

# Rules, regulations to consider before moving a business into your home

The economic impact of Covid-19 has seen many small business owners around the world terminating their leases at shopping centres and office buildings and seeking more affordable options, including working from their homes. In South Africa, this is creating challenges for community housing schemes like residential estates and the homeowners' associations that manage them, says specialist attorney Marina Conostas who is a director of BBM Law.



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She advises small business owners to arm themselves with the facts, including the municipal regulations and the memorandum of incorporation within their own estate before moving any business enterprise into their home. Homeowners' association directors should also consider refining their rules in order to mitigate risks and the impact on other residents, she recommends.

## Rules of the estate and municipal by-laws

"In large estates, the properties may be able to accommodate small businesses, but generally, the estate directors need to be really specific about having the correct rules in place if they decide to allow an estate, which is strictly speaking for residential purposes only, to accommodate certain home enterprises. A formal application should be made to the directors, and the business must comply with the rules of the estate and the municipal by-laws," she stresses.

Conostas cites a recent case in which the directors of an estate in Fourways, Johannesburg, approached her about a homeowner who wanted to close her hair salon and work from home. "She planned to convert an entertainment area into a home salon. In terms of Section 20 of the Home Enterprises for Professional Occupation, City of Johannesburg Land Use Scheme (2018), an owner wishing to use his or her residential building as a home enterprise may do so, provided certain conditions are met."

## Businesses not permitted to operate in residential areas

Outlining these conditions, Conostas says that it is important to first note that some businesses are not permitted to operate in a residential area at all. "These include motor sales, heavy mechanical repairs, a car wash, spray painting operation, a

shop or retail outlet, spaza shop, tavern or shebeen, restaurant or coffee shop.”

And while the hair salon in question would have to comply with certain conditions, a pet grooming salon would be a no-go from the outset, she notes. “Further businesses not permitted to operate from a home are a place of amusement, commune, hotel and pet salon.

“Once the business owner has established that their particular trade is not specifically excluded, they would then need to ensure that not more than 25% of the built floor area of the unit will be used for the non-residential purpose; or 50m<sup>2</sup> of the dwelling. The principal of the business must also be a permanent occupant of the residential home. The number of people who may work at the business is limited. A maximum of two other people – in addition to the members of the household who live there permanently - may work at the home business.”

## **Parking and increased traffic**

Parking is a consideration, and must be to the council’s satisfaction, Conostas states. “It is also stipulated that any home business, profession or occupation that causes an undue increase in traffic will not be permitted. In addition, the enterprise must not negatively impact any infrastructure services and place greater demand on these than normal domestic use would. Any business that interferes with the aesthetic appearance of the neighbourhood or creates noise, smells or dust would not be permitted.”

Once the business owner has ensured compliance with the conditions set out by the council, there are also the rules of the specific estate to be considered, Conostas says. “In a community housing scheme like a residential estate, the business should be subject to approval by the homeowners’ association. The rules of the estate where the hair salon was planned stipulated that no business activities could take place without the written approval of the homeowners’ association and the approval of the City Planning Department. The resident was not able proceed with her home business plans.”

## **Written approval for individual applications**

Conostas urges anyone considering a home business to study the municipal regulations and the memorandum of incorporation of their homeowners’ association. She urges homeowners’ association directors to ensure that their rules clearly state that no business activities or trade may take place without the written approval of the homeowners’ association, and that the rules are aligned with the municipal by-laws.

“In this way, each application can be considered individually, and everyone’s interests are protected. In the event that the rules are breached, the association would be entitled to institute legal proceedings in respect of such a breach, as well as refer such conduct to the relevant authorities for breach of the by-laws,” says Conostas.

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