



STR Fellowship of Santa Fe County

*Working Together to Protect Our Property
Rights & Financial Futures*

FAQs

Federal Lawsuit Fighting the Santa Fe County STR Ordinance (2022-07)

What is the STR Fellowship of Santa Fe County?

STR Fellowship of Santa Fe County is a true grassroots organization composed of STR owners across Santa Fe County and the City of Santa Fe. We initially came together in late 2022 to advocate for reasonable regulation, which evolved into having to fight the unjust, unconstitutional STR ordinance passed by the Board of County Commissioners (BCC).

The Fellowship fights for reasonable regulations on short term rentals throughout the state by:

- Advocating for fair STR regulations and against unconstitutional attacks on our property rights
- Supporting the courageous STR owners who filed a lawsuit in Federal court challenging the County's STR Ordinance (2022-07)
- Raising funds to support the lawsuit as it moves through Federal Court
- Coordinating with regional, state, and national organizations battling unfair STR regulations
- Vigorously opposing the Santa Fe County Tax Assessor's plan to reclassify properties with STRs as "non-residential" and dramatically increase our property taxes
- Keeping County and City STR owners updated on the legal issues, lawsuit process and other important matters impacting our ability to operate our short-term-rentals.

The STR Fellowship of Santa Fe County supports the Federal Lawsuit filed in July 2023 by plaintiffs who represent all Santa Fe property owners' interests in challenging the legality of Santa Fe County's Short Term Rental Ordinance and the Property Tax Reclassification. Our operating costs are minimal thanks to the dedicated work of our talented volunteers. 100% of all donations to our GoFundMe campaign go into the legal fund.

There is another local STR group called the **Santa Fe STR Alliance (SFSTRA)**, which is a 501(c)6 membership organization. The Alliance is not involved in the Santa Fe County lawsuit, and is not affiliated with the STR Fellowship.

Why did STR owners file the Federal lawsuit against Santa Fe County?

Plaintiffs in lawsuit believe the county's STR Ordinance (2022-07) violates federal property rights, interstate commerce laws and privacy laws. It is also vague and being administered and directed by one person – Penny Ellis-Greene, the Santa Fe County Growth Management Director – which makes the ordinance unfair and illegal. We oppose provisions in the ordinance that discriminate against non-owner occupied STR owners, as well as the requirements that subject some STR owners to retroactive enforcement of the 2016 Sustainable Land Development Code (SLDC).

The Santa Fe County Lawsuit argues the County ordinance:

- 1. Violates federal property rights** – The ordinance limits how you can use your property without any data to show those limits “protect the greater community’s needs.” *The Constitution expressly protects your right to use your property to its highest good.* STRs are blamed for issues from affordable housing to water shortages. None of their assertions are based upon verifiable facts. The Constitution requires our government must have facts to support their restriction of our rights for the ‘greater good of the community’. They do not have it.
- 2. Violates interstate commerce laws** - *The moratorium on non-owner occupied STRs violates federal law.* It prohibits a party from one state from doing business in another state.
- 3. Violates privacy laws** – The ordinance requires STR owners to send notifications including personal information to adjacent neighbors. *This violates privacy laws and may expose STR owners to potential harassment.* We have reports of STR owners being targeted by neighbors with false claims of violations and guests being assaulted by neighbors. Code enforcement officers have made illegal property searches and drones have been used to surveil STR properties. This is exactly what we feared would happen.
- 4. Is vague** – this makes the ordinance fundamentally unlawful and unconstitutional. Governmental bodies are prohibited from making laws that are vague/unclear.
- 5. Is administered and directed by one person** – In Santa Fe County, the Growth Management Director is both interpreting and enforcing the STR ordinance. *It is unconstitutional for one, unelected government employee to both determine law and enforce that law.* The Board of County Commissioners simply rubber-stamped the GMD's ordinance.
- 6. Is being applied subjectively and openly discriminates against non-owner occupied STR owners, as well as owners of older properties.** Non-Owner Occupied STRS are being held to more restrictive permit requirements. The County is requiring STR owners to produce original development permits for their entire property, regardless of the number of previous property owners and the age of the property. If you do not have the original development permits, your entire property becomes subject to the 2016 Sustainable Land Development Code. We have reports of STR owners being forced to obtain ‘after the fact’ permits and ‘variances’ prior to being considered for STR permits. These unnecessary requirements ordered owners to make expensive changes to their properties: Pouring concrete down bathroom drains, tearing down garages, redoing driveways, making additions to homes - all in order to comply with the SLDC. Many could not afford to make the unnecessary changes, some applied for variances and were denied, and still others were not approved for permits even after making the changes.

