Campbell Law Review

Volume 26
Issue 2 *Summer 2004*

Article 3

July 2004

There is a Porn Store in Mr. Roger's Neighborhood: Will You Be Their Neighbor? How to Apply Residential Use Restrictive Covenants to Modern Home Businesses

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COMMENTS

THERE IS A PORN STORE IN MR. ROGER'S NEIGHBORHOOD: WILL YOU BE THEIR NEIGHBOR? HOW TO APPLY RESIDENTIAL USE RESTRICTIVE COVENANTS TO MODERN HOME BUSINESSES.

I. INTRODUCTION

For a subscription fee of $34.95 a month, subscribers to "voyeurdorm.com" who are 18 years old or older can log onto their computers and watch streaming video of five young women living in a house and engaging in sexual acts twenty-four hours a day, seven days a week.[1] The house where these activities take place is located in an area of Hillsborough County, Florida that is zoned RS-60: Residential Single Family.[2] Voyeur Dorm is clearly a business being operated out of a house in the middle of a residential area.[3] Yet, despite the actions of the neighbors, the United States Court of Appeals for the Eleventh Circuit held that Voyeur Dorm was not violating the Tampa Zoning Ordinance.[4] The neighbors of 2312 West Farwell Drive were left with a porn site being operated next door and the knowledge that public land controls did not offer the protection once believed.

So, if one cannot rely on zoning laws to keep a porn site from being operated next door, what can one rely on? Private land controls

1. *See* Voyeur Dorm v. City of Tampa, 265 F.3d 1232, 1233-35 (11th Cir. 2001).

2. *Id.* at 1233.

3. *See id.* at 1233-35 (Tampa Zoning Coordinator's initial "plain meaning" interpretation, which was adopted by the Tampa City Council and affirmed by the United States District Court for the Middle District of Florida).

4. *Id.* at 1236-37 (holding that "section 27-523 does not apply to a residence at which there is no public offering of adult entertainment"). The Eleventh Circuit adopted the position articulated by Voyeur Dorm stating, "[b]ecause the public does not, indeed cannot, physically attend 2312 West Farwell Drive to enjoy the adult entertainment, 2312 West Farwell Drive does not fall within the purview of Tampa's zoning ordinance." *Id.* at 1236.

in the form of restrictive covenants. This simple answer has increasingly become the manner in which property owners control the look and feel of their communities. Limiting the property to "residential use" or "residential purposes" in order to prohibit a porn website being operated next door is precisely what makes restrictive covenants so appealing.[5] But this covenant, in particular its strict interpretation,[6] may also unintentionally prohibit millions of less scandalous home businesses as well. In 1991, the U.S. Census Bureau reported that 20 million people, other than farmers, were working at home at least part time.[7] By the year 2000, this number had increased to 39.6 million,[8] and it is estimated that within the next ten years eighty percent of Americans may work outside of the office—much of this work likely done out of the home.[9]

The home businesses of today that are unfairly burdened by the covenant cases of the past are those involving little more than a sole proprietor, a home computer, a phone line, and a printer/fax/modem. Covenants aiming more at the true intent of maintaining the look and feel of the community must replace the ill-fitting prohibitions on "business" activity. This Comment will illustrate the archaic restraints burdening those that work out of the home and offer a proposal for change that would balance the intent of "residential use" covenants with a homeowner's ability to make a living from home. This new proposal will still protect a neighborhood from businesses such as Voyeur Dorm, but will embrace the website manager, stock analyst, business consultant, and those others who's home business creates no negative external impact on the neighborhood.

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5. If the Tampa neighborhood where West Farwell Drive is located did have restrictive covenants, it would not be the first time a "residential use" or "residential purpose" limitation would have been violated. These deceptively simple restrictions are perhaps the most often violated. *See, e.g.*, Grasso v. Thimons, 559 A.2d 925 (Pa. Super. Ct. 1989); Oak Ridge Builders, Inc. v. Bryant, 252 So. 2d 169 (La. Ct. App. 1971); DeMund v. Chong Lum, 690 P.2d 1316 (Haw. Ct. App. 1984).

6. Left undefined by the covenant drafters, "many courts have stated that this language was designed to limit the use of the property to living purposes as distinguished from business or commercial purposes." 43 AM. JUR. 3d 473, *Application of Private Covenants Restricting Use of Property to Residential Purposes* § 7 (2003).

