

# March 2006

## Telecommuting and Home Occupation

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A recent study published by the Reason Foundation reported that nearly 4.5 million workers telecommute to most work days and that more than 20 million workers telecommute for some period at least once a month. Moreover, in a society in which both men and women are under increasing pressure to balance work and family life telecommuting continues to increase in popularity. This is particularly true in the Washington, D.C. metropolitan area, which, according to a recent survey, has some of the worst traffic congestion in the country.

Government representatives at both the federal and local level have taken note of this trend. At the federal level, the Occupational Safety & Health Administration ("OSHA") has stated that an employee's home is not a business establishment that is subject to OSHA regulations. However, the exemption does not apparently apply to industrial and manufacturing work.

Local governments have also taken action in response to this trend. Fairfax County amended its zoning laws a number of years ago to permit individuals with home occupations to employ one non-resident person within the home. Other jurisdictions, like Maryland, have liberalized regulations allowing such activities as day care services for children. The liberalized regulations make it easier to operate a day care service from the house.

Many community associations are increasingly being asked to address issues relating to private covenants that either prohibit or restrict the use of the units/lots

to residential use. Years ago, these restrictions made sense. Today, that is not always true. Many business activities can now be conducted in a home in a manner that is so unobstructive that no one can seriously object.

For deciding gray area cases, it is helpful for community associations to establish some guidelines to differentiate between permissible and non-permissible residential uses. In essence, these guidelines provide the interpretative criteria for the application and enforcement of the skeletal restrictions in the community association's governing documents. We generally counsel our clients to permit or approve non-residential uses that:

- a. Are subordinate to the principal use of the unit/lot as a residential dwelling;
- b. Do not require the use of commercial vehicles within the community (unless of course the Association permits commercial vehicles on the property);
- c. Do not adversely affect the Association's insurance coverage or costs;
- d. Comply with the local zoning, health and safety ordinances;
- e. Do not involve any exterior displays of any kind of a non-residential nature (i.e., signs);
- f. Do not disrupt the normal traffic or parking patterns within the community;

g. Do not disturb the regular noise levels or the peace and quiet within the community;

h. Do not involve the storage, use or sale of goods, equipment, or materials which are not customarily within the home; and

i. Do not impose an undue burden on the community's recreational facilities.

There will be of course other criteria applicable to certain community associations. The above list is in no way intended to be exhaustive; but it is designed to sharpen the focus of a Board that might be grappling with a close case.

If you believe your Association would benefit from the establishment of some guidelines, please do not hesitate to contact one of the community association attorneys in our office.

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