

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Section 2.
ENFORCEMENT

2.1 The responsibility for enforcement of these Deed Restrictions of Marilyn Estates shall be upon the Board of Directors (the “Board”) of the Marilyn Estates Association. The Board shall be comprised of elected officers and directors as defined in the By- laws, and shall be ultimately controlled by the By-laws of the Marilyn Estates Association. No person may be a member of the Board unless they are an Owner of Marilyn Estates which has adopted these amended deed restrictions. The address of the Board shall be: P.O. Box 35144, Houston, Texas 77235, or such address as they may designate from time to time, and all notices to the Board or any committee thereof shall be sent to such address.

2.2 The President shall appoint, with advice and consent of the Executive Committee, members to a Deed Restriction/Enforcement Committee to monitor compliance with these Deed Restrictions. To ensure and enforce compliance with these Deed Restrictions, the Association is authorized and empowered, after notice under section 209.006 of the Texas Property Code, to the Owner, to assess fines, fees, or charges against an Owner for violations of these restrictions provided that:

- (1) such fines, fees, or charges are reasonable;
- (2) such fines, fees, or charges are applied uniformly.

Fines may be assessed on a one per violation or a one per day basis and may becumulative. Charges for attorney’s fees, or contractors engaged to correct a violation, andcharged to the Association, may be passed on to the Owner. Administrative fees may be assessed to defray expenses to the Association for handling these charges. To secure paymentfor the fines, fees, or charges, a lien against the property may be established. The Association may further pursue any available legal and equitable remedies for noncompliance with these Deed Restrictions. The Association’s failure to pursue available remedies shall not constitute a waiver.

Sec. 3.1 (p. 7): 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:

fences, antennas, flagpoles, shall be commenced, constructed, erected, placed or maintained in the Subdivision, nor shall any exterior addition to or alteration thereto be made, unless and until the drawings and specifications, together with a site plan showing the location of all improvements (both existing improvements, if any, and the improvements covered by the drawings and specifications) with reference to property lines, building lines and easements have been submitted to and 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).

ISSUE #1

Section 3.
ARCHITECTURAL CONTROL

3.1 No buildings, structures or other improvements, including but not limited to garages, outbuildings, temporary structures, driveways, sidewalks, roofs, roof replacements, pools, spas, fences, antennas, flagpoles, shall be commenced, constructed, erected, placed or maintained in the Subdivision, nor shall any exterior addition to or alteration thereto be made, unless and until the drawings and specifications, together with a site plan showing the location of all improvements (both existing improvements, if any, and the improvements covered by the drawings and specifications) with reference to property lines, building lines and easements have been submitted to and approved in writing by the Architectural Control Committee. Any modification of an existing structure, construction of a new structure, or change affecting the appearance of a Lot or the improvements thereto shall be presumed to require prior approval by the Architectural Control Committee.

3.2 The Architectural Control Committee is composed of not less than three members and not more than five members. The Board shall have the absolute power to replace any members at any