

RESOLUTION 01-01-2007

DIGEST

Covenants of Restrictions: Passive Solar Devices

Amends Civil Code section 714 to prohibit restrictions against the use of passive solar devices.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommend that legislation be sponsored to amend Civil Code Sections 714 and 801.5 as follows:

1 § 714

2 (a) Any covenant, restriction, or condition contained in any deed, contract, security
3 instrument, or other instrument affecting the transfer or sale of, or any interest in, real
4 property that effectively prohibits or restricts the installation or use of a solar energy system
5 is void and unenforceable.

6 (b) This section does not apply to provisions that impose reasonable restrictions on
7 solar energy systems. However, it is the policy of the state to promote and encourage the
8 use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable
9 restrictions on a solar energy system are those restrictions that do not significantly increase
10 the cost of the system or significantly decrease its efficiency or specified performance, or
11 that allow for an alternative system of comparable cost, efficiency, and energy conservation
12 benefits.

13 (c) (1) A solar energy system shall meet applicable health and safety standards and
14 requirements imposed by state and local permitting authorities.

15 (2) A solar energy system for heating water shall be certified by the Solar Rating
16 Certification Corporation (SRCC) or other nationally recognized certification agencies.
17 SRCC is a nonprofit third party supported by the United States Department of Energy. The
18 certification shall be for the entire solar energy system and installation.

19 (3) A solar energy system for producing electricity shall also meet all applicable
20 safety and performance standards established by the National Electrical Code, the Institute
21 of Electrical and Electronics Engineers, and accredited testing laboratories such as
22 Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission
23 regarding safety and reliability.

24 (d) For the purposes of this section:

25 (1) (A) For solar domestic water heating systems or solar swimming pool heating
26 systems that comply with state and federal law, "significantly" means an amount exceeding
27 20 percent of the cost of the system or decreasing the efficiency of the solar energy system
28 by
29 an amount exceeding 20 percent, as originally specified and proposed.

30 (B) For photovoltaic systems that comply with state and federal law,
31 "significantly" means an amount not to exceed two thousand dollars (\$2,000) over the
32 system cost as originally specified and proposed, or a decrease in system efficiency of an
33 amount exceeding 20 percent as originally specified and proposed.

34 (2) "Solar energy system" has the same meaning as defined in paragraphs (1), (2)
35 and (3) of subdivision (a) of Section 801.5.

36 (e) Whenever approval is required for the installation or use of a solar energy
37 system, the application for approval shall be processed and approved by the appropriate
38 approving entity in the same manner as an application for approval of an architectural
39 modification to the property, and shall not be willfully avoided or delayed.

40 (f) Any entity, other than a public entity, that willfully violates this section shall be
41 liable to the applicant or other party for actual damages occasioned thereby, and shall pay a
42 civil penalty to the applicant or other party in an amount not to exceed one thousand dollars
43 (\$1,000).

44 (g) In any action to enforce compliance with this section, the prevailing party shall
45 be awarded reasonable attorney's fees.

46 (h) (1) A public entity that fails to comply with this section may not receive funds
47 from a state-sponsored grant or loan program for solar energy. A public entity shall certify
48 its compliance with the requirements of this section when applying for funds from a state-
49 sponsored grant or loan program.

50 (2) A local public entity may not exempt residents in its jurisdiction from the
51 requirements of this section.

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54 § 801.5.

55 (a) The right of receiving sunlight as specified in subdivision 18 of Section 801
56 shall be referred to as a solar easement. "Solar easement" means the right of receiving
57 sunlight

58 across real property of another for any solar energy system.

59 As used in this section, "solar energy system" means either of the following:

60 (1) Any solar collector or other solar energy device whose primary purpose is to
61 provide for the collection, storage, and distribution of solar energy for space heating, space
62 cooling, electric generation, or water heating.

63 (2) Any structural design feature of a building, whose primary purpose is to
64 provide for the collection, storage, and distribution of solar energy for electricity generation,
65 space heating or cooling, or for water heating.

66 (3) Any device whose primary purpose is to provide for the collection, storage, and
67 distribution of solar energy for electricity generation, drying, illumination, space heating or
68 cooling, or for water heating.

69 (b) Any instrument creating a solar easement shall include, at a minimum, all of
70 the following:

71 (1) A description of the dimensions of the easement expressed in measurable
72 terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on
73 specified dates during which direct sunlight to a specified surface of a solar collector,
74 device, or structural design feature may not be obstructed, or a combination of these
75 descriptions.

76 (2) The restrictions placed upon vegetation, structures, and other objects that
77 would impair or obstruct the passage of sunlight through the easement.

78 (3) The terms or conditions, if any, under which the easement may be revised or
79 terminated.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild—Los Angeles Chapter

STATEMENT OF REASONS:

Existing Law: While existing law recognizes the value of solar easements for energy conservation, it fails to include passive solar devices, such as clotheslines, which can reduce average household energy consumption by 10%.

This Resolution: Would modify existing law by specifically including passive solar devices, such as clotheslines, as warranting protection from restrictive covenants prohibiting their installation.

The Problem: Studies have shown that mechanical clothes dryers often use 10% of a household's energy consumption. People need to be encouraged to reduce energy consumption in order to reduce greenhouse gases and global warming. Clotheslines are an easy way for people to reduce their non-renewable energy source consumption without investing a lot of money. The law should include passive solar devices such as clotheslines in the list of solar energy systems entitled to protection for the value they provide to local conservation efforts, and to the planet.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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