

GUIDE TO

leasing studio space

VOLUNTEER
LAWYERS AND
ACCOUNTANTS
FOR THE
ARTS
ST. LOUIS

Researched by Mark Bunney, student, St. Louis University School of Law
Prepared by Sue Greenberg, VLAA Executive Director
Revised by Céline Bondard, Spring Associate, 2004
Cover design by Create Studio, Washington University

Special thanks:

Leonard Adreon
John Ammann
Art St. Louis
Jill Belsky
Tim Boyle
Eric Friedman
Christy Gray
Stephen Novack
Philadelphia Lawyers for the Arts
Darwin Portman

This publication is designed to provide general information; it should not be utilized as a substitute for professional legal and/or accounting services. If legal advice or other expert assistance is required, consult a professional.

St. Louis Volunteer Lawyers and Accountants for the Arts (VLAA) is a referral service that provides free legal and accounting assistance to income-eligible artists and small arts organizations. For those who are ineligible for free services because their family income or annual operating budgets exceed VLAA guidelines, VLAA can provide the names of lawyers and accountants who have expertise in addressing arts-related problems.

VLAA also offers a wide variety of educational programs in arts law and business including seminars, speakers, a resource library, and publications.

Arts Resolution Services, a national collaboration among several volunteer lawyers for the arts organizations, provides mediation services and workshops in negotiation skills.

VLAA is supported by the Regional Arts Commission; the Illinois Arts Council, a state agency; the Missouri Arts Council, a state agency; corporate sponsorships; foundation grants; donations from individuals; and workshop fees. VLAA is a nonprofit, tax-exempt organization.



St. Louis Volunteer Lawyers and Accountants for the Arts
6128 Delmar, St. Louis, MO 63112
314/863-6930
vlaa@stlrac.org
www.vlaa.org

Preface

Fifteen years ago, locating affordable space was not an acute problem in St. Louis, primarily because our community was known for its low cost housing.

Still, we suspected that local artists were interested in the kind of live/work spaces — lofts with good light, high ceilings, and freight elevators — that were readily available in San Francisco, Boston, Minneapolis/St. Paul, New York, and other cities. We were right.

In 1992, in collaboration with Benton Park Neighborhood Association, Cherokee Business District, City Property Company, Community Marketing Resources, Grand Center, Land Clearance for Redevelopment Authority, and Regional Arts Commission, we commissioned a study on artists' live/work space. The Public Policy Research Centers at UM-St. Louis was hired to design and analyze a survey that was mailed to 3,500 artists and representatives of arts organizations. The study demonstrated overwhelming enthusiasm for the concept of live/work space, particularly among younger, single artists with limited means.

Armed with the results of the survey and unparalleled perseverance, developer Tim Boyle of City Property Company secured financing for ArtLoft. In 1997, the 10-story, former warehouse building, located in Washington Avenue Loft District, was renovated into 63 units of live/work space created specifically for low-income artists.

Today, thanks to the momentum generated by ArtLoft, Missouri's historic preservation tax credit program, and significant investments in street beautification, Washington Avenue is a thriving district, including market rate loft housing, nightclubs, and artist studios. But the rebirth of the neighborhood resulted in rising property values and downtown studio space is no longer plentiful or affordable.

Thankfully, there are other properties available elsewhere in the city and beyond. We are pleased to assist artists with their space-related needs by maintaining an online database of studio and live/work properties and by publishing this leasing guide. The guide outlines some of the factors that should be considered when looking for space, describes lease terms and conditions, provides negotiation tips, and lists resources for further information. Our goal is to deliver practical information in an easily understandable format. But nothing can replace legal counsel. Do not sign on the dotted line before seeking the advice of a lawyer who has experience with commercial leases. If you live in Southwestern Illinois or Missouri, and would like an attorney to review your lease, please send us an application for assistance. The form can be downloaded from our Web site (www.vlaa.org).

Finally, keep records of all oral and written communication with your landlord. These records may prove invaluable if you find it necessary to enforce your rights.

