

Winzenburg, Leff, Purvis & Payne, LLP

Colorado Homeowners Association Law

Solar Panels: What HOAs Need to Know

By Molly Foley-Healy on May 20, 2011

I can't believe it . . . the sun is actually peeking out from behind the clouds that seem to have taken up residence over Colorado! Hmm . . . is it time to **start** thinking about installing solar panels on the roof of my house? Do you think the HOA will notice if I **install** them without receiving architectural approval? Will the HOA try to stop me from doing my part to help save the environment?

Colorado law (**C.R.S. 38-30-168**) addresses the authority of HOAs to regulate the installation and use of "solar energy devices" which are defined as ". . . a solar collector or other device or a structural design feature of a structure which provides for the collection of sunlight and which comprises part of a system for the conversion of the sun's radiant energy into thermal, chemical, mechanical or electrical energy." Solar panels clearly fall within this definition.

Here's what HOAs need to know about regulating the installation of solar panels:

- Associations are not permitted to prohibit the installation of solar panels on a unit or property which is owned by a member of the association. Any such prohibition in the governing documents of an association is void and unenforceable.

- An individual does not have the right to place solar panels on: (1) property owned by another person; (2) property which is leased by the individual; (3) *limited common elements of an association*; (4) *general common elements of an association*; and on (5) property which is collateral for a commercial **loan** – without permission of the secured party.

- Associations are permitted to adopt aesthetic provisions (commonly referred to as “architectural guidelines”) that impose *reasonable restrictions* on the dimensions, placement or external appearance of solar panels and **that do not**:
 - Significantly increase the cost of the solar panels; or
 - Significantly decrease the performance or efficiency of the solar panels.

- Associations are also permitted to adopt “bona fide safety requirements, required by an applicable building code or recognized electrical safety standard, for the **protection** of persons or property.”

HOA To Do List:

Review Declaration. Review the declaration of your association to determine whether any provision prohibits the installation of solar panels on a unit or property owned by an individual. If your declaration contains such a provision – it is void as a matter of law and you are not permitted to enforce it. If a decision is made as some point in time to amend the declaration, this provision should be addressed.

Review Policies and Rules & Regulations. Review these documents to determine whether there are any prohibitions on the installation of solar panels on a unit or property owned by an individual. If such prohibitions exist, they are not enforceable and the policy or rule and regulation should be amended to come into compliance with Colorado law.

Review Architectural Guidelines. Review the architectural guidelines of the association to ensure any restriction on solar panels are reasonable and comply with Colorado law – as more fully described above. If the restrictions do not

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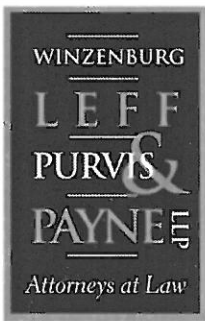
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comply with Colorado law, take steps to amend the architectural guidelines.

If your association needs assistance with any of these important steps, our attorneys are available to provide legal assistance. You can contact us by calling at 303-863-1870 or **email me at mfoley-healy@wlpplaw.com**.

Keep your eye out for future blog postings on the regulation of windmills and energy efficiency measures in associations.

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