

WIEGAND ATTORNEYS & COUNSELORS LAW LIBRARY

The Legal Side of Home Businesses

Sometimes it seems that home-based offices are as common as snowflakes in Alaska. Corporate downsizing has played a role. And personal computers, modems and faxes have made it easy for a home office to communicate with the world at the push of a button.

Starting a business at home has lots of pluses. You're comfortable there, the price is right, and you can dress as casually as you like. But just because it's your PC in your den, you don't necessarily have the right to do whatever you want. There are a few legal hurdles to clear if you're starting a home-based business. As usual, it's better to deal with these early rather than late. Your lawyer can help with these matters and with home-office taxes and insurance, which we'll cover in a later issue.

Zoning

Depending on what you're doing and where you're doing it, your home-based business might mean you need to get acquainted with your locality's zoning department.

Zoning is a way of keeping neighborhoods from getting cluttered with all sorts of things. That's why your town or city probably has zones for heavy industry, commercial space and residential space -- as well as some for mixed use.

A possible problem is that your neighborhood might be strictly zoned for residential use only. You can find out by asking your zoning officials some questions based loosely on the business you're thinking of starting.

The quieter and less obtrusive your business is, the more likely you're okay with the law. Red flags are apt to be raised by visibility, noise, smell, signs, increased traffic and employees.

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If your preliminary inquiries indicate that there might be trouble (or if trouble comes after you've started because the business has grown), you may have several options:

1. Adapt the business so you comply. Make sure your signs are the right size, that you don't use too many parking spaces and that you have only the maximum number of employees the zoning laws allow.
2. Try to get the law to adapt to your business. The zoning language may go back decades, long before your type of business ever existed. It may be possible to convince those in charge of enforcement that your business does not violate the spirit of the law.
3. If that fails, your zoning laws probably allow you to petition the powers that be for either a **special use exemption** or a **variance**. Either one essentially creates an exception for you. You'll have to make a formal request to the zoning board or a similar governmental body. There probably will be hearings to let your neighbors complain if they're so inclined. It's a good idea to ask your lawyer to represent you. Be prepared to show that your business causes minimal problems. Try to secure testimony from neighbors who aren't bothered.
4. If you're on the edge of a zone, you could try to have the small area covering your home rezoned slightly so you're in a permissible zone, rather than one in which you're violating the law. This probably requires a vote by the city council (or whatever your local legislature is called), and going this route might be a big deal.

Private Regulations

Even if the zoning folks don't raise any problems, you might run afoul of other regulations. If you live in a condo or co-op, there is certainly a governing document (the **declaration** or **master deed**) that spells out the rules and regulations of living there. If you rent, there's probably a lease that tells you what you can and can't do. Sometimes residential developments have **declarations of covenants and restrictions** put in by the builder to assure buyers that the quality of living there won't deteriorate.

All of these probably include some standard language designed to deter or limit the business use of the property. A good first step when you're thinking about starting up a business in your apartment or house is to look at whatever document sets the rules. Maybe what you're thinking of isn't prohibited.

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If it is, it might be possible to resolve any potential problems with a little negotiation. Maybe the landlord or condo board won't think your proposed business will be disruptive once you explain it to them. Let them know that the business will be run during normal hours with little extra noise and traffic. Try to have it recognized by a rider in the lease or a waiver in the declaration.

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- Probate and Trust
- Financial Planning
- Elder Money Management
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