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ResearchReport

"Solar Rights" Laws in Arizona, California, Florida, Massachusetts, and New York

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Issue

This report describes the provisions of "solar rights" laws in Arizona, California, Florida, Massachusetts, and New York that generally prohibit condominiums, common interest communities, and homeowners associations (HOAs) from banning solar installations on their rooftops or properties.

Summary

Arizona, California, Florida, Massachusetts, and New York (among other states) have all enacted "solar rights" laws that generally prohibit condominiums, common interest communities, and HOAs from banning solar installations on their rooftops or properties. These laws generally make void and unenforceable the provisions in certain property documents (e.g., deeds, contracts, and security agreements) that prohibit a homeowner from installing or using solar energy equipment on the property.

Although these laws effectively prohibit banning solar installations, they often allow certain limitations and restrictions to be imposed. For example, New York's law allows an HOA to impose limits on installing or using solar power systems, as long as they do not reduce the system's efficiency or increase its costs beyond a certain threshold. California's law allows an HOA, among other things, to require system installers to indemnify or reimburse the association for loss or damage caused by installing, maintaining, or using the system.

Brief descriptions of the laws in Arizona, California, Florida, Massachusetts, and New York are below.

Arizona

Under Arizona law, any covenant, restriction, or condition in a deed, contract, security agreement, or other instrument affecting the transfer or sale of, or interest in, real property is void and unenforceable if it effectively prohibits installing or using a solar energy device (Ariz. Rev. Stat. § 33-439). The law, enacted in 1979, exempts these provisions in documents that were entered into before April 17, 1980.

A separate law also prohibits the HOAs of planned communities from prohibiting the installation or use of a solar energy device. However, an HOA may adopt reasonable rules for their placement, as long as the rules do not prevent the installation, impair the device's functioning, restrict its use, or adversely affect its cost or efficiency (Ariz. Rev. Stat. § 33-1816). This law does not apply to condominiums (Ariz. Rev. Stat. § 33-1802).

California

Originally enacted in 1978, California's Solar Rights Act similarly makes void and unenforceable any covenant, restriction, or condition in a deed, contract, security instrument, or other instrument affecting the transfer or sale of, or interest in, real property, and any provision of a governing document, if it effectively prohibits or restricts installing or using a solar energy system. The system must meet certain requirements, such as those imposed by state and local health and safety codes and the state's electrical code.

However, law exempts provisions that impose "reasonable restrictions" that:

1. do not (a) increase the system's cost by more than $1,000 or (b) decrease its efficiency or specified performance by more than 10% or
2. allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

The law further specifies, among other things, that if an approval is required for installing or using a solar energy system, the application must be processed and approved in the same way as an application for approval of an architectural modification to the property and cannot be willfully avoided or delayed. If the approving entity is a private HOA, the application's approval or denial must be in writing. And if is not denied in writing within 45 days, then the application is deemed approved unless the delay stems from a reasonable request for additional information (Cal. Civ. Code § 714).

The state's law also allows HOAs to impose reasonable provisions that:

1. restrict solar energy systems' installation in common areas to HOA-approved systems only;

2. require the owner of a separate interest to obtain the HOA's approval for installing a system in a separate interest owned by another;

3. provide for the maintenance, repair, or replacement of roofs or other building components; and

4. require system installers to indemnify or reimburse the association or its members for loss or damage caused by installing, maintaining, or using the system.

It also specifically prohibits HOAs from:

1. establishing a general policy that prohibits installing or using a rooftop solar energy system for household purposes on (a) the roof of the building in which the owner resides or (b) a garage or carport adjacent to the building that has been assigned for the owner's exclusive use and

2. requiring approval for such an installation through a vote of members owning separate interests in the common interest development (Cal. Civ. Code § 714.1).

Florida

Florida's solar access law, enacted in 1980, prohibits deed restrictions, covenants, declarations, or similar binding agreements from banning or effectively banning the installation of solar collectors, clotheslines, or other renewable resource-based energy devices on buildings built on the lots or parcels that the documents cover. In addition, any entities that these documents authorize to approve, forbid, control, or direct property alterations for residential dwellings and within the boundaries of a condominium unit cannot deny permission to install solar collectors or other energy devices. However, these entities may determine the specific location where solar collectors may be installed on the roof within an orientation to the south, or within 45 degrees east or west of due south, if it does not impair the solar collectors' effective operation (Fla. Stat. § 163.04).

The state's law also allows a condominium's board of administration, without the unit owners' approval, to install solar collectors, clotheslines, or other energy-efficient devices based on renewable resources on or within the common elements or association property (Fla. Stat. § 718.113(7)).

Massachusetts

A Massachusetts law enacted in 1985 voids any provision in an instrument related to the ownership or use of real property that forbids or unreasonably restricts (1) installing or using a solar

energy system or (2) building structures that facilitate the collection of solar energy (Mass. Gen. Laws ch. 184, § 23C).

New York

This past August, New York enacted a new law that voids and makes unenforceable, as a violation of public policy, any covenant, restriction, or condition in certain documents if it effectively prohibits installing or using a rooftop solar power system with a capacity of up to 25 kilowatts. The documents covered by the law include deeds; contracts; security agreements; HOA bylaws, rules, or regulations; and any other instrument affecting the transfer or sale of, or interest in, real property. The system must comply with any local, state, or federal health and safety laws, as well as those requirements imposed by state and local permitting authorities.

The new law also addresses HOAs more specifically by prohibiting them from adopting or enforcing any rules or regulations that would effectively prohibit or impose unreasonable limitations on installing or using these solar power systems. "Unreasonable limitations" under the law include any restrictions that (1) inhibit the system from functioning at its intended maximum efficiency or (2) increase the system's installation or maintenance costs by an amount estimated to be more than 10% of the system's initial installation cost, including labor and equipment. Under the law, however, HOAs may prohibit installing the systems on property owned either by the HOA or in common by the HOA's members. A denial of a homeowner's request to install a system must include a detailed description of the exact basis for the rejection in writing, with specific examples of the HOA's concerns, if applicable (2021-2022 Senate Bill S2997).

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