

October 27, 2017 COMMENT:

The issues pertaining to solar and reasonable restrictions or prohibitions by the HOA is pertinent to all HOAs as a model for consideration. The outline, text definitions and comparisons between the Homeowner's property and the Association's common area property is important.

This case is an example for non-Californian HOAs in West Virginia to develop guidelines for solar installation. West Virginia HOA law is silent concerning HOA reasonable restrictions or prohibitions. [West Virginia §36-4-19](#). Solar energy covenants unenforceable; penalty. (effective June 2015)

Key to approval and/or denial by an HOA architectural committee and the board of directors is REASONABLE.

Nance Briscoe, EPOHOA VP & Membership Chairman

Solar Panels & Solar Energy Systems

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[Civil Code Section 714](#) is a component of the “[California Solar Rights Act](#).” It limits the degree to which an association’s [governing documents](#) may prohibit or restrict the installation of solar energy systems in a member’s separate interest:

“Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in [Section 4150](#) or 6552, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.” ([Civ. Code § 714\(a\)](#).)

A “solar energy system” means either of the following:

- Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating; *or*
- Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating. ([Civ. Code §§ 714\(d\)\(2\), 801.5\(a\)\(1\)-\(2\)](#).)

“Reasonable Restrictions” Permitted

[Civil Code Section 714\(b\)](#) permits “reasonable restrictions” on the installation or use of solar energy systems. Reasonable restrictions on solar energy systems are “those restrictions that do not significantly increase the costs of the system or significantly decreases its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.” ([Civ. Code § 714\(b\)](#).)

The term “significantly” has different meanings depending on the type of solar energy system being used (i.e., whether it is solar panels or a solar water heating system):

Photovoltaic Systems (Solar Panels): \$1000 Cost Increase or 10% Efficiency Reduction

For photovoltaic systems (solar panels) that comply with state and federal law, “significantly” means:

- “an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed,” *or*
- “a decrease in the system efficiency of an amount not exceeding 10 percent as originally specified and proposed.” ([Civ. Code § 714\(d\)\(1\)\(B\)](#).)

Solar Water Heating Systems: 10%/\$1,000 Cost Increase or 10% Efficiency Reduction

For “solar domestic water heating systems or solar swimming pool heating systems” that comply with state and federal law, “significantly” means:

- “an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000),” *or*
- “decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.” ([Civ. Code § 714\(d\)\(1\)\(A\)](#).)

Application & Timeline for Approval: 45 Day Maximum

Where association approval for the installation or use of a solar energy system is required, the application must be processed and approved in a manner consistent with that utilized for approving an application for modifications to the owner’s property. ([Civ. Code § 714\(e\)\(1\)](#); See also “[Architectural Application & Approval Process](#).”) Approval or denial must be in writing. If no approval or denial is received within forty-five (45) days from the date of receipt of the application, the application will be deemed approved unless the delay is due to a reasonable request for the owner to provide additional information. ([Civ. Code § 714\(e\)\(2\)\(A\)-\(B\)](#).)

Additionally, [Civil Code Section 714.1\(b\)](#) allows an association to impose reasonable provisions that require the owner to obtain association approval for the installation of a solar energy system in a separate interest owned by another.

System & Owner Requirements

The solar energy system proposed by an owner must:

- Meet applicable health and safety standards and requirements imposed by state and local permitting authorities, consistent with Government Code Section 65850.5;
- For solar water heating systems, the system must be certified by an accredited listing agency as defined in the Plumbing and Mechanical Codes; *and*
- For a solar energy system that produces electricity, the solar energy system must meet all applicable safety and performance standards established by the [California Electrical Code](#), the [Institute of Electrical and Electronics Engineers](#), and accredited testing laboratories such as [Underwriters Laboratories](#) and, where applicable, rules of the [Public Utilities Commission](#) regarding safety and reliability. ([Civ. Code § 714\(c\)\(1\)-\(3\)](#).)

Additionally, [Civil Code Section 714.1](#) allows an association to impose reasonable provisions which:

- Restrict the installation of solar energy systems installed in common areas to those systems approved by the association;
- Require the owner of a separate interest 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; *and/or*
- 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. ([Civ. Code § 714.1\(a\)-\(d\)](#).)

Solar Energy Systems Installed in Common Area

[Civil Code Section 4745](#) addresses the extent to which an owner may, under certain circumstances, install an [electric vehicle \(“EV”\) charging station](#) on common area or exclusive use common area. Civil Code Sections [714](#) and [714.1](#) do not contain similar provisions in the context of solar energy systems. Therefore, there is ambiguity in the law regarding whether an association may broadly prohibit the installation of solar energy systems in any portion of common area or exclusive use common area. That ambiguity is underscored by the provisions of [Civil Code Section 4600](#) which restrict the degree to which a board may

grant exclusive use of any portion of the association's common area to a member. (See "[Granting Exclusive Use of Common Area.](#)")

***Note – AB 634 was recently passed to allow for the installation of solar energy systems on common area roofs. For more information, see [AB 634](#) and new [Civil Code Section 4746](#) (effective January 1, 2018). We will revise the information relative to the issue in the coming months.**

Aesthetic Considerations

In reviewing an application for a proposed solar energy system, an association is permitted to consider the aesthetic impacts of the proposed system, provided that such consideration does not violate [Civil Code Section 714's](#) requirements with regard to "significant" increases in the system's costs or decreases in the system's efficiency or specified performance:

"Nothing in the language of section 714 prohibits the consideration of aesthetic impacts. To the contrary, the provision in section 714 that "the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property" indicates that the Legislature specifically anticipated that an evaluation of a proposed solar energy system—just as any other proposed improvement—would involve the consideration of aesthetics." ([Tesoro del Valle Homeowners Assn. v. Griffin](#) (2011) 200 Cal.App.4th 619, 633.)

No Requirement for Association to Propose Alternative System

If an association justifiably denies an application for a proposed solar energy system, the association is not required to then propose a comparable alternative system that would satisfy the association's approval requirements:

"We are likewise unpersuaded by [the homeowners'] argument that [the association] had the burden to propose a comparable alternative system at the time it denied [the homeowners'] application. Again, nothing in the language of section 714 imposes such a burden on a homeowners association. The statute requires only that the denial of a solar energy system application be in writing and in a timely manner. (§ 714, subd. (e)(2).) Nor do the CC&R's or Design Guidelines require that the [association] redesign a solar energy system that fails to garner approval. Instead, the burden is on the homeowner to submit an application that is complete and sufficient to generate approval...once the [association] informed [the homeowners] of the bases of its denial, it was [the homeowners'] burden to reapply for approval of a solar energy system utilizing an application that satisfied the procedural requirements in the CC&R's and that addressed the [association's] concerns about location, safety and aesthetics." ([Tesoro del Valle Homeowners Assn. v. Griffin](#) (2011) 200 Cal.App.4th 619, 633.)

Violation & Enforcement of Section 714

An association that "willfully violates" the requirements of [Civil Code Section 714](#) is liable to the applicant or other party for actual damages and a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00). ([Civ. Code § 714\(f\)](#).) In an action to enforce compliance with [Civil Code Section 714](#), the "prevailing party shall be awarded reasonable attorney's fees." ([Civ. Code § 714\(g\)](#).)

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