

October 2017

Community Associations Newsletter

Soak up the Sun – Solar Panels in your Community

**By: Nicole A. Williams
Kristen L. Buck**

Lots of homeowners look for ways to save on energy costs. A growing trend in our area is the installation of solar panels and other solar collection devices on individual homes. As the cost to obtain solar energy through the purchase or lease of panels decreases and tax credits become available, communities will see more homeowners desiring to add these features to their homes.

As a community association, what does this mean in terms of preserving the aesthetic and cohesive character of your community?

A number of states across the country have enacted laws to allow homeowners to install solar panels regardless of any restriction in an association's governing documents. This is a growing trend that we have seen already in both Maryland and Virginia.

In Maryland, the General Assembly enacted Section 2-119 of the Real Property Article which states that any restriction regarding land use may not impose unreasonable limitations on the installation of solar panels on the roof or walls if the property owner owns or has the right to exclusive use of the roof or exterior walls. The statute defines

restriction as a declaration, bylaws or rules of a condominium or homeowners association or any other instrument affecting any other interest in real property. The law defines an unreasonable limitation is one that significantly increases the cost of the solar collector system or decreases the efficiency of the system. The only exception to this relates to property that is listed in, or determined to be eligible for inclusion in, the Maryland Register of Historic Properties.

In Virginia, the General Assembly amended and reenacted Section 67-701 of the Code of Virginia to restrict community associations from prohibiting an owner from installing a solar energy collection device on the owner's property unless the recorded declaration for the community association establishes such a prohibition. The statute further provides that an association may establish reasonable restrictions on the size, place, and manner of placement of the devices on the owner's property and requires the association to include a statement in the resale certificate and disclosure packet of any restrictions, limitations, or prohibitions on the right of an owner to install or use solar energy collection devices. As to the common elements or

common area of the community association, the statute allows the association to prohibit or restrict the installation of solar energy collection devices on the common elements or common areas as well as establish restrictions as to the size, place and manner of placement or installation. The statute defines a solar energy collection device as “any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.”

The District of Columbia does not have solar energy regulations pertaining just to community associations; however, the Department of Consumer & Regulatory Affairs (DCRA) does regulate the installation of solar panels by requiring building and trade permits and inspections to ensure code compliance. The process is detailed and requires the submission of plans for all systems and any solar panels that extend more than 4’ above the roof must also have a plat of the existing structure reflecting the proposed solar system. In addition to DCRA’s requirements, owners must ensure they have permission from the community association to install a solar device. Since the majority of associations in D.C. are condominiums or cooperatives, the installation of a solar panel or other device usually need to be installed on the common elements or a limited common element which are under the repair and maintenance responsibility of the association. For these reasons, owners will need prior approval from their association before they undertake any installations, and Boards/committees of community associations in the District should

carefully consider the ongoing maintenance of these structures and the impact they may have on the structural integrity of the building.

Even though the statutes in Maryland and Virginia impose certain limitations and D.C. regulates installation methods, associations can and should enact a rule or resolution that sets forth the community’s policy on the installation of solar panels and other devices so that all of the homeowners are on notice of the policy and process required by the association. While there are a lot of limitations on the power of associations to regulate the installation of solar panels and other solar collection devices, associations can still attempt to preserve the aesthetic character of the community while still staying in compliance with the law. For example, an association can require a homeowner to provide a copy of the plans and specifications for the solar panels that the owner wishes to install. Also an association can require the panels to be placed in a certain location so long as it does not increase the cost or decrease the efficiency of the panels. If the home is a part of a condominium where the roof and/or walls are part of the common elements, the association can require the owner to restore any portion of the common elements damaged as a result of the installation or removal of the solar panel.

If your community does not have a resolution or policy in place, we recommend you contact your attorney at Rees Broome for guidance on the adoption of such a resolution for your community.