

6878

2015-2016 Regular Sessions

I N A S S E M B L Y

April 8, 2015

Introduced by M. of A. GALEF -- read once and referred to the Committee on Housing

AN ACT to amend the real property law, in relation to prohibiting homeowner 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 homeowner associations, for example, have
7 not adapted their by-laws to provide homeowners with that option. States
8 such as Arizona, California, Florida and Massachusetts have remedied
9 this problem by enacting laws to prohibit homeowner associations from
10 banning or curtailing the installation of solar arrays on a homeowner's
11 roof.

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

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

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

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

LBD10006-02-5

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

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

6 (C) "ROOF" MEANS OF A SINGLE FAMILY DWELLING UNIT WHICH IS SOLELY
7 OWNED BY AN INDIVIDUAL OR INDIVIDUALS, AND WHICH IS NOT DESIGNATED AS A
8 COMMON ELEMENT OR COMMON PROPERTY IN THE GOVERNING DOCUMENTS OF A HOME-
9 OWNER ASSOCIATION.

10 (D) "HOMEOWNER ASSOCIATION" MEANS AN ASSOCIATION OR CORPORATION ESTAB-
11 LISHED TO GOVERN A PRIVATE COMMUNITY WHOSE MEMBERS OWN THE IMPROVED LOTS
12 OR HOMES OR BOTH SUCH LOTS AND HOMES OF WHICH THE COMMUNITY IS COMPOSED.
13 MEMBERSHIP IN THE ASSOCIATION IS MANDATORY FOR OWNERS OF A LOT OR HOME
14 IN THE COMMUNITY.

15 2. NO HOMEOWNER ASSOCIATION SHALL BAN IN ITS BY-LAWS OR BY RULES OR
16 REGULATIONS ADOPTED PURSUANT THERETO, ANY SOLAR PANEL ARRAYS, THE
17 INSTALLATION OF ROOFTOP SOLAR PANELS OR THE CLEARING AND TRIMMING OF
18 VEGETATION ON HOMEOWNERS' PROPERTIES THAT OBSCURE SUCH SOLAR PANEL
19 ARRAYS OR ROOFTOP SOLAR PANELS.

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

25 4. A HOMEOWNER ASSOCIATION MAY ADOPT RULES OR REGULATIONS TO REGULATE
26 THE INSTALLATION AND MAINTENANCE OF SOLAR ARRAYS ON ROOFS AS FOLLOWS:

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

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

30 (C) CONCEALMENT OF SOLAR ARRAYS' SUPPORT STRUCTURES, FIXTURES AND
31 PIPING;

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

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

36 SUCH RULES OR REGULATIONS MUST BE CODIFIED IN THE HOMEOWNER ASSOCI-
37 ATION BY-LAWS.

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

45 6. A HOMEOWNER ASSOCIATION SHALL NOT ADOPT OR ENFORCE ANY RULE OR
46 REGULATION RELATED TO THE INSTALLATION OR MAINTENANCE OF A SOLAR POWER
47 SYSTEM IF COMPLIANCE WITH SUCH RULE OR REGULATION INHIBITS THE SOLAR
48 POWER SYSTEM FROM FUNCTIONING AT ITS INTENDED MAXIMUM EFFICIENCY.

49 7. A HOMEOWNER ASSOCIATION MAY NOT DENY A HOMEOWNER'S INSTALLATION OF
50 A SOLAR POWER SYSTEM UNLESS IT MAKES WRITTEN FINDINGS BASED UPON
51 SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE PROPOSED INSTALLATION WOULD
52 HAVE A SPECIFIC, ADVERSE IMPACT UPON THE PUBLIC HEALTH OR SAFETY, AND
53 THERE IS NO FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR AVOID THE
54 SPECIFIC, ADVERSE IMPACT. SUCH FINDINGS SHALL INCLUDE THE BASIS FOR THE
55 REJECTION OF POTENTIAL FEASIBLE ALTERNATIVES FOR PREVENTING THE ADVERSE
56 IMPACT.

1 8. HOMEOWNERS WHO HAVE SUBMITTED SOLAR INSTALLATION DESIGNS PRIOR TO
2 THE EFFECTIVE DATE OF THIS SECTION MAY RESUBMIT THE SAME DESIGN DRAWINGS
3 AND ACCOMPANYING MATERIALS TO THE HOMEOWNER ASSOCIATION UNLESS THERE HAS
4 BEEN SUBSTANTIVE AND SIGNIFICANT CHANGES TO THE HOME STRUCTURE AND PROP-
5 erty.

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

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

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

18 S 3. This act shall take effect immediately.