

CHAPTER 208  
FORMERLY  
HOUSE BILL NO. 65  
AS AMENDED BY  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SOLAR PHOTOVOLTAIC SYSTEMS AND RESTRICTIVE COVENANTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 318, Title 25 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 318. Restrictive covenants.

(a) As used in this section, "roof" or "roofs" means:

(1) A roof of a single family dwelling unit which is solely owned by a person, persons, trust or entity and which is not designated as a common element or common property in the governing documents of an association; and

(2) A roof of a townhouse dwelling unit, which for the purposes of this section means any single-family dwelling unit constructed with attached walls to another such unit on at least 1 side, which unit extends from the foundation to the roof, and has at least 2 sides which are unattached to any other building, and the repair of the roof for the townhouse dwelling unit is designated as the responsibility of the owner and not the association in the governing documents.

(b) ~~No~~ Any covenant, restriction, or condition contained in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that effectively prohibits or unreasonably restricts the owner of the property from installing or using a roof mounted system for obtaining solar energy on that owner's property is void and unenforceable ~~shall be allowed in any deed contract or legal instrument recorded after January 1, 2010.~~

(c) ~~This section shall not amend, nullify, or affect the enforceability of any covenant, restriction, or condition contained in a deed, declaration, contract or other legal instrument concerning land owned by a maintenance corporation or homeowner's association.~~ This section does not apply to provisions that impose reasonable restrictions on a roof mounted system for obtaining solar energy. However, it is the policy of the State of Delaware to protect the public health, safety, and welfare by encouraging the development and use of renewable resources and to remove obstacles thereto. Accordingly, reasonable restrictions on roof mounted systems for obtaining solar energy are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(d) This section shall not amend, nullify, or affect the enforceability of any conservation easement or historic preservation covenant.

(e)(1)a. For purposes of this section, a property owner's vote under this subsection may be expressed as follows:

1. An in-person vote at a meeting.  
2. A proxy vote if the governing document or law permit proxy voting.  
3. Voting electronically from a source known to a maintenance corporation or homeowner's association governing the property owner's property, including an e-mail address registered with the maintenance corporation or homeowner's association.

4. Voting by electronic voting software selected by the maintenance corporation or homeowner's association.

5. Signing a petition for calling for an amendment under this subsection.

6. Signing an amendment to the governing document.

b. For purposes of this paragraph (e)(1) of this section, a signature may be in ink or electronic.

c. For purposes of this paragraph (e)(1) of this section, an entity or trust owning a property may designate a person to vote for the entity or trust.

(2) Any covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the Unit Property Act [§ 2201 et seq. of this title], for residential property which does not explicitly include a mechanism to amend the document, may hereafter be amended by a vote requiring the affirmative vote of 2/3 of the property owners.

(3) Covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the Unit Property Act [§ 2201 et seq. of this title], for residential property that prohibit or restrict the installation of ~~rooftop or~~ ground-mounted solar systems may be amended to allow or promote installation of ~~rooftop or~~ ground-mounted solar systems by an affirmative vote of ~~2/3~~ a majority of the property owners.

(4) Covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the Unit Property Act [§ 2201 et seq. of this title], for residential property that impose a reasonable restriction permitted under subsection (c) of this section on the installation of roof mounted solar systems may be amended to promote installation of roof mounted solar systems by an affirmative vote of a majority of the property owners.

~~(f) No Any covenant, restriction, or condition contained in a deed, contract, or other legal instrument which affects the transfer, sale, or any other interest in real property, which is zoned for residential use and the lot or lots are 1/2 of an acre or greater in size, that effectively prohibits or unreasonably restricts the owner of the property from installing or using a ground mounted system for obtaining solar energy on that owner's property is void and unenforceable shall be allowed in any deed, contract or other legal instrument. A covenant, restriction, or condition which requires that fencing, landscaping, or other appropriate means be used to shield the system from view, so that it is not readily visible from adjacent streets shall be deemed to be a reasonable restriction.~~

(1)a. An owner of property may install a roof mounted system for obtaining solar energy on that owner's property if, no later than 60 days before installing the system, the owner sends notice that the owner intends to install the system to the following:

1. If the property is governed by a maintenance corporation or homeowner's association, to the applicable maintenance corporation or homeowner's association and to a neighboring property owner whose property is within 150 feet of the owner's property line.

2. If the property is not governed by a maintenance corporation or homeowner's association, to a neighboring property owner whose property is within 150 feet of the owner's property line.

b. The owner shall send notice required by this paragraph (f)(1) of this section by certified mail, return receipt requested.

c. The notice must include the day of the proposed date of the installation of the system and the owner's mailing address.

(2) A maintenance corporation, homeowner's association, or neighboring property owner receiving notice required under paragraph (f)(1) of this section shall provide the owner of property with input or direction on the placement of the roof mounted system for obtaining solar energy no later than 30 days before the owner's proposed date of the installation of the system.

a.1. The input or direction provided by the maintenance corporation, homeowner's association, or neighboring property owner on the placement of the roof mounted system for obtaining solar energy must be consistent with a reasonable restriction imposed under subsection (c) of this section.

2. If the covenants, restrictions, or conditions governing the owner's property do not impose a reasonable restriction on a roof mounted system for obtaining solar energy, the input or direction provided by the maintenance corporation, homeowner's association, or neighboring property owner on the placement of the system must be reasonable. For purposes of this paragraph (f)(2)a.2. of this section, "reasonable" means input or direction that does not significantly increase the cost of the roof mounted system for obtaining solar energy or significantly decrease the system's efficiency or specified performance.

b. The maintenance corporation, homeowner's association, or neighboring property owner shall provide the input or direction required under paragraph (f)(2) of this section to the owner by certified mail, return receipt requested, at the mailing address provide under paragraph (f)(1)b. of this section.

c. If the maintenance corporation, homeowner's association, or neighboring property owner does not provide the input or direction within the time required under this paragraph (f)(2) of this section, the owner may install the system as planned.

Approved August 20, 2019