

MARKUP #1 ->

and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

(e) Individual Insurance. Each Owner covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 9 of this Declaration, unless a determination not to rebuild is made in accordance with Paragraph 9 hereof. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

ISSUE #1

9. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Property, or make any exterior change, alteration, or construction (including painting and landscaping) on any Common Property or on any Lot, nor erect, place or post any object, sign, antenna, playground equipment (which is on the Lot, other than in the backyard), playhouse, tool shed, mailbox, dog house, tennis court, swimming pool, light (except for reasonable seasonal decorative lights displayed between Thanksgiving and January 15), artificial vegetation, exterior sculpture, fountains, or other thing on the exterior of the buildings on any Common Property or on any Lot, without first obtaining the written approval of the Architectural Control Committee. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, lots and structures, and the location in relation to surrounding structures and topography.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the Committee may reasonably require. Applications for approval shall be deemed "submitted" upon the receipt by any member of the Committee of such information as the Committee may reasonably require. In the event the application is deficient in some fashion, the entire application shall be returned to the Owner within seven (7) days as insufficient with a written statement of what is needed before the application shall be properly "submitted". However, all approvals and disapprovals of submitted plans shall be in writing. However, in the event that the Committee or its designated representative fails to approve or to disapprove an application within twenty-one (21) days after the application and such information as the Committee may reasonably require shall have been properly "submitted", its approval will not be required and this subparagraph (a) will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, or the rules and regulations.

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 9 (p. 14): 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:

place or post any object, sign, antenna, playground equipment (which is on the Lot, other than in the backyard), playhouse, tool shed, mailbox, dog house, tennis court, swimming pool, light (except for reasonable seasonal decorative lights displayed between Thanksgiving and January 15), artificial vegetation, exterior sculpture, fountains, or other thing on the exterior of the buildings on any Common Property or on any Lot, without first obtaining the written approval of the Architectural Control Committee.

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).