



HOMEOWNER'S ASSOCIATIONS AND SOLAR
INSTALLATIONS IN THE COMMONWEALTH OF VIRGINIA

A REVIEW OF RELEVANT LAW AND SOLAR BENEFITS TO HOMEOWNERS

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EXECUTIVE SUMMARY

In recent years, Virginia homeowners have increasingly expressed frustration regarding restrictions by Homeowners' Associations (HOAs) on rooftop solar installations. This educational report on HOA rooftop solar law and benefits is intended for those homeowners and HOAs wrestling with this issue. It provides guidance on relevant laws and the type of restrictions that may be imposed by HOAs on solar.

This report addresses Virginia laws relevant to the issue of HOA restrictions on rooftop solar installations. The most important law on the topic allows HOAs to adopt "reasonable" restrictions to limit rooftop solar. This report has been updated to observe significant changes to applicable law. Statutory amendments enacted in 2020 now provide numeric benchmarks for homeowners and HOAs to ascertain which restrictions are unreasonable.¹ Under these benchmarks, homeowners may generally install rooftop solar where it allows for economic self-production of electricity behind the meter. Our report concludes that HOAs have limited ability to restrict rooftop installations. In instances where disputes proceed to litigation, Virginia law allows homeowners to recover reasonable attorney's fees and costs.

Finally, this report includes a broader discussion on property rights in the HOA context and HOA restrictions that can be placed on homeowners' ability to use their property. Important information on the potential benefits of solar to both homeowners and HOAs is also provided.

Those benefits may include:



Utility bill savings



Increased property values



Roof protection



Added resiliency to homes from energy outages when paired with battery backup

Homeowners should first educate and work with their HOAs. Where that process does not result in the desired outcome, homeowners do have legal options available to them. Homeowners should explore all of the available options with legal counsel before deciding to pursue litigation.

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¹ Va. Code § 67-701(B) (effective July 1, 2020).

INTRODUCTION

Many homeowners across Virginia are understandably frustrated when their HOA tries to restrict their ability to install rooftop solar. This educational report is intended to be a resource for both homeowners in HOAs and HOA board members interested in the law governing rooftop solar. Until recent years, affected homeowners did not enjoy clear statutory support or recourse, but recent changes to law, and court rulings against HOAs, have clarified the limited scenarios when HOAs can restrict rooftop solar. This report discusses relevant laws in the Commonwealth of Virginia and reviews the benefits that rooftop solar brings to homeowners and their neighbors.



“REASONABLE RESTRICTIONS” LAW

SIZE, PLACE, AND MANNER

Virginia law allows an HOA to place “reasonable restrictions” on solar installations.² However, an HOA cannot impose unreasonable restrictions on your right to install solar. Under Virginia statute, a restriction is not reasonable if it would either: increase the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or reduce the energy production by the solar energy collection device by ten percent below the projected energy production of the initially proposed installation.³

An HOA cannot require you to move panels to the back of the house, or make them not visible from the street, if it reduces the production of the system by ten percent or increases the cost by five percent. Such an HOA restriction would be superseded—essentially voided—by the statute.

Within the numeric limits in the statute, an HOA can impose reasonable restrictions on the size, place, and manner of placement of the solar system. For instance, a reasonable restriction may include a requirement that the installation must look presentable, without exposed wires, and must meet all local building codes. It could also include a requirement to reconfigure the location of the panels, but again, the HOA’s requirement could not increase the installation cost by five percent or decrease production by ten percent.

BEST PRACTICE FOR HOMEOWNER SUCCESS

In your application, establish that alternatives were considered. Get a quote showing the loss in production of an HOA-compliant design by considering the following:

Size: Demonstrate compliance with your utility’s net metering program and ask the solar company to show that panels are newer technology for maximum efficiency.

Place: Establish that the HOA rule substantially impairs return on investment or increases cost. Show loss of production between alternative configurations.

