

# Town of Eliot

INCORPORATED 1810

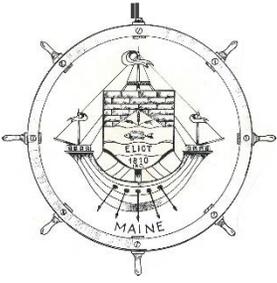
Code Enforcement Department

1333 State Road, Eliot, ME 03903

Tel: (207) 439-1813 Extension 16

## **DECLARATION OF COVENANTS AND RESTRICTIONS FOR ACCESSORY DWELLING UNITS**

1. This declaration must be notarized. If you bring this paperwork to the Code Enforcement Office prior to signing, the Code Enforcement Officer will review the paperwork for you, and notarize the document.
2. This declaration is required to be filed with the York County Registry of Deeds. All four (4) of the following pages are required to be filed.
3. Prior to scheduling a Certificate of Occupancy inspection for the Accessory Dwelling Unit, a copy of the declaration, with the book and page stamp from the registry, must be filed with the Code Enforcement office.



# Town of Eliot

INCORPORATED 1810  
1333 State Road, Eliot, ME 03903

## DECLARATION OF COVENANTS AND RESTRICTIONS FOR ACCESSORY DWELLING UNITS

This Declaration of Covenants and Restrictions is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, whose mailing address is \_\_\_\_\_, hereinafter referred to as “Declarant.”

WHEREAS, Declarant is the owner of property located at \_\_\_\_\_, Assessor’s map \_\_\_\_ lot \_\_\_\_\_, in the Town of Eliot, Maine, which property is described in a deed recorded in the York County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ (the “Property”); and

WHEREAS, Declarant has received a permit from the Town of Eliot permitting the location of an accessory dwelling unit on the Property pursuant to section 45-459 of the Municipal Code of Ordinances of the Town of Eliot, Maine (the “Code”); and

WHEREAS, the accessory dwelling unit on the Property may be occupied only in compliance with the requirements of section 45-459 of the Code;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, occupied, improved, transferred, sold, leased and conveyed subject to the covenants and restrictions set forth below, which covenants and restrictions shall be binding upon all persons acquiring or owning any interest in the Property, including Declarant and Declarant’s grantees, successors and assigns, and which shall be deemed to run with the land.

1. The accessory dwelling unit located on the Property shall be designed, used and occupied only in compliance with the requirements of section 45-459 of the Code, a copy of which is attached to and made a part of this Declaration.
2. In order for the accessory dwelling unit to remain lawful under the Code, either the accessory dwelling unit or the principal dwelling unit on the Property must be occupied by a person who has a legal or equitable ownership interest in the

Property and bears all or part of the economic risk of decline in value of the Property and who receives all or part of the remuneration, if any, derived from the lease or rental of the accessory dwelling unit or the principal dwelling unit.

3. This Declaration is made in consideration of the issuance of a permit by the Town of Eliot for the accessory dwelling unit and the Declarant hereby agrees for himself/herself and his/her heirs, successors, administrators and assigns, that if the accessory dwelling unit is used or occupied in violation of this Declaration, the Town of Eliot may seek all available remedies, legal and equitable, to secure compliance with the covenants and restrictions of this Declaration.

IN WITNESS WHEREOF, \_\_\_\_\_ (Declarant) has executed this instrument on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Declarant

STATE OF MAINE  
YORK COUNTY

Date \_\_\_\_\_, 20\_\_\_\_\_

PERSONALLY APPEARED the above-named \_\_\_\_\_, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed.

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Date Commission Expires

# TOWN OF ELIOT, MAINE

## Municipal Code of Ordinances

Sec. 45-459. - Accessory dwelling unit.

(a) An accessory dwelling unit (ADU) is a small apartment which is part of an existing or new single family owner-occupied home, and which is clearly secondary to the single family home. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.

(b) Owner-occupied means that either the principal dwelling unit or the accessory dwelling unit is occupied by a person who has a legal or equitable ownership interest in the property and bears all or part of the economic risk of decline in value of the property and who receives all or part of the remuneration, if any, derived from the lease or rental of the dwelling unit.

