



AB-634 Real property: solar energy systems. (2017-2018)

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Assembly Bill No. 634

CHAPTER 818

An act to amend Sections 714.1 and 4600 of, and to add Section 4746 to, the Civil Code, relating to real property.

[Approved by Governor October 15, 2017. Filed with Secretary of State October 15, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 634, Eggman. Real property: solar energy systems.

(1) Existing property law prohibits any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, and any provision of a governing document from effectively prohibiting or restricting the installation or use of a solar energy system.

Existing law also exempts from that prohibition provisions that impose reasonable restrictions on solar energy systems that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance. Existing law specifies that whenever approval is required for the installation or use of a solar energy system, the application for approval must be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property.

Existing property law permits an association to impose reasonable provisions that restrict the installation of solar energy systems installed in common areas, as defined, to those systems approved by the association.

This bill would prohibit an association from establishing a general policy prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use. The bill also would prohibit an association from requiring approval by a vote of members owning separate interests in the common interest development in those circumstances. Any action by an association that contravenes these provisions would be void and unenforceable. The bill would also make nonsubstantive and clarifying changes.

(2) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. The act requires an affirmative vote of members owning at least 67% of the separate interests in the common interest development before the board may grant exclusive use of a portion of the common

interest development to a member, unless the governing documents specify a different percentage. Existing law exempts from this requirement certain actions, including, among others, a grant of exclusive use to eliminate or correct engineering errors in recorded documents, to accommodate a disability, and to install and use an electric vehicle charging station through a license granted by the association.

This bill also would exempt from that vote requirement an action to install and use a solar energy system on the common roof of a residence that meets specified requirements.

The bill would require an association, when reviewing a request to install a solar energy system on a multifamily common area roof shared by more than one homeowner, to require an applicant to notify each owner of a unit in the building on which the installation will be located of the application and to require each owner to maintain a homeowner liability coverage policy, as specified. The bill would permit an association, when reviewing this request, to impose additional reasonable requirements, including a requirement to submit a solar site survey showing the placement of the solar energy system, in accordance with specific criteria.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 714.1 of the Civil Code is amended to read:

714.1. (a) Notwithstanding Section 714, an association may impose reasonable provisions that:

- (1) Restrict the installation of solar energy systems in common areas to those systems approved by the association.
- (2) 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.
- (3) Provide for the maintenance, repair, or replacement of roofs or other building components.
- (4) 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.

(b) An association shall not:

- (1) Establish a general policy prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use.
- (2) Require approval by a vote of members owning separate interests in the common interest development, including that specified by Section 4600, for installation of a solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use.

An action by an association that contravenes paragraph (1) or (2) shall be void and unenforceable.

(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.

SEC. 2. Section 4600 of the Civil Code is amended to read:

4600. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required

before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability.

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

(H) To install and use an electric vehicle charging station in an owner's garage or a designated parking space that meets the requirements of Section 4745, where the installation or use of the charging station requires reasonable access through, or across, the common area for utility lines or meters.

(I) To install and use an electric vehicle charging station through a license granted by an association under Section 4745.

(J) To install and use a solar energy system on the common area roof of a residence that meets the requirements of Sections 714, 714.1, and, if applicable, Section 4746.

(K) To comply with governing law.

(c) Any measure placed before the members requesting that the board grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

SEC. 3. Section 4746 is added to the Civil Code, to read:

4746. (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.