

## Homeowner's Associations and Solar Energy: What Board Members Should Know

By Amy Strider Copyright 2009

Given the increasing concerns about global warming and climate change, interest in environmentally-friendly solar power is growing. The California Solar Rights Act sets forth a timeline for homeowner's associations ("HOAs") to process homeowner's applications to install and/or use solar energy systems on their individual units, and limits the restrictions an HOA can place on such systems. Failure to meet these requirements could result in expensive litigation and liability for fines, damages and attorney's fees.

First, if the governing documents of an HOA require approval of the board of directors and/or an architectural committee for the installation or use of a solar energy system (and most will), the approving entity must process such an application in the same manner as any other application for an architectural modification, and cannot willfully avoid or delay the application. Civ. Code, § 714 (e)(1). This means, for example, that if most applications for modification of a unit are reviewed and approved or denied within 30 days, then an application involving a solar energy system must be processed within the same time frame and the HOA cannot impose any additional burdens on the applicant (except those described below) or delay the process.

Further, if the approving entity is the HOA board itself, it must approve or deny the application in writing within 60 days from the date of receipt, *even if the usual timeframe is longer*. If the board takes no action, the application is deemed approved after the 60 day period has expired, unless the delay is the result of a reasonable request for additional information from the board. Civ. Code, § 714 (e)(2)(A) and (B).

Any HOA that willfully violates these guidelines will be liable to the applicant for actual damages occasioned thereby, and must pay a civil penalty to the applicant in an amount not to exceed one thousand dollars (\$1,000). Civ. Code, § 714.

However, the California Solar Rights Act also permits HOA's to impose "reasonable restrictions" on solar energy installations. Civ. Code, § 714.1. An HOA may impose reasonable provisions which:

- (a) Restrict the installation of solar energy systems installed in common areas to those systems approved by the HOA.
- (b) Require the owner of a separate interest to obtain the approval of the HOA for the installation of a solar energy system in a separate interest owned by another.
- (c) Provide for the maintenance, repair, or replacement of roofs or other

building components that could be affected by the installation and use of the system.

(d) Require owners of solar energy systems to indemnify or reimburse the HOA and/or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system. HOAs should inspect their roof warranties and insurance documents before permitting roof installations to ensure that such installations will not void the warranty and/or the policy.

A restriction is defined as "reasonable" if it does not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allows for an alternative system of comparable cost, efficiency, and energy conservation benefits. Civ. Code, § 714 (b). The term "significantly" means either (i) a 20% increase in costs (with respect to solar domestic water heating systems or solar swimming pools) or an increase in cost of \$2,000 or more (for photovoltaic systems that comply with state and federal law) or (ii) a decrease in system efficiency of more than 20%. Civ. Code, § 714 (d)(1).

In conclusion, it is important for HOA board members to understand these regulations in order to avoid fines and potential litigation. If a unit owner submits an application to install a solar energy system, it is prudent for the board to consult with an attorney before proceeding.