7. Nicole Stelle Garnett, *On Castles and Commerce: Zoning Law and the Home-Business Dilemma*, 42 WM. & MARY L. REV. 1191, 1192 (2001).

8. *See* U.S.Census Bureau's American Fact Finder Home Page at http://factfinder.census.gov/home/saff/main.html?_lang=en (last visited April 30, 2004).

9. Katharine N. Rosenberry, *Home Businesses, Llamas and Aluminum Siding: Trends in Covenant Enforcement*, 31 J. MARSHALL L. REV. 443, 457 (1998).

II. COURTS AND RESTRICTIVE COVENANTS[10]

> The law [of restrictive covenants] is an unspeakable quagmire. The intrepid soul who ventures into this formidable wilderness never emerges unscarred. Some, the smarter ones, quickly turn back to take up something easier like the income taxation of trusts and estates. Others, having lost their way, plunge on and after weeks of effort emerge not far from where they began, clearly the worse for the wear. On looking back they see the trail they thought they broke obscured with foul smelling waters and noxious weeds. Few willingly take up the challenge again.[11]

Despite this negative perception, courts are increasingly recognizing the advantage of restrictions on land and their impact on land values.[12] For centuries, restrictive covenants on the conveyance and development of real property have been used to control the use of land. Over the last century they have become increasingly directed at preserving the residential character of local communities by prohibiting the commercial use of land therein.[13] Neighborhoods with mutual restrictions on the use of land allowing all members of the development to enforce the covenants are becoming more common and desirable.[14] "Determining whether a particular use violates a covenant restricting the use of property to residential purposes necessarily depends on the specific language of the covenant and the facts of each case."[15] There is a presumption that restrictive covenants, which restrict the use of real property, are legally enforceable.[16] "Property owners have frequently sought to enjoin alleged nonresidential uses of land burdened by this type of covenant restriction."[17]

A property owner must have notice of the restrictive covenant before it will be enforced against them. Yet, it is no longer the case that covenants have to be mentioned in every deed to be enforceable.[18] "If the declaration for a common interest community is recorded, the

10. Suits alleging waiver, laches, unclean hands, and change in circumstances are possible ways to get around a particular set of restrictions under the right circumstances, but are not the focus of this Comment.

11. Citizens for Covenant Compliance v. Anderson, 906 P.2d 1314, 1316 (Cal. 1995).

12. Rosenberry, *supra* note 9, at 446.

13. 43 AM. JUR. PROOF OF FACTS 3d 481 (1997).

14. Rosenberry, *supra* note 9, at 447.

15. *Id.* at 443.

16. Grasso v. Thimons, 559 A.2d 925, 927 (Pa. Super. Ct. 1989).

17. 43 AM. JUR. PROOF OF FACTS 3d 481 (1997).

18. Rosenberry, *supra* note 9, at 447 (citing Citizens for Covenant Compliance v. Anderson, 906 P.2d 1314, 1316 (Cal. 1995)).

restrictions are enforceable pursuant to statute."[19] Moreover, "when a restrictive covenant is recorded, the purchaser is charged with legal notice of the restriction, even if it is not stated in his own deed. Recordation implies knowledge, and knowledge implies acceptance."[20]

Furthermore, courts construe vague covenants against the drafter, holding that an owner is in violation of a covenant only if that restriction is clear.[21] The primary objective behind interpreting a particular covenant is to determine the intent of the parties.[22] The plaintiff has the burden of proving the covenantee intended the covenants to apply in the situation at hand.[23] "In determination of the intention of the parties, the entire context of the covenant is to be considered."[24] When construing a covenant the court will look at the intended meaning of the words used and will not limit itself to any definition of a word according to a dictionary.[25] Therefore, where the intent is clear, the restrictions will stand.[26] However, "where restrictive covenants are ambiguous they should be so construed as to favor the free use of land."[27] Some courts cite efficiency as a concern for favoring strict construction of restrictive covenants as long as they are not unconstitutional or against public policy.[28] "It prevents the courts and the owners from having to engage in burdensome and expensive litigation involving the facts of each owner's unique reasons for violating the covenants."[29]

The type of relief most often awarded for the violation of restrictive covenants is one of equity: an injunction.[30] "Where building restrictions or covenants are violated, . . . parties within a subdivision may have that activity enjoined and may enforce the restrictive covenants."[31] In the name of equity a court may stop a continuing violation of a covenant, prevent threatened violations, order the removal of

19. *Id.*

20. *Id.* at 448 (citing Timberstone Homeowners Ass'n v. Summerlin, 467 S.E.2d 330, 331 (Ga. 1996)).

