Arizona's Solar Rights Law
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The Essentials

- Arizona law bars Homeowners' Associations (HOAs) from "effectively prohibiting" the installation or use of a solar energy device (SED) within their jurisdiction.
- Some "reasonable" restrictions on the placement of solar energy devices are allowed, but they must not "adversely affect" cost and efficiency. Whether a restriction or reasonable or adversely affects cost and efficiency is decided on a case-by-case in the courts.
- Arizona is one of 22 states with solar rights laws. Arizona has a relatively stringent policy supporting homeowner's solar rights, although some states are more stringent and much more explicit about the types of restrictions HOAs can impose on homeowners.

Details of the policy

Arizona has two main statutes addressing Homeowner Associations' (HOAs) ability to place restrictions on the installation of solar energy devices (SEDs) on private homes, Arizona's solar rights law was enacted in 1979 and imposes a general ban on HOA rules which "effectively prohibit" SED installation. This has been interpreted further by the Arizona Appellate Court in a 2003 case. The second statute, enacted in 2007, addresses HOA rules on the "placement" of SEDs. It allows "reasonable" rules on placement, but restricts HOAs' ability to "adversely affect" cost and efficiency. Taken together, these statutes provide significant protections for homeowners who wish to install SEDs on their property in Arizona.

A.R.S. § 33-439 – Arizona's Solar Rights Law

Arizona's solar rights law, A.R.S. § 33-439 provides that "Any covenant, restriction or condition" contained in an HOA agreement which "effectively prohibits the installation or use of a solar energy device . . . is void and unenforceable." This statute has been in force since 1979, effectively giving Arizona homeowners a right to install solar energy for the last 34 years.

The *Garden Lakes* standard

However, under Arizona law, HOAs are still allowed to place some restrictions on the manner in which homeowners may install solar devices. The extent to which this restriction may take place all turns on the meaning of "effectively prohibits" contained in A.R.S. § 33-439. This language was interpreted by the Arizona Court of Appeals in *Garden Lakes Community Ass'n v. Madigan*[1] in 2003. In that case, a homeowner was challenging his HOA's prohibition on the installation of a rooftop solar water heater. The court considered several factors to

[1] *Garden Lakes Community Ass'n v. Madigan*, 204 Ariz. 238, 242, 62 P.3d 983, 987 (Ariz. Ct. App. 2003).

determine whether the HOA regulation "effectively prohibited" the installation of the solar heater, the most important of which were the additional cost of complying with the stringent requirements of the HOA's policy, the feasibility of making the required modifications, and the feasible alternatives available to the homeowner. The HOA policy in that case would have required a $5,000 addition to the homeowner's house in order to comply with the policy, thus the court determined that the policy "effectively prohibited" the installation of a solar water heating system and was void and unenforceable.

Garden Lakes Factors:

- Content and language of the restrictions or guidelines
- Conduct of the HOA in interpreting and applying the restrictions
- The existence of feasible alternatives
- Feasibility & cost of alternative designs
- Whether HOA policy is wholly responsible for precluding installation
- Location, type, and value of the homes in the community
- Whether restrictions impose too great a cost in relation to what typical homeowners in the community are willing to spend.

Arizona courts will decide challenges to such HOA regulations on a case-by-case basis, so both HOAs and homeowners should be aware of these factors when facing the prospect of a legal challenge.

A.R.S. § 33-1816 – Reasonable restrictions on placement allowable

In 2007, the Arizona legislature introduced a new law that explicitly grants HOAs the right to adopt "reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device." (A.R.S. § 33-1816). It's left to be determined whether this statute, in fact, imposes any additional requirements to A.R.S. § 33-439 and the *Garden Lakes* standard. One case, *Fox Creek Community Association v. Carson* (2012) involved the new statute. In *Carson*, an HOA sued a homeowner in the association for failure to obtain approval from the HOA before constructing his SED. The court decided in favor of the HOA because the homeowner couldn't prove that the HOA restrictions were unreasonable and thus should have reapplied for approval from the HOA. The court did not say whether A.R.S. § 33-1816 was more restrictive than the 1979 law.

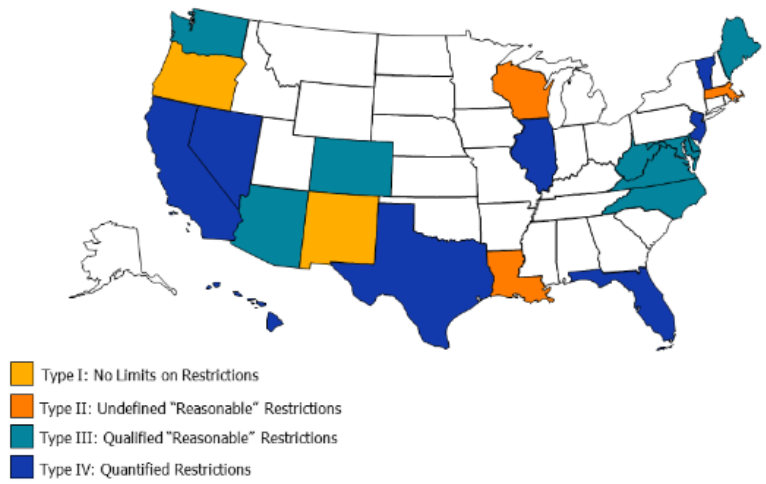
If anything, the language prohibiting HOAs from adversely affecting the cost or efficiency of the solar system seems to create even greater protections than *Garden Lakes*, which gave HOAs some room to impose additional costs on residents, so long as it did not effectively prohibit the installation of the system. Unfortunately, Arizona's legislature did not give a statement of legislative intent to accompany the bill which might help define the threshold for "adverse" effects or "reasonability."

Arizona's Solar Rights in a national context

Arizona is one of twenty-two states that have a solar rights law. In terms of its stringency for protecting solar installation and limiting the restrictions that HOAs can place on SEDs, Arizona is above average among the 22 states, but not in the

highest category, according to a report by the Solar Foundation[2]. The report ranks states' solar rights policies in four categories, each ascending in stringency and specificity of limits on HOAs' ability to restrict the installation of solar devices. The report classifies Arizona a "Type III" state which has a "reasonability" standard for allowing restrictions, and some qualifications such as cost and efficiency, but fails to quantify them precisely.

Figure 3: Typology – Solar Rights and CC&Rs



Only eight states, California, Florida, Hawaii, Illinois, Nevada, New Jersey, Texas, and Vermont, place quantifiable limits on an association's ability to restrict solar energy installations. Examples of a policy which quantifies allowable restrictions include: caps on how much it additional costs an HOA policy may impose, disallowing HOAs from implementing policies which decrease SED efficiency beyond a certain limit, and limiting HOAs' ability to restrict the orientation of the solar device.

Read more

- For links to Arizona's solar rights laws, visit the DSIRE website: http://www.dsireusa.org/incentives/incentive.cfm?incentive_code=az07r
- For a summary of the Solar Foundation report, visit Greentech Media at: http://www.greentechmedia.com/articles/read/Homeowner-Associations-The-Right-to-Solar-and-Solar-Soft-Costs
- The full Solar Foundation report is accessible at http://thesolarfoundation.org/sites/thesolarfoundation.org/files/HOA%20Guide_Final.pdf

[2] *See* "A Beautiful Day in the Neighborhood: Encouraging Solar Development through Community Association Policies and Processes," Prepared by The Solar Foundation, accessed June 30, 2013 at http://thesolarfoundation.org/sites/thesolarfoundation.org/files/HOA%20Guide_Final.pdf