



CITATIONS

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RESIDENTIAL SOLAR PANEL USE IN CALIFORNIA AND IMPACTS UPON NEIGHBORS

By Mark F. Miller

We have all seen or heard the ads beckoning homeowners in Southern California to turn their roofs into power generation plants through the installation of purchased or leased solar panels and, thereby, avoid all or a large portion of their monthly electric bills. Some ads promise that (if leased) the panels can even be installed at no cost to the homeowner. What is not discussed is that many legal issues – regulatory, contractual and impacts upon neighbors – may arise in connection with installing photovoltaic (PV) panels. Failure to heed these issues can result in potential litigation and liability, loss of investment, loss of insurance coverage or enforcement by governmental authorities or homeowner associations.

PV panels convert sunlight into electricity, which is then converted into AC current suitable for household use. Panels generally require little-to-no maintenance, usually have no moving parts, and do not produce carbon emissions. Panels can be purchased outright but are usually the subject of complicated leasing arrangements with the installers, in which a one-time lease payment is made in exchange for the prospect of future free or reduced electricity costs. The market



value of the property may be affected, as some buyers may be attracted to a home with a solar panel, while others may consider the risks and drawbacks off-putting. Uncertainty exists as to ownership of the panels in the event of foreclosure of the property.

California's solar access laws appear in the Civil, Government, Health and Safety and Public Resources Codes. Civil Code section 801.5 provides that neighbors may sign solar easements to ensure proper sunlight is available for PV panels. Government Code section 65850.5 permits subdivisions to include solar easements applicable to all subdivision plots. Public Re-

sources Code section 25980 contains the Solar Shade Control Act (SSCA), under which trees and other natural shading planted after installation of a solar collector may not cast a shadow that covers more than ten percent of a neighboring property's solar collector absorption area between the hours of 10 a.m. and 2 p.m.

Nuisance (Civ. Code, § 3479) is the "unreasonable interference with the use and enjoyment of the property of another." One potential nuisance impact from PV panels is extreme glare. In certain alignments, mirror-surface solar panels may direct and concentrate reflected sunlight (and intense heat

and glare) toward neighboring properties. In one well-publicized example, the mirrored convex surface of a London skyscraper concentrated sunlight into a “death ray” that melted the interior of a nearby parked Jaguar. A dearth of case law exists in California as to allowable levels of heat, light, glare and inconvenience that may be directed by PV panels to a neighbor’s property. By analogy, provisions of the Los Angeles Municipal Code restricting exterior lighting may be useful. LAMC § 93.0117, provides that “no exterior light source may cause more than two footcandles (21.5 lx) of lighting intensity or generate direct glare onto exterior glazed windows or glass doors; elevated habitable porch, deck, or balcony; or any ground surface intended for uses such as recreation, barbecue or lawn areas or any other property containing a residential unit or units.” Until the heat and glare issue is clarified, it is prudent for PV owners in residential areas to minimize impacts on neighbors through use of solar panels constructed with non-reflective tinted glass.

Another potential adverse impact on neighboring properties from PV panels is loss of view. There is no general protection for light, air or view in California; however, exceptions exist for (a) recorded height restriction covenants; (b) municipal view ordinances; (c) CCRs; and (d) “spite walls” (or “living walls,” per cases holding that a massed line of trees planted for spiteful purpose can constitute a “living spite wall”). Height limitations for PV panels are contained in LAMC §12.21.1B(3) which specifies the allowable height deviation for certain roof top features and states: “In all zones, Solar Structures may exceed the roof surface by three feet even if the roof surface

is at or above the allowable building height limit.”

Prohibitions and restrictions against use of solar panels may be contained in CCRs, architectural guidelines or rules and regulations of homeowner associations or CIDs. Civil Code section 714, subdivision (a), part of the Solar Rights Act, renders “void and unenforceable” any covenant, restriction, or condition “that effectively prohibits or restricts the installation or use of a solar energy system.” Subdivision (b) makes this prohibition inapplicable to provisions that impose only “reasonable” restrictions on solar PV, i.e., those which do not “significantly” increase the cost of the system or decrease its efficiency or performance. Subdivision (d) defines a cost increase of more than \$2,000 or efficiency decrease of more than 20 percent as significant.

The Public Utilities Commission has made retrofit installation rebates available to energy customers of the state’s three investor-owned utilities – Pacific Gas and Electric Company, Southern California Edison and San Diego Gas and Electric – through the California Solar Initiative. On the federal level, a personal tax credit is available for certain qualified residential and commercial solar installations; the credit is 30 percent of the cost of a system “placed in service” from Jan. 1, 2006 through Dec. 31, 2016.

A description of energy cost advantages to consumers from PV and guidelines for safe PV installation are found on the state’s “Go Solar California” website. “Net energy metering,” is a billing arrangement that provides credit to customers with solar PV systems for the retail value of the electricity their system generates. The customer’s electric meter tracks the amount of electricity consumed by the customer and the amount of excess electricity

generated by the system and sent back into the electric utility grid. Over a 12-month period, the customer pays only for the net amount of electricity used from the utility (plus certain distribution costs). Customers who generate a net surplus of energy at the end of a twelve-month period can receive payment for the excess energy under special utility tariffs.

In PV panel placement, careful consideration should be given to regulatory zone, permit and code requirements, as well as impacts upon neighbors. Failure to consider these matters may cause losses or potential liability that far exceeds any energy cost savings realized from the PV installation.



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