

Accessory Dwelling Units in Eldorado at Santa Fe

The possibility of permitting accessory dwelling units (ADUs), commonly known as guest houses, in the Eldorado at Santa Fe subdivision could not even be considered until recently. The old Santa Fe County land use code used to clearly prohibit the construction and maintenance of ADUs on lots located in Eldorado. However, section 10.4 of the new Santa Fe County Sustainable Land Development Code (the “Code”) may permit the development of such units. This description of issues concerning ADUs is intended to provide a broad overview as to whether ADUs are permitted under Eldorado’s Covenants. It does not address whether ADUs are permitted in Eldorado under the Code.

There is no provision in the Covenants that directly addresses the permissibility of ADUs in Eldorado. Article II, Section 1 of the Covenants limits the permissible structures “on any residential lot” to “single family dwellings” and “accessory buildings such as studios, garages, greenhouses, recreational facilities and storage sheds.” This language could be interpreted to permit more than one single family dwelling on a lot as the plural form – “dwellings” – is used to describe what can be placed “on any residential lot.” Section 1 also includes a list of acceptable accessory buildings, but the use of the phrase “such as” indicates that the list is not exclusive and is intended to provide examples of acceptable accessory buildings. There may be types of accessory buildings permissible under the Covenants that are not included on this list.

As a rule, courts in New Mexico resolve ambiguities in covenants in favor of the free use of property. They do not read restrictions into covenants that are not expressly stated. The Eldorado Covenants do not expressly restrict ADUs in Eldorado. Therefore, it seems likely that a court could find that ADUs are permissible under the Covenants. This conclusion is reinforced by the fact that it is not uncommon in Santa Fe County for residential lots to have casitas as well as principal residences located on a single lot. Since the list of permitted accessory buildings in the Covenants is not an exclusive list, a court might find that an ADU is the type of accessory building that residents of Eldorado expect as one aspect of the free use of a residential lot.

Under the Covenants as currently written, if ADUs are permitted in Eldorado, owners of the lots on which such units are located would be permitted to rent both the principal dwelling unit and/or the ADU. Both long-term and short-term rental of the units would be allowed. The Code does not restrict these types of rentals, and there is nothing in the Covenants at present to prohibit such use. In addition, the New Mexico Court of Appeals has ruled that a covenant restricting the use of lots in a subdivision to single-family residential purposes did not prohibit a lot owner from renting his residence to others for a minimum of three nights. Accordingly, in order to prohibit or regulate the long-term or short-term rental of principal dwelling units and/or ADUs, the Covenants would need to be amended to expressly prohibit or regulate such use.