21. *Grasso*, 559 A.2d at 927.

22. Metzner v. Wojdyla, 886 P.2d 154, 157 (Wash. 1994).

23. DeMund v. Chong Lum, 690 P.2d 1316, 1320 (Haw. Ct. App. 1984).

24. *Id.* at 1342.

25. *Id.*

26. *Id.* at 1320.

27. *Id.* at 1342.

28. Rosenberry, *supra* note 9, at 451.

29. *Id.*

30. Richard R. Powell, 9-60 POWELL ON REAL PROPERTY § 60.07 (Michael Allan Wolf ed., 2003).

31. Oak Ridge Builders, Inc. v. Bryant, 252 So. 2d 169, 171 (La. Ct. App. 1971).

buildings, or cancel covenants altogether.[32] The criteria for an injunction "must be examined in the light of equity including balancing the relative interests of the parties and, if appropriate, the interests of the public."[33] When breach of a covenant is shown, the courts will enjoin the violation in the name of equity even though there is no proof of actual damages to the plaintiff or the neighborhood.[34]

Individuals who choose to work at home must currently face the grim reality that not only might their business be enjoined, but they also might face both criminal and civil penalties.[35] Criminal penalties are a very real possibility because of the method in which some homeowners choose to enforce their restrictive covenants. When a neighbor attempts to get an injunction, the attorney's fees can quickly become more burdensome than the challenged behavior. To alleviate this problem, some homeowners will pass the buck to the city by claiming the behavior in question is violative of town zoning ordinances as well. Some states, however, explicitly reject such attempts.[36]

III. THE CHANGING SCOPE OF WORK DONE OUT OF THE HOME

For most of human history a person's home and place of business was one in the same.[37] "[T]he phenomenon of leaving home to go to work did not become the norm until the Industrial Revolution created two 'separate spheres' of human existence, the domestic and the com-

32. Powell, *supra* note 30. The equitable relief often given in cases involving home businesses is an injunction that orders the operation of the business to come to a halt.

33. Mains Farm Homeowners Ass'n v. Wothington, 854 P.2d 1072, 1074 (Wash. 1993) (quoting Tyler Pipe Indus. v. Dep't of Revenue, 638 P.2d 1213, 1217 (Wash. 1982)).

34. 43 AM. JUR. PROOF OF FACTS 3d 486 (1997).

> 'The plaintiff's right to maintain the restrictions is not affected by the extent of the damages he might suffer for their violation.' This all comes down to the well-understood proposition that a breach of a covenant, no matter how minor and no matter how de minimus the damages, can be the subject of enforcement.

Terrien v. Zwit, 648 N.W.2d 602, 607 (Mich. 2002) (quoting Austin v. Van Horn, 222 N.W. 721 (Mich. 1929)).

35. Garnett, *supra* note 7, at 1229.

36. Dobo v. Zoning Bd. of Adjustment, 562 S.E.2d 108, 115 (Tyson, J., dissenting), *rev'd per curiam* 576 S.E.2d 324 (N.C. 2003) (adopting Judge Tyson's dissenting opinion). "Zoning regulations are not a substitute for private restrictive covenants. If the subdivision residents believe that [landowner's] use of their property is unreasonable, [the resident's] remedy is an action in nuisance, not to enlist the city as an accomplice by incessant complaints about their neighbor." *Id.*

37. Garnett, *supra* note 7, at 1191.

mercial:"[38] the factory or the office was identified as the commercial sphere and the home was the domestic sphere.[39] The separation of these two spheres became the "American ideal." However, decades later there are economic and technological revolutions seemingly merging these spheres back together for millions of Americans.[40] Before long, this shift will have courts facing an old problem with a new twist: interpreting restrictive covenants against "home businesses" where the business produces no external changes to the home.

Despite the wide acceptance of covenants, those flatly rejecting the use of land for anything other than single family uses and those denying the operation of home-businesses will be increasingly challenged in the years to come. The cases will not concern day cares,[41] beauty salons,[42] timber yards,[43] or even small accounting firms[44] being run in violation of restrictive covenants banning non-single family uses.[45] Those types of occupations involve increased noise, traffic, and noxious smells. The modern home businesses do not yield the same negative external impact businesses of the past have produced.

