

967
MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 25. (p. 15): FCC OTARD Satellite Dish / Antenna Preemption Defect: Clause imposes a blanket ban, prior-approval delay, or sub-1-meter size cap on residential reception antennas/satellite dishes preempted by 47 C.F.R. § 1.4000.

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

Statutory Comparison: Under the FCC Over-the-Air Reception Devices (OTARD) Rule, 47 C.F.R. § 1.4000, promulgated under § 207 of the Telecommunications Act of 1996, any covenant or rule that prohibits, requires prior architectural approval before installation, or restricts satellite dishes/antennas measuring one meter (39.37 inches) or less in diameter on property within the owner's exclusive use or control is federally preempted and void.

CURRENT WORDING IN DOCUMENT:

No Antennas, No television antenna, satellite dish, radio receiver or sender or other similar device greater than one meter in diameter shall be attached to or installed on the exterior portion of any Dwelling Unit or other structure on the Property or any Lot within the Development without the prior written consent of the Declarant or the Board.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section 25. to incorporate the mandatory statutory safe harbors of 47 C.F.R. § 1.4000 (FCC OTARD Rule); S.C. Code Ann. §§ 27-30-110 to 27-30-310 (South Carolina HOA Act) & S.C. Code Regs. Ch. 28 (SC Dept. of Consumer Affairs HOA Rules), permitting OTARD reception antennas (up to 1 meter in diameter without prior approval) and solar/EV/water-wise installations within statutory parameters.

ISSUE #1

Section 23. Tree Removal. No trees or shrubs shall be removed prior to obtaining approval of plans as set forth in Article IV. The majority of the trees may not be removed from any Lot except in the area of the Lot upon which the house and driveway are to be constructed. No trees having a diameter of four (4) inches or greater at a height of four (4) feet may be cut down at any time without prior approval of Declarant or Board.

Section 24. Wells. No private potable water wells may be drilled or maintained on any residential Lot without the prior written consent of the Declarant or the Board. Irrigation wells may be used for landscape maintenance.

Section 25. No Antennas. No television antenna, satellite dish, radio receiver or sender or other similar device greater than one meter in diameter shall be attached to or installed on the exterior portion of any Dwelling Unit or other structure on the Property or any Lot within the Development without the prior written consent of the Declarant or the Board. No radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. Notwithstanding the foregoing, the provisions of this section shall not prohibit the Declarant from installing equipment necessary for a master antenna system, security system, cable television, mobile radio system or other similar systems within the Development.

Section 26. No Window Air Conditioners or In-Wall Units. No window air conditioners or in-wall air conditioners or heaters shall be permitted.

Section 27. Sound Devices. No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be used upon Lots within the Development. The playing of loud music from any balconies or porches shall be offensive, obnoxious activity constituting a nuisance.

Section 28. Laundry. No Owner, guest, or tenant, shall hang laundry from any area within or outside a dwelling residence if such laundry is within the public view, or hang laundry in full public view to dry, such as on balcony or terrace railings. This provision may, however, be temporarily waived by the Declarant or the Board during a period of severe energy shortages or other conditions where enforcement of this section would create a hardship.

Section 29. Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner and Declarant (with respect to improved Property owned by Declarant) shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire, or other casualty. Variations and waivers of this provision may be made only upon Declarant or the Board establishing that the overall purpose of these Restrictive Covenants would be best effected by allowing such a variation. Variations to this section are to be strictly construed and the