
Here Comes the Sun Again: A Quick Primer for Homebuilders About California's 2011 Mandatory Solar Option Law

By Kathleen F. Carpenter

A new law in California requires homebuilders to begin to provide optional solar energy systems to homebuyers. California Public Resources Code Section 25405.5 (The "**Mandatory Solar Option Law**"), went into effect on January 1, 2011. The new law mandates that homebuilders begin to offer an option for solar energy in certain new production homes. This article provides some background about California's Solar Initiative and addresses some of the most frequently asked questions about new opportunities and compliance issues stemming from the new law.

BACKGROUND:

Back on January 12, 2006, the California Public Utilities Commission (PUC) approved the California Solar Initiative, authorizing the state to invest \$3.2 billion in small-scale solar electric power systems over eleven years and establishing the statewide goal of building a million solar roofs. At the time, it was believed that less than 5% of California's new homes came equipped with solar power. In order to accomplish the statewide goal, the state set a target that at least 50% of new homes should be equipped with solar power within thirteen years. The Mandatory Solar Option Law, which went into effect January 1, 2011, is an integral part of the California Solar Initiative.

FAQs:

1. Must a Homebuilder Offer Solar Power as an Option on All Homes Sold on or After January 1, 2011?

Answer: **No.**

The trigger date is not the date of sale. Nor is it the date a building permit is pulled. Homebuilders must offer the solar power option to potential buyers of production homes in projects with 50 homes or more where the City or County deems the application for a Tentative Subdivision Map complete **on or after** January 1, 2011. In sum, while the Mandatory Solar Option Law is now in effect, the new law is being phased in. Generally, projects whose Tentative Subdivision Maps are deemed complete prior to January 1, 2011, or whose Phased Final Maps were filed prior to January 1, 2011, are excluded from the new law. It is unclear at this point as to how the Mandatory Solar Option Law will dovetail with any future or current county or city solar installation requirements.

2. Does the Mandatory Solar Option Law Apply to Attached Product Such as Condominiums or Apartments?

Answer: **Generally No.**

The Mandatory Solar Option Law applies to the sale of "production homes." What does this mean? California Public Resources Code Section 25405.5 (a)(2) states that "Production home" means a single-family residence constructed as part of a development of at least 50 homes per project that is "intended or offered" for sale. While other commentators have taken the position that this new law could arguably extend to multi-family projects, such an interpretation seems contrary to the express language of the implementing regulations, which define "single-family residence" as a "Detached Single-Family Dwelling" as defined in California Building Code, Title 24, Part 2, Section 202. The California Building Code in fact defines a Detached Single-Family Dwelling as: "*Any single-family dwelling which is separated from adjacent property lines by 3 feet or more or is separated from adjacent buildings by 6 feet or more.*" Thus, it appears that most cluster homes, most townhomes and some detached condominiums would not fall within the Mandatory Solar Option Law (even if built on separate legal lots), as they are unlikely to meet the separation requirements.

Here Comes the Sun Again:

A Quick Primer for Homebuilders About California's 2011 Mandatory Solar Option Law

3. Does the Offset Program, Which Permits a Developer to Forgo the Solar Option in Future Projects by Installing Solar Energy in "Other" Projects, Include Current Solar Installations?

Answer: **It Depends.**

In order to be considered as part of the offset program permitting a developer to forgo offering solar as an option in future projects, the current and/or planned solar installation on other projects must comply with the new offset program requirements. California Public Resources Code Section 25405.5(c) obligates the State Energy Resources Conservation and Development Commission to develop an offset program that allows a developer and/or seller of production homes to forgo the solar option requirement on a project by installing solar energy systems generating specified amounts of electricity on "other" projects. In order to develop a compliance plan and in order to "bank" solar credits to use later as offsets against the mandatory solar option, developers need to review the provisions of the offset program, which were adopted by the Commission on December 29, 2010.

4. Are There Any Special Disclosures Required to Homebuyers in Connection With the Mandatory Solar Option Law?

Answer: **Yes.**

Under the Mandatory Solar Option Law, the seller of production homes offering solar as an option must provide certain information to the prospective home buyer regarding the total cost, the estimated range of cost savings and other details about applicable California solar energy incentives, as well as information about the "Go Solar California" website. See, <http://www.gosolarcalifornia.org>. Further, the "solar as an option" disclosure must be made available to prospective homebuyers at the sales office and on the seller's website. In addition to any disclosures required by the new law, sellers offering solar should include additional project-specific disclosures and restrictions in CC&Rs which protect the solar footprint.

5. Does a Homebuilder Have any Reporting Requirements?

Answer: **Yes.**

There are detailed annual reporting requirements to the Energy Commission. Some of the disclosures require various details about the planned development. Others disclosures include post sale reports, technical information regarding the costs of installation as well as a summary of certain solar incentives. There are also reporting and verification requirements. In addition, the California Energy Commission reserves the right to review the "solar as an option" materials disclosed to the prospective homebuyer at any time..

Now is the time to develop a comprehensive plan for implementation and compliance with California's new Mandatory Solar Option Law. Contact a member of our Common Interest Development Group or our Climate Change, Renewable Energy & Sustainable Technology Group for assistance.

Stay tuned for further developments

Contact the Author.

The author of this e-Update is a member of both groups. You can reach Kathleen at 415.356.4622 or kcarpenter@luce.com.