

COMMUNITY ASSOCIATION

LEGAL UPDATE

Timely, relevant legal information for condominiums and planned communities.

Issue Number 10

NEW FCC ORDER:

Satellite Dishes and Antennas

On November 20, 1998, the Federal Communications Commission issued the *Second Report and Order* regarding satellite dishes and antennas. Under the order, community associations may enforce rules and regulations regarding the placement of satellite dishes and television antennas. The order was issued in response to a request made by telecommunication providers to reconsider the 1996 Over The Air Reception Devices (OTARD) Rule.

Under the order, community associations will be allowed to:

- Require individual residents who wish to install an antenna on community association common property to obtain the community association's permission. (However, individual residents may still install satellite dishes and television antennas less than a meter in diameter with towers less than 12 feet above the roof line on individually owned or exclusive use area property without the association's permission);
- Install a central antenna serving all residents in order to prohibit individual installations of antennas providing the same service (as long as certain conditions are met);
- Enforce safety restrictions; and
- Enforce certain antenna painting requirements.

This modification to the Over The Air Reception Devices Rule will go into effect in a few months. Associations should review their governing documents to determine if any changes will be necessary. For more information about the FCC order or for a copy of the order, please contact Beth Mulcahy of the Mulcahy Law Firm, P.C. at (602) 241-1093.

HOW TO RUN EFFICIENT MEETINGS:

Motions

Does your association know the proper process to propose, to debate and to vote on motions? Are your association's methods of proposing, debating and voting on motions disorderly? Associations should consider adopting parliamentary procedure to run meetings more efficiently.

When evaluating the use of parliamentary procedure, associations should consider if their governing documents specify a particular procedure for meetings. If there is a conflict, the association must follow their governing documents.

If an association chooses to use parliamentary procedure, the most popular form is *Robert's Rules of Order*, a set of rules devised by Henry M. Robert in 1876 for use by non-legislative bodies. *Robert's Rules of Order* can be used as a guideline for proposing, debating and voting on motions.

According to *Roberts Rules of Order*, all business should be brought to the floor by a motion of a member or by the presentation of a communication to the assembly. The motion is brought before the assembly, it is debated, and then a vote is taken.

PROPOSING A MOTION:

A *motion* is a formal proposal that the assembly take a certain action. To address the assembly, a member must obtain the floor or the right to speak.

To obtain the floor:

- The member addresses the chair;
- The chair recognizes the member by name; and
- The member speaks.

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SATELLITE DISHES AND ANTENNAS

Over the past decade, antennas and satellite dishes have drawn a great deal of attention to community associations. In 1996, telecommunications providers inserted a small provision into the federal Telecommunications Act regarding community association restrictions regarding antennas and satellite dishes. In response, the Federal Communications Commission released the Over the Air Reception Devices ("OTARD") Rule. Since that time, community associations have been struggling to determine what the OTARD Rule means. Set forth below is a summary of the OTARD Rule and the decisions and cases interpreting the OTARD Rule.

1. What Types of Antennas are covered under the OTARD Rule?

The following devices are covered:

- DBS antennas 1 meter or less in diameter (except in Alaska, where DBS antennas of any size are permitted);
- Television broadcast antennas of any size;
- MDS antennas 1 meter or less in diameter;
- Masts used to attach any of these antennas;
- Transmission-only antennas that are necessary for the use of one of the antennas listed above. These antennas must also be 1 meter or less in diameter.

2. What Types of Association Restrictions are Pre-empted?

The OTARD Rule *prohibits* associations from enforcing antennas rules that (1) prevent or unreasonably delay antenna installation, maintenance, or use; (2) unreasonably increase the cost of antenna installation, maintenance, or use; or (3) preclude reception of acceptable quality signals.

Examples of invalid provisions include:

- Prohibitions on installing antennas
- Requirements that a fence be installed around an antenna
- Requirements for application fees

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- Requirements that an antenna application go through an architectural review process
- Requirements that antennas be placed only in the backyard -- where some backyards do not face the proper direction for quality reception

3. **What Types of Association Restrictions and Rules are Still Valid Under the OTARD Rule?**

Association restrictions that do not cause any one of the three impairments listed above are valid. Examples of *valid* requirements include:

- Hiding antennas with existing landscaping
- Removing an antenna during routine maintenance

However, exceptions for the three impairments must be added to all association antenna restrictions and rules -- otherwise, the association's antenna rules are invalid.

