

Solar Panels – What Your Association Should Do When Someone Requests to Install Them

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POSTED IN [BYLAWS AND RULES](#), [FEDERAL LAW](#), [MISCELLANEOUS](#), [STATE LAW](#)

When faced with a request by a homeowner or condominium owner to install solar panels at your association, your Board needs to determine a number of things:

1. Whether there are restrictive covenants or rules that prevent the installation;
2. What “solar access rights” if any exist under their state’s laws;
3. What if any restrictions the Association wants and can place on the installation, maintenance, repair, replacement and removal of the solar panels;
4. Who is paying for any of the maintenance, repairs or removal of the solar panels.

Federal Law. In 2018, HR 2454 – [The American Clean Energy and Security Act](#) was proposed which would have made it illegal for homeowner associations to restrict the installation of solar panels. Although there were a few exceptions, in general the law would have overridden most restrictions on the installation of solar panels. That bill did not become law, however, with the new administration and more focus on clean energy your Board needs to pay attention to what laws are passed.

State Laws. A number of states, including Wisconsin, have various Solar Right Acts. [California Civil Code Section 714](#) is one of the older statutes and is straight forward:

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, and any provision of a governing document, as defined in Section 4150 or 6552, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

At least half of the states have similar solar access laws.

Wisconsin’s laws are in various locations throughout the statutes and include a prohibition on a political subdivision from placing “any restriction, either directly or in effect, on the installation or use” of wind energy system or solar energy system unless the restriction satisfies one of the following conditions:

- a) Serves to preserve or protect the public health or safety.
- b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- c) Allows for an alternative system of comparable cost and efficiency.” [66.0401\(1m\) Wis. Stat.](#)

Associations though are not political subdivisions, as that term is limited to a “city, village, town or county.” Although this law does not apply to associations, a similar law does. [Section 236.292\(2\) Wis. Stat.](#) provides that “[a]ll restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems ... or a wind energy system ... are void.”

Two other laws that may affect your association’s decision on whether to deny the request would include: (1) The municipality may require the person seeking to install the solar panels to obtain a permit. [66.0403 Wis. Stat.](#), and (2) [Section 70.111\(18\) Wis. Stat.](#) exempts of the solar and wind system from general property taxes for the owner of the property.

Based on the laws that currently exist, at least in Wisconsin, the approach that should be taken would appear to differ for homeowner associations versus condominium associations.

Homeowner Associations. Absent confirming that the homeowner has whatever permits are required and the location and colors are within any reasonable norm, denial of the request does not appear as a reasonable alternative. The homes, including roofs, and lots are generally owned by the member. Accordingly, they have rights to install solar panels in a manner that complies with the law. What the association can do, is seek a short (2 page) agreement from the owner relative to the maintenance, repair, replacement and removal duties. Arguably, the law does not protect a solar panel system that does not work.

Condominium Associations. The option of denying the request is available to condominium associations because the right of a unit owner to demand solar panels on common element is far less clear. In most states, condominiums can deny such a request because the roofs are common elements. In Wisconsin, there are no cases deciding this issue and the broad language of [Section 236.292\(2\)](#) making void any restriction on platted land relating to solar energy systems, creates risk for an any association who follows that route. The argument of the unit owner would likely be something along the lines that the unit owner is a part owner of the roof to the unit (generally in common with all of the other unit owners), and accordingly as such is entitled to the benefits of the law. Absent an association willing to fight this battle, a safer approach may well be an agreement similar in form to the HOA one mentioned above setting forth the maintenance, repair, replacement and removal rights and duties.

If you have a request for an owner to install solar energy panels, make sure that before you deny any such request your association understands the risks.