

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Section 8. Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing Units and other improvements in the project. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and welfare of the Project as a residential community. As used in this Section and its sub-paragraphs, the words "its successors or assigns" specifically do not include purchasers of completed Units except where the Declarant shall so expressly state in writing. In order that said work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, no Owner or the Association or the Architectural Committee shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Project may be modified by the Declarant at any time and from time to time, without notice) and the granting of easements; or
- (b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any property owned or controlled by Declarant, or its successors or assigns, or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Project as a residential community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any property owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements in the Project as a residential community and of disposing of Units therein by sale, lease or otherwise; or
- (d) Prevent Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be initially constructed as part of the Project without limitation including the Community Properties; or
- (e) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on any property owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Units or which may dispense general information and/or directions.

Section 9. Outside Installations. No radio station or shortwave operators of any kind shall operate from any Unit. No exterior radio antenna, television antenna, or other antenna of any type shall be erected or maintained on the residential building or Community Properties, except that a master antenna or antennae, or cable television antenna or antennae, may be provided for the use of Owners, and Declarant does hereby reserve upon the Community Properties and may grant easements for such purposes.

Sec. 9. (p. 21): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)
Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:
Outside Installations. No radio station or shortwave operators of any kind shall operate from any Unit. No exterior radio antenna, television antenna, or other antenna of any type shall be erected or maintained on the residential building or Community Properties, except that a master antenna or antennae, or cable television antenna or antennae, may be provided for the use of Owners, and Declarant does hereby reserve upon the Community Properties and may grant easements for such purposes.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).

ISSUE #1
B3884 P114