Finding Property

Finding space to work could be one of the most important business decisions you'll ever make. Well-informed decisions can make the difference between creating art in a productive environment and experiencing total frustration. In *Creating Space*, Cheryl Kartes outlines four primary factors to consider before you start looking for space:

1. Location. The area you chose (downtown, suburban, rural, residential, commercial) will determine the type of building you will find. You also will want to consider: parking; proximity to support services/amenities; how far you'll be from friends, family and your job; noise; and neighborhood security.

2. Work Requirements. Evaluate your needs. Think about windows, doors, floors, ceiling height, water and plumbing, ventilation, access (24/7, loading docks, drive-in doors), electrical, environmental, and walls (sound proofing, hanging heavy work or storage shelving).

3. Space. Measure your current studio space. Is it big enough? Should it be longer or wider to accommodate the scale of your work? If you don't have a studio, what factors are most critical? If you plan to live in your space, measure your current home as a guide. (Two bedroom apartments are typically about 1,000 square feet.) Do you need additional space for rehearsal, exhibition, office, or storage?

4. Financial Resources. Prepare a realistic budget by calculating your monthly expenses and income. Think ahead. Are you expecting the cost of your current space to increase next year? How about your income? How much could you afford to invest in improvements? Can you borrow from your family? Do you have the skills to make improvements or will you need to barter or hire others?

Most artists want inexpensive space and, initially, most decide to rent rather than buy. Leasing space has several advantages including mobility due to the relatively short commitment, reduced risk and responsibility, and efficient use of limited funds.

Although leasing is easier than buying, it's a business transaction that demands care. You'll be happier if you talk to other people (especially artists) in the building about its pros and cons, the landlord's responsiveness to repair requests, his maintenance of common areas (e.g., stairs and hallways), his respect for tenant's privacy, and any other areas of concern. These individuals also may tell you what they pay, giving you a sense of the market. Their experience will be very helpful in making your decision and in negotiating a lease.

Finally, commercial leases are not subject to the consumer-friendly laws governing residential leases, which protect tenants from unscrupulous landlords. For example, under Missouri law, a landlord can only require a maximum of two months' rent as a security deposit and cannot evict a tenant without a court order. Many states have statutes regarding the landlord's access to residential rental property, and federal law prohibits discrimination in housing.

Landlord Q&A

When discussing a property with the potential landlord, you may want to ask the following questions:

- What uses will the landlord allow or not allow in the building?
- Who is responsible for maintaining the premises? Repairing any damage?
- Who pays for improvements? Who will “own” improvements made by the tenant?
- What is the rent? On what basis is it calculated? Who is responsible for property taxes, insurance, utilities, and other charges?
- For how many years is the landlord willing to rent the premises?
- What will be the increase, if any, in rent each year of the lease? Will there also be increases in the additional charges? Can those additional items be capped not to exceed a predetermined amount?
- Will you have the option to renew the lease when it ends? For how long and on what terms?
- Should you need to move out before the lease term expires, what options would be available?

Lease Terms & Conditions

Once you have decided on a specific property, the landlord will prepare a lease, which should protect both parties and help avoid misunderstandings. Commercial leases can be as long as 30 pages. Don't panic. But don't sign an agreement that you do not understand in its entirety or that includes clauses that do not meet your needs. Consult an attorney.

Many landlords use a standard commercial lease form for storefronts, industrial, and warehouse spaces. Generic commercial lease forms can be found at most office supply stores. Not surprisingly, they tend to favor the landlord. However, most landlords will be willing to negotiate.

Negotiations need not be adversarial; ideally, the parties will seek win-win outcomes designed to meet the basic needs of both sides. During negotiations, you should be able to determine if you'll be doing business with someone with whom you're comfortable, someone who understands artists, and who has integrity. You'll also lay the groundwork for a good working relationship. In the end, the process (the negotiations) may be just as important as the product (the lease).

Trust your instincts. If you cannot reach a satisfactory agreement, you should be prepared to walk away. If you have an alternative space in mind, you will be more confident when you negotiate.

Here are some important terms and conditions that can create a more balanced agreement. These terms and conditions are designed to give the tenant more rights, but will not always work in every situation, particularly when the real estate market is hot.

