



HOA

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Note: This Sunday, I turn my column over to local attorney Troy R. Dickerson, general counsel for Angius & Terry LLP. He talks about how Nevada homeowners associations can regulate residential solar energy systems.

Over the past several years, Nevada news outlets have been abuzz with stories related to the state's rooftop solar energy boom, the phase-out of "net metering" incentives in 2015 and the industry's subsequent decline. Recent changes to state law in 2017 appear likely to resurrect the competitive battles for market position in Nevada's "clean" energy industry that were being fought not too long ago. While the key players involved in these battles include rooftop solar installation companies, NV Energy, the Public Utilities Commission and the Nevada Legislature, the actual solar panels at issue are being installed on residential rooftops in our neighborhoods and common-interest communities.

In homeowner associations, any improvement requiring the installation of solar panels on a residential rooftop typically invokes an association's governing documents and the often-accompanying architectural guidelines, approval and potential enforcement issues that come with the territory.

One of the scenarios that inevitably plays out in residential solar installations all over Nevada involves the location and configuration of solar panels on a rooftop and the resulting aesthetic effect to the surrounding neighborhood. In these situations, a homeowner and his installer may insist that solar panels be oriented on a certain side of the roof for maximum sun exposure, while the HOA's architectural review committee demands that placement on the other side of the house is better for aesthetics. Or, the conflict might involve how many panels are necessary and how and where the system is configured. To intensify the situation, the installer provides a detailed technical analysis report to the association, claiming that the "efficiency" of the solar panel system on the rooftop will suffer considerably if the solar panels are located/configured where the HOA wants.

Does a Nevada HOA have the right to restrict where and how solar panels are installed and configured on a residential rooftop? The answer has something to do with "efficiency" and might even require the intervention of a state agency.

Changes made to Nevada law in 2009 forbid HOAs from enforcing any regulation that prohibits or unreasonably restricts a residential property owner from using a system to obtain solar energy, including solar paneling. Current laws specifically state that any restriction that decreases the efficiency performance of a system by more than 10 percent of the amount originally anticipated is considered to be “unreasonable.”

The Nevada Governor’s Office of Energy is charged by state law with the responsibility to determine whether an HOA’s regulation of a residential solar energy system is overly restrictive for efficiency purposes. Once a request is made from either an HOA or a homeowner, the Office of Energy reviews information provided from both sides of the conflict in order to provide an official determination to the parties within 30 days. This includes any technical analysis and data regarding the orientation and configuration of the proposed panels provided by the solar power installer, which is independently analyzed and confirmed by the Office of Energy. A decrease in the efficiency or performance of a proposed system by more than 10 percent of the amount originally specified for the system is used as a standard to determine if an association’s restriction is unreasonable or not. The proposed solar energy system is then assessed against the HOA’s attempted restriction and the restriction’s underlying purpose. A final decision is memorialized in a letter sent to the involved parties by the Office of Energy’s Director.

In other words, those solar panel applications your HOA will be considering shortly for potential approval might require more than just input from the association’s architectural review committee and legal counsel. They might also require a determination from the Nevada Governor’s Office of Energy.

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