7. The retroactive enforcement of the 2016 SLDC (Sustainable Land Use Development Code) and disregard of the “Existing Building Code” is unlawful. No other property owners are subject to this type of retroactive development code review for a business license for existing properties. The costs associated with obtaining so-called “After the Fact” permits or “Variances” are cost prohibitive. *Is your neighbor subject to the same review because their home was built before 2016, they are the 3rd owner and don't have copies of the original development permits?* No. Further, no other STR ordinances in the State of New Mexico or other states have such a requirements.

8. The County is in violation of State Law. Santa Fe County does not have Home Rule Authority granted by the State. In simple terms, that means the County has a limited scope of authority and must abide by State rules in notable areas of regulation. County laws cannot be more restrictive than State law because they do not have Home Rule authority. By contrast, the City of Santa Fe was granted Home Rule in the late 1960s. The City demonstrated its competency to have a higher level of autonomy, assembled a building department, and developed a city constitution approved by voters.

9. The County is not abiding by the State Land Use “Existing Building Code,” which is also included within the County’s Sustainable Land Use Development Code. This means that any structure built before Nov 2016, that can be proven to exist with a warranty deed, a title doc, a tax record (not development permit) is grandfathered. The County is intentionally disregarding state law and its own county land use law and forcing STR owners to make significant changes to their properties when they legally do not have to. It’s tyrannical governmental abuse of power.

The plaintiffs are backed by a significant amount of supportive Case Law:

No fewer than **23** State Appellate and Supreme Courts from Washington to Florida have ruled that short term rentals are residential in “use.” Language used in numerous rulings says STRs are:

- “No different in use than primary, vacation and long-term rental residences. Only the duration of use is different.”
- “Short term rentals are used for the standard residential functions of sleeping, bathing and eating.”
- “Short term rentals are not businesses. No money exchanges hands in the residence.”

New Mexico Appellate cases of 2009 and 2013 ruled that STRs are residential in “use.” This is settled state law, yet our government officials disregard this, using language in the state statute as their excuse for targeting STRs and comparing them directly to “hotels, motels and similar structures.” Rulings in Las Vegas, NV, Austin, TX and recently in Dallas, TX have affirmed this. Rulings in New Mexico and around the country demonstrate, when property owners come together and sue to protect their rights, the Courts rule in STRs’ favor.

How are they enforcing the STR ordinance?

Rick Lovato sent enforcement letters to “about a hundred” unregistered/unlicensed STRs at the end of December 2023. Every violation comes with a potential fine of \$300 per day and even jail time. This enforcement action is likely to cause platforms like Airbnb and Vrbo to deactivate listings that do not have registration or license numbers. Penny Ellis-Greene also inserted a “severability clause” into the STR ordinance – probably in response to our lawsuit. This clause would allow her to continue enforcing the rest of the ordinance even if one aspect of it is found to be illegal by a court.

Didn't the county conduct a study to assess the impacts of STRs on communities?

Yes, the county paid \$20,000 to Santa Fe-based consultant Southwest Planning & Marketing to determine the impact of STRs on the community. The final report, "Analysis of the Impacts Related to Short-Term Rentals in Santa Fe County," was delivered in October 2023, and concluded that **there was absolutely no evidence of negative impacts from short term rentals**. In fact, the study found:

- STRs do not have an impact on affordable housing in Santa Fe County
- No data supports that Non-Owner Occupied STRs are more likely to violate regulations
- The County has received only 1 complaint about an STR since June 1, 2023
- 84% of county residents believe STRs are good for the economy
- More than half felt STRs did not alter their community's traditional character
- 54% said STRs had no impact at all on their quality of life

In other words, the study found **no reason to impose rigorous STR restrictions** in Santa Fe County. In fact, the study suggested that STRs, on balance, are beneficial to the county!

How much taxpayer money has Santa Fe County spent on the STR regulations?

At least half a million taxpayer dollars have been spent so far on consultants and staff time to identify STRs, process applications, and study the impacts of STRs on the community. The county currently pays a company called Granicus more than \$100,000 a year to support STR regulation. They've been paying Granicus this obscene amount since 2020 – more than two years before the STR ordinance was even proposed. Our team discovered Granicus has been charging Santa Fe County taxpayers for multiple services like a "24 hour hotline," "online permitting platform," and "monitoring and enforcement" – that the company has never delivered.

