

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. IV (p. 4): 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:

No building, barn, outbuilding, garage, drive, fence, satellite dish, or structure of any kind or nature, or alterations or additions thereto, shall be erected, placed or made on any lot hereinabove referred; nor any basement or excavation of any kind shall be made unless and until the complete plans and specifications as to the size, design, and material, shall have been submitted to and then approved, in writing, by 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).

Section 7. Effect of Foreclosure. Where the holder of a mortgage or financing statement constituting a recorded lien on the lot against which a delinquent assessment has been levied obtains title through foreclosure or proceedings in lieu of the foreclosure of such lien, such lien creditor shall not be liable for the payment of the delinquent assessment levied against such lot prior to such acquisition of title. Rather, this delinquent assessment, including interest and costs of collection, shall be deemed to be a common expense to the payment of which all lot owners, including the secured party acquiring title, shall contribute jointly on a pro-rata basis.

Section 8. Liability of Purchaser of Lot. The purchaser of a lot (other than a purchaser of a foreclosure sale or a lien holder acquiring title by virtue of a foreclosure or voluntary conveyance in lieu of foreclosure) shall be jointly and severally liable with the seller for the amounts of any current or delinquent assessments owing by the latter up to the time of conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by him as such joint debtor.

**Article IV
Architectural and Landscape Control**

All improvements within the subdivision or any additional properties subjected to these declarations must conform and adhere to certain purely aesthetic considerations and the architectural integrity of the existing and anticipated improvements; and the location, design, configuration, composition, exterior appearance and use of such improvements, including landscape, must be consistent with existing and proposed improvements, the topography, and the purpose and philosophy of the mutual benefit residential community concept hereby adopted. ~~No improvement shall be commenced, placed or maintained upon the properties, nor shall any exterior addition to, or change or alteration therein be made until the complete plans and specifications (including plot plan) showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the architectural review committee.~~

No building, barn, outbuilding, garage, drive, fence, satellite dish, or structure of any kind or nature, or alterations or additions thereto, shall be erected, placed or made on any lot hereinabove referred; nor any basement or excavation of any kind shall be made unless and until the complete plans and specifications as to the size, design, and material, shall have been submitted to and then approved, in writing, by the Architectural Control Committee. In the event the Architectural Review Committee fails to approve any proposed improvement with sixty (60) days after the plans, specifications, and/or plot plan have been submitted to it, then such plans, specifications and /or plot plan ~~deemed to have been disapproved and rejected.~~

No lot owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted on any lot which materially affects surface grade of said lot or surrounding lots, unless approved in writing by the Architectural Review Committee.

**Article V
General Provisions**

1. Any person who acquires title to a lot, other than a person who acquires title merely as security for debt, shall promptly inform the Board of Directors of the Homeowners' Association of the identity of such person and the date upon and the manner in which title to the dwelling was

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