**HOME BUSINESSES - IS YOURS LEGAL?**

The sharp upsurge in businesses operating remotely as a result of the pandemic lockdowns means a lot more people working from home - most presumably in low-profile home offices, but inevitably some in the form of full-on business activities from home. What effect is that having on the property market?

**Work-from-home and what’s hot in property market trends**

Let’s firstly have a look at what trends are emerging in the “hot property” market, driven by both the work-from-home phenomenon and by the general economic fallout from the pandemic and the lockdowns:

1. Increased interest in coastal and country properties from employees and businesses looking to work remotely away from congested highways and crowded cities.

1. Upsizing by stay-at-home workers looking for extra home office space and facilities.

1. Downsizing by financially-stretched homeowners reducing costs and looking to realise the value in large houses they no longer need (either by selling or by renting out).

1. Increased demand for rental properties in some sectors, driven presumably by owners selling homes to cut costs, perhaps also by sales in anticipation of emigration or semi-gration.

**The law**

The next question of course, regardless of whether you are selling, buying or staying put, is this - what does the law have to say about home businesses? As a small business are you clear to move your business into your house? As an employee is there anything in the law to stop you from setting up a home office? As a neighbour do you have any right to object?

Those are of course important questions to ask before you buy a “home-office-house” and before you open up a home business in your existing house. The last thing you want is to be shut down by unhappy neighbours or the local municipality.

**The two questions to ask**

The High Court has confirmed that there are essentially two questions to ask -

1. Is the activity in question allowed by local zoning and land use laws?

1. Is there any other legal block in place, for example are there any title deed restrictions or, if the residence is part of a community scheme like a Home Owners Association (HOA) or a Sectional Title complex, do the complex’s rules allow it?

**Living in a complex - the hair salon allowed by zoning laws but closed down by the HOA**

1. A homeowner had for many years run a hair salon business from her home in a complex, although both the HOA’s constitution and its conduct rules allowed only residential usage of houses except with authorisation via a special resolution. She was bound by the constitution and rules both by the terms of her purchase agreement and by her title deeds.

1. When she refused to cease business the HOA approached the High Court for an interdict. Her central argument was that her home business was permitted by the local zoning regulations in terms of which certain small scale non-residential activities were allowed in the area.

1. Not relevant, held the Court in interdicting the homeowner from continuing her business. She had agreed to a limitation of her rights, she had agreed to forfeit her right to use their land for anything but residential purposes and the HOA had not purported to change the zoning scheme and was “well within its rights to seek to preserve the residential character of the development”.

In other words, HOA and Body Corporate rules can in principle be more restrictive than local zoning laws and effectively override them in such a case. Bear in mind that each case will be decided on its facts, and in addition there has been some speculation recently that the National State of Disaster regulations and orders could be used to justify a departure from that principle. Much safer however to assume that you are bound by your complex’s rules (which may in any event allow you to work from home and/or to run a small business, although perhaps only with consent).

**Must you apply for rezoning or municipal consent? 3 categories to consider**

If you don’t live in a residential complex or if you do but are in compliance with the complex’s rules, you need to check that you aren’t going to be stopped from operating (perhaps even fined) by your local authority.

Your local municipality will have its own land use and zoning regulations and bye-laws, but generally speaking your business activities will fall into one of three categories:

1. **Micro business:** Depending on the zoning of your particular area, working alone from home in a home office is highly unlikely to cause any issues either legally or practically, and you are also likely to be allowed to conduct small scale business activities from home without consent where your business activities fall into your municipality’s “micro-business” or “home enterprise/undertaking” category (check with your local municipality on its rules in this regard).

1. **Municipal consent:** As soon however as your activities go further (there are normally limits on things like the nature of the business, number of staff, percentage area of the house used for the business, parking availability, noise/nuisance factors and the like) you will probably have to apply for municipal consent or a permit to operate.

1. **Rezoning:** In other cases you may need to go further and apply for complete rezoning of the property, possibly also for removal of title deed restrictions.

**Take specific advice in any doubt!**