

# AB 2188 Changes Solar Energy System Restrictions in HOAs

By Brian D. Moreno

**SOLAR ENERGY TECHNOLOGY** has advanced considerably over the years. It is arguably the cleanest renewable energy source available. Modern technology is capable of harnessing this energy for generating electricity, providing light or heating water. As such, the technology can significantly reduce a homeowner's energy bills. In light of the benefits of this technology, California has prioritized the widespread adoption of solar power as a renewable energy resource.

On September 21, 2014, Governor Brown approved Assembly Bill No. 2188 (Muratsuchi), which expedites the approval process for solar energy systems in homes within common interest developments, commonly known as homeowners associations. AB 2188 amends Civil Code section 714, which is a statute that already limits a community association's ability to restrict or ban solar energy systems. AB 2188 further limits a community association's ability to restrict.

A solar energy system is a device designed to collect, store or distribute solar energy for heating, cooling or electricity generation. By way of example, a solar energy system includes solar panels that are installed and used on portions of residential property that are exposed to the sun. Solar modules found in the panels use light energy from the sun to generate electricity. The solar panels collect, generate and supply electricity to the residence on which the panels are installed.

In a homeowners association, owners are bound by governing documents, including covenants, conditions and restrictions (CC&Rs). Typically, the CC&Rs regulate the installation of improvements and modifications made to the property, including the installation of solar panels.

Civil Code section 714 does allow a community association to impose "reasonable restrictions" on solar energy systems so long as the restriction does

not "significantly" increase the cost of the system or "significantly" decrease its efficiency or specified performance. If it does, the restriction must allow for an alternative system of comparable cost, efficiency and energy conservation benefits.

The previous version of section 714 defined "significantly" as follows: For solar domestic water heating systems or solar swimming pool heating systems, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the system by an amount exceeding 20 percent, as originally proposed. For photovoltaic systems, "significantly" means an amount not to exceed \$2,000 over the system cost originally proposed, or a decrease in system efficiency exceeding 20 percent as originally proposed.

AB 2188 amends the term "significantly" with regard to solar domestic water heating systems or solar swimming pool heating systems to mean an

amount exceeding 10 percent of the cost of the system, not to exceed \$1,000, or decreasing the efficiency of the system by an amount exceeding 10 percent. With regard to photovoltaic systems, it is changed to read an amount not to exceed \$1,000 over the system cost or a decrease in system efficiency of an amount not to exceed 10 percent, as specified. Thus, a community association's ability to restrict solar energy systems is further curtailed by changing the meaning of the term "significantly" in the statute.

Additionally, the previous version of section 714 required that an application for approval of a solar energy system be processed and approved in the same manner as an application for approval of an architectural modification to the property. It also required the approval or denial of an architectural application relating to a solar energy system be stated in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information. AB 2188 amends section 714 by shortening the community association's response deadline to 45 days.

Finally, AB 2188 amends section 714 to require a solar energy system and solar collectors for heating water in commercial or swimming pool applications to be certified by an accredited listing agency.

AB 2188 reflects the legislature's desire to support the installation and use of solar energy systems within common interest developments throughout California. ■

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