

Board Must Allow Renewable Energy Devices

July 29, 2018

By: Joseph E. Adams

Q: I would like to install solar panels on the roof of my home, but I did not see any standards addressing this within my homeowners' association's documents or architectural review guidelines. Would I be allowed to install these in order to make my home greener? (K.L. via e-mail)

A: Probably. Under Section 163.04 of the Florida Statutes, homeowners' association declarations may not prohibit owners from installing certain renewable energy devices on buildings located on lots or parcels that are subject to the declaration. These devices include "solar collectors, clotheslines, or other energy devices based on renewable resources." In the event that an owner wishes to install solar collector devices on a roof, the statute allows the approving entity under the declaration (such as the architectural review committee) to determine the specific location where they may be installed, including positioning the solar collectors to the south or within 45 degrees east or west of due south, if this does not impair the effective operation of the solar collectors.

This law was first enacted in 1980, and the prevailing view is that covenants which predate the statute may still be enforced.

In the condominium context, the statute provides that owners may not be denied the ability to install the solar panels by the approving entity in the declaration, so long as the proposed installation is done within the unit boundaries. However, from a practical standpoint, these panels would rarely be located within the unit boundaries.

The Florida Condominium Act also allows the board of directors to install solar collectors, clotheslines, or other renewable energy devices upon or within the common elements or association property to benefit unit owners, without unit owner approval.

Q: My condominium association has historically had problems getting people to serve on the board. Two board members recently resigned and the remaining three board members cannot get volunteers to fill the vacancies. Some people in our community have suggested simply having the State come in and run the Association. Is that actually an option? (W.P. via e-mail)

A: Not really. The Florida Condominium Act does not provide a mechanism for the State to take over and handle the operation of the association. The Division of Condominiums, Timeshares, and Mobile Homes is the administrative agency in

charge of regulating condominium associations. However, it does not have the authority to step in and run a condominium association.

You may be referring to the process of having a “receiver” appointed. Section 718.1124 of the Act provides that when an association fails to fill the vacancies on the board of administration sufficient to constitute a quorum, any unit owner can give notice of their intent to apply for a receiver to be appointed to manage the association’s affairs.

The statute outlines the process to have a court appoint a receiver, including providing notice to all owners, which must be given 30 days before filing the petition, in order to give the association sufficient time to constitute a quorum of the board of directors.

A receiver is typically a professional such as an attorney or an accountant who would run the association until such time as a quorum of the board can be sufficiently constituted. The association must pay the receiver’s salary, which could potentially be expensive. In my experience, appointing a receiver is not a desirable option for an association or your property values. Owners in your condominium need to step up and take their turn serving on the board. You should also look into professional management if your association does not currently use it.

Another option for the association would be to amend the bylaws to provide for a three-member board, which may make it easier to fill all the positions, and only requires two directors for a quorum.

Joe Adams is an attorney with [Becker & Poliakoff, P.A.](#), Fort Myers. Send questions to Joe Adams by e-mail to jadams@beckerlawyers.com. Past editions may be viewed at floridacondohoalawblog.com.