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2024 Colorado Revised Statutes Title 38 - PROPERTY - REAL AND PERSONAL (§§ 38-1-101 — 38-53-110) REAL PROPERTY (§§ 38-30-101 — 38-46-104) INTERESTS IN LAND (§§ 38-30-101 — 38-34-106) Article 30 - Titles and Interests (§§ 38-30-101 — 38-30-173) Section 38-30-168 - Unreasonable restrictions on renewable energy generation devices or fire-hardened building materials - definitions

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CO Rev Stat § 38-30-168 (2024)

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(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:

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

(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;

(III) A geothermal energy device; or

(IV) A heat pump system, as defined in section 39-26-732 (2)(c).

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

(a)

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

(A) Increase the cost of the device by more than ten percent;

(B) Decrease the performance or efficiency of the device by more than ten percent; or

(C) Require a period of review and approval that exceeds sixty days after the date of application. If an application for installation of a renewable energy generation device is not denied or returned for modifications within sixty days, it is deemed approved. The review process must be transparent; denial of approval must not be arbitrary or capricious; and the basis for any denial must be described in reasonable detail.

(II) This subsection (2)(a), as amended by House Bill 21-1229, enacted in 2021, does not apply to an association that includes time share units, as defined in section 38-33-110 (7).

(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.

(5)

(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 explicitly or effectively prohibits or restricts the installation, use, or maintenance of fire-hardened building materials is void and unenforceable. This subsection (5) does not apply to bona fide safety requirements required by an applicable building code for the protection of persons and property.

(b) Nothing in this subsection (5):

(I) Prohibits or restricts a unit owners' association from:

(A) Adopting and enforcing reasonable standards regarding the design, dimensions, placement, or external appearance of fire-hardened building materials used for fencing at a unit owner's property in accordance with section 38-33.3-106.5 (3) (c); or

(B) Adopting bona fide safety requirements that are consistent with applicable building codes or nationally recognized safety standards; or

(II) Confers upon a property owner, unit owner, or lessee the right to construct or place fire-hardened building materials on property that is:

(A) Owned by another person;

(B) Leased, except with permission of the lessor; or

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

(c) As used in this subsection (5):

(I) "Common element" means "common elements" as defined in section 38-33.3-103 (5).

(II) "Common interest community" has the meaning set forth in section 38-33.3-103 (8).

(III) "Fire-hardened building materials" has the meaning set forth in section 38-33.3-106.5 (3)(e)(I).

(IV) "Unit owner" has the meaning set forth in section 38-33.3-103 (31).

(V) "Unit owners' association" means an "association" as defined in section 38-33.3-103 (3).

Amended by 2024 Ch. 24,§ 1, eff. 3/12/2024.

Amended by 2023 Ch. 165,§ 10, eff. 8/7/2023.

Amended by 2022 Ch. 335, § 10, eff. 8/10/2022.

Amended by 2021 Ch. 409, § 2, eff. 9/7/2021.