

6081--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

March 13, 2015

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Introduced by M. of A. GALEF -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to prohibiting condominium associations from banning the installation of solar arrays in their by-laws or rules and regulations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative intent. The governor and legislature have  
2 embarked upon a multi-year, multi-pronged initiative to promote solar  
3 investment and use. In order to meet those goals, solar power opportu-  
4 nities must be expanded to those, who for a variety of reasons, have  
5 been prevented from installing solar power systems, particularly solar  
6 arrays, on their homes. Most condominium associations, for example, have  
7 not adapted their by-laws to provide unit owners with that option.  
8 States such as Arizona, California, Florida and Massachusetts have reme-  
9 died this problem by enacting laws to prohibit condominium associations  
10 from banning or curtailing the installation of solar arrays on a unit  
11 owner's roof.

12     Compounding the problem is the lack of consistency regarding condomin-  
13 ium association by-laws. There is no common standard governing the  
14 installation and most, if not all, condominium associations reject such  
15 installation without citing reasons. Frequently, litigation results with  
16 dissimilar outcomes. This legislation would permit unit owners to  
17 install solar arrays in consultation with their condominium association.  
18 It would thus expand the use of solar power systems for unit owners,  
19 while granting a role in the decision-making process to the condominium  
20 associations.

21     S 2. The real property law is amended by adding a new section 339-11  
22 to read as follows:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 339-LL. BY-LAWS AND RULES AND REGULATIONS; CERTAIN PROVISIONS  
2 PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL  
3 HAVE THE FOLLOWING MEANINGS:

4 (A) "SOLAR POWER SYSTEM" MEANS THE USE OF SOLAR PHOTOVOLTAIC (PV)  
5 TECHNOLOGY THROUGH THE INSTALLATION OF MULTIPLE PANELS.

6 (B) "SOLAR ARRAYS" MEAN THE MULTIPLE PANELS PLACED ON ROOFS AND AS  
7 FREE-STANDING INSTALLATIONS ALONG WITH THE SUPPORT STRUCTURES AND  
8 FIXTURES SUCH AS METERS AND PIPING.

9 (C) "ROOF" MEANS OF A SINGLE FAMILY DWELLING UNIT WHICH IS SOLELY  
10 OWNED BY AN INDIVIDUAL OR INDIVIDUALS, AND WHICH IS NOT DESIGNATED AS A  
11 COMMON ELEMENT OR COMMON PROPERTY IN THE GOVERNING DOCUMENTS OF A CONDO-  
12 MINIUM ASSOCIATION.

13 (D) "CONDOMINIUM ASSOCIATION BOARD OF MANAGERS" OR "BOARD OF MANAGERS"  
14 MEANS AN ASSOCIATION OR A GROUP OF PERSONS AUTHORIZED TO GOVERN A  
15 PRIVATE COMMUNITY WHOSE MEMBERS OWN THE IMPROVED LOTS OR UNITS OR BOTH  
16 SUCH LOTS AND UNITS OF WHICH THE COMMUNITY IS COMPOSED. MEMBERSHIP IN  
17 THE ASSOCIATION IS MANDATORY FOR OWNERS OF A LOT OR UNIT IN THE COMMUNI-  
18 TY.

19 2. NO CONDOMINIUM ASSOCIATION SHALL BAN IN ITS BY-LAWS OR BY RULES OR  
20 REGULATIONS ADOPTED PURSUANT THERETO, ANY SOLAR PANEL ARRAYS, THE  
21 INSTALLATION OF ROOFTOP SOLAR PANELS OR THE CLEARING AND TRIMMING OF  
22 VEGETATION ON UNIT OWNERS' PROPERTIES THAT OBSCURE SUCH SOLAR PANEL  
23 ARRAYS OR ROOFTOP SOLAR PANELS.

24 3. ANY COVENANT, RESTRICTION OR CONDITION CONTAINED IN ANY DEED,  
25 CONTRACT, SECURITY AGREEMENT, OR OTHER INSTRUMENT AFFECTING TRANSFER OR  
26 SALE OF, OR ANY INTEREST IN, REAL PROPERTY WHICH EFFECTIVELY PROHIBITS  
27 THE INSTALLATION OR USE OF A SOLAR ENERGY DEVICE IS VOID AND UNENFORCEA-  
28 BLE.

