

Is a Solar Panel Lease Agreement Right for You?

In the Dirt: A Real Estate Legal Update

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It is increasingly common for landowners and building owners (“Owners”) to be approached by a developer (“Developer”) interested in executing a “solar land lease” (“Solar Lease”) or a “solar power purchase agreement” (“Solar Power Purchase Agreement”).

Solar Leases allow for a Developer to install solar panel systems on an Owner’s property in exchange for payment. Conversely, in a Solar Agreement, the Developer finances and installs solar panels on an Owner’s property and stipulates that the Owner use the electricity generated which is often cheaper than the rate charged by utility companies.

Here are some points to consider when deciding if a solar lease is right for you:

1. A typical Solar Lease will last for multiple decades and may include provisions for renewal.

Specifically, most Solar Leases begin with an option period that allows the Developer to determine the desirability of the land for its purpose.

Payment is often made to the Owner on a per-acre basis. During the option period, the rent is typically paid at a reduced rate (about 10% of ordinary rent) but an Owner may negotiate for reimbursement of attorney’s fees incurred in starting the project.

If the Owner is entering into the Solar Lease because the economics are more favorable than the revenue obtainable through agricultural use of the land, the Owner should consider the need for rent adjustments during the lease term to preserve the fundamental economics of the transaction, which the Owner may want to benchmark to an index or formula that reflect agricultural yields and profit, including any governmental incentives.

The Owner may sometimes maintain the ordinary use of their property during the option period. Solar Agreements also have a decades-long lifespan, but they typically do not have an option period. Some lease contracts may instead allow the Owner to eventually purchase the solar installation from the Developer.

Read More: Long Term Impact of Solar Panels on Property

2. For the Developer, solar contracts can be complicated.

First, the developer must obtain a permit and financing. Developers may also seek tax incentives or other government benefits.

In a Solar Lease, an agreement with an electric transmission line is necessary to act as a power source for the solar panels. Electric transmission lines are owned by utility companies who might be hesitant to work with Developers.

These details may be negotiated during the option period when payments to the Owner are at a lower rate.

3. There are several terms that should be considered before the solar lease is signed.

Other important terms to negotiate in a Solar Lease include:

- Rent
- Owner responsibilities
- Various financial matters
- The Developer's obligations to the Owner
- Use of the property, including removal and remediation at the end of the Solar Lease.

Rights retained by the Owner as well as rights assigned to the Developer should also be provided. Location of utility lines, for example, may be important to both parties, and this should be determined at the time of contract rather than left open for discussion after an agreement is reached. The respective liability of the parties must also be known prior to entering into an agreement.

Finally, given the long-term nature of the agreement and significant costs of equipment/panel removal and land restoration, an Owner must consider security to cover these costs at the end of the Solar Lease.

As with any contract, it is important to have a clear understanding of the rights and obligations imposed. Solar Leases are potentially decades-long commitments so a comprehensive evaluation and resolution of problems is crucial.

Considerations Before Agreeing to a Solar Panel Lease:

If you've determined that a solar panel lease is right for you, here are a few questions you should ask before making a commitment.

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HOW LONG IS THE LIFE OF A SOLAR INSTALLATION?

- According to the Department of Energy, “land can be reverted back to agricultural uses at the end of the operational life for solar installations” which is typically 20-25 years.

WILL THE SOLAR INSTALLATION DEplete THE LAND?

- During the lease period, the land will likely be highly restricted or entirely unusable to the land owner.
- In the long run, solar installations may have a positive impact on land used for agriculture, as the period of non-use allows for the land to recover.
- The Department of Energy suggests planting legumes below solar panels to increase nutrient levels in the soil.
- If the solar agreement requires the developer to remove trees or other vegetation, the land owner may choose to negotiate with the developer for replanting upon removal of the solar panels.

WHAT HAPPENS IF THE SOLAR PANEL COMPANY GOES OUT OF BUSINESS?

- Due to the lengthy leasing period, it is possible, and perhaps likely that the lease will change hands at some point. It is also possible that the solar developer will go bankrupt. As a result, Owners who engage in these lease agreements must be aware of inherent uncertainty in the party that might control their property.
- In the early years of a lease, it is more likely that a new buyer will take on the abandoned obligations of the bankrupt company. If the solar technology becomes less appealing, it may become more difficult to find a new buyer.
- Initial lease agreements may not contain provisions protecting Owners from this outcome, so it is important that the Owner negotiate for protection against such events.
- Some localities may require a surety bond or the Owner may negotiate for this protection.

HOW TO DETERMINE FAIR COMPENSATION FOR GIVING UP EXCLUSIVE CONTROL OF THE LAND.

- Payment to the Owner should take into consideration the value of the land, the Developer’s experience, and other factors including those discussed in this article.
- Payments should also be structured to increase over time, adjust for inflation, and may include a base or minimum rent payment.

- Solar Leases may also provide that Owner share in the Developer's revenues.
- Cancellation payment to Owner in the event of early termination of the Lease should also be considered.

**This blog was written with assistance from law clerk Adrianna Northrop.*

Read Part 2: Considerations Before Agreeing to a Solar Power Purchase Agreement

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