

Owner, can you move “shop” to your house?

Lockdown has changed many a thing in our daily lives - one of them is trying to work from home. The question many might ask once the lockdown has been lifted, is whether you can “move shop” and start running your business from your residence?

What many homeowners don't know or realise, is that their title deed contains certain restrictions. In a recent case, *McKay and Others v Ursiweb (Proprietary) Limited and Others*[\[1\]](#), the title deed contained a condition we regularly find in practice. It reads as follows:

“This erf shall be used for residential purposes only and no trade or business or industry whatsoever shall be conducted thereon.”

It is quite a standard condition in the suburbs and restricts the use of a property to residential purposes. To use the property for business purposes, the owner will have to apply to the Local Municipality, in whose jurisdiction the property is situated, for

(1) the rezoning of the property (which would entail the property being rated and taxed differently) and

(2) the removal of the restrictive condition contained in the title deed.

The case mentioned dealt with a company which “traded” from a residential property (an erf). The company had applied to the municipality for the rezoning of the property and the removal of the condition. The municipality had not denied or approved the application and had started rating the property as a business property. Other homeowners opposed the application for rezoning to the municipality.

The court, in this case, took a clear stance as to running a business in contravention of the restrictive condition. The court was quoted that “(t)he applicants (the company trading from the house) have been continuing to act in an unlawful manner at least for fifteen (15) months. It appears that they (the

company) are hell-bent to do so without the necessary relaxation of the restrictive conditions.”

It is therefore imperative to know what you may or may not do and to ensure that you obtain the approval to do so, as it is illegal to act in contravention of a restrictive condition in the title deed of your property.

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[\[1\]](#) (3510/2019) [2019] ZAFSHC 232.