

# E K M A R K & E K M A R K, L.L.C.

ATTORNEYS AT LAW

## **GUIDELINES GOVERNING ANTENNAS AND SATELLITE DISHES**

Several years ago, federal statutes were enacted that allowed the Federal Communications Commission (“FCC”) to overrule the governing documents of associations in relation to the installation of antennas and certain satellite dishes. About a year ago, the FCC expanded this rule to cover internet dishes. Because of the prevalence of satellite and internet dishes, and constantly changing rules of the FCC, the following article is a general overview of what rules govern the installation of antennas, satellite dishes, and internet dishes.

The first question is what kinds of communications devices are covered by the FCC. The FCC rules cover television antennas of any size, and fixed wireless devices that are one (1) meter or less in diameter regardless of the nature of the services provided through the antenna (whether it be voice (telephone services), data (internet services), or video). The rule governs the personal reception of these services, not the distribution of the services. The covered devices will be collectively referred to as “antennas”.

The second question is what restrictions are associations allowed to place on these devices. For an association to place any restrictions on the placement of these devices, it must have an enforceable rule in place. If the association’s governing documents contain a restriction against any antennas, or specifically require prior approval from the association before an antenna may be installed, the association’s provision is unenforceable, and the association cannot prohibit the installation of the antenna is installed. The only way for the association to have any enforceable provisions against antennas is for the association to either amend the provision in their governing documents, or for the Board of Directors to adopt rules that are enforceable based on the FCC rules. For example, although the Board cannot require prior approval for installation, the Board can provide rules to all of its members restricting the location of antennas in certain places. A rule may state that the antenna cannot be visible from neighboring property so long as the person can obtain an acceptable signal. Please note, however, that if the owner claims that the only place where the owner can obtain an acceptable signal is on the roof of the house, the association has the burden of proving that an acceptable signal can be achieved in another location on the lot. The rule may also state that the antenna must be painted to match the house so long as the owner can still obtain an acceptable signal and the painting requirement does not void the warranty on the antenna. The Board must ensure that any rules that it establishes comply with the FCC guidelines; otherwise, the rules will be unenforceable. The Board should also make its rules flexible enough that it can modify its guidelines as the FCC modifies its rules.

The third question is where must an association allow antennas to be placed. Owners may place antennas on any area that they either own, or is their area of exclusive use and control, so long as other rules of the association (compliant with FCC guidelines) are met. For example, if the association is a condominium, and each owner has a patio or balcony that is that owner’s area of exclusive use and control, the owner may place an antenna within that area. In a townhouse

community, if the owner owns his lot, including his roof, he may place an antenna on the roof, even though the association is responsible for maintaining the roof. The association may, however, make the owner responsible for any damage caused to the roof by the installation of the antenna.

The fourth question is what are the association's remedies if an owner fails to comply with rules governing antennas established by the association. Please note that the association may not impose fines until either a court or the FCC has found the association's rules to be reasonable. The owner then has a certain time period to bring the antenna into compliance. Therefore, the association must bring a legal action for injunctive relief and/or to determine whether its rules are reasonable to require an owner to move the location of an antenna.

In summary, if an association wishes to restrict antennas within its community, it must modify its guidelines to comply with the rules set forth by the FCC. Otherwise, it will not be able to restrict antennas in any manner. If you need an enforceable antenna resolution or have any further questions, please contact Lynn Krupnik at 480-922-9292.

*The foregoing is a general overview of an issue and is not intended as specific legal advice regarding any particular situation. Associations are advised to seek competent legal counsel when confronted with legal issues. If you have any questions, please contact Ekmark & Ekmark at 480-922-9292.*