

MERCERTRIGIANI

SOLAR PANEL INSTALLATION IN VIRGINIA

OVERVIEW

Solar panel restrictions have drawn attention in recent sessions of the Virginia General Assembly. Initially enacted in 2006 and amended several times since, the legislation is intended to limit architectural restrictions on the installation of solar energy collection devices (solar panels) on individual lots in common interest communities. Originally part of the Virginia Energy Plan in Title 67 of the Code of Virginia, the statutes were moved in 2021 to **Section 55.1-1820.1** of the Virginia Property Owners' Association Act and **Section 55.1-1951.1** of the Virginia Condominium Act – as part of recodification of Title 67.

While community associations maintain control over the installation of solar panels on common area, the solar panel statutes provide that no community association shall *prohibit* an owner from installing solar panels on that owner's property *unless* the recorded declaration for that community expressly prohibits solar panels. In other words, unless recorded governing documents of a community association expressly prohibit solar panels or are amended to prohibit solar panels, owners may install solar panels on individually owned property.

The solar panel statutes also establish express authority for the development and adoption of *reasonable* rules addressing installation of solar energy collection devices. Amendments adopted in 2020 added standards to define *reasonableness*. These changes necessitate a careful review of association authority as well as policies and architectural restrictions adopted in accordance with that authority.

DISCUSSION

Rulemaking Authority – The solar panel statutes establish association authority to adopt rules addressing installation of solar energy collection devices, whether or not the rulemaking authority is contained in the recorded declaration for the community.

Individual Property – An association “may establish reasonable restrictions concerning the size, place, and manner of placement” of solar energy collection devices on individually owned property. Therefore, associations may establish rules, but the rules must be *reasonable* according to the new statutory definition of reasonable.

Common Spaces – An association may prohibit or restrict the installation of solar energy collection devices on common elements or common area. The restrictions may address number, size, place and manner of placement.

Reasonableness Defined – Amendments to the solar panel statutes in 2020 defined whether association-established rules on individually owned property are *reasonable*. Subsection B of both solar panel statutes provides that a rule is deemed *not* to be reasonable if application of the rule to a particular installation proposal:

- (i) Increases the *cost of installation* of the solar panel by **five percent** over the projected cost of the initially proposed installation **or**
- (ii) Reduces the *energy production* by the solar panel by **ten percent** below the projected energy production of the initially proposed installation.

The burden to show the impact of an association restriction on a proposed installation is on the *owner*. The owner must provide sufficient documentation, satisfactory to the association, that the restriction is not reasonable. The documentation must be prepared by an independent solar panel design specialist certified by the North American Board of Certified Energy Practitioners and licensed in Virginia.

Resale Disclosure – Resale certificates and association disclosure packets issued on behalf of a community association must contain a statement setting forth any restriction, limitation or prohibition on installation or use of solar energy collection devices.

RECOMMENDATIONS

When adopting or reviewing a restriction on installation of solar energy collection devices, typically set out in architectural guidelines, the restriction should be evaluated to ensure that the restriction is *reasonable* and achieves established goals. Considerations include:

- Does the declaration establish a prohibition or other limitations on the installation of solar energy collection devices on individually owned property?
- Is the restriction consistent with established goals for adoption and implementation of architectural standards?
- Is the restriction clearly drafted? Does the restriction make sense?
- Is the rule the least restrictive way to achieve the goals of architectural standards?
 - Does the restriction prevent or limit collection of solar energy?
 - Does the restriction prevent the effective use of solar energy collection?
 - Does the restriction create excessive additional expenses for the property owner?
- Is the collection of solar energy for primary or exclusive use of the property?

Care should be taken to ensure rules (architectural guidelines) and changes to rules are drafted clearly, after inviting opportunity for community comment.

Care and attention should similarly be given to implementation of rules. Additional application requirements may be necessary – so current application forms should be reviewed and revised to reflect new requirements. Restrictions should be applied consistently, taking into account property differences. Rationale for approval or denial of an application should be thoroughly and carefully drafted and documented in the owner, unit or lot file.

Care should be taken to review resale certificates and association disclosure packets to ensure solar panel restrictions are included and up to date.