To better illustrate the reality of the home business movement and its interplay with the law of restrictive covenants I am going to use Emma, who, like millions of Americans, lives in a community with restrictive covenants prohibiting the operation of a home business. This fact is of little consequence to Emma, who has just received her letter of incorporation from the secretary of state for her new consulting business: Emma's Consulting Services, Inc. However, if a neighbor challenged the operation of Emma's home business in court she would be forced to cease operating out of her home. Emma's hypothetical

38. *Id.* at 1192.

39. *Id.* at 1201-02.

40. *Id.* at 1192.

41. *See, e.g.*, Metzner v. Wojdyla, 886 P.2d 154 (Wash. 1994) (holding that the Wojdylas operating a licensed day care constituted a commercial enterprise in violation of the restrictive covenants of the neighborhood).

42. *See, e.g.*, Oak Ridge Builders, Inc. v. Bryant, 252 So. 2d 169 (La. Ct. App. 1971). Louisiana's Third Circuit Court of Appeals needed only three pages to find Bryant in violation of the restrictive covenants. The court held that Bryant's operation of a state-licensed beauty salon serviced multiple clients at a time and consisted of beauty chairs, professional dryers and the full equipment of a commercial beauty parlor. *Id.*

43. *See, e.g., Dobo.*

44. *See, e.g.*, Grasso v. Thimons, 559 A.2d 925, 927 (Pa. Super. Ct. 1989) (holding that the clear language of the instant restrictive covenant prohibits appellants from using their property to run an accounting business and granted an injunction).

45. *See e.g.*, DeMund v. Chong Lum, 690 P.2d 1316, 1316 (Haw. Ct. App. 1984) (holding that the renting of extra units was clearly violative of the covenant limiting lots to single family use only and thereby restricting businesses).

home business is important because her situation represents the calamity of the law today. A trial court applying the basic principles of covenant law after a simple analysis would levy an injunction, forcing Emma to stop operating the business out of her house.[46]

Decades of case law strongly suggest that Emma and the millions of other similarly situated people are at the precarious mercy of their neighbors. Any home business could be shut down despite the lack of any increase in traffic or other evidence that the home business is affecting the character of the community.

IV. IMPLEMENTING A CHANGE IN THE LAW OF COVENANTS

A new rule needs to be fashioned that upgrades the law of restrictive covenants and creates a better analysis for courts to apply. Simply, the rule should be: *when a restrictive covenant is violated through the operation of a home business, that operation should only be enjoined to the extent it results in a negative external impact on the character of the neighborhood.* The resulting analysis is also straightforward and easy to apply.

First, is the house encumbered with a valid restrictive covenant under a contract theory?

Second, is that restriction being violated? In the past these two questions have been the alpha and the omega of covenant cases. If the answer to either of the questions is no, then the query and the case ends here, just as it has for centuries. Third, if the house is encumbered by a valid restrictive covenant, is the violation of the covenant related to operating a home business? If the violation is due to a circumstance other than a home business, then traditional covenant analysis applies. Fourth, if the violation is related to operating a home business, does its operation cause a negative external impact? This step gets to the heart of the matter and encompasses the new rule. This is the question that exposes the differences in operating a timber yard and daycare versus the external effects on the neighborhood of having a high-speed internet connection. Fifth, if there is no clear negative external impact on the neighborhood, then the home business

46. In Emma's situation: 1) notice is presumed because the covenants were recorded when construction began on the entire neighborhood; 2) the language of the covenant proscribing home businesses is clear and unambiguous; 3) there likely exists sufficient evidence to support her establishment of a home business (e.g. computer and office equipment are present, separate phone lines have been connected, and the company billing and corporate documents share the same address with the home); 4) the covenant both benefits and burdens her land along with her neighbors; and 5) there is no reason to believe an injunction is not the fairest remedy.

may keep operating. If on the other hand the complaining neighbor can point to a clear external impact as a result of the breached covenant, traditional covenant remedies would apply and the operation would likely be enjoined.

There are two slightly different means of implementing the new rule. First, courts can look to the intent of the covenants to discern if their purpose is to protect the character of the neighborhood—which is exactly why most of the restrictions on home businesses exist. In this instance courts have the discretion to allow home businesses to operate which do not affect the character of the neighborhood. Second, courts could recognize a public policy exception for home businesses that do not impact the neighborhood at all. This policy would support the privacy of an individual homeowner as well as legitimate state interests such as: the benefits of parents working at home and caring for their kids, the encouragement of small businesses, the reduction in overall traffic and pollution, and decreasing city and suburban sprawl.

