“Sun-damental” Rights

Solar Rights, Solar Easements and the "Right to Dry": Is there a right to Harness the Sun's Energy
Historical Context

"He who owns the soil also owns the land above it."

Eden Roc and the Fountain Blue today
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Ancient Romans-protected right to solar heat and light through easements, allocations, and court decrees.

Ancient Lights Doctrine, established in England, also in use in Japan. Common law created a negative easement where a person who opened a window in his house had a natural right to receive the flow of light through it, if the window was opened long enough. Prescription Act of 1832 - statutory right.

American Approach-Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc. ( Fla. Ct. App. 1959)
There is no legal right to the free flow of light and air.
More Recent Approaches

Marking a shift from encouraging development to preserving the environment.

- **Solar Easements**
  - Prescriptive, Implied and Express
  - Can be agreed to
  - Prescriptive and Implied not likely

- **Obstruction of Light as a Nuisance**
  - Balancing Competing Interests on a Case by Case Basis

- **Statutes and Regulations**
  - State laws
  - Zoning
  - Permit processes

- **Passive Home Design**
- **Active Design (PV Solar Panels)**
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- Prescriptive, Implied and Express
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- Prah v. Maretti (Wisc. 1982)
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Passive Home Design

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Active Design (PV Solar Panels)

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State laws
- Zoning
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"Current" Events in the Solar Rights Saga

Spends lots of money on solar panel for his roof...

Gets fined daily by H.O.A
Spends lots of money on solar panels for his roof...

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Aesthetics & Property Value v. Environment, Liberty, Costs

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
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<tbody>
<tr>
<td>Cost Savings (A family could save on their electric bill)</td>
<td>Safety (Faulty wiring, roof collapse)</td>
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<td>Liberty</td>
<td>Aesthetics</td>
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<td>Environmental benefits (25 years of using a solar panel = not driving 400,000 miles in a car, eliminating 15 lbs of garbage, 400 lbs of acid rain, &amp; 2550 lbs of CO2)</td>
<td>Right to Contract (You signed on if you moved here, private parties should be able to agree to this)</td>
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<td>Promoting Green Neighborhoods</td>
<td>&quot;Next everyone is going to want a window in their yard.&quot;</td>
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<td>Cost Savings (A family could save on their electric bill AND possibly sell their excess to the power grid)</td>
<td>Safety (faulty wiring, roof collapses)</td>
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<td>Environment (25 years of using a solar panel= not driving 400,000 miles in a car; eliminating 1k lbs of smog, 830 lbs of acid rain, &amp; 250k lbs of CO2)</td>
<td>Right Contract (You signed on if you moved here, private parties should be able to agree to this)</td>
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<td>Promoting Green Neighborhoods</td>
<td>“Next everyone is going to want a windmill in their yard.”</td>
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The Right To Dry

19 States and Counting

- Arizona
- California
- Colorado
- Florida
- Hawaii
- Illinois
- Indiana
- Louisiana
- Maine
- Maryland
- Massachusetts
- Nevada
- New Mexico
- North Carolina
- Oregon
- Texas
- Utah*
- Vermont
- Virginia
- Wisconsin
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<td>Cost Savings (Could save families $25/mo and 10% off electric bill)</td>
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<td>Environmental Impact (Each dryer cycle is the equivalent of 4.4 lbs of CO2)</td>
<td>Right to Contract (encouraging development and the right for private parties to agree among themselves; tacit consent)</td>
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<td>Arizona</td>
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Proposed Solutions/Approaches

No solar panels, according to HOA regs! Even if you save money and the environment.

Respect my solar rights!

Right to Dry Laws Incorporated into Existing Solar Rights Laws
Judicial Activism in Nuisance and Easement Cases
Zoning Laws that encourage Passive Solar homes, solar panels and the ability to hang dry clothes
Educating H.O.A.s in Solar Rights/Right to Dry states; Make H.O.A. challenges easier
A consumer-based approach to more attractive solar panels and clothesline options
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