



Sterns & Weinroth, P.C.

REAL ESTATE / TRANSACTIONAL LAW

A L E R T

April 2009

HERE COMES THE SUN: DEVELOPERS MUST OFFER SOLAR ENERGY SYSTEMS IN CERTAIN NEW CONSTRUCTION

On March 31, 2009, Governor Jon Corzine signed into law Bill A-1558/S-2265, which requires, “when technically feasible,” any developer of “twenty five or more [single family, detached] dwelling units” to offer to install, or provide for the installation of, a solar energy system when the “prospective owner enters into negotiations with the developer to purchase the unit.” The law, known as the “Residential Development Solar Energy Systems Act”, was overwhelmingly approved by the New Jersey Legislature and is being touted as a means to reduce reliance on nonrenewable fuel sources, create jobs related to the manufacture, design and installation of renewable energy technology, and help achieve the stated goal requiring over twenty percent of the State’s electricity demand to be produced from renewable resources by the year 2020.

Obviously, this new law will have significant impact on the planning and development stages of residential developments. The law requires developers to “disclose in any advertising”: (1) that a prospective owner may have a solar energy system installed in their home; (2) the total cost of the system installation that will be charged to the owner by the developer, including, but not limited to, any costs related to any roof modifications that would otherwise not be necessary; and (3) an estimate of the potential energy cost savings of the solar energy system as opposed to standard gas or electric, which presumably will be based on information supplied by the Department of Community Affairs (“DCA”) or the system’s manufacturer. The law also provides that when the solar energy system is installed on a dwelling unit governed by a community association that is responsible for maintenance, repair or replacement of the roof of the unit or other area on which the solar system is installed, the association will have the right to impose and collect additional costs or expenses from the unit owner in order to maintain, repair and/or replace the solar energy system, where applicable. Further, the law requires the Board of Public Utilities (“BPU”) to adopt minimum standards of efficiency for these solar panel systems, which is to include a ten-year warranty that would come from the system manufacturer, and allows the DCA to enforce the provisions of this law, which may include assessing penalties for non-compliance. This legislation is effective immediately, and will apply to all homes for which a construction permit is issued ninety days after the issuance of the standards to be adopted by DCA, in consultation with BPU.

The law’s sponsors believe that it will increase interest and use of solar panels, which are both easier and less expensive to install during the initial construction process. However, opponents of the bill, including some developers, point out that offering solar energy systems to every new homebuyer presents practical difficulties as these systems are not feasible on all types of homes and the incremental costs associated with such systems will place them beyond the means of many homebuyers. While it is unclear whether this new legislation will have an immediate impact on new home construction, what is clear is that this law is just one of several legislative proposals to incorporate “green” initiatives into projects as a prerequisite to governmental approval.

For further information on the Residential Development Solar Energy Systems Act, or to discuss other environmental law related issues or matters concerns, please contact Vincent J. Paluzzi, Esq. at vpaluzzi@sternslaw.com or 609.989.5033 or Roxanne E. Jayne, Esq. at rjayne@sternslaw.com or 609.989.5063.