



## SOLAR EASEMENTS

A potential problem...

Interest in solar energy is growing as more and more homeowners, as well as businesses, are taking long, serious looks at this alternative source of power. As with any new technology, however, there are potential problems. For example, the sun's rays must reach the solar collectors in order to produce energy from either active or passive systems. If the sun were always directly overhead there would be no problem. It is not, of course, and this brings up the question of solar access -- the availability of sunlight to reach a building's solar collectors. Resolution of this problem often involves access across adjacent properties, which, in turn, involves a neighbor's air space.

Since the amount of unobstructed sunlight reaching the solar collectors is critical to the efficient operation of a solar system, the flow of sunlight to the system must be assured. In most systems it takes about six hours of direct sunlight per day for maximum equipment efficiency. This varies, naturally, according to the season, geographic location and the type of solar system installed.

Passive systems are especially dependent on direct sunlight. The sun's rays cannot be reflected or diffused. For the building owner, access questions involve both the height and setback of adjacent buildings. That's where negotiated agreements for solar easements come into sharp focus. If a neighbor's trees grow high enough to cut off the sun early in the morning or late afternoon, your solar system may not perform up to design specifications. The same thing goes for structural heights which is why the question of guaranteeing access to sunlight is becoming an important part of property ownership. In fact, it has been called the single most difficult legal issue connected with solar energy use. The most practical solution to the problem is the negotiation of easements between property owners.

Under such an agreement, one property owner would receive assurances from the other that the sunlight which travels over the neighbor's property would always be available. The neighbor, and all subsequent owners, would be restricted in building or planting trees which could obstruct the sunlight.

After agreement, if such solar easements are not properly recorded, problems could arise if the property is subsequently sold and the new owners are either unaware of the easement or not in agreement with its conditions. Solar easements may have to be negotiated with several different neighbors to assure adequate access to the sun throughout the year. Such easements could negatively affect the future property values of those neighbors.

California was one of the first states to enact legislation to guide the establishment of solar easements. The California Solar Rights Act of 1978 was passed to promote and encourage the "widespread use of solar energy systems and to protect and facilitate adequate access to the sunlight which is necessary to operate solar energy systems." This statute prohibits any covenant, condition or restriction which prohibits or restricts the installation or use of a solar energy system.

A solar easement establishes certain land use conditions agreed to by the property owners involved. Such an agreement includes:

1. A description of the dimensions of the easement, including vertical and horizontal angles measured in the degrees or the hours of the day, on specified dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed;
2. Restrictions placed upon vegetation, structures and other objects which would impair or obstruct the passage of sunlight through the easement, and;
3. The terms and conditions, if any, under which the easement may be revised or terminated.

It is important, of course, that all solar easements be officially recorded, just as other uses and conditions are included in public records. Otherwise, such an easement might not be noted during the title search at the time of a real estate sale. Such an omission could create serious problems at a later date when the new owners decide to make structural or landscape changes that would affect the path of sunlight across their property.

NOTE: This information is provided for reference purposes only and is subject to change without notice. All information provided here is deemed reliable but not guaranteed.



## SOLAR LEASE AGREEMENTS

What you need to know for a smooth closing...

While residential solar panel installations have increased more than 50% each year since 2012 nationwide, disputes over solar panel leases have simultaneously increased during the transfer of properties. Ensure your successful closing by considering these helpful tips and considerations for transactions involving solar panel lease agreements:

### **Be proactive:**

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Preopen your escrow with Chicago Title and use the time early in the listing or prelisting period to be sure you completely understand the terms of the agreement as it applies to the transfer of the lease. It is better to be prepared and informed ahead of time before going into contract with a potential buyer.

### **Know your options:**

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Address possible scenarios for handling the lease transfer well before the close of escrow (or before the official listing) to further help ensure a smooth process of the sale.

### **Keep your solar panel leaseholder involved:**

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Many companies have designated specialists available and assigned to assisting buyers and sellers through the lease transfer process.

### **Check the Records:**

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Ensure that any solar easements have been officially recorded in public records so that it is available to be noted during the title search process. Such an omission can potentially create issues for future buyers.

### **Communication is key:**

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Ensure that your escrow officer is informed. The more information you can offer, the better is to a smooth transaction. Make sure you alert your escrow team to your current lease agreement, status of the agreement and requirements from the leaseholder.

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# SOLAR PANELS ON YOUR ROOF

## Don't let them affect your closing!

If you are selling your home with a Solar System, it's important for you to get as much information as you can about the financial condition of the system. By completing the questionnaires below, you may uncover relevant information that can benefit your transaction and avoid any closing issues.

1. *How did you purchase this system? Financed or Leased?*

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2. *If leased, is the lease assumable?*

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3. *Do you have a copy of the lease agreement or purchase contract?*

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4. *Does the system service the entire house or just a specific area like the pool?*

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5. *When was the system installed?*

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6. *How much is the payment, whether leased or purchased?*

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7. *What is the payoff?*

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8. *Is there a pre-payment penalty?*

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9. *What are the total number of panels?*

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10. *Who sold you the system?*

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11. *What is the warranty on the system? Is it transferable?*

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12. *Does the warranty cover the roof?*

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13. *Is the company who sold you the system still in business?*

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14. *Who gets the utility credit...the homeowner or the solar company?*

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15. *If the system can't be transferred to a new buyer, is the seller willing to payoff or buyout the contract?*

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16. *Is the Buyer willing to pay it off?*

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17. *Does the system actually lower the electric bill or eliminate it entirely?*

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18. *How much is your current electric bill?*

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19. *Did you use the HERO Program?*

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