

Dish only worked on Exclusive Use Patio – No Alternative Plan by Association

Association Must Allow Satellite Dish on Member's Patio

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Issues involving satellite dishes installed on residential properties are governed by regulations issued by the Federal Communications Commission ("FCC"), even

when the residential property involved is located within a common interest development. The supremacy of federal law over state law in this regard was recently confirmed in Ohio, in the case *Woodbridge Condominiums Owners' Association v. Jennings* (2004 11th Appellate District) 2004 Ohio 5317.

Lawsuit filed to Remove Dish

The Jennings installed an 18-inch satellite dish on the patio outside their condominium unit in the Woodbridge Condominiums Owners' Association. The patio was considered exclusive use common area as to which an owner or occupant was prohibited from changing, altering, constructing, or decorating without the prior written approval of the Association's Board. The Association objected, and then filed a lawsuit against the Jennings and their tenants to have the satellite dish removed.

Court Deems Satellite Dish Okay

After a hearing, the trial court determined that the satellite dish was not in violation of the Association's regulations or by-laws, as it was not affixed to the condominium unit and was not a "change, alteration, construction, or decoration of any kind." Furthermore, the trial court stated that "it would be unreasonable to read the [CC&Rs] and Bylaws so as to require board approval in every instance of a change in porch furnishings."

Even if a Violation, FCC Regulations Preempt

In the alternative, the trial court determined that, even if the satellite dish was in violation of the Association's regulations or by-laws, Federal Communications Commission regulations, 47 Code of Federal Regulations 1.4000,

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preempted the Association's regulations and by-laws and, therefore, prohibited the Association from prevailing in the lawsuit. The court specifically determined in this regard that the patio area was within the Jennings' exclusive control despite being part of the Association's common area.

Appellate Court Agrees Dish Only Functional on Outside Patio

The Ohio appellate court agreed with the trial court – and the Jennings – and dismissed the Association's lawsuit. The appellate court explained that federal law prohibits a community association from banning the placement of a satellite dish that is less than one meter in diameter on any area under the homeowner's exclusive control if the effect of preventing such placement would be to impair the installation, maintenance, or use of

the satellite dish. In the case of the Woodbridge Condominiums, federal law specifically preempted the Association's rules especially because the Jennings' dish could not function properly unless placed outside on the patio.

An important factor was that the Association did not offer any viable alternatives to placement on the patio. Hence, the Jennings were permitted by the courts to maintain their dish on their exclusive use common area patio despite the Association's rules. ■

