



Solar Panels and Community Associations: Sparks Can Fly

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Green living sometimes can be at odds with community association living. As much as we all likely strive to live in an environmentally responsible manner, sometimes these ambitions clash with the wants and desires of our neighbors, bringing strife and dissension to a neighborhood. Though the Washington legislature has not attempted regulating chickens, clotheslines or composting (yet), it has enacted legislation affecting a homeowner association's right to govern solar panels within a community association.

Under RCW 64.38.055 of the Washington Homeowner Association Act:

(1) The governing documents may not prohibit the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

- (a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;
- (b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and
- (c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

The statute is clear on its face and should not require much, if any, legal interpretation. Though an association cannot "prohibit" installation of solar panels, it can regulate the installation and use as described in the next section of the statute:

(2) The governing documents may:

- (a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roof line;
- (b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:
 - (i) The solar energy panel conforms to the slope of the roof; and
 - (ii) The top edge of the solar energy panel is parallel to the roof ridge; or
- (c) Require:
 - (i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) An owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; or

(iii) Owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

The statute goes on to explain specific terms and also provides definitions to clarify how an association can effectively apply the statute. Lastly, the statute applies retroactively to association governing documents in effect before the 2009 law was passed and signed.¹ Any provision in an association's governing document that is inconsistent with the statute is void and unenforceable. The statute expressly does not apply to community association common areas, which implies that an association is free to regulate in any reasonable manner the use or prohibition of solar panels in these areas.

Since the law is comprehensive and clear on its face, homeowner associations should adopt solar panel rules that track closely the statute. Because an association is not prohibiting, but merely regulating, the use of solar panels, the rules can be adopted via the board's rulemaking authority, and need not be included within an association's Declaration or CC&Rs.

The statute only applies to homeowner associations in Washington; thus, condominium associations appear to have full discretion in regulating the installation and use of solar panels within their communities. It is uncertain how a court might respond to a suit by a homeowner seeking permission to install solar panels on the roof or deck above her unit. Though condominium associations ordinarily have wide discretion in controlling and regulating common and limited common elements, some judges could be persuaded by a public policy argument favoring the use of green energy.

The safest route for a condominium association would be to get in front of any potential dispute by adopting a resolution that expressly bars the installation of solar panels, whether attached to a unit or limited common element. Conversely, some condominium associations may lean the other way and wish to install such panels and devices on the common elements or limited common elements. Whatever an association's preference, they should draft and adopt rules and regulations before contentious disputes arise and sparks fly. 🚀

¹ The complete statute may be found at: <http://apps.leg.wa.gov/rcw/default.aspx?cite=64.38.055>.