



NOTICE
8/6/20

Adopted Solar Panel Policy – Operating Rules Changes

During the August 3, 2020 Special General Session Board meeting, the Board of Directors adopted the Solar Panel Policy, as Operating Rules Changes., which will be posted on the Association's website.

SIENA HOMEOWNERS ASSOCIATION

RULES AND REGULATIONS REGARDING SOLAR ENERGY SYSTEMS

The California legislature codified Civil Code Sections 714 and 714.1 (adding Civil Code Sections 714(e)(2)(A) and 714(e)(2)(B)) in order to address specific requirements for California homeowners associations that receive requests from owners to install solar energy systems. In addition, the legislature passed Civil Code Section 4746 that became effective on January 1, 2018, if applicable.

The Siena Homeowners Association (“Siena” or “Association”) has created the following Rules and Regulations (or “Rules”) to comply with said legislation and in order to create a process by which the Association may review and consider applications for solar system installation within the Siena community (“Community”).

1.0 Applicable Law (Civil Code Sections 714, *et seq.* and 4746):

- 1.1 Civil Code Section 714** provides that any covenant, condition or restriction found in any governing document for a common interest development that “effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.” However, homeowner associations can impose reasonable restrictions on solar energy systems.
- 1.2 Civil Code Section 714(b)** identifies what a “reasonable restriction” is: “[r]easonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.”
- 1.3 Civil Code Section 714(d)(1)(A)** identifies “significantly” as: “[f]or solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, ‘significantly’ means an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.”
- 1.4 Civil Code Section 714(d)(1)(B)** states: “[f]or photovoltaic systems that comply with state and federal law, ‘significantly’ means an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.”
- 1.5 Civil Code Section 714(a)** states: Notwithstanding Section 714, an association may impose reasonable provisions that:

- 1.6 **Civil Code Section 714(a)(1)** states: Restrict the installation of solar energy systems in common areas to those systems approved by the association.
- 1.7 **Civil Code Section 714(a)(2)** states: Require the owner of a separate interest to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.
- 1.8 **Civil Code Section 714(a)(3)** states: Provide for the maintenance, repair, or replacement of roofs or other building components.
- 1.9 **Civil Code Section 714(a)(4)** states: Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system.
- 1.10 **Civil Code Section 4746** states:
 - (a) When reviewing a request to install a solar energy system on a multifamily common area roof shared by more than one homeowner pursuant to Sections 714 and 714.1, an association shall require both of the following:
 - (1) An applicant to notify each owner of a unit in the building on which the installation will be located of the application to install a solar energy system.
 - (2) The owner and each successive owner to maintain a homeowner liability coverage policy at all times and provide the association with the corresponding certificate of insurance within 14 days of approval of the application and annually thereafter.
 - (b) When reviewing a request to install a solar energy system on a multifamily common area roof shared by more than one homeowner pursuant to Sections 714 and 714.1, an association may impose additional reasonable provisions that:
 - (1) (A) Require the applicant to submit a solar site survey showing the placement of the solar energy system prepared by a licensed contractor or the contractor's registered salesperson knowledgeable in the installation of solar energy systems to determine usable solar roof area. This survey or the costs to determine useable space shall not be deemed as part of the cost of the system as used in Section 714.
 - (B) The solar site survey shall also include a determination of an equitable allocation of the usable solar roof area among all owners sharing the same roof, garage, or carport.
 - (2) Require the owner and each successive owner of the solar energy system to be responsible for all of the following:

(A) Costs for damage to the common area, exclusive use common area, or separate interests resulting from the installation, maintenance, repair, removal, or replacement of the solar energy system.

(B) Costs for the maintenance, repair, and replacement of solar energy system until it has been removed and for the restoration of the common area, exclusive use common area, or separate interests after removal.

(C) Disclosing to prospective buyers the existence of any solar energy system of the owner and the related responsibilities of the owner under this section.

(c) For purposes of this section:

(1) "Association" has the same meaning as defined in Section 4080 or 6528.

(2) "Common area" has the same meaning as defined in Section 4095 or 6532.

(3) "Separate interest" has the same meaning as defined in Section 4185 or 6564.