(c) An accessory dwelling unit may be permitted as an accessory use to a single family home under the following conditions:

- (1) Only one accessory dwelling unit (ADU) is permitted per lot. The accessory dwelling unit shall be located in the same building as the principal dwelling unit or in a building accessory to the principal dwelling unit. Any structure containing an accessory dwelling unit must meet minimum yard and setback requirements for principal structures.
- (2) A building permit for the proposed construction of a new ADU or the creation of a new ADU within an existing building, must be issued by the CEO. Planning board approval is not required for an ADU.
- (3) A building permit for a new single family home may include an ADU as long as the provisions of this section are met and the building conforms to all of the dimensional requirements for the zone in which it is being built. An ADU may be included in a new home constructed on a lawful nonconforming lot of record which may be built upon pursuant to [section 45-194](#)
- (4) The property owner must occupy either the principal dwelling unit or the ADU as their principal residence, and at no time receive rent for the owner-occupied unit. Principal residence must be proven by voter registration or other evidence acceptable to the CEO.
- (5) In no case shall an ADU be more than 650 square feet or less than 300 square feet, nor have more than two bedrooms. Area shall be measured using the interior dimensions of the ADU.
- (6) A home occupation or home business may be conducted, subject to existing regulations, as an accessory use to either the ADU or the principal dwelling unit, but not both.
- (7) Apartments built prior to November 2, 1982 and existing on March 16, 2002, shall be considered lawful nonconforming uses which may continue pursuant to [section 45-191](#). Any apartments existing on (effective date of [section 45-459](#)) and built on or after November 2, 1982 shall not be considered lawful nonconforming uses, unless the property owners applies for a building permit for the ADU and brings the unit up to the health and safety provisions of the minimum housing code standards. A grace period of one year from the adoption of this article will be allowed for homeowners to modify such unlawful non-conforming units. The CEO will have the authority to waive certain space and setback requirements for such unlawful nonconforming units where full compliance would be impractical. On March 16, 2003, all owners of unlawful nonconforming units who have not brought them up to the health and safety standards of the minimum housing code, will be in violation of this section and subject to fines per [section 45-6](#) (b).
- (8) When any property containing an accessory dwelling unit is sold or transferred, the new owner must continue to meet the requirements of this Section in order to continue the use of the

- accessory dwelling unit. Should the new owner not meet the requirements of this section, the use of the unit must be discontinued. However, any lease in effect at the time of transfer may be continued until it expires or up to one year from the date of the transfer, whichever is shorter. This paragraph (8) does not apply to an apartment built before November 2, 1982 and existing on March 16, 2002.
- (9) To ensure continued compliance by current and subsequent owners, the applicant shall provide and record in the York County Registry of Deeds a covenant in a form acceptable to the town attorney that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by a person who owns the property. It is also required that any owner of the property must notify a prospective buyer of the limitations of this section.
  - (10) New accessory dwelling units are not subject to the requirements of the Growth Management Ordinance, [chapter 29](#). However, the number of accessory dwelling units that may be issued building permits within a calendar year is limited to a total of 12, to be issued on a first-come, first-served basis in the order in which the code enforcement officer receives completed applications for building permits under [section 45-127](#). If two or more applications are received simultaneously (as in as a single mail delivery), the code enforcement officer shall determine their order by random selection. The provisions of this paragraph are retroactive to January 1, 2003.
  - (11) This provision shall not prohibit the conversion of a single family dwelling to a multifamily dwelling so long as said conversion complies with all current zoning requirements. However, if such conversion is approved, any accessory dwelling unit previously allowed under this section must be incorporated into and meet all the requirements for one of the units of the multifamily dwelling. Multifamily dwellings shall not include accessory dwelling units as defined in this section.
  - (12) Design criteria:
    - a. An ADU shall be designed to maintain the architectural design, style, appearance, and character of the main building as a single-family residence. If an ADU extends beyond the existing footprint of the main building, such an addition must be consistent with the existing facade, roof pitch, siding, and windows.
    - b. Exterior stairs are restricted to the rear or sides of the structure.
  - (13) Occupancy of an ADU shall be limited to the following: No more than two persons may occupy a unit of 300 to 400 square feet of gross floor area; no more than three persons in a unit ranging from 401 to 600 square feet of gross floor area; and no more than four persons in a unit of 601 square feet or greater of gross floor area.
  - (14) One off-street parking space must be provided for the accessory dwelling unit in addition to the off-street parking required for the principal dwelling unit.
  - (15) An occupancy permit must be issued by the CEO prior to occupancy of an accessory dwelling unit created or modified pursuant to this [section 45-459](#)
  - (16) The CEO shall prepare a biennial report to the planning board on accessory dwelling units which will include: (a) the number of units established; (b) the geographic distribution of the units; and (c) the average size of the units. The planning board shall reassess the provisions of this section allowing accessory dwelling units every five years or sooner if records show that 20 percent of single family homes have ADUs.
  - (17) The code enforcement officer may inspect an accessory dwelling unit, with or without complaint with a minimum of 48 hours of receipt of notice of inspection to the property owner to ensure compliance with the section. Any property owner found in violation of this section shall have 30 days from the date of written notice to correct such violation. Failure to correct the violation shall result in the revocation of the accessory dwelling unit certificate of occupancy, as well as subjecting the property owner to the remedies and penalties provided in sections [45-101](#) and [45-102](#)

*(T.M. of 3-16-02, (art. 4); T.M. of 6-10-03; T.M. of 6-14-05)*

