

## **CABLE TV**

The federal government has something to say about your tenants' rights, as explained in the Federal Telecommunications Act of 1996 (47 U.S.C. §§ 151 and following). In this Act, Congress decreed that all Americans should have as much access as possible to information that comes through a cable or over the air on wireless transmissions. The Act makes it very difficult for state and local governments, zoning commissions, homeowners' associations and landlords to impose restrictions that hamper a person's ability to take advantage of these new types of communications.

### **1. Previously Unwired Buildings**

Most residential rental properties are already wired for cable. In competitive markets especially, you'll have a hard time attracting tenants if you do not give them the option of paying for cable. However, in the event that your property does not have cable, you may continue to resist modernity and say "No" to tenants who ask you for access. Don't be surprised if, in response, your tenant mounts a satellite dish on the balcony, wall or roof. See Section N, below, for your ability to regulate these devices.

### **2. Buildings With Existing Contracts**

Many multi-family buildings are already wired for cable. In competitive markets, landlords have been able to secure attractive deals with the service providers, passing savings on to tenants. Many landlords have signed "exclusive" contracts, whereby they promise the cable provider that they will not allow other providers into the building. Here is where things get a bit tricky. In the residential context, federal law allows landlords to enter into exclusive deals, as does California. Even if you don't have an exclusive contract, you're under no obligation to allow other companies into your property. Although an incumbent cable company can in theory share its wires with other providers, they typically don't want to make their hardware available to competitors. You are not obliged to allow a hodgepodge of wires throughout your building, which may happen if several companies run cable. (*Cable Arizona v. Coxcom, Inc.*, 261 F.3d 871 (9th Cir. 2001).)

## **SATELLITE DISHES AND OTHER ANTENNAS**

Wireless communications have the potential to reach more people with less hardware than any cable system. Tenants who enjoy watching sports programs are often eager to have a satellite dish antenna, which will deliver far more programs than cable. But there is one essential piece of equipment: A satellite dish with wires connecting it to the television set or computer.

Small and inexpensive dishes, two feet or less in diameter, are now available. Wires can easily be run under a door or through an open window to an individual TV or computer. Predictably, tenants have attached dishes to balconies, windowsills, railings and even the roof. Landlords are upset at the unappealing sight of wires and equipment that ruin a building's "curb appeal." They are concerned that dishes may fall and cause injuries and that their installation may damage weatherproofing of walls and roofs and interfere with electrical or plumbing systems. Fortunately, the Federal Communications Commission (FCC) has provided considerable guidance on residential use of satellite dishes and other antennas (Over-the-Air Reception Devices Rule, 47 C.F.R. § 1.4000, further explained in the FCC's Fact Sheet, "Over-the-Air Reception Devices Rule"). Basically, the FCC prohibits landlords from imposing restrictions that unreasonably impair tenants' abilities to install, maintain or use an antenna or dish that meet criteria described below. Here's a brief overview of the FCC rule. For complete details on the FCC's rule on satellite dishes and other antennas, see [www.fcc.gov/mb](http://www.fcc.gov/mb) or call the FCC at 888-CALLFCC. The FCC's rule was upheld in *Building Owners and Managers Assn. v. FCC*, 254 F.3d 89 (D.C. Cir. 2001).

### **1. Devices Covered by the FCC Rule**

The FCC's rule applies to video antennas, including direct-to-home satellite dishes that are less than one meter (39.37 inches) in diameter, TV antennas and wireless cable antennas. These pieces of equipment receive video programming signals from direct broadcast satellites, wireless cable providers and television broadcast stations.

Antennas up to 18 inches in diameter that transmit as well as receive fixed wireless telecom signals (not just video) are also included.

## **2. Permissible Installation**

Tenants may place dishes or other antennas only in their own, exclusive rented space, such as inside the rental unit or on a balcony, terrace, deck or patio. The device must be wholly within the rented space (if it overhangs the balcony, you may prohibit that placement). Also, you may prohibit tenants from drilling through exterior walls, even if that wall is also part of their rented space.

Tenants *cannot* place their reception devices in common areas, such as roofs, hallways, walkways or the exterior walls of the building. Exterior windows are no different from exterior walls—for this reason, placing a dish or other antenna on a window by means of a series of suction cups is impermissible under the FCC rule (obviously, such an installation is also unsafe). Tenants who rent single-family homes, however, may install devices in the home itself or on patios, yards, gardens or other similar areas.

## **3. Restrictions on Installation Techniques**

Landlords are free to set restrictions on how the devices are installed, as long as the restrictions are not unreasonably expensive or are imposed for safety reasons or to preserve historic aspects of the structure. You cannot insist that your maintenance personnel (or professional installers) do the work.

### **a. Expense**

Landlords may not impose a flat fee or charge additional rent to tenants who want to erect a satellite dish or other antenna. On the other hand, you may be able to insist on certain installation techniques that will add expense—as long as the cost isn't excessive and reception will not be impaired. Examples of acceptable expenses include:

- insisting that an antenna be painted green in order to blend into the landscaping, or

- requiring the use of a universal bracket which future tenants could use, saving wear and tear on your building.

### **b. Safety Concerns**

You can insist that tenants place and install devices in a way that will minimize the chances of accidents and will not violate safety or fire codes. For example, you may prohibit placement of a satellite dish on a fire escape, near a power plant or near a walkway where passers-by might accidentally hit their heads. You may also insist on proper installation techniques, such as those explained in the instructions that come with most devices. What if proper installation (attaching a dish to a wall) means that you will have to eventually patch and paint a wall? Can you use this as reason for preventing installation? No—unless you have legitimate reasons for prohibiting the installation, such as a safety concern. You can, however, charge the tenant for the cost of repairing surfaces when the tenant moves out and removes the device.

### **Be consistent in setting rules for tenant improvements.**

Rules for mounting satellite dishes or other antennas shouldn't be more restrictive than those you establish for artwork, flags, clotheslines or similar items. After all, attaching these telecommunications items is no more intrusive or invasive than bolting a sundial to the porch, screwing a thermometer to the wall or nailing a rain gauge to a railing. For general guidance, see the discussion in Section L, above, of tenants' alterations and improvements.

### **Require tenants who install antennas to carry renters' insurance.**

If the installation (or removal) causes damage to your property, you can charge the tenant or use the security deposit to cover the repair costs. Renters' insurance should cover the cost, too, which will save you the hassle of collecting from the tenant or dipping into (and having to replenish) the deposit. And if a device falls or otherwise causes personal injury, the policy will cover a claim.