Term: The lease should clearly state the date rental payments will begin and terminate. The length of the lease can be one year, two years, or longer. If you choose a longer lease, you will be able to enjoy any improvements to the property over a longer period of time, but might forfeit the flexibility to move to another location. A renewal option might provide the benefits of a long lease without losing the capability of leaving the property sooner. If you still choose to contract for a longer lease, try and negotiate a termination clause that will allow you to get out of the lease early and/or to assign or sublet the space (see the paragraph on Negotiating an Out, Assignment and Sublet).

If you'll be sharing in the landlord's operating costs (which should be clearly defined), try to look at the historical expenses of the building to determine if there have been large increases in expenses during the last five years, and if so, you should ask for a cap or maximum.

Rental Payments: Commercial space is usually priced by the square foot and calculated by the year. For example, a space that is 30 feet wide by 40 feet long has an area of 1,200 square feet. If it rents for \$4 a square foot per year, the yearly payment would be \$4800, and the monthly payment would be \$400.

Here is the equation: $1,200 \text{ sq. ft.} \times \$4 \text{ per sq. ft.} = 4,800 \div 12 \text{ months} = \400 per month.

Guide to Leasing Studio Space

There are several kinds of leases: gross, net, double net, and triple net. It is essential to know what kind of lease you are signing, as each involves different financial responsibilities. Depending on the nature of the lease, you will be responsible for some or all property taxes, utilities, water, insurance, and maintenance.

According to the Building Owners and Managers Association, a national trade association, a gross lease is “a lease that vests all responsibility for operating costs with the lessor, who assumes the full risk of any increases in these costs. The tenant’s payments cover all expenses except those specifically excluded or named as above-standard services.” A net lease is “a type of lease whereby the tenant pays for part or all of the operating expenses which may include utilities, janitorial, property insurance, property management, sewer, water, and garbage.” A double net lease is a “lease type in which tenant generally pays for all operating expenses. It may even include responsibility for roof and structural repair or replacement.” Finally, a triple net lease is “a lease in which the tenant pays for property taxes, insurance, repairs (sometimes even major ones), site maintenance, building upgrades (possibly even to meet local codes), routine maintenance, and all operating expenses; usually done only for unique single-tenant buildings and long-term occupancies.”

Be sure to read the fine print and understand your responsibilities, particularly when it comes to utilities. Keep in mind that the landlord may not use the above definitions, so make sure you understand all the terms.

In some cases, landlords may be willing to make improvements in the space or allow the tenant credit for making improvements. You also should negotiate the rate of rental increases, sometimes tied to the Consumer Price Index. (There are a number of indexes, so be sure you know which one will be used.) It is probably to your advantage to actually set future rates so you’re not subject to arbitrary or dramatic increases.

One more note: if you decide to share studio space, keep in mind that most group leases make each co-tenant liable for the entire rent should the other(s) default, unless stated otherwise.

Premises: Get a very specific description of the property to be leased. This should include, but should not be limited to, how much storage space is provided, the number of parking spaces that you are able to use and if they are reserved or on a first come basis. Determine the exact square footage of the space. Remember to find out if the square footage is measured from the exterior or interior of the walls (“Usable” area is defined as the number of square feet that can actually be occupied by the tenant.). Don’t automatically accept the landlord’s representation of square footage, especially when you might be responsible for increases in real estate taxes or other expenses that are based on your percentage of the total square footage. As a safeguard, have a written description and a floor plan of the premises included with the lease as an exhibit.

Use of Premises: The use of the premises should be clearly spelled out, especially if you plan to live in the space. At the same time, try to make the use clause as broad as possible. Having the phrase “or any other lawful use” in your lease could help avoid headaches should you be forced to find someone to sublet the space. If you’ll generate dust or fumes, or will use noisy equipment or play loud music, put it in writing. If you don’t, it might be considered a default on the lease.

Guide to Leasing Studio Space

You should also make sure that your work will be compatible with your neighbors' artistic pursuits. Will your generation of fumes bother them? Conversely, if you need a quiet environment, make sure there are no musicians in the building.

Repairs: A lease should spell out what the landlord and the tenant are responsible for repairing and that neither party must perform the duties of the other. Usually, a landlord will be responsible for maintaining, repairing, or replacing the roof, exterior facade (unless the tenant adds a sign), exterior and interior structural features, and major systems like plumbing and heating. The tenant is typically responsible for interior walls, floors, ceilings, windows, and plumbing fixtures.

