LICENSE BOARD SCRUTINIZING SOLAR CONTRACTORS

By Bruce D. Rudman
Abdulaziz, Grossbart & Rudman

The solar industry is an emerging business that is quickly growing. The problems that we see with solar projects are not the typical construction defect or workmanship type claims common in construction. Certainly, there are the rare exceptions where a roof is punctured and it leaks, or the connections to the grid are somehow compromised such that the electric company is not providing any credits to the homeowner for the energy produced by the solar system. That is not the area I am discussing herein where solar contractors appear to be scrutinized by the California Contractors' State License Board ("CSLB"), and likely by licensing boards in other jurisdictions as the issues are not unique to California; and, these agencies talk amongst themselves. The scrutiny I am writing about is centered on representations made by the salespersons that the customers will obtain a specific amount of savings, or have a "zero bill," or in certain circumstances with limited-sized systems, will be guaranteed to be billed at the lowest tier. A properly worded solar installation contract can help to negate any claims of oral representations during the sales presentation.

To be clear, the goal of the solar system is to reduce the electric bill. Our understanding is that almost every solar company bases the size of the solar system upon the amount of electricity that has been utilized by the customer over the last year. To that end, the utility bills are obtained and analyzed. Thereafter, most solar companies do a solar study to determine the type of panels, size of panels, location of panels, and amount of shade or sun that that property receives so that it can be determined whether a suitable system can be installed. Unfortunately for the industry, there are some contractors who do a sloppy job of this. There are others who really do not care what savings are going to be realized by the customer and simply sell the customer what they can get away with. Hopefully, the industry will ferret out that type of contractor.

For the well-intentioned solar contractor, there are good ways to protect themselves while informing their customers. Contractors should include a provision in their agreement that indicates that the agreement itself is an integrated document and supersedes all prior oral or written discussions or agreements. That type of "integration clause" has been present in contracts for centuries. More importantly, the contract should then specify exactly what is being provided. We recommend that the contract specifically identify the brand of the panels and inverters to be installed, the number of panels, the type of racking, the wattage of the panels, and the DC rating and/or wattage that is expected to be produced.

The contract should have a section that is initialed by the homeowners that specifically identifies the approximate quantity of kilowatt hours intended to be generated, or the percentage of its current average usage that is going to be produced. But, the agreement should also provide words to the effect that, "Variations in weather and other environmental conditions surrounding a solar electric system impact the ability to guarantee any specific performance of the solar electric system."

Now, having set forth what your system is supposed to provide, the next thing is to have specific disclaimer language regarding the customers own usage. As an example, there is a trend for owners, believing they now have an unlimited supply of "free" electricity, to unwittingly increase their electrical use, including greater use of air conditioning or other high-use energy appliances, following the installation of their solar system. Then, when the owners use more electricity, they get an electric bill because the system does not generate "enough" electricity. You should have disclaimer language where the owner acknowledges that energy consumption above and beyond the system size could result in electric bills greater than expected. You could even go so far as indicating that if the owner had previously conserved the use of such high-output electrical appliances, that they consider increasing the size of their system output.

Next, there is the issue with some contractors selling what might be called a small solar system. These are usually sold when a customer cannot afford a full system. While they may be properly engineered to get the client into the lowest tier, which would save on some costs on the electric bills, the problem is when those customers use more electricity as shown above, or their utility could change what is a "tier 1" level, or electric rates could go up. Again, a properly worded disclaimer is key to avoiding a claim. The License Board could very well claim that you lulled a customer into a solar system asserting that they are going to get savings when in fact, after they pay what is left of the electric bill and for the solar system, they really have very little savings. You may want to make sure that your client actually is getting a benefit or you may want to walk away from the deal.

The foregoing is not to say that you cannot sell a customer the size of system they ask for. You should just make sure that your customer understands what they are getting. If your contract does not contain these types of provisions, you may want to consult with a lawyer to draft you a carefully worded agreement that protects you.

Bruce Rudman has been practicing construction law for 20 years. He has garnered a great reputation in the construction field not only as a litigator but on licensing issues with the CSLB, particularly disciplinary proceedings. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Bruce Rudman can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at bdr@agrlaw.com, or at www.agrlaw.com