

## A MAN'S HOME IS HIS ... BAZAAR?

*by Paul A. Henderson, Esq., Law Offices of Scott M. Clark, P.C.*

With the advent of Internet-based flea markets and the meteoric rise of one in particular (eBay), making money from the comfort of your computer chair has never been easier. Forget telecommuting, where instead of traveling to your place of employment by car, bus, bicycle, or feet, you utilize fax machine, computer, and multiple-line telephone to handle your transactions. Instead, you need only to have items gathering dust in the hall closet and an Internet connection.

Of course, working from home is technically in violation of the Arizona Residential Landlord and Tenant Act. In part, the Act prohibits the use of a dwelling unit for anything other than as a residence: "Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit." A.R.S. § 33-1344. Under normal circumstances, landlords turn a knowingly blind eye to a resident utilizing his or her home as the "home office," providing that the residents keep the disruption to a minimum. After all, excessive traffic, noise disturbances, and warehousing goods on the apartment patio disrupt the quiet and peaceful enjoyment of the community by the other residents.

But what happens if the apartment is being used to facilitate a business and the landlord does not want to "wink and nod" at the transactions? Setting aside the patently illegal "home businesses" of narcotics production and distribution, how do you handle otherwise legitimate operations that should not be taking place within the community's grounds? Take, for example, the unlicensed daycare provider. He or she uses the apartment to host a half-dozen children, none of whom are his or her own. As the landlord, you've received complaints about noise and you've seen non-resident vehicles regularly arriving and leaving the community twice a day. The answer to this problem is straightforward: issuance of a notice of default under the terms of the lease, or, in common usage, the Ten Day Notice. Many leases have clauses that prohibit using apartment as anything other than a residence, but even without that clause, A.R.S. § 33-1344 still controls the landlord-tenant relationship. As always, proving the breach lies with the landlord, so be prepared to fight your tenant in court unless you have the necessary witnesses and documentation to support your case. Excessive traffic reports and back-tracking random cars frequently parking at the community will help support your claims – so much the better if you have eyewitness accounts or photographs of the incidents, too. Additionally, and especially if you have an issue of children (due to the very specific references to families with children in both ARLTA and the Fair Housing Act), make sure you document the incidents thoroughly.

Sometimes, however, the discovery of the business operation is solely serendipitous. An advertising card or a website hyperlink could disclose the existence of a business in the grounds of the community about which management would have no knowledge otherwise. Unlike that unlicensed daycare I referenced above, most businesses that can be operated from an apartment are necessarily quiet and unobtrusive. Discovery of the unauthorized business is generally only by accident.

Speaking of accidents, while I was researching a wholly different topic for a client, I came across an odd reference in the Scottsdale City Code. Under section 16-453, it is "unlawful for any person to conduct, manage, operate, maintain, offer to furnish or furnish an escort bureau business or introductory service without first obtaining and maintaining in effect an escort bureau license." Phoenix has a similar series of ordinances in Chapter 10, Article X. In these

cities, an escort business may be permitted operation providing that the people involved possess a license from the City, much the same way a bar must have a liquor license in order to sell alcohol.

I imagine you're a bit surprised that we even have an escort licensing law in some of our municipalities. I must admit that it surprised me. When you think about it, however, it makes sense. Technically it doesn't fall under the prohibitions of A.R.S. § 33-1368(A), because in and of itself the escort business isn't offering anything illegal. We might just be winking and nodding at the true nature of the undertaking, however, but the fact remains that if someone is operating a licensed escort business out of your apartment community, it remains an unauthorized business. The landlord can put an end to it, just as he or she would with any other business, with that Ten Day Notice. The local police department might be interested, too, but your first responsibility should be to put an end to the business transactions.

Ignoring one business, no matter what type it is, opens the door to allow other businesses into the community. Acting upon information to put a halt to commercial operations beyond the casual eBay seller is simply proper vigilance at your community. After all, we don't want to see our apartment communities turning into bazaars.

But you must admit, that business with escorts wanders away from bazaar and over to bizarre.