

AMENDED IN ASSEMBLY MARCH 12, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1892

Introduced by Assembly Member Smyth

February 7, 2008

An act to ~~add Section 1353.9 to~~ amend Section 714 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1892, as amended, Smyth. Common interest developments: solar energy.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Under existing law, the governing documents of a common interest development include the recorded declaration and any other document governing the operation of the common interest development. ~~Existing law places certain restrictions on the power of the governing documents to prohibit specified activity.~~ Existing law provides that 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, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable, except as specified.

This bill would apply the above provision regarding the unenforceability of prohibitions or restrictions relating to solar energy systems, in addition, to the governing documents of a common interest development.

~~This bill would prohibit a declaration or other governing document from limiting or prohibiting, or being construed to limit or prohibit, the~~

~~installation by an owner of a solar energy system, a solar heating collector, or a solar water heating system, as defined, on or in the owner's separate interest or his or her exclusive use common area, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 714 of the Civil Code is amended to read:

2 714. (a) Any covenant, restriction, or condition contained in
3 any deed, contract, security instrument, or other instrument
4 affecting the transfer or sale of, or any interest in, real property,
5 and any provision of a governing document, as defined in
6 subdivision (j) of Section 1351, that effectively prohibits or restricts
7 the installation or use of a solar energy system is void and
8 unenforceable.

9 (b) This section does not apply to provisions that impose
10 reasonable restrictions on solar energy systems. However, it is the
11 policy of the state to promote and encourage the use of solar energy
12 systems and to remove obstacles thereto. Accordingly, reasonable
13 restrictions on a solar energy system are those restrictions that do
14 not significantly increase the cost of the system or significantly
15 decrease its efficiency or specified performance, or that allow for
16 an alternative system of comparable cost, efficiency, and energy
17 conservation benefits.

18 (c) (1) A solar energy system shall meet applicable health and
19 safety standards and requirements imposed by state and local
20 permitting authorities.

21 (2) A solar energy system for heating water shall be certified
22 by the Solar Rating Certification Corporation (SRCC) or other
23 nationally recognized certification agencies. SRCC is a nonprofit
24 third party supported by the United States Department of Energy.
25 The certification shall be for the entire solar energy system and
26 installation.

27 (3) A solar energy system for producing electricity shall also
28 meet all applicable safety and performance standards established
29 by the National Electrical Code, the Institute of Electrical and
30 Electronics Engineers, and accredited testing laboratories such as

1 Underwriters Laboratories and, where applicable, rules of the
2 Public Utilities Commission regarding safety and reliability.

3 (d) For the purposes of this section:

4 (1) (A) For solar domestic water heating systems or solar
5 swimming pool heating systems that comply with state and federal
6 law, “significantly” means an amount exceeding 20 percent of the
7 cost of the system or decreasing the efficiency of the solar energy
8 system by an amount exceeding 20 percent, as originally specified
9 and proposed.

10 (B) For photovoltaic systems that comply with state and federal
11 law, “significantly” means an amount not to exceed two thousand
12 dollars (\$2,000) over the system cost as originally specified and
13 proposed, or a decrease in system efficiency of an amount
14 exceeding 20 percent as originally specified and proposed.

15 (2) “Solar energy system” has the same meaning as defined in
16 paragraphs (1) and (2) of subdivision (a) of Section 801.5.

17 (e) Whenever approval is required for the installation or use of
18 a solar energy system, the application for approval shall be
19 processed and approved by the appropriate approving entity in the
20 same manner as an application for approval of an architectural
21 modification to the property, and shall not be willfully avoided or
22 delayed.

23 (f) Any entity, other than a public entity, that willfully violates
24 this section shall be liable to the applicant or other party for actual
25 damages occasioned thereby, and shall pay a civil penalty to the
26 applicant or other party in an amount not to exceed one thousand
27 dollars (\$1,000).

28 (g) In any action to enforce compliance with this section, the
29 prevailing party shall be awarded reasonable attorney’s fees.

30 (h) (1) A public entity that fails to comply with this section
31 may not receive funds from a state-sponsored grant or loan program
32 for solar energy. A public entity shall certify its compliance with
33 the requirements of this section when applying for funds from a
34 state-sponsored grant or loan program.

35 (2) A local public entity may not exempt residents in its
36 jurisdiction from the requirements of this section.

37 ~~SECTION 1. Section 1353.9 is added to the Civil Code, to~~
38 ~~read:~~

39 ~~1353.9. Except as necessary for the protection of the public~~
40 ~~health or safety, no declaration or other governing document shall~~

- 1 limit or prohibit, or be construed to limit or prohibit, the installation
- 2 by an owner of any of the following on or in the owner's separate
- 3 interest or his or her exclusive use common area:
- 4 (a) ~~A solar energy system, as defined in paragraph (3) of~~
- 5 ~~subdivision (a) of Section 25405.5 of the Public Resources Code.~~
- 6 (b) ~~A solar heating collector, as defined in subdivision (g) of~~
- 7 ~~Section 2861 of the Public Utilities Code.~~
- 8 (c) ~~A solar water heating system, as defined in subdivision (h)~~
- 9 ~~of Section 2861 of the Public Utilities Code.~~

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