



Florida Solar Energy Research & Education Foundation, Inc.

TO WHOM IT MAY CONCERN:

This letter is in reference to homeowner association review of the installation of a solar energy system.

Florida law forbids ordinances, deed restrictions, covenants, or similar binding agreements from prohibiting the use of solar equipment. Under the law, a homeowner may not be denied permission to install a solar collector, clothesline, or other energy device based on renewable resources by "any entity granted the power or right in any deed restriction, covenant or similar binding agreement to approve, forbid, control, or direct alteration of property..."

While a homeowner cannot be prevented from installing a solar energy system, certain restrictions may be imposed without violating the law. However, those restrictions must be reasonable, not arbitrary, and uniformly imposed on the homeowners in the subdivision. They cannot act to impair the performance of the system or they may be seen as "effectively" prohibiting solar.

The law specifically prohibits a homeowner association from preventing the installation of solar collectors on the roof, although the association may determine where on the roof the collectors may be installed, so long as the installation is within the area required for its effective operation, that is, south or east or west of due south. The association is, thereby, limited in imposing requirements which would effectively restrict the system's operational efficiency, or increase the cost of installing the system. As such, requirements for screening the system from view, whether by trees or fences, ground-mounting, or limiting installation to an area not visible from the street, are contrary to the spirit and letter of the law.

Section 163.04 protects the rights of all solar consumers. The Legislature has made successive amendments to the statute to better state its intent to protect the right of all Floridians to use solar energy to reduce the cost of operating their homes, while at the same time reducing the state's dependence on fossil fuels. The law applies to all actions taken with respect to approval or denial of a solar system, regardless of when the subdivision was instituted or when the association bylaws may have been adopted.

If I can be of further assistance in this matter, please advise

Sincerely,

Colleen M. Kettles, J.D.
Director

February 10, 1998

163.04 Energy devices based on renewable resources.--

(1) Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.

(2) No deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restrictions, covenants, or binding agreements. A property owner may not be denied permission to install solar collectors or other energy devices based on renewable resources by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings not exceeding three stories in height. For purposes of this subsection, such entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south provided that such determination does not impair the effective operation of the solar collectors.

(3) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(4) The legislative intent in enacting these provisions is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

History.--s. 8, ch. 80-163; s. 1, ch. 92-89; s. 14, ch. 93-249.