(d) This section imposes additional requirements for any proposed installation of a solar energy system on a multifamily common area roof shared by more than one homeowner.

(e) This section does not diminish the authority of an association to impose reasonable provisions pursuant to Section 714.1.

2.0 Definitions:

2.1 "Solar Energy System" shall mean any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

2.2 "Owner" shall mean any person, firm, corporation or other entity which owns a fee simple interest in any dwelling unit within the Community, as shown by the official records of the Orange County recorder.

2.3 The term "Resident" shall include the family, guests, tenants and invitees of an Owner.

3.0 Applicability:

3.1 The following Rules shall apply to unit Owners and to all Residents within the Community.

3.2 All Owners and Residents must obtain approval by the Association's Board of Directors ("Board") of any proposed Solar Energy System as defined herein (or "System") prior to the installation and/or use of the System.

4.0 Application Process:

- 4.1 The Association's architectural application process (attached hereto) and these Rules will govern applications for the installation of Systems.
- 4.2 All Owners who wish to install a Solar Energy System at any location at or around their Units, and/or anywhere in the Community, must obtain Association approval before installing the System. The preferred location for any Solar Energy System is over the Owner's residence, such that it does not cause any life, health and/or safety issues due to reflection from the Solar Energy System.
- 4.3 Owners shall submit an architectural application to the Board for approval of the proposed Solar Energy System.
- 4.4 Owner applicants must notify each Owner of a Unit in the building on which the installation will be located of the application to install a Solar Energy System.
- 4.5 Applicants must submit a solar site survey showing the placement of the Solar Energy System prepared by a licensed contractor or the contractor's registered salesperson knowledgeable in the installation of Solar Energy Systems to determine usable solar roof area. This survey or the costs to determine useable space shall not be deemed as part of the cost of the system as used in Section 714. The solar site survey shall also include a determination of an equitable allocation of the usable solar roof area among all owners sharing the same roof or garage. There appear to be clear delineation between Owners' roofs. Owners shall make all efforts to not interfere with or place the Solar Energy System on another's roof or separate interest. If an Owner ("Dominant Tenement") desires or believes it is required to place a Solar Energy System on another Owner's roof or separate interest ("Servient Tenement"), the Dominant Tenement placing the Solar Energy System must first obtain written permission from the Servient Tenement in the form of an Architectural Modification and Maintenance/Use Agreement referenced below.
** See footnote below.*
- 4.6 Owners must sign an Architectural Modification and Maintenance/Use Agreement that will be recorded in the Orange County Recorder's Office. The Dominant Tenement shall pay for the costs of recordation of such agreement, not-to-exceed \$200.00; The Dominant Tenement shall also pay for attorney's fees and costs for drafting the agreement. If changes or revisions are requested by an Owner, said Owner will be responsible for paying the attorney's normal hourly rate. Such agreement shall apply to successor Owners of the Unit(s) and Solar Energy System.

** They are only required in the rare cases where an installing Owner can prove the necessity to install the Solar Panels on another Owner's roof or in the Common Area.*

The Dominant Tenement will agree to indemnify the Servient Tenement and/or Association and reimburse the Servient Tenement and/or Association for any damage to the Servient Tenement's property and/or Common Area or any other Owner or Invitee's property arising from the installation and/or use of the Solar Energy System and will be responsible for all maintenance of the system.

