

## THE SHORT AND THE LONG OF SATELLITE DISH ANTENNAE AND THE FCC RULES

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### [A Brief Overview](#)

Satellite dishes have become very popular for a variety of reasons. Because of their popularity, co-owners of condominium units are increasingly likely to either install a dish or request approval for a dish installation. The Michigan Condominium Act and most condominium bylaws would forbid such installations unless the co-owner first obtains written approval from the Association's Board of Directors. This is because most dishes are installed on common elements of the condominium project. If a dish is installed entirely within a condominium unit, it is far more likely that there is no requirement in the Act or the documents for preapproval.

The Federal Communications Commission (FCC) is the federal agency which has rule making authority concerning such satellite dish antennas. It has written a number of rules in the last few years which are all aimed at striking down restrictions which affect small satellite dishes. The first wave of FCC rules took aim at municipal ordinances that restricted satellite dishes. In September of 1996, the FCC adopted additional and revised rules in an attempt to preempt private regulation of satellite dishes. Whether or not the FCC has lawful authority to do so remains to be seen, and there are constitutional and other legal arguments that could be advanced in opposition of the FCC's rules.

Some may say that these new FCC rules amount to an attempt by the federal government to manufacture another "right": the right to install and use a satellite dish antenna of one meter or less, without regard to existing state, municipal or private restrictions. There are, however, some exceptions to this newly created "right".

If your Association is interested in attempting to restrict or ban satellite dish antennas, you will need to know what these new FCC rules apply to, the exceptions to these FCC rules, the limitations that now apply to your enforcement remedies, and the rules of procedure that will govern disputes overseen by the FCC.

### [THE SHORT VERSION](#)

If the satellite dish antenna is one meter or less in diameter and is being installed completely within a unit or its assigned limited common elements, the Association is very likely not going to have *any* say in the matter, and may find itself in legal hot water if it attempts to stop or restrict the installation

### [THE LONG VERSION](#)

Since the rules are so poorly written, they have to be very carefully read in order to discern which kinds of restrictions will be barred by the FCC rules. The following is a summary that will help you identify restrictions that are barred. Following the summary, we will analyze each element to help you determine whether or not your restrictions would be banned by the FCC's rules.

The FCC rules will bar your Association from enforcing restrictions against satellite dish antennas if:

1. Your restriction is a state or local law or regulation or private covenant, home owner's association rule or similar restriction.

AND

2. The property on which the satellite dish is to be installed is within the exclusive use or control of the antenna user

AND

3. The restriction “impairs” installation, maintenance or use of antenna. The FCC has defined the word “impair” to mean that your rule:
  - Unreasonably delays or prevents installation, maintenance or use,
  - Unreasonably increases the cost of installation, maintenance or use, or
  - Precludes reception of an acceptable quality signal.

Let’s take a look at these elements individually. First of all, the FCC rule does not specifically mention condominium master deed or bylaw restrictions although they would apply to the Condominium Act. The commentary to the rules makes it clear that they were intended to apply to condominium associations, but the argument could still be advanced that they do not because of the failure to mention them. Condominium restrictions are unique as compared to private covenants or homeowner association rules because of the shared ownership that is present in all condominium projects but lacking in private homeowner associations.

When we look at the second element of the FCC rules, it should be clear that if a dish is to be located on a general common element, the restriction should still be enforceable because general common elements are by their nature not within the exclusive use or control of the antenna user. Ownership of general common elements is shared by all of the co-owners in the project, and use and control of the general common elements is governed by the association and shared by all of the co-owners. If the dish is to be put on a limited common element, one can still argue that since the co-owner’s rights of use or control are not exclusive *as to the association*, the FCC rules should not bar enforcement. If the dish is to be located entirely within a unit then there is probably no restriction in your documents that would bar the installation absent some special consideration.

When we look at the third element, still more uncertainty creeps in because of the use of the word “unreasonably.” Just what might be unreasonable is not explained. Again, one could argue that in a condominium context there is nothing unreasonable about enforcement of your restrictions since the co-owner is on legal and probably actual notice of them prior to purchasing the unit. Many other “reasonableness” arguments might apply, such as the availability of a master antenna system. Requiring that the dish be located within the unit would apparently affect signal quality, but we have no guidance as to what would be considered an acceptable quality signal.

Before we take a look at the exceptions to the FCC rules, let me also say that not all satellite antenna dishes are covered by the new FCC rules. **If the dish under consideration is one meter or less in diameter, you can probably safely assume that it is the type of antenna the FCC rules were meant to cover.**

Even if your restriction is deemed to be the type barred by the new FCC rules, there are some exceptions to consider. One of these exceptions pertains to restrictions that are necessary to preserve a historic district; assuming that is not likely applicable to the typical association, we will ignore it for present purposes. The second exception applies if the restriction is necessary to accomplish a clearly defined safety objective that is either stated in the text, preamble or legislative history of the restriction. Even so, and despite the fractured syntax of the rules, it probably must also be no more burdensome to the antenna user than is necessary to achieve the safety objective.

If your restriction is barred by the new FCC rules, it is illegal for you to attempt to enforce the restriction. Given the cloudy nature of the FCC rules, it is likely that there may be some arguments as to whether they apply to your restrictions. Either the association or an aggrieved antenna user can petition the FCC or a court of competent jurisdiction to determine whether or not a particular restriction is permissible or prohibited. There are procedures which govern such petitions and the time for filing responses to them. Even if the FCC declares that the restriction in question is prohibited, the association may apply to the FCC for a waiver of the FCC rules. Again, there are procedures for responses to such petitions and the FCC rules bar you from writing up a new restriction and then seeking an FCC waiver after the fact.

Whether or not the controversy is worth pursuing is an issue that each board must carefully consider. Given the novelty of these situations, it is very difficult to predict the cost of petitions for declaratory rulings and petitions for rule waivers.

I should also note that I have heard of at least one company that is offering to install a master satellite dish free of charge to the association which can then be wired to every unit within the project, as an alternative to the installation of numerous individual antennas. It might be that the petition for a waiver would be more favorably considered if such an alternative was made available to those co-owners desiring to install a dish. They may prefer this option, since it may represent a lower cost alternative to them individually. Absent the FCC's blessing, it may not be possible to refuse an installation of an individual protected dish just because a master antenna has been made available.

To summarize, if the dish installation request involves a general common element location, it appears that you would be on strong legal grounds to refuse consent, since it does not appear that these new FCC rules apply if the applicant does not have exclusive use or control of the property in question. If, however, the request involves a limited common element, you may possibly be outside the realm covered by the FCC rules. This would indicate the wisdom of seeking a declaratory ruling or petitioning for a waiver before attempting to enforce the restriction. If the request is to install a dish within a unit it is unlikely that your restrictions even apply, but if they do, they will not survive the new FCC rules.

All things considered, if the dish is one meter or less in diameter and is within a unit or a limited common element, you are probably fighting a losing battle that is not worth the costs in time, money or goodwill among neighbors. Consider the proliferation of the FCC protected dishes as another compromise one must simply accept in the condominium context.