

Texas Property Code re: Regulation of Solar Energy Devices

PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 202 CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

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Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section:

- (1) "Development period" means a period stated in a declaration during which a declarant reserves:
 - (A) a right to facilitate the development, construction, and marketing of the subdivision; and
 - (B) a right to direct the size, shape, and composition of the subdivision.

(1-a) "Residential unit" means a structure or part of a structure intended for use as a single residence and that is:

- (A) a single-family house; or
- (B) a separate living unit in a duplex, a triplex, or a quadplex.

(2) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

- (A) threatens the public health or safety; or
- (B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

- (A) on the roof of the home or of another structure allowed under a dedicatory instrument; or
- (B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

- (A) extends higher than or beyond the roofline;
- (B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;
- (C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
- (D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

(8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

(f) During the development period for a development with fewer than 51 planned residential units, the declarant may prohibit or restrict a property owner from installing a solar energy device.

Added by Acts 2011, 82nd Leg., R.S., Ch. 939 (H.B. 362), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 126 (S.B. 1626), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 126 (S.B. 1626), Sec. 2, eff. September 1, 2015.