

Women Lawyers and Home-Based Offices: What You Need to Know About Zoning

By: Patricia E. Salkin*

According to a recent report commissioned by the Small Business Administration, roughly half of the businesses in the U.S. are home-based businesses. Living in the "Technology Age," lawyers can conduct research, transmit documents, converse with certain types of clients, and complete transactional work without leaving the comfort of the home. There are many reasons why women lawyers in particular might be interested in this workplace option. First and foremost, a home office offers great flexibility for those that have daytime family obligations such as kids, an aging parent, or an ill family member. A home office also allows for a significant reduction in office overhead (e.g., no commercial rent or commercial utility bills), not to mention savings on mounting gas prices and parking, and the possibility of taking a tax-deduction for a portion of certain home expenses that can be attributed to the use of the dwelling as an office (Note: The IRS has specific regulations about this and their regulations and publications should be consulted to determine allowable deductions). While kids are at school, a home office can offer a quiet place to work, and work hours may actually increase when factoring in time that would otherwise be spent commuting to a traditional office.

Before hanging out a shingle in a residential neighborhood, however, check the local zoning law for applicable regulations. Referred to as either home occupations or home based businesses in the zoning regulations, local governments take varying approaches to whether and how people can operate a business from their home. From a public policy standpoint, there are many reasons why government has an interest in regulating what goes on "in the privacy" of the home in these scenarios. For example, if the neighborhood is a typical suburban subdivision, localities will be concerned about traffic on the otherwise "quiet" residential street (traffic from employees, clients, and/or from delivery trucks), parking issues if clients routinely come to the home and/or if there are any employees, and signage on the front lawn or affixed to the home. Remember, neighbors are concerned about maintaining property values and

the quiet enjoyment of their property. And, after all, the whole premise of zoning dating back to the early 1900s is to create zoning districts that separate what are believed to be incompatible uses of land. Following the logic of the early proponents of zoning, business uses and residential uses were inherently incompatible, especially in non-urban areas.

Some municipalities regulate home based businesses by providing a list of allowable home occupations in designated zoning districts. Often, office for lawyers, doctors, accountants and other "learned professions" are specifically delineated as allowable uses in a home. This is the older approach to dealing with home occupations. Lots of caselaw exists addressing the situations where courts have had to decide whether other businesses not specifically listed, were allowed in the district (e.g., an exterminator business, a piano teacher, a dance teacher, an actuary, etc.).

The modern approach to regulating home based businesses is to use performance measures, rather than to list specific types of businesses that are allowed. Municipalities often require that individuals who desire to operate a home occupation first obtain a special use permit. Newer zoning regulations might specify whether a home based business may include employees who do not reside in the dwelling, and if so, how many. Modern zoning regulations might also limit the hours of operation for a home occupation, indicate whether off-street parking spaces (and how many) are required, and they might contain limitations of the amount of square footage in the home that may be used for the home business. In addition, newer regulations might limit the number of daily or weekly trips that are generated as a direct result of the home occupation (e.g., how many cars or trucks go to and from the home based business), and zoning ordinances typically specify the type of signage that is allowed in the district. Limitations on noise and external lighting are also commonly found in regulations involving home occupations.

In the final analysis, while many lawyers who work from home will not put up a sign advertising
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their business, will not have clients routinely coming to the house, will not regularly employ others to work on-site, will not generate noise or light pollution, and will not attract daily truck traffic to the neighborhood, the local law may still require procedural compliance to operate the home occupation legally. Interested individuals should both consult the local zoning ordinance for applicable regulations, and call the local zoning enforcement officer to discuss the regulations and to obtain the necessary forms/applications where such are required. It is unlikely that local zoning regulations will prevent readers from practicing law from the home (appropriately scaled, of course, for a residential district), but it would be embarrassing for lawyers to fail to comply with applicable local laws by neglecting to seek required permits and/or approvals.

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