

AN ACT

relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 202, Property Code, is amended by adding Sections 202.010 and 202.011 to read as follows:

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section:

(1) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(2) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy

1 device that:

2 (1) as adjudicated by a court:

3 (A) threatens the public health or safety; or

4 (B) violates a law;

5 (2) is located on property owned or maintained by the
6 property owners' association;

7 (3) is located on property owned in common by the
8 members of the property owners' association;

9 (4) is located in an area on the property owner's
10 property other than:

11 (A) on the roof of the home or of another
12 structure allowed under a dedicatory instrument; or

13 (B) in a fenced yard or patio owned and
14 maintained by the property owner;

15 (5) if mounted on the roof of the home:

16 (A) extends higher than or beyond the roofline;

17 (B) is located in an area other than an area
18 designated by the property owners' association, unless the
19 alternate location increases the estimated annual energy
20 production of the device, as determined by using a publicly
21 available modeling tool provided by the National Renewable Energy
22 Laboratory, by more than 10 percent above the energy production of
23 the device if located in an area designated by the property owners'
24 association;

25 (C) does not conform to the slope of the roof and
26 has a top edge that is not parallel to the roofline; or

27 (D) has a frame, a support bracket, or visible

1 pipng or wiring that is not in a silver, bronze, or black tone
2 commonly available in the marketplace;

3 (6) if located in a fenced yard or patio, is taller
4 than the fence line;

5 (7) as installed, voids material warranties; or

6 (8) was installed without prior approval by the
7 property owners' association or by a committee created in a
8 dedicatory instrument for such purposes that provides decisions
9 within a reasonable period or within a period specified in the
10 dedicatory instrument.

11 (e) A property owners' association or the association's
12 architectural review committee may not withhold approval for
13 installation of a solar energy device if the provisions of the
14 dedicatory instruments to the extent authorized by Subsection (d)
15 are met or exceeded, unless the association or committee, as
16 applicable, determines in writing that placement of the device as
17 proposed by the property owner constitutes a condition that
18 substantially interferes with the use and enjoyment of land by
19 causing unreasonable discomfort or annoyance to persons of ordinary
20 sensibilities. For purposes of making a determination under this
21 subsection, the written approval of the proposed placement of the
22 device by all property owners of adjoining property constitutes
23 prima facie evidence that such a condition does not exist.

24 (f) During the development period, the declarant may
25 prohibit or restrict a property owner from installing a solar
26 energy device.

27 Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS. A

1 property owners' association may not include or enforce a provision
2 in a dedicatory instrument that prohibits or restricts a property
3 owner who is otherwise authorized to install shingles on the roof of
4 the owner's property from installing shingles that:

5 (1) are designed primarily to:

6 (A) be wind and hail resistant;

7 (B) provide heating and cooling efficiencies
8 greater than those provided by customary composite shingles; or

9 (C) provide solar generation capabilities; and

10 (2) when installed:

11 (A) resemble the shingles used or otherwise
12 authorized for use on property in the subdivision;

13 (B) are more durable than and are of equal or
14 superior quality to the shingles described by Paragraph (A); and

15 (C) match the aesthetics of the property
16 surrounding the owner's property.

17 SECTION 2. Sections 202.010 and 202.011, Property Code, as
18 added by this Act, apply to a dedicatory instrument without regard
19 to whether the dedicatory instrument takes effect or is renewed
20 before, on, or after the effective date of this Act.

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 362 was passed by the House on April 11, 2011, by the following vote: Yeas 143, Nays 3, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 362 on May 27, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 362 on May 29, 2011, by the following vote: Yeas 143, Nays 1, 2 present, not voting.

Chief Clerk of the House

H.B. No. 362

I certify that H.B. No. 362 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 362 on May 29, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor