

**38-30-168. Unreasonable restrictions on renewable energy generation devices - definitions.**

(1) (a) A covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a renewable energy generation device is void and unenforceable.

(b) As used in this section, "renewable energy generation device" means either:

(I) A solar energy device, as defined in section 38-32.5-100.3; or

(II) A wind-electric generator that meets the interconnection standards established in rules promulgated by the public utilities commission pursuant to section 40-2-124, C.R.S.

(2) Subsection (1) of this section shall not apply to:

(a) Aesthetic provisions that impose reasonable restrictions on the dimensions, placement, or external appearance of a renewable energy generation device and that do not:

(I) Significantly increase the cost of the device; or

(II) Significantly decrease its performance or efficiency;

(b) Bona fide safety requirements, required by an applicable building code or recognized electrical safety standard, for the protection of persons and property; or

(c) Reasonable restrictions on the installation and use of wind-electric generators to reduce interference with the use and enjoyment by residents of property situated near wind-electric generators as a result of the sound associated with the wind-electric generators. Interference with the use and enjoyment of property by residents for the purpose of determining whether a restriction is reasonable shall be determined as a part of the architectural review process as required by the governing documents of the common interest community and shall include consideration of input by the individuals requesting approval from the common interest community to install a wind-electric generator.

(3) This section shall not be construed to confer upon any property owner the right to place a renewable energy generation device on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of a common interest community.

(4) In any litigation involving the significance of an increase in cost of a renewable energy generation device, for purposes of subparagraph (I) of paragraph (a) of subsection (2) of this section, the party that prevails on the issue of the significance of the increase shall be entitled to its reasonable attorney fees and costs incurred in litigating that issue. This subsection (4) shall not be construed to limit or prohibit an award of attorney fees or costs on other grounds or in connection with other issues.

**Source: L. 79:** Entire section added, p. 1396, § 4, effective May 25. **L. 2008:** Entire section amended, p. 617, § 1, effective August 5.

**ANNOTATION**

**Applied** in Governor's Ranch Homeowner's Ass'n v. Gunther, 705 P.2d 1011 (Colo. App. 1985).