Manner: Demonstrate minimal aesthetic impact: concealed wires, inverters, and racks. Panels parallel to the roof and below peak.

KEY POINT

What if my HOA has not amended its architectural guidelines? As of July 1, 2020, the statute governs your application, regardless of the state of your board’s guidelines.

The Sunnyside Manor Homeowners’ Association has told Aurora that, for aesthetics reasons, she cannot install rooftop solar on the front, street-facing side of her house, despite it being the southern-facing side. Her installer provided a quote for solar installation for both sides of the house. The north-facing, back-of-the-house installation quote shows 30% less production at the same cost compared to the front-of-the-house installation. Despite Aurora’s best efforts to inform her HOA that they are not being reasonable based on Virginia law, the HOA denies her request. Aurora files suit against the HOA. Likely result? An HOA cannot restrict the location or placement of solar if it reduces production by ten percent over the original design. Aurora will likely prevail and will also be entitled to attorney’s fees.

² Id.

³ Id.

A HOMEOWNER'S LEGAL RIGHTS

Virginia law protects a homeowner's right to install solar even if your HOA doesn't want you to. By law, HOAs cannot prohibit an owner from installing solar unless a recorded covenant prohibits solar.⁴ Also, any reasonable restrictions on the size, place, and manner of installation must be clearly authorized under the recorded covenants.⁵ This law is applicable to all HOAs, regardless of when they were formed or when they recorded their covenants.⁶

If you have to take your HOA to court, the Virginia Property Owners' Association Act allows the prevailing party to recover attorney's fees.⁷ In 2019, the Virginia Supreme Court addressed the attorney's fees statute, ruling against an HOA for disallowing holiday lighting and remanding the case for consideration of the homeowner's counterclaims and attorney's fees.⁸

KEY POINT

Recorded covenants are important! "Recorded covenant" means the document is recorded at the courthouse. Check your deed to see what restrictions, if any, have been recorded.

HYPOTHETICAL CASE

Elena lives in the Evergreen Valley HOA. She requested approval to install rooftop solar, but the HOA denied the request because the association's architectural guidelines say "no rooftop solar." Elena went to the county courthouse to check for covenants on her property. The recorded covenants for her property lack any restrictions on solar. Elena files suit against the HOA. The result? An HOA cannot effectively prohibit solar unless the prohibition is recorded in the covenants. Elena will likely prevail and may also be entitled to attorney's fees.

PROPERTY RIGHTS IN AN HOA

Property ownership is protected in several ways by the constitutions of the United States and Virginia. But the relationship with an HOA is a private contract, so landowners may not enjoy a traditional set of property rights.⁹ Inexperienced landowners may be surprised by the amount of power an HOA can assert over a homeowner's free use of property.

Virginia HOAs, however, do not enjoy unfettered power. The Virginia Property Owners Association Act establishes a suite of basic protections for homeowners.¹⁰ The Act provides the right to notice and due process in the conduct of a hearing.¹¹ As noted above, the Act also provides for attorney's fees to a homeowner who prevails in a suit against their HOA.¹²

Homeowners within an HOA should carefully review the governing documents of their HOA and consult an attorney to protect their rights.

4 Va. Code § 67-701(A).

5 See *Sainani v. Belmont Glen Homeowners Ass'n*, Record No. 181037 (Supreme Court of Virginia, Aug. 26, 2019), at fn.7. Available at: <http://www.courts.state.va.us/opinions/opnscvwpp/181037.pdf>

6 Op. Atty. Gen. Mark Herring to Del Yost (April 14, 2105), available at: https://oag.state.va.us/files/Opinions/2015/14-057_Yost.pdf

7 Va. Code § 55.1-1828(A)

8 *Sainani v. Belmont Glen Homeowners Ass'n*, at fn.7.

9 *Gillman v. Unit Owners Ass'n of Buildamerica-1*, 223 Va. 752, 766, 292 S.E.2d 378, 385 (1982). See also *Manchester Oaks Homeowners Ass'n, Inc. v. Batt*, 732 S.E.2d 690 (2012) ("A declaration pursuant to the Act is 'a contract entered into by all owners' of the lots in the subdivision it governs.").

