

## THE "DISH" ON ANTENNAS AND SATELLITE DISHES

By Josh Rosenstein

About 10 years ago, the Federal Communications Commission (FCC) adopted rules designed to ensure that homeowners have access to a broad range of video programming services. Since then, the FCC has clarified but always steadfastly defended those rules. The FCC's Over-the-Air Reception Devices (OTARD) rules prohibit community associations and local governments from making any rule that (a) unreasonably delays or prevents installation, maintenance or use of certain antennas that receive video signals, (b) unreasonably increases the cost of their installation, maintenance or use, or (c) prevents reception of an acceptable quality signal. Exceptions allow associations to make rules for safety or for historical preservation. OTARD rules only apply to antennas that are one meter (approximately 39 inches) or less in diameter, which includes most of the TV satellite dish receivers common today.

Under the OTARD rules, homeowners can place antennas anywhere within a homeowner's "exclusive use" area if it's necessary to get a good signal. Exclusive use areas include both those areas owned exclusively by the owner and areas to which the owner has the exclusive right of use or control. In a condominium, the exclusive use area includes the owner's unit and any limited common elements assigned to the unit. In a single family development, the exclusive use area is generally the owner's lot. A deck, balcony or patio designated as a limited common element is an exclusive use area even if an association has the right or obligation to maintain it. Since associations aren't allowed to make rules restricting placement of antennas within exclusive use areas, associations and owners need to understand the boundaries. The association's governing documents define the legal boundaries between common and exclusive use areas.

OTARD rules do not prohibit associations from making rules limiting antennas in areas other than exclusive use areas. That means that associations can entirely ban placing any antenna within a condominium's common elements. Often, the common elements of a condominium include the building structure and the land and airspace around and above the buildings, so the association can prohibit owners from placing antennas on the building exterior (other than within limited common elements), even if the owners can't get an adequate signal from an antenna placed within their exclusive use area. Antennas must be completely contained within exclusive use areas. An association can prohibit a dish that hangs out from an exclusive use area deck railing into the airspace adjacent to it because that airspace is part of the common elements.

FCC interpretations have answered some questions about how to apply the OTARD rules. Recent FCC rulings include:

Association rules that require pre-approval of an antenna by the Board or any other body are prohibited. But, the association may require that an owner notify it that the owner has installed or is going to install an antenna, as long as the notification does not in any way delay installation or add any additional cost.

Rules may rank preferred installation locations within exclusive use areas, but the burden is on the association to demonstrate that its preferred location doesn't interfere with the installation, maintenance or use of the antenna.

An association cannot make a rule requiring an owner to comply with applicable local laws and the manufacturer's instructions prior to installation of an antenna unless the requirement is safety-related. Such a rule causes an unnecessary burden on a homeowner to cull through ordinances, laws, regulations and industry standards to determine which ones apply.

Rules prohibiting placement of antennas based on safety concerns must describe the safety concern in the rule itself. Safety-based antenna rules should rely upon procedures that are standard in the industry, if they are available, such as those procedures suggested by a manufacturer. Other permissible safety-based rules could regulate where antennas are installed, including how close they are to fire and life safety equipment and control panels, electrical panels, power lines and emergency ingress or egress routes.

A rule requiring that owners place their antennas on association-provided brackets in locations designed to get the best reception possible violates OTARD rules, even if the rule is intended to avoid repair costs, promote safety and aesthetic concerns and fairly balance the interests of individual owners and the association.

There are other wrinkles in drafting antenna rules not discussed in this article. Since telecommunications technology is always changing, the antenna rules may need to evolve over time, too. Due to the complexity of the OTARD rules, associations should involve their attorneys in drafting them. More information on the OTARD rules is available from the FCC fact sheet at [www.fcc.gov/mb/facts/otard.html](http://www.fcc.gov/mb/facts/otard.html).

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