those systems approved by the association.
- Require the owner of a separate interest, as defined in Section 4185, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.
- Provide for the maintenance, repair, or replacement of roofs or other building components.
- Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system.

A community's solar equipment installation policy should address the following:

- a. **Prior Written Approval.** All solar collection equipment must receive approval in writing from the board or architectural committee prior to the equipment being installed. It should be understood and communicated to all that compliance with the CC&Rs and association approval is separate and apart from compliance with applicable city, county or local building codes.
- b. **Detailed Description.** Architectural applications should include photos or drawings showing the specific proposed panel layouts and the location of equipment. The application should identify the panel manufacturer and model number and include installation specifications. Specifically, with respect to roof installations, the application must include detail as to how the installation will protect the roof and be in compliance with the roof manufacturer's specifications and any applicable roof warranty.
- c. **Aesthetics.** The materials and components used should be of a particular type and look that is as aesthetically compatible with the existing architecture and structures as possible (e.g., glazed versus non-glazed panels; painted a specific color) and without significantly increasing the costs or decreasing efficiency. The board should adopt standards so that owners know in advance what is acceptable.
- d. **Location.** The association may restrict the location of the solar equipment, subject to Civil Code Section 714. Thus, the association may require the solar collection equipment be obscured from view of other owners to the greatest degree possible without significantly increasing cost or decreasing efficiency. Areas owned by individual homeowners but maintained by the association (such as roofs and slopes) present unique challenges that must be addressed.
- e. **Indemnification.** The association should require the owner indemnify the association for any loss or damage from installation or maintenance of the solar energy system. An indemnification agreement or covenant should be required holding the owner responsible for any damages caused by the proposed solar equipment, including defense costs if a lawsuit is filed against the association in connection with the equipment. The agreement should authorize the association to impose a reimbursement assessment against the applicant owner's property to pay for any damages that are caused relative to the solar equipment. Any owner who seeks to install solar panels on a roof maintained by the association should have to agree to be responsible for roof maintenance and repair.
- f. **Code Compliance; Safety.** The applicant owner should confirm that the solar collection equipment as well as all component parts comply with all applicable laws, and if not, that the owner agrees to modify the equipment so that full compliance is accomplished.
- g. **Workmanship.** The applicant owner should warrant that all work be performed in a good and workmanlike manner consistent with all applicable industry standards, and that the applicant owner oversees the safe performance of all work and obtaining all necessary permits.

- h. Disclaimer. The association should disclaim that by approving any particular application, the association shall have no liability or responsibility arising out of: (1) the safety, structural integrity, workmanship, engineering and/or the soundness of the plan, drawing and/or design in the application itself or the work performed pursuant thereto; and/or (2) the compliance with building codes or other laws or ordinances applicable to the proposed plan, drawing or design. In addition, the applicant owner should expressly understand that the approval of any plan, drawing and/or design in an application is no guarantee that, as constructed, the resulting architectural change will be free of defects, in compliance with building codes or other applicable laws or ordinances, and/or in compliance with the association's governing documents. Finally, any disclaimer should state that the association shall have no liability or responsibility arising out of the approval of any plan, drawing and/or design to the applicant.
- i. Recorded Covenant. Finally, in order to document the parties' rights and responsibilities related to the solar equipment installation the association can and should require the owner execute a covenant that is recorded against the owner's property setting forth the above stipulations such as liability, indemnity, maintenance and repair.