An association may also require a resident to sign an indemnification agreement, agreeing to reimburse the association for any personal injury or damage occurring to association residents or personnel, common property or other residents' property.

4. **Where May Antennas Be Installed?**

Antennas can be installed only in certain areas in community associations. If a resident individually owns the property on which he or she wants to install an antenna, then that installation is permitted. If a resident has exclusive use of property, then installation on that property is also permitted. Exclusive use property includes limited common elements such as balconies, patios, decks, and lanais in condominiums and cooperatives. The FCC says that it is irrelevant if the association maintains the exclusive use areas; antenna installation is still permitted.

Individual antenna installation is not permitted on common property. In addition, antennas cannot be installed on individually owned or exclusive use areas when the antennas extend beyond the exclusive use area into common area airspace (as in the case of an antenna installed on a balcony and extending outside the balcony and over the roof).

5. **May an Association Permit Individual Antenna Installations on Common Property?**

The OTARD Rule does not prevent an association from permitting antenna installations on common property. Since individual antenna installations on common property are not covered by the rule, an association may adopt and enforce any type of restrictions and rules

for this installation.

6. **Do Tenants Have Any Rights to Install Antennas?**

Tenants may install antennas on exclusive use areas without having to show that they have the owner's permission. Tenants may not install antennas on common property.

7. **Does the OTARD Rule Provide Any Exceptions?**

There are two exceptions to the OTARD Rule.

1. Association restrictions and rules that clearly articulate a legitimate safety concern are exempt. These restrictions and rules must be no more burdensome than necessary and treat other similar outdoor devices in a comparable manner.
2. In addition, areas that are listed on or are eligible for listing on the National Register of Historic Places are exempt, as long as the restrictions treat other modern devices similarly and are no more burdensome than necessary.

Prior approval processes also are permitted for mast installations that would rise more than 12 feet above the roofline or higher than the distance between the antenna installation and the lot line. The FCC has reasoned that because of the Building Officials and Code Administrators Code presumes that these types of installations pose greater safety risks than other antenna installations, prior approval processes in these situations are reasonable.

8. **If There is an Antenna Dispute Between a Resident and the Association, Where Can Either Party Go For Resolution?**

Associations, residents or telecommunications providers may go either to a local court with jurisdiction to hear the case or to the FCC. (The commission's dispute resolution process is called the declaratory ruling process.) All parties must provide copies of their arguments to other parties directly involved in the dispute. In addition, an association that initiates a proceeding must notify all other associations residents of the dispute by publishing a notice in the association newsletter or posting a notice in a public place.

9. **Which Party Has the Burden of Proof?**

The association has the burden of proving that its rules are valid. This is the case even when the resident files a petition for declaratory ruling with the FCC. This means that an association may sometimes have to enter a resident's property to prove that the association's antenna restrictions do not impair the resident's reception of video signals.

10. **May an Association Fine a Resident for Violation of the Association's Antenna Restrictions?**

An association may not fine, penalize or collect attorney fees for the period during which a petition or court case is pending. If the FCC or a local court validates the association restriction or rule, then the resident has a 21-day grace period in which to comply with the restriction before the association may assess fines and penalties. This grace period does not apply, however, if an association rule was previously validated by a court or the commission -- unless the resident has challenged the validity of the rule as it applies to his or her particular situation.

11. **If an Association Installs a Central Antenna, Then May it Prevent Individual Antenna Installation?**

An association may install a central antenna system that would provide telecommunications service to any resident desiring the service and prohibit individual antenna installation, provided that the following four criteria are met:

- The central antenna offers the same service from the same provider that the resident wants;
- The quality of signals from the central antenna equals that from the individual antenna;
- The proportionate cost of central antenna installation and services is less than the installation and service cost for an individual antenna; and
- There is no unreasonable delay in installing the central antenna.

The FCC's clarifications should make life easier for community associations, since they uphold the right of associations to make reasonable antenna restrictions and rules.