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Home Businesses and “Residential Only” Covenants

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Increasingly, due to lengthy commutes and technological improvements, “telecommuting” or working from home has become a viable means of making a living. In the community association context, occasionally a resident’s desire to work from home or operate a home business may conflict with the association’s governing documents.

In most cases, community association covenants will restrict the use of homes and community facilities to purely “residential” use. In some cases, covenants will expressly prohibit “business” uses. In either case, Boards are often faced with the challenge of balancing the need to enforce the covenants with the need to reasonably accommodate the lifestyles of their residents. Striking an appropriate balance, however, is possible.

A good place to start when examining a proposed “non-residential” use is confirming that the use in question is consistent with local zoning ordinance. If the resident’s use is not consistent with zoning, the municipality will

ordinarily be obligated to see that the use ceases.

If a use is consistent with local ordinances, the “residential only” covenant itself must be looked at closely. If the covenant limits the use of homes for “businesses”, certain uses for which business licenses are required (e.g., daycare, salons, etc.) may be prohibited. Where the language only limits home use to “residential purposes” or the like, a more difficult question is presented.

The courts that have examined the meaning of “residential only” restrictions have had to do so on a case-by-case basis. Many courts have ruled that “residential only” restrictions do not preclude all home businesses. Instead, if a home business is essentially residential in character, some courts have held that it does not violate a community’s “residential only” restrictive covenants. The next question is which home businesses can be classified as “residential”?

In determining whether a home business is “residential” in character, courts have focused on many of the following factors:

- ? Is the home business subordinate to the principal use of the unit or dwelling?
- ? Is a separate covenant, apart from the “residential” covenant, violated by the use in question (e.g., does the business require the use of commercial vehicles within the community which violates a separate parking restriction)?
- ? Does the home business activity adversely affect the Association’s insurance coverage?
- ? Does the home business comply with the local zoning, health and safety ordinances?
- ? Does the home business display any exterior signs or other marketing displays that are not residential in nature?
- ? Does the home business or its clientele disrupt the normal traffic or parking patterns in the community?
- ? Does the home business disturb the regular noise levels or peace and quiet in the community?
- ? Does the home business involve the storage, use or sale of goods, equipment or materials that are not customarily found within a home?
- ? Does the home business impose an undue burden on the community’s recreational facilities?

Traditionally, courts have strictly construed covenants that restrict the use of property in favor of the free use of the

property. On this basis, courts have generally accepted home business or other uses shown to be “residential” in nature. However, if the governing documents of your association clearly prohibit a particular use of a lot or unit, and the Association has consistently enforced this use prohibition, then a court is more likely to enforce the Association’s prohibition. This is true even if enforcement precludes a resident from using his or her home for a business that would otherwise be “residential” in character.

The provision of day-care often brings the meaning of the “residential purposes only” covenant into direct scrutiny. Day-care providers often argue that, while the use is a business, it is a use that is consistent with “residential” nature of the community. Day-care proponents also argue that the children in a day-care are doing the same things and participating in the same activities as the other children who live in the community. While courts have reached different conclusions on day-care, at least one local court (Fairfax Circuit) has found that the use of a home for day-care violated a “residential purposes only” covenant given traffic, noise and other incidental impacts. Maryland, on the other hand, has sought to clarify the issue statutorily by limiting the right of association’s to rely upon “residential” covenants to restrict day-care and empowering the membership to choose to restrict or allow the same.

We have been suggesting that our clients focus on the impact, principally the

external impact, of businesses or other uses. If the use has little or no impact on the community, most Boards have been tolerant of the use of homes for telecommuting or other “business” purposes. To add consistency to the review process, we have been recommending that our Boards consider adopting a written home business policy. In such a resolution, the Board can outline acceptable and unacceptable criteria for home business (e.g., sign use,

traffic, employee visits, etc.). Such criteria should aid residents, as well as management and the Board, in evaluating questionable cases.

If your Association would like more information on home businesses and residential only covenants, please contact one of our community association attorneys.