10 See Va. Code §§ 55.1-1800 through -1836.

11 Va. Code § 55.1-1807(4).

12 Va. Code § 55.1-1828(A).

BENEFITS OF SOLAR: ADDING VALUE AND RESILIENCY

Solar photovoltaic systems provide clean, renewable energy for your household's needs, while adding resiliency to your home, homes nearby, and the grid overall. There are no moving parts to worry about—only a daily dose of sunshine is needed to provide up to 100% of a household's electricity needs. The occasional precipitation will typically take care of the cleaning needs of the panels (or modules), so there is usually little maintenance required.

Key benefits of rooftop solar installations may include:



Utility bill savings



Increased property values



Roof protection



Added resiliency to homes

Solar systems not only provide overwhelming environmental benefits, but can provide significant cost savings as well. An average solar system is about 6 kW (roughly 20 panels/modules), and according to SolarReviews, generates about \$75 worth of electricity per month. Over a 20-year period, the net savings (electricity generation value minus installation cost) of such a system is often between \$20,000-\$27,000.¹³ Since many solar systems are designed to last more than 20 years, the net savings can be even greater.

In addition, many studies have shown solar installations have a positive impact on property values. A 2014 study by Berkeley Labs stated that, “PV consistently adds value across a variety of states, housing, PV markets, and home types.”¹⁴ In 2019, Zillow Economic Research conducted a study that concluded homes with solar systems sell for 4.1% more, on average, compared to similar homes without solar. As residential solar installations become familiar sights in all neighborhoods, we expect this “solar premium” to increase a home's value even further.

KEY POINT

Rooftop solar systems generate electricity, paying for themselves in cost savings, and are designed to last more than 20 years.

KEY POINT

Rooftop solar installations often increase a house's sale value.

¹³ <https://www.solarreviews.com/blog/what-is-the-average-solar-savings-in-2018-for-a-residential-solar-installation-in-the-us>

¹⁴ <http://eta-publications.lbl.gov/sites/default/files/lbnl-6942e-presentation.pdf>

When it comes to solar, placement is key. In the Northern hemisphere, a south-facing roof usually provides the ideal placement of a solar array to optimize production. East- and west-facing placements may still work, albeit with slightly less power production. A north-facing roof does not receive enough direct sunlight to make economic sense for placement of a solar array. According to the National Renewable Energy Laboratory's Watts calculator, a 1 kW (kilowatt) array facing south can produce 1,393 kWh (kilowatt hours), compared to the same array facing north producing only 786 kWh. South-facing installation is key to maximize a system's return on investment.

Once a solar array is installed, the panels can help protect the roof from precipitation and damaging UV rays, along with lowering the temperatures below (in the roof and attic) which, in turn, can lower overall cooling costs.

When solar is paired with battery storage, there are more possibilities to lower a home's reliance on grid power and to be more resilient. When adding battery storage, a solar home can have the ability to be "islandable", which means it can be separated from the grid and become self-reliant. This becomes especially important when a home relies on power for health or safety reasons.

KEY POINT

All directions are not created equal. Southern-facing installations are essential for maximizing production and return on investment.

KEY POINT

A rooftop solar installation protects your roof and can enhance a home's efficiency.

SUPPORT SERVICES

Trying to educate and find agreement between an HOA and a homeowner is always the preferred option. However, if your HOA is not being responsive based on its own bylaws, or not being reasonable related to an installation request, speaking to a lawyer to review your available options is advised. HOAs should also carefully examine their processes regarding solar installations and contact legal counsel if they are concerned about following the law.

“ReisingerGooch, PLC, a Richmond-based energy and environmental law firm, represents homeowners who are attempting to install solar but are experiencing difficulty with their HOA. Contact one of our attorneys if you would like to discuss your legal rights and the options available.

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