HOME OCCUPATION
(By Desmond Foynes)

With ongoing changes in the nature of work, and advances in the technologies of the workplace, we increasingly find people with home-based businesses, or individuals who telecommute, full or part-time, from their residence.

As work is being brought into the home, it is useful to consider the regulatory rules that govern work in residences. All residences in the District of Columbia, including Cooperative Communities, are subject to the Zoning Code and its standards for home-based businesses. In addition, many Cooperative Documents contain language that may be more restrictive than the requirements of the Zoning Code. The purpose of this article is to review the salient elements of “Home Occupation” rules that are contained in Title 11 of the Code.

An important philosophical and practical point is established early in municipal regulations. Home-based businesses are meant to be accessory uses to the underlying residential use. Home-based work must occur in the principal residence of the practitioner of the home-based business.

The intent of the regulations is to protect residential areas from the adverse effects of activities associated with home-based businesses, while allowing residents to use the home as a source of livelihood. Without the explicit link between principal residence and home-based work, it would be easy for dwellings to be adapted to office use during daytime hours, with the practitioner returning to a home at another location.

Other requirements include:

- The practitioner must have a Home Occupation Permit;
- The Permit is not transferable to another person, or from one location to another;
- No more than the larger of 250 square feet or 25% of the floor area of the dwelling may be used for the home occupation;
- No more than one person, who is not a resident of the dwelling, may be engaged in the home occupation;
- No more than eight clients or customers may be on the premises in any one hour period;
- If more than one home occupation is practiced in a dwelling, the cumulative impact of the multiple occupations may not exceed the previously mentioned standards.
- Other standards in the Zoning Code address signage, and specific forms of occupation such as tutoring, dressmaking, painting, sculpting, and other fine arts occupations.

Co-owners and Directors of Cooperative Associations should be mindful of municipal regulations, plus their specific house rules and by-laws when addressing issues of home-based employment. Copies of the municipal regulations on “Home Occupation” are available from the D.C. Cooperative Housing Coalition. Simply call Terry Leffler at 202-682-0300.
The activity of the Coalition is most vital and, indeed, urgent during periods of legislative initiatives that address housing in the District of Columbia, and Cooperative Housing in particular. On the legislative front, there was one noteworthy event that recently affected homeowners in the District of Columbia. The implementing regulations of the “Residential Real Property Seller Disclosure Act” were adopted during the summer of 1999.

In a nutshell, the law requires sellers of residential real estate to disclose known defects in the physical elements of a property. DC/CHC and its counsel, Whiteford, Taylor & Preston, advised the legal staff of the D.C. Department of Consumer and Regulatory Affairs that such a broad mandate would be problematic for sellers of cooperative apartments. As a result of the intervention and guidance of DC/CHC and counsel, the implementing regulations limited disclosure for the seller of a cooperative or condominium apartment. As a practical matter, such sellers cannot be expected to be informed about any “defects” in common elements, and in areas beyond the control of the seller. Such an outcome seems firmly grounded in common sense, but such common sense was not evident in the legislation or initial drafts of the implementing regulations. The intervention of DC/CHC and counsel was relevant and consequential.

Consistent with our need to follow legislative matters, the Coalition co-sponsors a legislative reception with the Community Association Institute each year. During the October 2000 reception that was held at #1 Judiciary Square, Council Members Ambrose, Evans, Graham, Mendelson, and Schwartz addressed and mingled with the coop community.

These have been the most visible activities of the Coalition and pale with the intense activity of the Coalition in past years. In 1998 for example, the D.C. Tax Revision Commission was convened to review the entire fabric of tax policy in the Federal City. I am pleased that 1999 and 2000 have been relatively quite for us, and you should be too.

If I were to critically review my role and contribution during the past twelve months, I would suggest that I have been a good leader in the context of our Board of Directors, and our monthly meetings. We have invited Kathleen Luzik, from the National Cooperative Bank, to address the Board on blanket mortgages to finance capital improvements. Kevin Cavanaugh, from the accounting firm of Goldklang, Cavanaugh & Associates, addressed the Board on “best practices” for directors of Cooperative Associations. (Kevin’s comments are excerpted below.)

As I see it, the challenge is to disseminate the information and guidance of these experts more broadly among our ranks. In past years, we issued an informative and attractively-edited newsletter. Volunteers wrote, edited, and produced the newsletter, but when these volunteer contributors and editors resigned, no one replaced them.

