

A SUMMARY OF FCC SATELLITE DISH REGULATIONS AFFECTING CONDOMINIUM & HOMEOWNER ASSOCIATIONS

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Telecommunications Act of 1986

The Telecommunications Act of 1996 directed the Federal Communications Commission (“FCC”) to issue regulations that “prohibit restrictions that impair a viewer’s ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multi-channel multipoint distribution service, or direct broadcast satellite services.” The FCC established rules that impact condominium and other homeowner associations which, on balance, favor residents.

Typical Declaration Provision

A typical provision in a condominium declaration prohibits the installation of antennas on the exterior of the building, without consent of the Board. The FCC rule could easily be interpreted to strike down or invalidate any association covenant, by-law, or rule “impairing” a resident’s ability to install satellite antennas that are less than one meter in diameter on portions of the property that a an individual owns or has the exclusive right to use.

FCC Rules

The FCC rules concerning satellite dishes and antennas, generally referred to as “over-the-air reception devices” or “OTARDS” invalidates association covenants, rules, or other restrictions on installation of antennas that are less than one meter in diameter, that are used to receive satellite, video, or television broadcast signals, or that are used to transmit or receive fixed wireless signals.

Ownership or Exclusive Right to Use Area

Notably, the prohibition on antenna restrictions only applies when an individual owns or has exclusive use of the area on which the antenna will be installed. Examples of exclusive use areas are patios, balconies, balcony railings, decks and other similar limited or restricted common elements in a condominium; an example of an area owned by an individual could be the roof of a non-condominium townhome. The rule also addresses rights of tenants of a unit. A tenant of a unit in an association enjoys the same rights as the owner to install a dish or antenna on exclusive use areas, and the tenant need not obtain the permission of the unit owner (landlord) to do so.

Impermissible Restrictions

Association restrictions which prevent, unreasonably delay, or unreasonably increase the cost of antenna installation, maintenance or use, or preclude reception of an acceptable quality signal, will no longer be enforceable. However, reasonable

architectural guidelines which do not impair signal reception will continue to be enforceable. The FCC has defined the word “impair” as: (1) unreasonably delaying installation, maintenance, or use of antennas; (2) unreasonably increasing the cost of installation, maintenance, or use; or (3) precluding acceptable signals.

Permissible Restrictions

Examples of permissible restrictions include: mandatory painting or screening of antennas and requiring the minimal visual intrusion possible. The rule appears to permit a prompt notification or registration process. The burden to demonstrate that an association rule does not impair signal reception is on the association; however, not the resident.

Further, if the satellite dish is to be installed on the limited common element balcony of an owner, the Association can require that the dish be installed within the boundaries of the balcony, and not extend beyond the boundaries of the balcony.

The association can impose installation restrictions due to safety or historic preservation concerns. The FCC requires that the safety concern be “legitimate,” though not necessarily “compelling,” in order to be enforceable. Safety-based restrictions cannot discriminate against OTARDS in comparison with other items of comparable size, weight and posing a similar or greater safety risk. Such restrictions must be: as narrowly tailored as possible; impose as little burden as possible; and apply in a non-discriminatory manner.

Impact of Association Installed Central Antenna System

Note that the FCC stated that an association can prohibit installation of individual antennas if the association installs a central antenna system and the resident would receive the same service or provider as he/she would choose with an individual antenna, the signal quality received by the central antenna is at least as good as that received by an individual antenna, the cost of the central antenna to the individual resident (including his/her share of installation costs and subscriber fees) is not greater than the cost of individual antenna installation, maintenance and use, and the requirement to use the central antennal system does not “unreasonably delay” the reception of video programming.

Use of Common Elements

Association common elements/area cannot be used for the installation of any antenna by an individual resident or owner without the association’s permission. Previously, the FCC had deferred any decision on restricting individual installation of antennas on common elements, other than exclusive use areas (limited common elements).

Homeowner Violation

If a homeowner is found to be in violation of a valid association restriction, the homeowner must be afforded a 21 day grace period after the determination of validity, during which time the homeowner can avoid any attorney's fees, fine or penalty if the homeowner complies with the adverse ruling during the grace period, unless the association can demonstrate that the homeowner's position in the proceedings was "frivolous."

Summary

In brief summary, the FCC rules do not invalidate association restrictions or prohibitions relating to the use of the common elements, other than the exclusive use areas or limited common elements, by individuals. A unit owner can install a satellite dish that is less than one meter in diameter on the property that he owns or the limited common elements of his unit, subject to rules consistent with the foregoing. However, an association may be able to ban individual satellite dishes if the association installs a central dish.

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