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No person ... shall allow a tree or shrub to grow ..., subsequent to the installation of a solar collector, so as to cast a shadow on it.

California Solar Rights Act**THIS ISSUE**

Seeking to promote the use of solar energy in California, the Legislature passed the California Solar Rights Act in 1978. This Act has recently received a lot of public attention, both in court and out.

BACKGROUND

The California Solar Rights Act¹ invalidates any deed, easement, covenant or other restriction on land that effectively prohibits or restricts the installation or use of solar energy systems. The Legislature intended to promote the use of solar energy and protect a consumer's right to install and operate solar energy technology, including access to sunlight. This was groundbreaking legislation 31 years ago. But the Legislature recently broke new ground again by allocating over \$3 billion in financial incentives to both residential and commercial customers to install photovoltaics (photo-electric cells) and solar water heaters.

Large-scale commercial solar energy projects are being embraced across California. For example, the Far Niente winery in Oakville (Napa Valley) recently installed a \$4.2 million solar energy project consisting of 1,300 photovoltaic panels – enough to power the entire winery.

With the costs of energy increasing rapidly, one can assume that trend will continue. One recent survey concluded that there were tens of thousands of jobs created by the sudden increase in solar energy installations, with another 5,000 new jobs projected for next year.

But what does the Solar Rights Act really say, and where does this leave consumers whose trees, houses, or other structures interfere with a solar panel's access to sunlight?

¹ California Civil Code sections 714, 714.1, 801 and 801.5.

WHAT IS THE SOLAR RIGHTS ACT?

The California Solar Rights Act protects access to sunlight and discourages the once-popular local government restrictions that sought to avoid “unsightly” solar panels on rooftops. The original legislation from 1978 identified the purpose of the Act: “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 [them].” The Act was intended to reduce California’s dependence on nonrenewable fossil fuels, supplement existing energy sources, and decrease pollution resulting from the use of fossil fuels.

HOW DOES THE ACT WORK?

Various components in the Act work together to ensure free access to sunlight on solar energy systems.

The Act defines which solar energy systems are protected by the Act, including both active and passive designs. (Civil Code section 801.5) The definition is pretty broad, including “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.”

And in section 801, the Act creates a legal right to a solar easement, as “the right of receiving sunlight upon or over land as specified in section 801.5.”

Moreover, the Act limits the ability of local governments and homeowner associations to prevent or restrict the use of solar energy systems. California Government Code section 65850.5 discourages the adoption of ordinances that would unreasonably restrict solar access, and promotes non-discriminatory permitting processes for the installation of solar energy systems. And the Act also prohibits homeowner associations from recording Conditions Covenants and Restrictions

that would unreasonably restrict the use or installation of solar energy systems. (Civil Code sections 714 and 714.1)

Section 714 holds “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 that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.”

The Act also requires that certain new subdivisions make accommodation for future solar heating and cooling. Even some architects are incorporating these passive energy conservation techniques into their building designs by changing the size, location, and quality of windows in buildings. And in conjunction with this the Act allows cities and counties to create ordinances that require the dedication of solar easements in some subdivisions.

HOW ARE VIOLATIONS HANDLED?

What is a “reasonable restriction” on solar energy system installations? A resident of the Palos Verdes Home Association wanted to install a passive solar water heating system on his home. The Association’s CC&Rs required Association approval for any improvements outside the home. And the CC&Rs contained guidelines for solar system installation, allowing active, but not passive systems to be installed. This prohibition on passive systems was based on aesthetics, and required systems to be installed more or less flush with the rooftop, which would raise the cost of installation by about \$1,500.

The homeowner ignored the CC&Rs and built the system. The HOA, predictably, sued to enforce the restriction on passive systems. The Court of Appeal held that the restrictions were not unreasonable when they only minimally increased the costs of installation.

By contrast, at least one out-of-state case held that the increased cost to conform to the Association's rules made the CC&Rs too restrictive. In that case, the Association's rules requiring that screening be added to obstruct the view of the solar energy systems would have, in the Court's opinion, raised the cost enough to make the average homeowner less likely to install the system. (*Garden Lakes Community Ass'n v. Madigan* (2003) 204 Ariz. 238)

There is clearly an intended private right of enforcement built into the laws. And the Act provides for prevailing party attorney fees in any case based upon the Act.

CAN THE ACT RESTRICT NEIGHBOR SHADE?

The most common question regarding the Act seems to be whether a homeowner can force his neighbor to trim his trees or otherwise remove a structure that shades a solar energy system. The Act does not ensure that all solar energy systems are entitled to access to sunlight.

But California Public Resources Code section 25982 addresses issues involving some trees or shrubs that shade existing solar systems. This is known as the Solar Shade Control Act. The Act has been described as "protecting active or passive solar energy systems against obstruction by later-planted or later-grown trees and foliage." The relevant language of the Shade Act, reads as follows:

"After January 1, 1979, no person owning, or in control of a property shall allow a tree or shrub to be placed, or, if placed, to grow on such property, subsequent to the installation of a solar collector on the property of another so as to cast a shadow greater than 10 percent of the collector absorption area ...; provided, that this section shall not apply to specific trees and shrubs which at the time of installation of a solar collector or during the remainder of that annual solar cycle cast a shadow upon that solar collector."

There is no similar restriction on structures, though.

In one recent case, a homeowner sued the County of Santa Clara on numerous theories, but primarily claiming that trees owned by the County had grown tall enough to shade the homeowner's solar panels and eliminate his ability to derive benefit from them.

But the Act permits local jurisdictions to exempt themselves from its operation. The exemption provision states: "Any city, or ... county, may adopt ... an ordinance exempting their jurisdiction from the provisions of this chapter." Predictably, facing this lawsuit, the County exempted itself from the provisions of the Shade Control Act.

The County having exempted itself from the Act, the homeowner instead focused on a claim that the longtime use of his solar system had created an easement by prescription to continue that use. The Court held in favor of Santa Clara County, finding that by statute solar easements may only be created by a written instrument.

CONCLUSION

Homeowners can use the Solar Shade Control Act to prevent neighbors from allowing their trees or shrubs to grow in such a way that they obstruct an existing solar energy system.

Also, restrictions (by local ordinance or by CC&Rs) that inhibit the installation or maintenance of solar energy systems are prohibited.

NEXT ISSUE

Recent appellate decision on enforceability real estate option to purchase.

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