I think the information that the Directors have received from these experts is substantial and worthy of a newsletter-type mailing. This issue of the newsletter is our attempt at bringing you relevant information on cooperative housing.
RULE ENFORCEMENT WITHOUT LAWYERS
By JOSEPH D. DOUGLASS
(A Lawyer!)

We all know that a cooperative has some potent weapons for enforcing rules and contract/proprietary lease provisions. The most persuasive of these is the ability to terminate ownership and evict the transgressor, a tool not available to our neighbors in condominiums! Also, of course, a cooperative can file suit against a member to seek an injunction against bad behavior. The problem with both of these approaches is that they can get very expensive, very quickly. Legal fights tend to be that way.

What less-expensive approach can a cooperative board take to make difficult members comply with the rules? Here are some thoughts.

First, let's keep our eye on the ball. What are we seeking--punishment or compliance? The answer, obviously, is compliance. If a cooperative board has an enforcement system that convinces difficult members that compliance is preferable to the alternatives, there rarely, if ever, will be a need to terminate or sue a member.

The keys to this approach are relentlessness and inevitability. We need a system that moves along, inexorably, with the screws gradually tightening, convincing the transgressor that, "this is bigger than all of us," and that the inevitable result will be unpleasant, unless the bad behavior stops. At each step of the process, there will be a percentage of violators who reach their "threshold of aggravation" and decide to obey the rules. By the time we reach the end of the process, most, if not all, of the cases will be resolved. Here is how it should work:

1. Complaint received (or violation noted by management).
2. Friendly, but firm, written notice to violator, with deadline for compliance, and a mention of further action if violation continues.

3. Less-friendly written Notice of Hearing to violator, stating that the Board has scheduled a time and date for a hearing on the violation, and to determine what action is appropriate.

4. Hearing before the Board, conducted formally, with opportunities for complainant (or management) and violator to present evidence and make statements.

5. Board decision (discussed in executive session) and written notice of decision to violator, stating whether a violation has been found, the action required to correct it, and what will happen if the violation continues.

Our experience with this process is that it is a cheap and effective way to convince transgressors of the need for compliance and of the seriousness of the Board in enforcing rules and contract/proproprietary lease provisions. This approach will resolve most cases "internally", among the members of the cooperative, which is how cooperatives are supposed to work. It means less work for lawyers, but . . . oh, well!

(Mr. Douglass is a partner and Head of the Community Associations Section in the firm of Whiteford, Taylor & Preston, L.L.P.)

DIRECTORS
Denizl Daye, Meridian Hill Apts (13 units)
Coralie Farlee, River Park Mutual Homes (518 units)
Desmond Foyes, The Presidential Owners (42 units)
William Kamerer, 3315 Wisconsin Ave (65 units)
Robert Kilpatrick, Westmoreland Coop (59 units)
Art Leaman, 1870 Wyoming Ave (28 units)
Ted Martin, Naylor Gardens (323 units)
Carlen Ruschhoff, 3020 Tilden St (20 units)

Members in Good Standing
1300 Massachusetts Avenue, Inc.
1661 Crescent Place, N.W., Inc.
1725 T Street Cooperative
1860 Clydesdale Associates
1870 Wyoming Avenue, N.W.
1901 Wyoming Avenue, N.W. Cooperative, Inc.
2101 Connecticut Avenue Cooperative
2370 Champlain Street, N.W.
2500 Massachusetts Avenue Cooperative
3001 Porter Street, N.W., Inc.
3018 Porter Street, N.W., Inc.
3020 Porter Street, N.W., Inc.
3016 Tilden Street, N.W., Inc.
3020 Tilden Street, N.W., Inc.
3022 Porter Street, N.W., Inc.
3024 Porter Street, N.W., Inc.
3026 Porter Street, N.W., Inc.
3028 Porter Street, N.W., Inc.
3620 Connecticut Avenue Associates
3900 Watson Place, N.W.
5112 Connecticut Avenue Cooperative

Avondale Cooperative
Cathedral Avenue Cooperative
Chesterfield Cooperative
Copley Plaza Cooperative
Harbour Square Owners
Lambert Owners Inc.
Madison Terrace Cooperative
Mendota Apartments
Meridian Hill Apartments, Inc.
Naylor Gardens
Presidential Owners Inc.
River Park Mutual Homes, Inc.
Shoreham West Cooperative
Tilden Gardens Cooperative Housing Association
Watergate South, Inc.
Westchester Cooperative
Westmoreland Cooperative