



FAQs Regarding ARRL's Legislation: H.R. 1094, S. 459

Who Are The Primary Opponents of Removing The Prohibitions On Amateur Radio?

CAI, the Community Associations Institute, Inc. This national organization, with chapters in every State, is the political voice of home owner associations ("HOA"), HOA management companies, HOA law firms, and developers. It is rabidly anti-Amateur Radio.

Will the passage of the Legislation negatively impact real estate interests?

- No.
- This bill gives Hams the same privileges that were granted to homeowners in 1996 by Congressional action — the right to erect TV antennas, satellite TV dishes, and wireless internet antennas — and in 2005 by Congressional action — the right to erect free-standing flagpoles. The legislation merely extends those same rights to Hams.
- Twenty-nine years of the right of American homeowners to erect antennas and supporting masts, towers, and related equipment on the outside of their residences has proven the installation of antennas exterior to residences does not adversely affect the quality of life in the residential developments, safety, or home values.
- The legislation includes specific language preserving traditional regulation by national, state, county or city, building and zoning codes.

Why aren't we attempting to pass this Legislation state-by-state?

The Federal Communications Commission preempts the regulation and use of all radio frequencies. It is the reason that cellular telephone service, broadcast radio and television, satellite communications, GPS services, police, fire, and military communications are all regulated by the FCC. Amateur Radio has been a voluntary federal service since the Radio Act of 1927. Radio waves know no state boundaries. Homeowner TV and wireless internet antennas were granted relief from HOA restrictions in 1996 (47 CFR § 1.4000). Homeowners were granted relief from HOA restrictions against flag poles in 2005 (4 U.S.C. § 5 (note)). Effective, uniform relief for Amateur Radio, will have to come at the Federal level.

Does this Legislation break contracts between community/HOA associations and homeowners?

- No.
- Private land use restrictions, also known as CC&Rs or deed restrictions are conditions that are impressed upon the land and are not subject to being removed by either private citizens or community associations. The documents that create these restrictions specifically prohibit the elimination of the restrictions by negotiation.
- Approximately 80% of new homes are constructed in developments that are burdened by deed restrictions that prohibit Hams from installing antennas on the outside of their residences. This means that it has become more and more difficult for a potential purchaser to find any alternative housing in newer neighborhoods with access to quality schools, which are close to places of employment and that have reasonable access to shopping. There are entire cities that are entirely HOA controlled. (Examples: The Villages, FL, and Foster City, CA – see *Hotz v. Rich*, 4 Cal.App.4th 1048 (1992).)
- Homeowners, contrary to the claims of the opponents to this legislation, cannot negotiate away the anti-Ham prohibitions.
- Private land use restrictions have been stricken by government on many occasions.

Examples of CC&Rs that were declared unenforceable by state and federal law include:

- Prohibitions on the display of the American flag
- Prohibitions on the erection of free standing flag poles
- Prohibitions on the installation of solar panels
- Prohibitions on the installation of energy efficient roofing shingles
- Prohibitions on the installation of rainwater collection systems
- Prohibitions on the installation of composting
- Prohibitions on Xeriscaping (desert landscaping – little water)
- Prohibitions on the installation of certain types of turf
- Prohibitions on the presence of certain makes/models of automobiles
- Prohibitions on the installation of clotheslines
- Prohibitions on the right to display political signs
- Prohibitions on the installation of standby electric generators
- Prohibitions on the installation of satellite TV dishes (for TV and internet)
- Prohibitions on the installation of exterior WISP (Wireless Internet Service Provider) masts/towers, antennas
- Prohibitions on the installation of VHF/UHF TV masts, towers and antennas

Can community associations/HOAs grant variances from the recorded deed restrictions?

- No.
- As noted, the documents that create the restrictions prohibit the governing associations from modifying the restrictions, except by amending and rerecording the deed restrictions after approval of a super majority of the residents of the housing development.
- This was the reason Congress in 1996 ordered the FCC to create the OTARD (the “Over-The-Air-Reception-Device”) rules that render unenforceable all restrictions on the installation of TV antennas, satellite dishes, and wireless internet antennas.