

Keeping It Legal

Before you set up shop at home, make sure you've got all your zoning and licensing bases covered.

Today's Most Read

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In starting a home business, you should consider the legal issues of starting any business (addressed in previous columns) as well as your local zoning regulations and any restrictions on the use of your property.

Zoning Regulations

Municipal regulations for your town determine what types of businesses may be run from your home. These vary by town, so you'll want to look up the regulations for your town by visiting the zoning board or local law library, which is usually located near the local courts. When you go, if you speak with zoning board or other officials, be careful not to give out your name or information to them. Just make general inquiries about the regulations, your planned business and your area of town. You don't want to inadvertently create problems by highlighting your home as a spot for investigation. Alternatively, you can have a friend or your attorney find out such information for you.

Generally, the municipal regulations set forth broad terms of permitted uses such as "customary home businesses" or a list of uses such as "professions and domestic occupations and crafts or services" or "law, dentistry, medicine, music lessons, photography, cabinet making" and so on. These regulations are broadly worded to allow for judicial interpretation in a case challenging a use, which comes before a court. Case law for your state would outline the factors that a court would consider in determining whether there is a violation of the local regulations.

Local regulations for home businesses also often restrict:

- The number of employees the business can have (often very few at most).
- The number of customer and third party (delivery, vendor and so on) visitors and the frequencies of their visits to your home (per hour or per day).
- The percentage of your home and which parts of your home (garage, den, shed) you can use for a business.
- Signs for the business.
- The resulting traffic, noise and parking effects of the business.

You'll want to be careful and aware regarding these matters, as your neighbors are usually the ones to complain to the zoning authorities. In other words, running a business so that your neighbors are unaware is a good way to ensure that the local authorities won't come to your door.

You also want to talk to your accountant or read information from the IRS on the issues of tax deductions regarding home businesses. They are often advantageous but can have restrictions, which may be at odds with the local regulations. So it's a good idea to read up on both before taking any actions in terms of where and how you'll set up the business on your property. Be aware that any claims you make to the IRS or other government agencies about usage of your home and business could end up being used in a later investigation or audit, so be sure to be truthful and consistent in the information you provide.

Private Restrictions on Land Usage

Secondly, you need to consider any private restrictions on how you can use your property. These may be in the form of use covenants on the land, co-op or condominium rules, or lease or rental agreements.

- **Covenants:** Land covenants are legal restrictions on the title or deed to the property that have been formally agreed to, or imposed by law on the property, by yourself or other property owners regarding use of the property. There may be restrictions on business uses of the property. Subdivisions typically have extensive covenants on the property that restrict usage, so if you live in a subdivision, be sure to get a copy of them from your division management.
- **Rules:** Cooperative and condominium living places have governing rules that you agree to when you are given permission to live there. These are often lengthy and contain many restrictions on noise, use of property, activities at different times of day and so on. You'll want to read yours carefully before starting a home business. If you violate them, you can be forced to move out or sell your property.
- **Leases:** Standard apartment and home leases contain restrictions on noise and use to protect the other tenants and neighbors, as well as to ensure the landlord's protection from liability for unusual or unauthorized uses of the property. Thus, be sure to read your lease carefully prior to opening a business, especially how the agreement may be terminated. For example, if you are on a month-to-month lease (vs. a yearly lease), the landlord can evict you (and you can leave) with one month's notice, without reason. If he or she doesn't like the effects of your home business, your landlord might choose to exercise his or her right to evict you.

Other Considerations

Finally, many potential home businesses also require state licenses--such as child care, talent agency, auto repair, private investigation and others. After you've researched your town's regulations on home businesses, be sure to call the Secretary of State and ask about what agency, if any, regulates your planned business and what you need to do to get a license. Often you can also find this information through the Secretary of State Web site or other state agency Web site.

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