

**M A S S I E
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F L U R Y**

A Professional Law Corporation

MEMORANDUM

TO: Board of Directors
FROM: Adam C. Flury, Esq.
DATE: February 17, 2023
CLIENT: Tu Casa Homeowners Association
MATTER NO.: 1202.1
RE: Solar Installation on Common Area Roofs

Dear Members of the Board and Management,

It is my understanding that there has been an increasing desire by some owners in the community to install solar on the Association's common area roof. This has likely increased given all of the news coverage relating to the upcoming changes to solar credits that will occur in April of this year. Since the Association does not have a solar energy system policy (i.e., Solar Rules) currently in place, it will have to default to California's Civil Code ("Civil Code") which outlines the Association's ability to regulate solar energy systems in the community. I also strongly recommend the Association adopt solar rules ensure additional control over the process as the Code provides limited requirements to owners.

Generally, associations cannot prohibit the installation or use of solar energy systems pursuant to Civil Code section 714 because California's public policy is to promote and encourage homeowners to utilize solar energy. Associations may, however, impose reasonable restrictions and provisions on the installation of these systems, pursuant to Civil Code sections 714, 714.1 and 4746. Again, these "reasonable restrictions" must be outlined by way of Association rules. There are, however, some mandatory rules that owners must comply with under the law.

Pursuant to Civil Code section 4746, associations *shall* require each owner who wishes to install a solar energy system on a common area roof to:

- (1) 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, and
- (2) Maintain a homeowner liability coverage policy at all times and provide the association with a certificate of insurance within fourteen (14) days of approval of the application.

Pursuant to Civil Code sections 714.1 and 4746, associations *may* require each owner who wishes to install a solar energy system on a common area roof to, among other things:

- (1) Submit a solar site survey showing the placement of the solar energy system prepared by a licensed contractor;
- (2) Pay for the costs to maintain, repair and replace the solar energy system; and
- (3) Pay for and indemnify the association or its members for the loss or damage to the common areas, including the roof or other building components, caused by the solar energy system.

The solar site survey can require the owner include a plan for an “equitable allocation of the usable solar roof area among all owners sharing the same roof, garage, or carport.” See, Civil Code Section 4746(b)(1). This means owners cannot place, as an example, panels over the entire or even a majority of the common area roof space. Instead, the roof must be divided equitably so that all owner can now or at some point in the future install solar on the common area roof.

It is important to note that the equitable allocation language is found in the discretionary portion of the Code which states that the Association can enact this type of rule – not that it is mandated by the law on its own. As such it is important to get a set of solar rules in place sooner than later. With that said, even without rules currently in place, if an owner submits an application that seeks to take an unreasonable share of the Association’s common area roof space, I recommend that the Association deny that application.

The other reason it is important to implement solar rules is to ensure that owners sign a maintenance and indemnification agreement that will be recorded against their unit which will make that owner, along with any future owners of that unit, responsible for any damages, repairs, etc. related to their solar installation. Our office can prepare a set of solar rules for the Association for a flat fee of \$500.00.

I hope this information is helpful, please do not hesitate to contact me with any questions, comments or concerns that you may have regarding this matter. I would be happy to discuss these issues further with the Board at an upcoming Board meeting if you would like.

Best Regards,

Adam C. Flury