Alterations: Before signing a lease, make sure the landlord approves your remodeling plans. In a form lease, the tenant is usually without any right of ownership of improvements made by him to the property. As the tenant, you should negotiate to have the right to remove any improvements such as lighting or shelving, as long as the property is restored to its original form. Also, define to what extent you will have to restore the space to original condition after the lease ends. If you want to put a sign on the property, get prior approval from the landlord and the city before signing the lease.

Zoning & Codes: Zoning is the system of rules which controls the use of local real estate. Be sure the landlord puts in writing that the space complies with all governmental and other code requirements for the intended use of the property. Any necessary adjustments should be made at the landlord's expense.

It is your responsibility as the tenant to find out which activities are permitted under the zoning designation of your prospective space. As you search for space, you have to know whether the nature of your work requires you to occupy residential, commercial, or industrially zoned space. If the space will be used for public performances or exhibitions or if you're counting on residential use, you should check with city hall about zoning. If the current zoning does not permit your intended use, you may be able to get a variance. To do so, you will need the assistance of the property owner and an attorney.

The Americans with Disabilities Act (ADA) also can affect your space. It requires the removal of physical objects that impede access to a place of public accommodation. In general, if you are dealing with the public in any manner, your facility must comply with the law. If possible, get representation from the landlord that the premises comply with the ADA before signing the lease.

Also, it is very important that you make sure your landlord has satisfied all fire code requirements. If he did, he should have no problem putting it in writing. This might include a sprinkler system that is up to code and in working order.

Finally, before signing the lease, the city building department may have to inspect the property in order to give you an occupancy permit. If any of your activities involve hazardous materials, even in small quantities, make sure that the zoning allows the materials on the property and that the details are disclosed to the landlord. Otherwise, your lease may be invalid and you could be exposed to financial liability. In any case, you should get an occupancy permit to protect yourself.

Guide to Leasing Studio Space

Negotiating an Out, Sublet & Assignment: Your situation may change and you may want to move during the term of the lease. There are three options for getting out of a lease: negotiating an out, sublet, or assignment. Try to negotiate a clause that allows you to break the lease with an agreed upon notice in writing and a reasonable penalty payment. But in most situations, the landlord will want the tenant to sublet the property. In legal terms, the landlord is the lessor, the tenant is the lessee, and the sublessee is renting from the lessee. Assignment is an alternative to subletting in which the sublessee assumes the remainder of the original lease and deals with the landlord. In either situation, the tenant should include the word “reasonable” before “written consent” in the lease in order for the tenant to avoid a landlord who might want unreasonable demands met before the property is assigned or sublet.

Entry & Inspection: This is a common clause that serves to spell out the exact circumstances in which the landlord should have the right to enter your premises. It will help avoiding issues related to your right to privacy, such as “random” inspections. Your landlord should have the right to enter your premises in four situations: 1) in the event of an emergency (such as a gas leak); 2) to make necessary and agreed upon repairs or improvements; 3) to show the space to potential tenants or buyers; and 4) to conduct an annual inspection to check for safety or maintenance problems.

Possession: If your landlord fails to deliver possession of premises for any reason not within his or her control, including, but not limited to-partial or complete destruction of the premises, you will have the right to terminate the lease upon proper notice. Your landlord then-should return any prepaid rent and security deposits. Note that if you fail to take possession, you will still be held responsible for paying rent and complying with the lease agreement.

Damages & Insurance: Insurance matters are very complicated. Keep in mind that the most important aspect of insurance coverage is to decide who will be responsible for what. Ideally, you will purchase a minimal renter’s insurance policy to cover loss or damages to personal belongings. In some cases, the landlord may require you to obtain liability insurance and to name him as an additionally insured in the policy.

In turn, the landlord should agree to insure the property against fire and other hazards and have general liability insurance. Liability insurance will protect you should someone be injured in your space. It will also protect you if you are inadvertently responsible for damages to another person’s property. If you accidentally start a fire in your space and cause damages to other studios, for example, the landlord’s insurance should cover you. You may also want to discuss what will happen if the building is damaged by fire or other casualty. For example, you can agree that your rent will decrease proportionately to the amount of space damaged. Or you could negotiate for the right to cancel the entire lease if you consider it impossible to live in the space.