29 4. A CONDOMINIUM ASSOCIATION MAY ADOPT RULES OR REGULATIONS TO REGU-  
30 LATE THE INSTALLATION AND MAINTENANCE OF SOLAR ARRAYS ON ROOFS AS  
31 FOLLOWS:

32 (A) QUALIFICATIONS, CERTIFICATION AND INSURANCE REQUIREMENTS OF  
33 PERSONNEL OR CONTRACTORS WHO MAY INSTALL THE SOLAR SYSTEM;

34 (B) THE LOCATION OF SOLAR ARRAYS ON ROOFS;

35 (C) CONCEALMENT OF SOLAR ARRAYS' SUPPORT STRUCTURES, FIXTURES AND  
36 PIPING;

37 (D) COLOR HARMONIZATION OF SOLAR ARRAYS WITH THE COLORS OF STRUCTURES  
38 OR LANDSCAPING IN THE DEVELOPMENT;

39 (E) AGGREGATE SIZE, COVERAGE OR TOTAL NUMBER OF SOLAR ARRAY PANELS  
40 PROVIDED THAT THE PROVISIONS OF THIS SECTION ARE MET.

41 SUCH RULES OR REGULATIONS MUST BE CODIFIED IN THE CONDOMINIUM ASSOCI-  
42 ATION BY-LAWS.

43 5. A CONDOMINIUM ASSOCIATION SHALL NOT ADOPT OR ENFORCE ANY RULE OR  
44 REGULATION RELATED TO INSTALLATION OR MAINTENANCE OF SOLAR ARRAY PANELS  
45 IF COMPLIANCE WITH A RULE OR REGULATION WOULD INCREASE THE SOLAR POWER  
46 SYSTEM'S INSTALLATION OR MAINTENANCE COSTS BY AN AMOUNT WHICH IS ESTI-  
47 MATED TO BE GREATER THAN TEN PERCENT OF THE TOTAL COSTS OF THE INITIAL  
48 INSTALLATION OF THE SOLAR POWER SYSTEM, INCLUDING THE COSTS OF LABOR AND  
49 EQUIPMENT.

50 6. A CONDOMINIUM ASSOCIATION SHALL NOT ADOPT OR ENFORCE ANY RULE OR  
51 REGULATION RELATED TO THE INSTALLATION OR MAINTENANCE OF A SOLAR POWER  
52 SYSTEM IF COMPLIANCE WITH SUCH RULE OR REGULATION INHIBITS THE SOLAR  
53 POWER SYSTEM FROM FUNCTIONING AT ITS INTENDED MAXIMUM EFFICIENCY.

54 7. A CONDOMINIUM ASSOCIATION MAY NOT DENY A UNIT OWNER'S INSTALLATION  
55 OF A SOLAR POWER SYSTEM UNLESS IT MAKES WRITTEN FINDINGS BASED UPON  
56 SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE PROPOSED INSTALLATION WOULD

1 HAVE A SPECIFIC, ADVERSE IMPACT UPON THE PUBLIC HEALTH OR SAFETY, AND  
2 THERE IS NO FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR AVOID THE  
3 SPECIFIC, ADVERSE IMPACT. SUCH FINDINGS SHALL INCLUDE THE BASIS FOR THE  
4 REJECTION OF POTENTIAL FEASIBLE ALTERNATIVES FOR PREVENTING THE ADVERSE  
5 IMPACT.

6 8. UNIT OWNERS WHO HAVE SUBMITTED SOLAR INSTALLATION DESIGNS PRIOR TO  
7 THE EFFECTIVE DATE OF THIS SECTION MAY RESUBMIT THE SAME DESIGN DRAWINGS  
8 AND ACCOMPANYING MATERIALS TO THE CONDOMINIUM ASSOCIATION UNLESS THERE  
9 HAS BEEN SUBSTANTIVE AND SIGNIFICANT CHANGES TO THE UNIT STRUCTURE AND  
10 PROPERTY.

11 9. ALL PROPOSED SOLAR POWER SYSTEMS MUST MEET THE REQUIREMENTS ESTAB-  
12 LISHED BY ANY LOCAL, STATE OR FEDERAL LAW, RULE OR REGULATION ON HEALTH  
13 AND SAFETY STANDARDS AND THOSE REQUIREMENTS IMPOSED BY STATE AND LOCAL  
14 PERMITTING AUTHORITIES.

15 10. A PERSON CLAIMING TO BE AGGRIEVED BY ANY VIOLATION OF THIS SECTION  
16 MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION. IN ANY  
17 ACTION BROUGHT PURSUANT TO THIS SECTION, THE COURT MAY AWARD COSTS OF  
18 LITIGATION, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE PREVAILING  
19 PARTY.

20 11. NOTHING IN THIS SECTION SHALL PROHIBIT THE OWNERS OF MULTIPLE  
21 DWELLING UNITS FROM INSTALLING SUCH SOLAR POWER SYSTEMS AS A GROUP WITH  
22 INDIVIDUAL OWNERS RETAINING RESPONSIBILITY OF EACH UNIT.

23 S 3. This act shall take effect immediately.