

CHAPTER 144  
FORMERLY  
SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 49

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SOLAR PHOTOVOLTAIC SYSTEMS AND AMENDMENTS TO DEED RESTRICTIONS.

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

Section 1. Amend Chapter 3, Title 25 of the Delaware Code, by adding a new §318 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 one side, which unit extends from the foundation to the roof, and has at least two 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 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 prohibits or unreasonably restricts the owner of the property from using a roof mounted system for obtaining solar energy on his or her property 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.

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

(e) Any covenants, restrictions, or conditions contained in a deed or declaration 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 two-thirds of the property owners. Covenants, restrictions, or conditions contained in a deed or declaration for residential property that prohibit or restrict the installation of rooftop solar systems may be amended to allow or promote installation of rooftop solar systems by an affirmative vote of two-thirds of the property owners.”

Approved July 09, 2009