In addition, the county was forced to pay staff overtime and hire temporary workers just to process the cumbersome, onerous, and unnecessarily complex applications for STR registrations and licenses. Since there are only about 350 STRs currently registered in the county, the county has spent more than \$1,500 to register each STR. Why is the county spending so much money on so few properties?

What is the Sustainable Land Development Code (SLDC)?

The Sustainable Land Development Code (SLDC) is the massive, 770-page law passed in 2016 that governs all aspects of land use, permitting and development in the county. The SLDC was "embedded" in the STR ordinance through a single mention in section 7.1 that states "STRs shall comply with all applicable requirements in other county ordinances, including, but not limited to, the SLDC..." In other words, the 10-page STR ordinance incorporates the entire 770-page SLDC.

To obtain an STR registration or license, the entire property (not just the space being used as an STR) must be in full compliance with the SLDC, even if the property was built long before 2016. We have reports of STR owners who were told to pour concrete down bathroom drains, tear down garages, eliminate driveways, and even make costly additions to their homes – all in order to comply with the SLDC before they could get their STR registration or license.

We believe this retroactive enforcement of the SLDC is unlawful because it disregards the state's "Existing Building Code" which grandfathers existing buildings from enforcement of new zoning rules

like the SLDC. The County is also in violation of state law because it does not have Home Rule Authority, which means county laws cannot be more restrictive than state law.

The county's Growth Management department is administering the STR ordinance as a land use regulation, when in fact it is a special licensing and restrictions rule that does not run with the land as most other "land use" approvals or restrictions do. The STR ordinance imposes restrictions on the use of some privately owned residential properties while not imposing the same restrictions on other properties in the same residentially zoned areas. That's called "spot zoning" and it's illegal.

For example, the BCC is about to vote on amendments to the STR ordinance that impose a cap on the number of non-owner occupied STRs and set new limits on the number of guests who can stay in an STR. The county doesn't restrict people from buying multiple properties to use as vacation homes or long-term rentals, and they could never tell you how many guests you can have stay in your home overnight. But they are trying to impose these discriminatory rules on STRs.

Why am I hearing that property taxes on my STR may increase as much as 30%?

The Santa Fe County Tax Assessor, Isaiah F. Romero, sent notifications to STR owners that he plans to reclassify properties that are primarily used as STRs as "non-residential" in 2024. This change will:

- Immediately reassess your property to current market value
- Impose commercial property tax rates, which are significantly higher than residential rates
- Eliminate the 3% annual cap, so property taxes can increase much more every year

Santa Fe Assessor Isaiah Romero's notification to STR owners detailed his interpretation of the state statute definition of residential property: "Based on information received from the City and County Land Use Departments, or a third party vendor, your property has been identified as being used as 'short-term rental.' Based on the definition of 'residential' as used in the Property Tax Code and as per New Mexico (NMAC) state statute 7-35-2 (K), 'residential property' is defined as follows: 'Residential property' means property consisting of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures. As used in this subsection, 'dwellings' includes both manufactured homes and others structures when used primarily for permanent human habitation, but **the term does not include structures when use primarily for temporary or transient human habitation such as hotels, motels and similar structures.** As a result, our Office is requiring that you provide additional information as to how your property is currently being used in order to determine the predominant use of your property, being either 'residential' or 'non-residential.'"

Similar changes have been proposed by the Tax Assessor in Bernalillo County and Lincoln County, and will likely be coming soon to other New Mexico jurisdictions.

Will my mortgage or insurance be affected if my property is reclassified?

Absolutely. The Santa Fe Association of Realtors (SFAR) has expressed a grave concern that if the Santa Fe Tax Assessor isn't stopped, reclassification of your STR as "non-residential" could cause your mortgage to be recalled and your homeowners insurance to be cancelled.

How would “non-residential” reclassification affect my home’s value?

If the re-classification is not stopped, property values in Santa Fe will be negatively impacted. The Santa Fe Association of Realtors has communicated to the Tax Assessor that his tax change will impact sales, as it will limit a property’s use and thus decrease its market value. Properties will have to be disclosed as “commercial” and the significantly higher property taxes will be shown on the MLS. Who is going to want to buy a home that is classified as commercial and subject to high commercial property tax rates? How will a prospective buyer obtain a mortgage or insurance for a home classified as commercial in a residentially zoned area?

I heard some STRs are also getting hit with back-tax bills from the state. Is that true?

