

Satellite Dishes – What Can An Association Regulate?

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In 1996, Congress passed the Telecommunications Act. Section 207 of the Act required the Federal Communications Commission (“FCC”) to adopt rules for the installation of satellite dishes in all community associations. The FCC adopted an initial set of rules in October 1996. In the years since, the FCC has amended its rules several times and issued decisions to clarify their meaning and intent. The result is a general set of guidelines with a number of nuances and exceptions that depend on the type and configuration of your particular association, whether a condominium, homeowner association, or a co-op community.

The official name of the FCC’s rule is the Over-the-Air-Reception Device (“OTARD”) rule. The rule generally provides that a resident has the right to install a satellite dish on the property the person owns/leases or that is assigned for the person’s exclusive use, such as a patio or balcony in a condominium or cooperative property. Communities can still prohibit installations in or on the common elements or common property.

A person’s right to install a dish in certain areas of the community can be regulated, within reason, as defined by the FCC. For example, a board can require that a resident provide a “notice” of his/her intent to install a dish. But, the board may not mandate the resident wait until the board approves the installation before proceeding. The FCC has determined that prior approval would cause an “unreasonable delay.”

A board may adopt installation guidelines that include permissible installation locations, screening and maintenance requirements, height restrictions, and indemnification requirements that limit the association’s potential liability for damage to or from a satellite dish installation. However, these types of guidelines and requirements must be adopted and put in place before a resident installs a satellite dish.

The type of community involved, the provisions of the governing documents, and even the type of buildings in the community, such as high-rises, clusters, attached townhouses, or free-standing units/homes determines how far and how restrictive a board can go with these rules. The FCC has, though, provided some guidance on its regulations in the form of a Q&A that follows below. (Note: references to “association” below means any type of housing development, from condominium associations, to master associations, to cooperatives.) If your community is interested in or in need of rules applicable to your specific community, please contact us for additional assistance.

Q: What types of association rules are prohibited?

A: Association rules that impair a person’s ability to install, maintain, or use a satellite dish are prohibited. A restriction impairs if it: (1) unreasonably delays or prevents use; (2) unreasonably increases the cost; or (3) precludes a person from receiving an acceptable quality signal from a satellite dish. The FCC does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

Q: Can an association prohibit all satellite dishes? Can a satellite dish user be required by an association to obtain prior approval before installing his/her satellite dish?

A: The answer is no to both questions. A restriction that prohibits all satellite dishes is prohibited just as a restriction that requires a person to obtain a permit or approval prior to installation on a person’s own property is prohibited. Permits or prior approval that are necessary to serve a legitimate safety or historic preservation purpose may be permissible. Although a simple notification process is permissible, such a process cannot be used as an approval requirement and may not delay or increase the cost of installation. The burden is on the association to show that a notification process does not violate the rule.

Q: Can a satellite dish be installed in/on common elements?

A: No, a satellite dish cannot be installed in common elements without board permission. The FCC's rule does not require an association to allow the installation of a satellite dish on or in a common element, such as a walkway, hallway, community garden, common element exterior wall or roof. Board approval is still required to install a satellite dish in such areas.

Drilling through a common element exterior wall (as an example, to run the cable from the patio into a condominium unit) is generally not permitted because the exterior wall is typically a condominium common element. A satellite dish owner should check with the retailer or installer for advice on how to install the satellite dish without drilling a hole. Alternatively, the board may grant permission to drill such a hole

Q: Can the association require a satellite dish installation fee?

A: No. Any requirement to pay a fee to the association for a permit to install a satellite dish is prohibited.

Q: Is the association allowed to make any satellite dish rules?

A: Clearly defined, legitimate safety rules are permitted. Examples of valid safety rules include fire code compliance that prevents people from installing satellite dishes on fire escapes; rules requiring that a person not place a satellite dish within a certain distance from a power line; and installation rules that describe the proper method to secure a satellite dish. The safety reason for the rule must be written in the text of the rule.

Q: Can the association require that a satellite dish be painted?

A: A requirement to paint a satellite dish so that it blends into the association scheme would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

Q: If a resident lives in a condominium with a balcony but cannot receive a signal from the satellite because his/her balcony faces the wrong direction, can the dish be installed on the roof?

A: No. The roof of a condominium is generally a common element, not a limited common element that is reserved for an individual's exclusive use. If the roof is a common element, a resident may not use the roof unless the board approves of such installation. The board may, but is not obligated to, provide a place to install a satellite dish if a resident does not have a limited common element or other exclusive use area facing the correct direction for satellite dish reception.

Q: May a condominium resident install a satellite dish if it hangs over or protrudes beyond the balcony railing or patio?

A: No. The FCC's rule does not permit satellite dishes to be installed beyond the balcony or patio of a condominium unit if such installation is then in, on, or over a common element. Therefore, a satellite dish must be installed entirely within the limited common element or exclusive use area, such as the balcony or patio. The only exception is for a satellite dish attached to the inside or top of a railing, where a part of the dish may slightly extend beyond the balcony.

Q: Can an association rule limit the number of satellite dishes that may be installed?

A: No. An association rule limiting residents to only one satellite dish is not permissible if more than one satellite dish is necessary to receive the desired services.

Q: If the association provides a central satellite dish, may an owner install an individual satellite dish?

A: Generally, no. The availability of a central satellite dish allows the association to restrict the installation of individual satellite dishes. Restrictions based on the availability of a central satellite dish are generally permissible provided that: (1) the person receives the particular video programming that the person desires and could receive with an individual satellite dish; (2) the signal quality of transmission to and from the person's home using the central satellite dish is as good as, or better than, the quality the person could receive with an individual satellite dish; and, (3) the costs associated with the use of the central satellite dish are not greater than the costs of installation, maintenance, and use of an individual satellite dish.

Q: Must a homeowners' association, cluster association, or other non-condominium community permit satellite dish installations?

A: Yes. If the owner owns or has the exclusive use of the whole house or lot, including the walls and the roof, the FCC permits satellite dishes just as in a single family home. The owner is able to put a satellite dish on his/her roof, the exterior walls, the backyard, or any other place that is part of what he/she owns. This is true even if the association maintains the roof or other exterior areas of the home or lot.

Q: Can a non-condominium homeowners' association establish rules for satellite dish locations?

A: Possibly. A rule that satellite dishes can be located where reception would be impossible or substantially degraded is prohibited. However, a rule that satellite dishes be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing a satellite dish in the rear of the house costs significantly more than installation on the side of the house, then such a rule would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or preclude reception of an acceptable quality signal, then the rule is permissible and the dish owner must comply.

Q: Are sample rules or guidelines available for an association to review and adopt?

A: No. The FCC does not provide sample guidelines for satellite dish installations because every community is different. Guidelines must be prepared based on each community's governing documents, the type of buildings involved, the plat or drawings for the community, and even the layout of the property itself. Some associations have written restrictions that provide a prioritized list of placement preferences so that residents can see where the association wants them to install the satellite dish. The residents must comply with the placement preferences provided it does not impose unreasonable delay or expense or prevent reception of an acceptable quality signal.