



## Court Ruling Shows Covenants Will Be Interpreted Narrowly

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A ruling by the New Mexico Court of Appeals this spring over homeowners’ rights to keep chickens as pets, despite a community covenant restriction against keeping poultry, has ramifications for property owners, including those in business condominium associations and other business developments.



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The appellate court in March reversed a 2014 trial court decision that Eldorado residents who kept chickens as pets in their backyards violated the community’s covenants against raising poultry. It did so on the grounds that the covenant language was ambiguous enough to be interpreted in more than one way, and should be interpreted expansively.



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The covenant at issue was titled “Household Pets.” It read, in part, “No animals, birds, or poultry shall be kept or maintained on any lot, except recognized household pets which may be kept thereon in reasonable numbers as pets.” Residents of the Santa Fe-area subdivision claimed their chickens were pets; the association argued they were poultry. The HOA convinced the trial court to apply a more expansive rule of legal interpretation to reach its decision.

The appellate court concluded that testimony about what the developer intended in 1972 and how the HOA members and community had historically viewed the covenants was not determinative. The appellate court also disregarded testimony of a veterinarian and statistics that suggested public attitudes about keeping chickens as household pets had evolved. All of this evidence, the court explained, consisted of “unreliable factors that were changeable at any given time due to changes in the association membership and residential makeup and depending who at any given time might be interpreting” the covenant.

The court concluded that when a covenant operates to restrict a property owner’s right to use the property as he or she wishes, the court should disregard external evidence, such as past practices or social trends, and resolve the issue in favor of freedom of use (subject, of course, to state, county and federal law).

The importance of the decision is this: Many HOA members, boards and officers are inclined to think that restrictive covenants can be applied in an expansive manner to restrict activities to which they object. This case made it abundantly clear that the four well-established New Mexico rules that New Mexico courts must apply when determining the meaning of covenants remain unchanged: covenant disputes are to be resolved in favor of the free enjoyment of property, covenants will be interpreted reasonably but narrowly, covenant restrictions will not be expanded by implication and the words in covenants will be given their ordinary meaning.

Decisions like this one underscore the need for HOA members, boards and managers, as well as developers, to carefully consider the wording of all covenants, especially those that restrict use within the development, and to review the language at regular intervals.

HOA boards would do well to consider this case and the previous New Mexico Supreme Court decisions against the expansive interpretation of restrictive covenants before commencing a covenant enforcement action.

The bottom line is this: If an association wants covenants to restrict certain conduct or require certain conduct, the covenants must be clear and unambiguous. If covenants are not clear and unambiguous, they should be amended to make them so.

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