- 4.7 Owners must hire a licensed contractor with at least a California C46 License to install the Solar Energy System. A copy of such license must be submitted to the Association prior to the commencement of any installation project.
- 4.8 Not only will the vendor(s) installing the System be properly licensed, but they must carry liability insurance, auto insurance and workers' compensation insurance. They must also be bonded. The insurance **MUST** specifically provide for coverage for work on a planned unit development, condominium and/or town homes project such that the Association is covered by the insurance policy.
- 4.9 The Board will respond, in writing, to the Owner's request within 45 days from the date of receipt of the request.
- 4.10 The Board shall have the right to deny any application that does not meet with the requirements as listed herein, and/or where the System causes or may cause a life, safety, or health issue in its placement and/or installation.
- 4.11 All Owners whose plans for a Solar Energy System are approved will be required to enter into an Architectural Modification and Maintenance/Use Agreement with the Servient Tenement and/or Association, if the Solar Energy System impacts and/or is located on a Servient Tenement's property and/or Common Area.
- 4.12 All Owners whose plans for a Solar Energy System are approved will be required to pay for the cost of recording the Architectural Modification and Maintenance/Use Agreement with the County of Orange, as provided herein.
- 4.13 All Owners applying for a Solar Energy System approval will be required to pay reasonable attorney's fees and costs where the Association's legal counsel is required to assist in the process. Such sum shall not exceed \$750.00 per Owner, as long as changes or revisions are not requested by an Owner. If changes or revisions are requested by an Owner, said Owner will be responsible for paying the Association's attorney's normal hourly rate.
- 4.14 Owners must hire a licensed contractor with at least a California C46 License to install the Solar Energy System. A copy of such license must be submitted to the Association prior to the commencement of any installation project.
- 4.15 All Owners whose plans for a Solar Energy System are approved will be required to enter into an Architectural Modification and Maintenance/Use Agreement with the Servient Tenement and/or Association, if the Solar Energy System impacts and/or is located on a Servient Tenement's property and/or Common Area.

- 4.16 Not only will the vendor(s) installing the System be properly licensed, but they must carry liability insurance, auto insurance and workers' compensation insurance. They must also be bonded. The insurance **MUST** specifically provide for coverage for work on a planned unit development, condominium and/or town homes project such that the Association is covered by the insurance policy.
- 4.17 The Board will respond, in writing, to the Owner's request within 45 days from the date of receipt of the request.
- 4.18 The Board shall have the right to deny any application that does not meet with the requirements as listed herein, and/or where the System causes or may cause a life, safety, or health issue in its placement and/or installation.
- 4.19 All Owners whose plans for a Solar Energy System are approved will be required to pay for the cost of recording the Architectural Modification and Maintenance/Use Agreement with the County of Orange, as provided herein.
- 4.20 All Owners applying for a Solar Energy System approval will be required to pay reasonable attorney's fees and costs where the Association's legal counsel is required to assist in the process. Such sum shall not exceed \$750.00 per Owner, as long as changes or revisions are not requested by an Owner. If changes or revisions are requested by an Owner, said Owner will be responsible for paying the Association's attorney's normal hourly rate.

5.0 Solar Energy System Requirements:

- 5.1 Aluminum trim, if used and visible should be anodized or otherwise color treated to match existing structures. The Association shall have the right to approve or disapprove colors and other aesthetic items related to the Solar Energy System.
- 5.2 Exterior plumbing lines should be painted in a color scheme consistent with the structure and materials adjacent to the pipes. The Association shall have the right to approve or disapprove colors and other aesthetic items related to the Solar Energy System.
- 5.3 Solar collectors, when possible, should be installed on the plane of roof material (flush mounted).
- 5.4 Solar units must be firmly secured to the roof in accordance with uniform, state, and local building codes, all Association Governing Documents, and other relevant guidelines.
- 5.5 A sample or illustration brochure of the proposed installation should be provided to the Board. It should be drawn to show the location and number of collectors, attachment to roof structure, and location of any other exterior system components.

5.6 Construction drawings for the proposed solar energy system should show the same items in paragraph 5.5.

5.7 Calculations should be provided showing the number and area of collectors required.

6.0 Insurance, Obligations:

6.1 The Owner and each successive Owner must maintain a homeowner liability coverage policy at all times and provide the Association and/or Servient Tenement, where applicable, with the corresponding certificate of insurance within 14 days of approval of the application and annually thereafter.

7.0 Repair, Replacement, and Maintenance Obligations:

7.1 Owners and successive owners of the Solar Energy System shall be responsible for all of the following:

- (A) Costs for damage to the Servient Tenement, Common Area, Exclusive Use Common Area, or Separate Interests, where applicable, resulting from the installation, maintenance, repair, removal, or replacement of the Solar Energy System;
- (B) Costs for the maintenance, repair, and replacement of the Solar Energy System until it has been removed and for the restoration of the Servient Tenement, Common Area, Exclusive Use Common Area, or Separate Interests, where applicable, after removal;
- (C) Disclosing to prospective buyers the existence of any Solar Energy System of the Owner and the related responsibilities of the Owner under this section.