

RMC - HOAs Cannot Prohibit Installation of Solar but can Enforce Reasonable Restrictions

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For the past several years, the homeowner association (HOA) space has seen and continues to see many changes in regulation, including legislation around renewable energy options. Various states have taken a more proactive stance on the installation of solar panels, explicitly targeting HOAs that enforce restrictions on these devices. According to [HOA-USA](#), there are 370,000 HOA-run communities in the U.S., with 53% of all homeowners living in an HOA community. An HOA's ability to regulate solar panel installation requests on an owner's property will be significantly impacted as legislation continues to develop throughout the country. However, HOA communities will still have the ability to restrict or prohibit solar panels in an association's common area. To ensure fair governance, it is crucial that HOAs stay up to date with changing regulations, understand the caveats that come with new laws, and adjust their governing documents accordingly.

Colorado alone has an estimated 10,410 HOA-run communities, with roughly 2.35 million people living in them, equaling approximately 40% of the state's population. Colorado House Bill (HB) 21-1229, which passed in 2021, increased protections for property owners within HOA-guided communities. Specifically, the bill keeps HOAs from prohibiting the installation of various home additions, including renewable energy-generating devices such as solar panels. However, HOAs can still enforce "reasonable" restrictions on installing solar panels. A "reasonable" restriction pertains to aesthetics and safety concerns that do not significantly increase the cost of the device or significantly decrease its efficiency. HB 1229 clarifies "significantly" to mean no more than 10%. Any rule imposed by an HOA that increases the cost of a solar device by more than 10% or decreases its efficiency by more than 10% is not reasonable.

This still allows HOA-run communities to enforce restrictions and standards on solar panel installations, but careful regulation is required. With that in mind, here are some key points to ensure your community regulates solar panels fairly and correctly.

Review Governing Documents

Boards must review their governing documents concerning restrictions or requirements for solar panel installation. If your documents outright prohibit the installation on an owner's property, it is time to amend them to adhere to current law—outright prohibition cannot be enforced. Additionally, any restrictions already included in governing documents must be scrutinized to ensure they are "reasonable." As each situation can vary, bringing in a seasoned HOA law attorney can make this process easier and legally sound, ensuring compliance with the law.

"Reasonable" Restrictions

Keep the 10% rule in mind when adopting restrictions for solar panel installations. Ensure any rules implemented do not explicitly prohibit solar panels from being installed on roofs and require them on the ground. This could effectively prevent owners from installing solar panels outright, making it unlawful and unenforceable. Instead, create rules that specify preferred locations for solar panels; require the solar panels to be painted or otherwise screened from view; limit the total amount of roof space utilized; or establish a preferred distance for solar panels above roof tiles. These rules must ensure they do not reach the 10% threshold. By accomplishing this, HOAs can still establish a uniform policy that all homeowners can follow for solar installations, thus maintaining the desired aesthetics of their communities.

Timely Review of Applications

Another facet of HB 1229 is the requirement that all fully submitted solar installation applications in an HOA be approved or denied within 60 days of submission. While the timeline for approval cannot be extended, it can be truncated if the associations governing documents provide a shorter time for review and approval of architectural submissions. If an HOA fails to take action on a solar application, it is automatically deemed approved after the expiration of the 60 days by state law. HOAs should establish a cohesive, streamlined review process to avoid delays, confusion, or enforceable denials.

Installation Agreements

Lastly, once an HOA board decides they want to enforce restrictions on solar panel installations, it is crucial to establish guidelines and formal agreements for homeowners to follow. Suppose a homeowner wishes to install solar panels on a Townhome roof that is maintained by the Association. In that case, a maintenance and repair agreement can stipulate reasonable restrictions that the homeowner agrees to, address situations such as

the removal of solar panels should a homeowner choose to do so, and the homeowner's responsibility to maintain and ensure their solar panels and the portion of the roof affected by their installation. Additionally, specific enforcement mechanisms, unique to each installation, may be addressed in the agreement should a homeowner breach the contract.

As the U.S. continues to shift away from traditional fossil fuel-driven energy sources, HOAs must keep a compliant mindset concerning renewable energy options that homeowners want to install on their properties. Establishing reasonable, unified, and cohesive guidelines for these kinds of installations will better protect HOAs and homeowners from litigation arising due to disputes or outdated governing documents. The legal landscape continues to evolve around renewable energy, so it is important to stay informed about requirements and have trusted legal counsel to advise and protect from litigation.

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