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Home Business Operations: How Does This Affect You?

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With many homeowners feeling the economic pressures of increased fuel prices and a declining economy, many are forced to search for more cost-effective ways to supplement and expand their household incomes. As a result, many homeowners are opting to operate full-time and part-time businesses from within their homes. Unfortunately, these homeowners may make this decision without consulting the board of directors or reviewing the governing documents or rules and regulations.

The legal documents of many associations require that lots or units be used for residential purposes only. Even if your community's documents are silent on this issue, your association is most likely granted the authority to establish, adopt and enforce regulations to protect the general welfare of its residents. As a result, associations routinely adopt policy resolutions specifically dedicated to this topic. As with any policy regarding the use of an owner's property, we encourage our clients to adopt

reasonable measures that provide clear guidance as to what is prohibited.

Problems often arise when an association seeks to enforce these policies. An owner is likely to challenge the policy rather than forego the benefits of their business. In order to survive such a challenge, many associations adopt resolutions that mirror restrictions found in local ordinances. For example, Fairfax County ordinance permits home business, provided they are in compliance with certain standards, such as a prohibition on commercial signage, limits on the number of commercial vehicles allowed and limits on the number non-residents engaged in the business that are allowed on the premises. Loudoun County prohibits excess traffic generated by the business and requires at least one member of the family residing within the property to be engaged in the business. Prince William County goes even further by requiring that no more than 25% of the gross floor area of the property be devoted to a home occupation.

In Maryland, both the Property Owners' Association Act and Condominium Acts include provisions that proscribe how an association may enact rules intended to limit the operation of home businesses. These statutes do not apply to associations that enacted home business rules or regulations prior to July 1, 1999, otherwise the restrictions detailed in Section 11-111.1 of the Maryland Condominium Act and Section 11B-111.1 of the Maryland Property Owners Association Act apply to those home businesses that are defined by the statute as family day care or "no impact" businesses because they provide day care services or operate a business that generates a limited amount of noise, requires limited storage and otherwise is subordinate to the residential use of the dwelling. These statutes limit the rules and regulations that homeowners associations and condominiums may impose upon a "no impact" home business or family day care business and they require any rules imposed by the Association that are intended to regulate these businesses to be adopted with the approval of a majority of all of the eligible votes in the association.

There is also regulation at the county level. For example, Prince George's County prohibits veterinary offices, antique shops, pharmacy shops or photography studios to be run as home businesses. The county also prohibits commercial signage (other than a business identification sign) and has a requirement that the floor area of the building devoted to the business not exceed an area equal to 45% of the gross floor area. In Montgomery County, the sale of goods on the premises is prohibited and the home business must be subordinate to the use of

the dwelling for residential purpose. Montgomery County also prohibits external modifications that detract from the residential appearance of the dwelling unit.

Any association considering adopting a home-based business resolution should refer to the ordinances that apply in the particular association's jurisdiction before deciding whether or not to adopt a policy on in-home businesses. Some associations have chosen to incorporate even more stringent standards so that they can address problems more effectively and without seeking intervention by local authorities. Many associations enact rules pertaining to licensure and permits for the business, adequate insurance coverage, and limits on visitors, traffic and disturbances.

If an association desires to regulate home businesses, we recommend that it adopt a policy resolution clearly identifying any requirements and prohibitions that reflect the community's particular governing document-based restrictions or prohibitions. We recommend that the primary focus be placed on the external impact that home-based businesses may have on the community. If the external impact is negligible, we recommend that our clients not get involved in regulating the operation.

We also recommend that any policy adopted by the board include an application process for each owner seeking to operate a home business. The application process will serve to control the number of applicants and provide each community with a means to regulate the number, types and potential impact of home businesses being operated within the community. Requiring

compliance with the application process will hopefully encourage owners to comply with the policy once the business is approved and in operation.

An application should require information on the activities that will be conducted on the premises, the hours of operation, parking and traffic impacts, permits and licenses required for the proposed business, insurance coverages, increases in trash and utility usage, etc.

We strongly recommend that each association have an enforcement provision as part of its policy, when permitted by either state law or the association's governing documents. For example, if an application is denied and an owner continues to run the operation, how will enforcement be handled? Will penalties be charged? Will the association revoke privileges?

Unfortunately, there is no "one size fits all" approach to these issues, and any such policy should be reviewed by an attorney before implementation. If you believe your association would benefit from the establishment of such a policy, please do not hesitate to contact one of our community association attorneys directly.