



### **Solar Power: Coming to a Community Association Near You...**

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One of the many reasons for the relatively slow growth of renewable energy in the United States stems from a common conflict between community associations and their residents regarding the right to install panels to utilize solar power. A recent article in the Los Angeles Times, which detailed one resident's struggle to "go green," detailed this common battle being waged throughout the country. In that particular case, the homeowners association denied a resident permission to install solar panels on his home. The resident sued, relying on California's Solar Rights Act, and ultimately won the right to install solar panels on his home. The court also awarded the resident legal fees for the expenses he incurred in bringing the suit.

Although solar access legislation exists in at least thirty-seven states, many of these laws only address solar easement contracts rather than an individual homeowners' right to install and utilize solar power. Only about fifteen states – including New Jersey – have enacted legislation specifically designed to override (with some exceptions) restrictions on solar installations imposed by associations. In addition to these state-by-state efforts, solar advocates are pushing for federal energy legislation that would prevent community associations nationwide from prohibiting the installation of solar systems. One such provision was included in the American Clean Energy and Security Act of 2009, H.R. 2454, which passed in the House of Representatives in June 2009. As written, the Act would ban associations from enacting any unreasonable restrictions on the installation and use of a solar energy system on residential property. This legislation, however, has yet to be considered by the Senate, and its future remains uncertain.

Closer to home, New Jersey is ahead of the curve. On August 21, 2007, the State enacted legislation making it unlawful for homeowners associations to prohibit the installation of solar collectors on the roofs of homeowners' units. As specified in the legislation, homeowners associations may not prohibit unit owners from installing solar collectors so long as the collectors are placed on the roof of a single family or townhouse unit that is not designated as a common element or common property by the association's governing documents. However, the association may adopt reasonable rules and regulations to oversee the installation and maintenance of solar collectors with regard to: (i) the qualifications of the installer; and (ii) the location, color, supportive structures and size of the solar collectors. Further, the law prohibits the association from adopting any rule or restriction that would significantly increase the costs of the initial installation or that would inhibit the solar collectors from functioning at their intended maximum efficiency.

It is important to note that this legislation does not affect the rights and responsibilities of unit owners in condominium associations pursuant to the New Jersey Condominium Act. This is because, in a condominium association, the unit owners each own a percentage share of the common property, such as the roof, but the association is responsible for the administration and maintenance of this common property. Conversely, in a homeowners association, the individual unit owner is generally responsible for his or her individual unit. Because the roofs of most, if not all, condominiums are designated common elements or common property, the decision to utilize solar power lies solely with the association's board. Thus, any attempt by an individual unit owner in a condominium to install solar collectors on a common element or common property would be violative of the Condominium Act and, most likely, the association's governing documents.

In the coming years, and with advancing technology, it is expected that solar systems will become both significantly less expensive and more efficient. Combine those factors with the generous federal and state incentives available in New Jersey for solar use, and experts predict that the number of individuals seeking to utilize solar power will skyrocket in the next ten years. Therefore, it is important for both individual homeowners and community associations to understand their rights and responsibilities with respect to these solar energy systems. While the law does limit rules restricting installation under certain circumstances, associations should seek legal counsel regarding the implementation of an appropriate policy that both conforms to the current law and ensures that your community maintains consistent aesthetic standards.

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