A. *Intent of Protecting the Neighborhood*

Instead of a strict and literal reading of the covenants, courts should look at the intent of the drafters to determine the reasons why the covenants were written. The question should be whether the restrictive covenant in question was drafted to maintain the residential feel and appearance of the neighborhoods or whether the covenant was truly drafted to prohibit residents from earning a living in the privacy of their own home. Adhesion to a bright line rule in favor of enforcement "shuts down every home office and business in the nation subject to a 'residential purposes only' covenant."[47] This type of myopic ruling overlooks the intent behind the restrictive covenant:[48] "a desire to preserve the residential character of the neighborhood and to make the neighborhood more attractive for residential purposes."[49] Bright line rulings ignore how changes in technology and the economy result in some business activities that are unobtrusive and do not detract from the desired intent and aesthetic beauty of a neighborhood.[50] A website manager, business consultant, internet salesperson, stock analyst, or day trader working full time out of their residence will likely have no reason for structural changes to their residence, yet all the businesses are subject to residential use limitations. Furthermore, a

47. Metzner v. Wojdyla, 886 P.2d 154, 158 (Wash. 1994) (Guy, J., dissenting).

48. *See id.* at 159.

49. *Id.* (citing Mains Farm Homeowners Ass'n v. Wothington, 854 P.2d 1072, 1074 (Wash. 1993)).

50. *Id.*

minimal increase in traffic, if any, does not alter the character of a neighborhood.[51]

A simple factor based analysis of each covenant would be easy to apply in determining whether to allow a home business in a neighborhood subject to a covenant restricting them. If a home business alters the character of the neighborhood it should be enjoined, if it does not have any external impact on the surrounding community then the business should stand.[52] Factors used to determine whether the character of a neighborhood is altered could include the presence of structural changes, increased noise levels, increased vehicular or pedestrian traffic, number of employees, pollution, hours of operation, or public safety.[53] "The crucial inquiry is whether one factor or a combination of factors causes the neighborhood to lose its character as a place of residence."[54]

If a neighbor were running a business similar to "voyeurdorm.com" out of their home in a neighborhood burdened by an applicable restrictive covenant the proposed rule and factor based test would prevent the residents of the neighborhood from simply pointing to a blanket restriction limiting lots to "single family use only" or to a prohibition on all home businesses. There is a valid restrictive covenant encumbering the land and prohibiting the operation of a business, but the key is whether the business is creating a negative external impact on the community. Neighbors would need to attempt to enjoin the website based on the same grounds that have worked against home businesses of past generations, by citing: increased traffic, elevated noise levels, overflowing cars from the driveway, or trashcans overflowing with waste from the business. These are all external impacts of the business on the neighborhood that lean in favor of enjoining the business under the covenant. The employees' cars overflowing from the driveway into the streets, any external commotion caused by the filming, and the increase in traffic as they traveled to and from work would be demonstrative of the negative effects on the character of the neighborhood.[55] Although the zoning laws would not keep Voyeur Dorm out, the restrictive covenants still would.

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51. *Id.*

52. *See id.*

53. *Id.*

54. *Id.*

55. *See* Voyeur Dorm v. City of Tampa, 265 F.3d 1232, 1233 (11th Cir. 2001). Voyeur Dorm employed over 20-25 women at one time, but only five actually resided at the house. Therefore, twenty or more women were coming and leaving from the house during the day and night.

What if there was no filming and therefore no increased traffic and the neighbor only managed the website's upkeep? If there was no increased trash and traffic, or no noise and disturbance, then a website managed from a home would be a business that would exemplify the exception. In this scenario it is just a man working from his home with a high speed modem and a powerful desktop computer. Any neighbors seeking an injunction would not have a legal leg to stand on due to the proposed "impact exception."

How would the new test affect the daycares, hair salons, timber yards, and other home businesses of the past that created the need for the restrictive covenants prohibiting business from being operated out of the home? The new test would still keep them from operating. The complaining neighbors would simply point out the valid restrictive covenants and then proceed to illustrate the negative external impact on the character of the neighborhood (e.g. the smells, the traffic, the noise, unsightliness).

