

grasses that, when regularly mowed, form a dense growth of leaf blades and roots.

- (IV) "Xeriscape" means the application of the principals of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.
- (c) Nothing in this Subsection (11) shall preclude the executive board of a common interest community from taking enforcement action against a unit owner who allows his or her existing landscaping to die; except that:
  - (I) Such enforcement action shall be suspended during a period of water use restrictions declared by the jurisdiction in which the common interest community is located, in which case the unit owner shall comply with any watering restrictions imposed by the water provider for the common interest community;
  - (II) Enforcement shall be consistent within the community and not arbitrary or capricious; and
  - (III) Once the drought emergency is lifted, the unit owner shall be allowed a reasonable and practical opportunity, as defined by the association's executive board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

(Note on application: This entire article was added in 1991, effective June 4, 1991. Section (11) (a) was amended in 2005, effective June 6, 2005.)

**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 (l) 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

(Note on application: This entire section was adopted in 1979, effective May 25, 1979. The entire section was amended in 2008, effective August 5, 2008.)