Yes! We received information from fellow STR owners that they have received “back tax due” notices from the New Mexico Department of Taxation stating that they have not paid their GRT on their STRs for years. Some report demands for back taxes of \$5,500 to \$500,000.

We all know the hosting platforms such as Airbnb and VRBO collect GRT (and now Lodgers Tax) on our behalf and remit them to the city/county. There was a long-standing issue where the taxes collected from county STR owners was being remitted to the city's coffers by mistake because the Board of County Commissioners (BCC) never sent remittance instructions to the Airbnb/VRBO. In July 2023 the county finally corrected this problem. Yet, the city and county are reporting STR owners to the state taxation department. Instead of cleaning up their accounting issues, they are placing this onerous task on STR owners to prove the GRT was remitted to them. If you receive such a notice, please reach out to us so we can relay the information to our legal team.

Why should I care about the lawsuit if my STR isn’t in Santa Fe County?

The County lawsuit is likely *the* most important property rights litigation New Mexico has seen in a generation or more. Our attorneys have advised a successful Federal Court ruling will protect all County STRs and by extension City and State STRS as residential in “use,” preventing STRs from being unfairly restricted, regulated or taxed by the county, city or state.

On the other hand, if the County gets away with their unlawful ordinance, the city of Santa Fe and other jurisdictions are likely to seek to incorporate the more restrictive elements of the Santa Fe County STR ordinance into their own STR regulations, and tax assessors statewide will proceed with their plans to tax STRs as commercial operations. The City of Santa Fe is currently in the process of revising its Land Use Code, which is expected to include more STR restrictions.

- **The Santa Fe County STR Lawsuit will stop the Santa Fe Tax Assessor’s ability to change your property tax “use” classification from “residential” to “non-residential.”** A major challenge within the SFC STR lawsuit is the fact that NM Appellate Court has ruled in 2013 that STRs are residential in “use.” This is important because the Tax Assessor’s sole foundation for changing STR property valuations is based upon his interpretation of the property’s “use.” *The NM Appellate Court ruled: “STRs are primarily residential, no different than primary, vacation, or long term rental homes.”* In addition, 23 Appellate and State Supreme Courts across the country have ruled the same. STRs are RESIDENTIAL in USE, not commercial.

- **The successful outcome of the SFC Lawsuit will prevent your property taxes from being increased 30% in one year and prevent high, compounded annual increases in the years to come.** It will preserve and protect your property's market value. This is the single most important action taken to protect property rights in Santa Fe.
- **The SFC Lawsuit will eliminate the risk of your mortgage being recalled** because it will now be considered “non-residential” with the Tax Assessor’s “use” re-classification. The Santa Fe Association of Realtors (SFAR) has expressed a grave concern that if the SF Tax Assessor isn’t stopped, the re-classification of mortgages is a real possibility. How will you obtain a commercial mortgage for your home after your residential one is recalled?
- **The SFC Lawsuit will prevent property insurance costs from skyrocketing** by preventing your property from being re-classified as non-residential.
- **If the re-classification is not stopped, property sales in Santa Fe will be negatively impacted.** SFAR has communicated to the Assessor that his tax change will impact sales, as it will limit a property’s use, thus decreasing its market value. Properties will have to be disclosed as “commercial” and disclose the significantly higher property taxes in the MLS.

How can I contribute to the legal fund supporting the lawsuit?

Every STR owner in New Mexico has a stake in this legal fight. If we win, every city and county as well as the tax assessor will be forced to rewrite regulations that unfairly target STRs. Your contributions to the GoFundMe are critical to keep the lawsuit moving through the courts. The legal team of Stephen Domas of DomasLaw, LLC, lead NM counsel. and Christopher Grimmer, co-counsel, is representing our interests in the case. Both attorneys have provided months of work without pay to get us to the point of filing. They believe our case is strong, solidly supported by case law, and morally just. They believe we must stand up to this tyrannical abuse of our rights.

Please consider donating to the legal to support our efforts to end unfair STR regulation and taxation. Every dollar goes directly to our legal expenses. Go to www.GoFundMe.com and search for “**Fight Santa Fe County's Unjust STR Ordinance!**” and give generously.

You can aim your phone camera at this code to be immediately directed to the GoFundMe site:



You can also send a check to:

DomasLaw, LLC
 128 Grant Avenue
 Suite 102
 Santa Fe, NM 87501

Note on check: "STR Lawsuit Donation"

Thank you for your interest and support! We are stronger together.