But situations such as Emma's would still be protected. Her consulting business involves no traffic coming to the house, there are no unsightly structures that need to be erected, and the only noises it creates are the slight humming of her desktop computer or the occasional fax. Complaining neighbors may point out the presence of a valid restrictive covenant, but would be unsuccessful at demonstrating any external impacts.

Courts must recognize that as long as a home business does not have a negative external impact on the character of a neighborhood, the presence of a restrictive covenant alone should not serve as a bar to its operation. The economic reality creating the ideas of separation of work and home has changed and today we are witnessing the pendulum swinging back: the home and work are once again intertwined, only this time there are no negative external effects on the neighbors.

B. *A Public Policy Exception to Enforcement*

Courts that do not choose to look at the intent of restrictive covenants being challenged still have an effective means at their disposal to diminish the reach of restrictive covenants prohibiting business activity in a neighborhood: public policy. But "[t]o determine whether the covenant at issue runs afoul of the public policy of the state, it is first necessary to discuss how a court ascertains the public policy of the state."[56] Courts recognize that in defining "public policy" they must

56. Terrien v. Zwit, 648 N.W.2d 602 (Mich. 2002).

rely on more than the beliefs of the judges themselves.[57] The proper exercise of the judicial power is to look beyond the personal preferences of the judges on the bench and to instead use objective legal sources for finding and defining a state's public policy.[58] Therefore, in determining public policy courts must rely on policies that have been adopted by the public through the various legal processes.[59] Public policies are reflected in state and federal constitutions, state and federal statutes, and in the common law.[60]

"Courts are likely to find that prohibitions against home businesses that have no external impact on the neighborhood violate public policy."[61] Public policy rulings on "single family use" covenants are sometimes argued in cases dealing with the permissibility of day cares,[62] and homes for the disabled,[63] and could be applied to home business cases as well. Many considerations point to the desirability of allowing home businesses with minimal impact including reducing traffic, reducing pollution, the limited supply of competent childcare providers, and permitting people to work at home benefits society as a whole.[64] "Having a parent at home when a child comes home from school is obviously desirable for society."[65]

Another legitimate interest as to why restrictions on home businesses are problematic for society is that working from home may enable people with limited education and job-related skills to achieve economic self-sufficiency.[66] "The low-skilled individuals who face welfare time limits and work requirements are among the most vulnerable in the modern economy."[67] Home businesses can serve as a buffer against these economic realities, "leading state legislatures to consider the option of increasing opportunities to work at home as an economic development tool."[68]

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57. *Id.*

58. *Id.* "This is grounded in Chief Justice Marshall's famous injunction to the bench in Marbury v. Madison, 5 U.S. 137, 177 (1803), that the duty of the judiciary is to assert what the law 'is,' not what it 'ought' to be." *Id.* at 177.

59. *Terrien*, 648 N.W.2d at 608.

60. *Id.*

61. Rosenberry, *supra* note 9, at 456.

62. *See* Terrien v. Zwit, 648 N.W.2d 602 (Mich. 2002) (ruling that covenants restricting day cares did not violate the public policy of the state of Michigan and were enforceable).

63. *See* 43 AM. JUR. PROOF OF FACTS 3d 516-17 (1997).

64. Rosenberry, *supra* note 9, at 457.

65. *Id.*

66. Garnett, *supra* note 7, at 1216.

67. *Id.*

68. *Id.* at 1217.

IV. CONCLUSION

Despite the fact that most home businesses today pose little or no threat to their neighborhoods, many strictly interpreted restrictive covenants make them subject to the very notion that should be used to maintain their existence: equity. As it stands now, the ideal of equity is wrongly used by community associations to place injunctions on home businesses. Courts cognizant of the realities of today's economy can cite public policy as the reason for invalidating the covenants in question. A business consisting of phone lines, computers, and a fax/printer/copier that has no external impact on the neighborhood should be allowed.[69] Meanwhile this still keeps out the businesses which bring with them undesired byproducts such as noise, increased traffic, or any noxious behavior detrimental to the character of the neighborhood.

Adopting the home business exception will not open the door to a Voyeur Dorm or a Porn Store popping up in Mr. Roger's neighborhood. The exception will allow the home businesses of the new economy to operate unhindered as long as that business does not serve as a hindrance on the character of the neighborhood. Judges must adapt to this new reality and must resist the urge to apply heavy-handed restrictive covenants on businesses operated out of the home for reasons that no longer apply.

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69. Rosenberry, *supra* note 9, at 458.