ISSUE #1

Section 11 - Sample Provision Excerpt (Public Preview)

Under no circumstances shall any air conditioning apparatus, television or radio antennas or other items be installed by the Unit Owner beyond the boundaries of his Unit. A Unit Owner may, however, use a central radio or television antenna or cable facilities provided as a part of his Unit.

MARKUP #1 ->

MARKUP #1 · POTENTIAL FED LAW CONFLICT

BOARD & COUNSEL REVIEW

Sec. 11 (p. 1): Potential FCC OTARD impairment (47 C.F.R. § 1.4000): antenna/satellite-dish ban, sub-1-meter size cap, prior written consent/approval gate, or front/visibility placement ban is unenforceable to the extent applied to covered <= 1-meter reception devices on exclusive-use property.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: Under the FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, including FCC 21-10), preemption is conditional on equipment type, property scope, and impairment: (1) Covered equipment includes direct-broadcast satellite (DBS/DSS) dishes one meter (39.37 inches) or less in diameter, television broadcast antennas, and fixed wireless broadband antennas; (2) Covered property is limited to areas within the owner's or occupant's exclusive use or control and does NOT extend to shared condominium roofs, exterior common walls, or general common elements; and (3) On covered exclusive-use property, restrictions are unenforceable if prior written consent/approval causes unreasonable delay, screening/mounting rules impose unreasonable cost, or sub-1-meter diameter caps or front-elevation/visibility bans preclude reception of an acceptable quality signal, unless justified by a documented safety objective (§ 1.4000(b)(1)) or a National Register historic site (§ 1.4000(b)(2)).

CURRENT WORDING IN DOCUMENT:

Under no circumstances shall any air conditioning apparatus, television or radio antennas or other items be installed by the Unit Owner beyond the boundaries of his Unit. A Unit Owner may, however, use a central radio or television antenna or cable facilities provided as a part of his Unit.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that for covered reception antennas and satellite dishes one meter (39.37 inches) or less in diameter installed within areas under the owner's or occupant's exclusive use or control, this provision shall be administered in accordance with 47 C.F.R. § 1.4000 without prior-approval delay, unreasonable installation/screening expense, or placement/size limits that preclude an acceptable quality signal, while preserving association authority over shared common elements, dishes exceeding one meter, documented safety objectives (§ 1.4000(b)(1)), and historic preservation sites (§ 1.4000(b)(2)).