



*Solar
Panels
&
Creating a
"Green"
Community*

**MULCAHY
Community
Association
Cheat Sheet®**

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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SOLAR ENERGY IN ARIZONA COMMUNITY ASSOCIATIONS

Arizona law favors the use and enjoyment of solar energy devices by owners in a community association. Any Arizona association that is considering denying an owner's request for a solar energy device on that owner's property should discuss the denial with their legal counsel prior to denying an application.

What Qualifies as a "Solar Energy Device?"

A.R.S. Section 44 -1761 defines "solar energy device," in part, as a system or series of mechanisms designed primarily to provide heating, cooling, or day lighting, to produce electrical or mechanical power, or to provide any combination of the foregoing by collecting and transferring solar generated energy into such uses either by active or passive means. Such systems may also have the capability of storing such energy for future utilization. Passive systems shall clearly be designed as a solar energy device.

HOMEOWNERS USING SOLAR ENERGY IN PLANNED COMMUNITIES

Arizona Revised Statute Section 33 -1816 (the Planned Communities Act) strictly prohibits planned communities from prohibiting the installation or use of a solar energy device. However, planned community associations may adopt rules regarding the placement of these devices so long as these rules do not effectively prevent installation, impair the device's ability to function or adversely affect the cost of the device.

The Act also provides that should a homeowner prevail in a lawsuit against the planned community regarding a violation of this statute, reasonable attorneys' fees and costs will be awarded to the homeowner. As such, it is very important that the association consult with an attorney prior to prohibiting the installation of solar energy on an owner's lot.

SOLAR DEVICES IN ALL ASSOCIATIONS

Planned Communities and Condominiums are also subject to A.R.S. Section 33 - 439.

Pursuant to this statute, association documents (such as CC&Rs, architectural review committee guidelines, rules and regulations, etc.) cannot "effectively prohibit" the use or installation of any solar energy device.

GARDEN LAKES COMMUNITY ASSOCIATION, INC., AN ARIZONA NON-PROFIT CORPORATION, PLAINTIFF— APPELLANT V. WILLIAM E. MADIGAN AND JOAN M. MADIGAN, HUSBAND AND WIFE; HENRY T. SPEAK AND LAVONNE M. SPEAK, HUSBAND AND WIFE, DEFENDANTS— APPELLEES

In Garden Lakes Community Association, Inc. v. Madigan/Speak, the Arizona Court of Appeals decided that pursuant to A.R.S. Section 33 - 439, the question of whether or not an association's documents "effectively prohibit" the use or installation of solar energy devices should be decided on a case-by-case basis using the following nine factors.

Do the Association's Documents "Effectively Prohibit" Solar Devices?

Determining factors for planned communities and condominium associations:

1. The content and language of an association's declaration, the restrictions, or guidelines;
2. The conduct of the homeowners association in interpreting and applying the restrictions;
3. Whether the architectural requirements are too restrictive to allow solar energy devices as a practical matter;
4. Whether feasible alternatives utilizing solar energy are available;
5. Whether any alternative design will be comparable in cost and performance;
6. The extent to which the property at issue is amenable to the required changes;
7. Whether decisions previously made by the owner or a prior owner are responsible for limiting and precluding the installation of solar energy devices rather than the restrictions themselves;
8. The location, type of housing and value of the homes in the community; and

9. Whether the restrictions impose too great a cost in relation to what typical homeowners in the community would be willing to spend.

While not all of these factors are required to make a determination regarding the “effective prohibition” of solar energy devices, none is dispositive alone.

In summary, associations are permitted to enact provisions imposing some aesthetic and architectural guidelines on the use and installation of solar energy devices so long as such provisions do not explicitly or effectively prohibit installation or use of such devices by adversely impacting its function or cost.

“GOING GREEN” - CREATING A “GREEN” COMMUNITY ASSOCIATION

Solar Energy as an Association Initiative

Despite the high costs of installation, associations may want to consider solar energy for common areas, such as the association’s pool or clubhouse. Solar power can be advantageous, it gives the association a return on its investment because utility companies will buy back excess power, the panels last approximately 20 years and this renewable source of energy is better for the environment.

Before Installing Solar Energy Devices

Check for Rebates

Many utility companies offer rebates for the installation of solar devices. The amount of the rebate and the terms vary depending on the utility company. However, terms may be subject to change and are not always guaranteed. It is a good idea to have the association’s attorney and the board review the terms of the rebate program to help safeguard the association from unexpected expenses should the program be discontinued.

Choose a Licensed and Bonded Contractor

Hiring a licensed contractor can protect the association from liability. When an unlicensed contractor or contractor’s employee is injured while performing work, it may open the association to liability for workers’ compensation. Always check a contractor’s status on the Arizona Registrar of Contractors website at: www.azroc.gov before going out to bid. A review of the Mulcahy Cheat Sheet©, Bidding and Contracting, will provide more information.

Have an Attorney Review the Contract

Carefully read the terms of the contract, then have an attorney review the contract *before* signing anything. This step can potentially save the association money and possible installation problems later on. It costs less to have an attorney review a contract prior to executing the contract than to hire an attorney regarding an issue with a previously executed contract.

Easy Ways for Associations to “Go Green”

“Going green” not only benefits the environment, but can also be a great way for the association to reduce costs.

Reduce Energy Consumption

The association may want to do an ‘energy audit’ of the clubhouse and common areas and consider: installing weather stripping, programmable thermostats, regularly replacing furnace filters, selecting energy efficient appliances, switching to more efficient light bulbs (LED) and making certain the clubhouse is properly insulated, etc.

Go Paperless

Keep records electronically and utilize email and community websites are additional easy ways for associations to save money and “go green.” This does NOT mean throwing away records. Be sure and “back up” all electronic records or store them on a network. Additionally, vital corporate records are a part of the community’s infrastructure and should be permanently retained. A unit owner’s lot files should be kept as long as it could be challenged in court; in Arizona the statute of limitations for breach of contract cases are six years. Please consult with an attorney for information on how long to keep a specific document. See our cheat sheet on records retention for more information on how long an association should keep records.

Changes to the Landscape

The association may want to consider having a professional talk to the board and residents regarding the attributes of xeriscaping. Some associations have switched from grass to xeriscape or artificial turf to reduce water and landscaping costs. However, in many associations, the homeowners are pleased with the current aesthetics in the community. Check your governing documents and with your association’s attorney for legal advice prior to proceeding. The initial costs of switching to xeriscape or artificial turf can be high and may require member approval. Any changes to the landscaping should be discussed in an open board meeting.

Regardless of the landscape type, it is important to practice appropriate landscape water management. Hire professionals to do a water management assessment. The professional should have an understanding of plant water needs, soil types and irrigation systems. The association can also consider installing smart controllers to detect when plants actually need water, flow meters and rain sensors. Deviations and variances in water and electric bills should be promptly addressed.

Recycle

If the association has centralized trash pickup, typical in condominiums, and does not have recycling dumpsters, contact the trash removal company to provide a recycling option. Additionally, recycle containers can be placed around the association pool, clubhouse and other common areas.