

Solar Rights and Solar Access Laws in the United States

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Solar Rights

- Refers to the ability to install solar energy systems on residential and commercial property that are subject to private restrictions, i.e., covenants, conditions, restrictions, bylaws, condominium declarations
- These non-governmental entities have a broad range of powers that are not subject to statutory regulation

Solar Access

- Refers to the ability of one property to continue to receive sunlight across property lines without obstruction from another's property (buildings, foliage or other impediment)
- Florida's Supreme Court determined that there is no common law right to sunlight (and we are the Sunshine State)
- Solar Easement Laws in the US are voluntary, and are specific in terms of their requirements

Community Associations

- Homeowner and Condominium Associations are prevalent in the US
- Their powers are unregulated with respect to solar energy devices, unless specific statutory guidelines are in place
- Common property presents a particular problem

Local Ordinances

- Local land use plans can address orientation for solar access
- Local ordinances can provide for incentives for developments that include solar
- Local ordinances can impede solar if building codes are overly restrictive
- Permitting can be cost prohibitive

Enforcement Issues

- Solar Rights Laws are typically decided on a case by case basis
- Enforcement may require legal action, which can be very costly
- Guidance needs to be developed and disseminated to target groups
- Voluntary nature of solar access laws

Constitutional Issues

- What to do about communities created after solar rights laws are enacted?
- Public policy can override constitutional concerns regarding “impairment of contracts”

Model Solar Rights Statute

Must address:

- Homeowner, Condominium and Cooperative Associations
- Local Ordinances (height restrictions, zoning, land use)
- Common Property
- Enforcement without litigation
- Retroactive enforcement
- All solar technologies
- Installation guidelines

Model Solar Access Statute

- There are many good examples to follow
- Much more technical in nature than a solar rights statute
- Issue of voluntary vs mandatory should be addressed

Key States

- What jurisdictions are most in need of solar rights and solar access laws?
- What jurisdictions are in need of improved solar rights and solar access laws?
- What jurisdictions can serve as models of good solar rights and solar access laws?

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