

Understanding SOLAR EASEMENTS

In Your Title Policy



Interest in solar energy is growing as more and more homeowners, as well as businesses, are taking long, serious looks at this alternative source of power. As with any new technology, however, there are potential problems. For example, the sun's rays must reach the solar collectors in order to produce energy from either active or passive systems. If the sun were always directly overhead there would be no problem. It is not, of course, and this brings up the question of solar access – the availability of sunlight to reach a building's solar collectors. Resolution of this problem often involves access across adjacent properties, which, in turn, involves a neighbor's air space.

For the building owner, access questions involve both the height and setback of adjacent buildings. That's where negotiated agreements for solar easements come into sharp focus.

Under such an agreement, one property owner would receive assurances from the other that the sunlight which travels over the neighbor's property would always be available. The neighbor, and all subsequent owners, would be restricted in building or planting trees which could obstruct the sunlight.

After agreement, if such solar easements are properly recorded, problems could arise if the property is subsequently sold and the new owners are either unaware of the easement or not in agreement with its conditions.

A solar easement establishes certain land use conditions agreed to by the property owners involved. Such an agreement includes:

- A description of the dimensions of the easement, including vertical and horizontal angles measured in the degrees or the hours of the day, on specific dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed
- Restrictions placed upon vegetation, structures and other objects which would impair or obstruct the passage of sunlight through the easement
- The terms and conditions, if any, under which the easement may be revised or terminated.

It is important, of course, that all solar easements be officially recorded, just as other uses and conditions are included in public records. Otherwise, such an easement might not be noted during the title search at the time of a real estate sale.

Such an omission could create serious problems at a later date when the new owners decide to make structural or landscape changes that would affect the path of sunlight across their property.

This article was edited from an article by the California Land Title Association.