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The FCC issues new satellite dish and antenna regulations

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On Jan. 22, new regulations issued by the Federal Communications Commission (FCC) on the installation of resident satellite dishes and antennas took effect. Before then, apartment owners and managers could, and usually did, say no to renters wishing to install an individual satellite dish or antenna. From the apartment owner/manager's perspective, the satellite dishes were not only ugly, but they also presented a safety and liability concern if they were to fall on people below.

The Joint Legislative Program of the National Multi Housing Council (NMHC), American Seniors Housing Association (ASHA) and National Apartment Association (NAA) educated the FCC on these concerns and urged the FCC not to restrict private property rights. While the FCC took note of many of our arguments, they nevertheless proceeded to give some renters new rights.

The end result is that apartment managers can no longer simply reject requests by a resident to install a satellite dish of one meter or less in size or a traditional stick-type antenna. Residents now have the right, subject to "reasonable" restrictions by the property manager, to put a dish on a balcony, balcony railing, or patio that is part of the resident's leased premises. The practical implications of carrying out these "reasonable" restrictions are not trivial.

But, what is reasonable? First, the regulations continue to prohibit several types of installations. These include: No dishes or antennas may be mounted on a building roof or in common areas such as balconies or stairways. No holes may be drilled in any outside walls or through glass. A resident does not have the right to pierce the outer shell of a building. Instead, they must use a flat cable that goes under a sliding door or a suction-type device applied to a window. Dishes or antennas may not hang out over a balcony or be mounted on extension devices that do so. Residents do not have the right to demand that wireless service be provided to all residents of the building. While some owners can provide such service to preclude residents from installing their own dishes, this solution is only workable in the very rare circumstance that the owners can provide every channel the resident could obtain through a satellite dish at the same cost.

Additionally, apartment owner/managers, we believe, can impose the following "reasonable" constraints: The resident can be required to sign an agreement indemnifying the apartment manager against any physical or personal damages which might result from the dish or antenna. A resident can also be asked to obtain liability insurance to cover physical and personal damages that might be caused by the dish or antenna.

No Southern-Facing Balcony - No Problem When considering the application of the new regulations, it is important to understand that the number of renters now eligible to install such devices is relatively small. The FCC rules only pertain to residents who have a balcony or patio included in their leased property and the balcony or patio faces South. (Wireless devices must be able to pick up a signal from the Southern

hemisphere because all of the satellites are positioned in the Southern sky in order to beam signals to the Northern hemisphere. In other words, residents without a Southern exposure cannot receive signals to their satellite dishes.) In properties without balconies, the only thing residents can do is set up a dish or antenna that is totally contained within the apartment unit and hope that their dish can pick up a signal through a window.

Resident Pre-Education Imperative Owners and managers should assume that some of their residents will indeed want to purchase and install dishes now that the FCC has provided them with that opportunity. Why? They may be unhappy with their current cable offerings; they may be trying to receive a special foreign or other channel unavailable from the present cable supplier; or they may be attracted to the extensive sporting events offered by satellite providers.

Given this likelihood, it is imperative that apartment managers educate the residents on the restrictions governing installation before the resident takes steps to complete an installation.

Otherwise, the following scenario is likely to occur. A resident intrigued by the expanded offerings of satellite dishes goes to the store and purchases a dish and an installation contract.

A few days later the installer shows up and mounts the dish on a balcony railing or by drilling a hole in the outside wall. Without prior education, the resident will probably not realize that drilling holes is prohibited and will consider the installation reasonable. If apartment owners intervene after the fact to enforce the "reasonable" restrictions they have imposed, chances are good that the resident will get angry and may refuse to comply with the required changes.

What does an apartment provider do then? Ask Judge Judy to resolve the dispute?

With the FCC's ruling the apartment manager and leasing professional have been put in the undesirable position of having to simultaneously keep residents happy and enforce "reasonable" restrictions for satellite dishes and antennas. The only way to do both is to educate residents about wireless technology. Be sure your residents know about the Southern exposure requirement; that there is no sense in purchasing a dish if they live on the Northern side of the building. You should also inform them that current law prevents satellites from transmitting local network affiliates which means the resident will not be able to receive local news.

Residents should understand why the "no drilling" restriction is reasonable. Explain to them that nature loves a vacuum and so do termites. Water damage and pest damage can wreak havoc on a property. The only way to reasonably install one of these dishes is via a suction device system and very few satellite sellers are likely to inform the residents that such systems cost an additional \$125. The apartment manager can and should.

Safety and Liability Issues This first part of the education process is relatively easy and not likely to meet with objection.

The more difficult challenge is explaining the liability and safety issues and restrictions. It should seem clear that the resident who puts up a dish or antenna on his or her leased premises is the responsible party if the dish causes any damage or injury. It should be clear, but it probably isn't.

Most residents will not consider their potential liability before they go out and buy a dish. Therefore, managers should inform them, in advance, that residents will be required to sign an indemnification and obtain proper liability insurance. Until the manager takes this precaution, the property manager/owner is more vulnerable to a lawsuit in the event that a dish or antenna hurts someone.

Managers should also encourage residents who are intent on installing a wireless device to have a professional install it. While you cannot insist on this, you can strongly encourage it to limit the resident's future liability. However, managers should not approve installations as acceptable after the fact, and therefore, subject themselves to liability claims.

The safety issue cannot be overemphasized. These devices have the potential of seriously injuring or even killing if they become airborne. One of NMHC/ASHA/NAA's overriding concerns throughout the development of these regulations was the fact that improperly installed satellite dishes and antennas are extremely dangerous when they become dislodged. While we expect most residents will act in a proper manner, the fact remains that there are many good reasons why these devices do not belong on certain types of properties, such as high rise properties subject to high winds and/or severe weather conditions.

Judicial Remedy Sought A coalition of real estate organizations that lease premises to others has asked a federal court to review the FCC's Antenna Order on the grounds that: the FCC exceeded its jurisdiction in issuing the Order; the Order violates the United States Constitution; and the Order is arbitrary, capricious and an abuse of discretion. People have a wide choice of where they want to live. Many apartments offer satellite television already while others offer excellent cable programming. It is better to let the marketplace work and to avoid government mandates that run counter to legitimate safety concerns.

This action was filed on Dec. 23, 1998, but the court is expected to take 12 months or more to review it. Until then, apartment owners will have to comply with the FCC Order.

Additionally, residents who believe that the restrictions you impose are unreasonable can write to the FCC objecting to your policies. Apartment providers will then have to demonstrate that the restriction is indeed reasonable. Owners who find themselves in such a situation can contact the author via e-mail at jarbury@nmhc.org for additional information.

Going Forward Apartment managers should begin the process of educating residents and eliminating as much liability exposure as possible. NMHC/ASHA/NAA has prepared a one page flyer which can be distributed to residents to identify installation procedures that are allowed and those that are prohibited by the FCC Order. For information on purchasing a supply for your property, call NAA at (703) 518-6141. To further minimize resident interest in individual satellite dishes, owners should also review the offerings of their existing cable provider to ensure that residents can receive most, if not all, of the programming they seek at a reasonable price.

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