



## Satellite Dish Not Permitted on Condo Roof

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**Q:** I live in a corner unit of my condominium and would very much like to have a satellite dish mounted on the roof so that I can receive a picture in HD format. I recently wrote to the president of the association and requested authorization for the installation. My request was refused. I have learned that there is a cable act where the association cannot prohibit the installation of a dish. Is this true, and if so can you please state the act? **S.S. (via e-mail)**

**A:** The “act” you are referring to is the Over The Air Reception Devices (OTARD) Rule that was enacted by the Federal Communications Commission pursuant to the Telecommunications Act of 1996. The OTARD Rule prohibits, among other things, association restrictions that impair the installation, maintenance, or use of antennas used to receive video programming. The Rule applies to video antennas, including satellite dishes that are less than one meter (at least 39 inches in diameter), certain types of television antennas, and wireless cable antennas. The OTARD Rule prohibits most restrictions that unreasonably delay or prevent installation, maintenance or use; or unreasonably increase the cost of installation, maintenance or use; or preclude reception of an acceptable quality signal. Accordingly, associations may not, with certain exceptions, enforce rules and restrictions that cause any one of these three impairments.

The OTARD Rule applies to viewers who place video antennas or satellite dishes on property that

they own (or have a leasehold interest in) that is within their exclusive use or control, including condominium owners who have an area where they have exclusive use, such as a balcony or patio. Therefore, while you may have an argument that the OTARD Rule allows you to install a satellite dish on your balcony (presuming you have one), that Rule does not include the right to install a satellite dish on the condominium building roof (which is usually a common element that a particular owner does not have the exclusive use of).

The association has a right to list preferred locations within the unit or “exclusive use areas” for the installation of satellite dishes in its rules. However, the burden of proof for the enforceability of any rule or restriction affecting the installation, maintenance, or use of a satellite dish will be on the association.

The only exceptions to the OTARD Rule are restrictions that are necessitated by safety or historic preservation concerns, and even then the restrictions must be as narrowly tailored as possible, and impose as little burden as possible, and apply in a nondiscriminatory manner throughout the regulated area.

**Q:** I have lived in a homeowners’ association community for five and a half years. Our governing documents prohibit pick-up trucks, even if they are non-commercial. My husband has owned a non-commercial passenger pick-up truck since the day we

moved in. Before purchasing a home in the community, we spoke with the developer and were told that the truck restriction would not be enforced. There were numerous trucks in the neighborhood and upon speaking to the owners of these trucks, they stated that they had never received a notice to remove the trucks. Now, the association wants to start enforcing the truck restriction. Does this lack of enforcement for over five years prohibit the board from enforcing this restriction against us now? Also, we attempted to amend our governing documents to permit non-commercial passenger pickup trucks. The governing documents require a two-thirds vote to change the covenants. We were able to obtain the necessary vote, but one owner convinced a number of owners to rescind their vote. Can a vote by ballot or proxy be changed after it has already been cast?

**K.B. (via e-mail)**

**A:** The statute of limitations for these types of enforcement actions is generally five years, and therefore, you would likely have a valid statute of limitations defense if the association attempted to enforce the restriction against you now. However, note that if you lived in a condominium, the law governing condominiums specifically states that the statute of limitations does not begin to run until after the association has been “turned over” from the developer to the association. In other words, the “clock” does not start to run until turnover of the association from the developer. There is no similar statute in the law governing homeowners’ associations, so I think that in your case, the clock starts when you moved into the community with the truck.

Many associations, when faced with this lack of enforcement problem will adopt a resolution “grandfathering in” those homeowners who violated the covenants during the time that the developer was in control of the association or during the time that the association was lax in its enforcement. The resolution notifies all owners that the association intends to take action only prospectively against homeowners who violate the covenants after the adoption of the resolution. The purpose of such a resolution is to acknowledge that the restriction had not been consistently enforced in the past, and to place all future owners on notice (through the recordation of the resolution in the public records)

that the association will begin to enforce the restriction prospectively. This type of resolution would permit current owners who may have relied on representations from the developer and who may have valid defenses (such as the statute of limitations, estoppel, laches, and waiver) to continue to keep their trucks and would also allow the association to avoid costly and expensive litigation. The association could then focus its enforcement efforts on prospective violators who are on notice of the association’s intent to enforce the restrictions prospectively.

Regarding the voting issue, the law governing homeowners’ associations specifically provides that a proxy is revocable at any time at the pleasure of the person who executes it. The law does not specifically address ballots, but typically, a ballot is cast at the meeting. If the ballot is cast, but the question has not been voted on at the meeting, an owner could request that his ballot be returned so that he could change his vote. In other words, until the “question has been called” and voted on, an owner has the right to change his vote. However, once the question has been called and the votes tabulated at the meeting, the votes cannot be changed.

The exception to this rule is in the condominium election context. In a condominium, once the election ballot has been received by the association, it cannot be rescinded or changed.

**Q:** I have read a number of your articles regarding the Florida Condominium Act. Do you know off hand if, under Florida law, a condominium association can deny a lease application based on a condominium owner’s unpaid fines versus an unpaid assessment? Many thanks for your thoughts. **S.G. (via e-mail)**

**A:** The Florida Condominium Act specifically addresses the issue of denying lease approval based upon an unpaid assessment. The Condominium Act states that if the association is authorized by the declaration or by-laws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

Therefore, if your association's declaration or by-laws authorize the association to approve or disapprove a proposed lease, the Condominium Act specifically provides that the lease can be disapproved if the owner is delinquent in the payment of an assessment when the approval is sought.

There is no statutory authority, however, to deny a lease application based upon an unpaid fine. Accordingly, you would then need to review the association's declaration of condominium to determine if such authority was contained in that document. If not, I believe it would be improper to deny a lease based upon an unpaid fine.

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

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