Finally, you should always shop around for insurance. Try contacting other artists for referrals since rates and coverage can differ greatly between insurance companies. Also, insure your major risks first; do not insure small losses. The higher your deductible, the lower your premium.

Guide to Leasing Studio Space

Eminent Domain: If the premises or any other part of the building materially affecting your use of the premises will be taken by eminent domain, your lease will terminate. The rent should be apportioned as of the termination date. If you have paid any rent for any period beyond that date, you should be reimbursed. You should also be aware that you can file a claim for any taking of fixtures and improvements owned by you, as well as for moving expenses. The lease should state that you have the right to file for a condemnation award, which would provide money for relocation expenses.

Tax Increases: In the event there is any increase during any year of the term of your lease in real estate taxes over and above the amount of the taxes assessed for the tax year during which the term of this lease commences, you may have to pay your landlord a certain percentage of this increase in taxes. The taxes are on the land and building in which the leased premises are situated. Therefore, make sure you agree in writing on the exact percentage that your space is of the total building space. Also, in the event that such taxes are assessed for a tax year extending beyond the term of the lease the amount you pay should be proportionate to the portion of the lease term.

Grace Periods: In the case of a default, for instance if you are unable to pay your rent on time, it is valuable for you to have included in the lease a grace period of ten to fifteen days after written notice of a default to be able to cure or fix the default. Make sure the amount of late penalties is clarified.

Lead Paint: Lead from paint, paint chips, and dust can pose health hazards. Prolonged lead exposure can cause neurological damages, and is especially harmful to young children and pregnant women. If you live in a residential building built before 1978, your landlord must give you a pamphlet published by the Environmental Protection Agency (EPA) called "Protect Your Family from Lead in Your Home." This will provide you with all the information you need to know about lead. Furthermore, the landlord has the responsibility of disclosing to you all known lead-based paint hazards in your building. Finally, at your expense, you should have the right to have a risk assessment or inspection of the premises for possible lead-based paint hazards.

Dispute Resolution: Compared to litigation, arbitration and mediation are private, fast, and less costly conflict resolution methods. Arbitration uses an independent third party to resolve the dispute. The arbitrator hears both sides, then decides what the solution should be. Mediation is an innovative and informal process in which trained neutral mediators guide the discussion between the disputing parties. The mediation process allows the parties to control the outcome, rather than accept the decision made by an outsider (such as a judge or arbitrator). The win-win mediation process is particularly well suited for arts-related disputes because it addresses relationship issues (like trust, respect, fairness, friendship) and procedural issues (like how decisions are made), as well as substantive issues (like money).

If you live in Missouri or Southwestern Illinois, you may want to include the following mediation clause in your lease: *All disputes arising out of this Agreement shall be submitted to mediation in accordance with the rules of the Arts Resolution Services, a program of the St. Louis Volunteer Lawyers and Accountants for the Arts.*

The Art of Negotiation

by Joseph S. von Kaenel
Armstrong Teasdale LLP

The Negotiation Process

Negotiation consists of back and forth communications designed to reach an agreement when two sides have both common interests and opposing interests.

In the continuing process of negotiations, the negotiators always have a three-fold choice: 1) to accept the last offer; 2) to let the deal fail; or 3) to propose an alternative. The result is either an agreement or an impasse. If a mutually beneficial agreement cannot be negotiated, the parties are probably better off not dealing with one another.

Rules for Negotiating

Identify and prioritize the issues. Identify each area of potential difference. The issues should then be separated into “deal breaking” issues, negotiable issues, and false or throwaway issues.

Consider the alternatives if no agreement is reached. Knowing what alternatives you have if no agreement is reached will keep you from accepting terms that are too unfavorable or rejecting terms that are in your interest. The other party’s alternatives should also be evaluated.

Avoid negative behavior. Aggression, intimidation, accusations, threats, sarcasm, and ridicule should be used sparingly, if at all. Their use will provoke retaliation and bad feelings.

Communicate your position. Make certain the other side understands your position. Try to build to a logical and compelling conclusion by stating your reasoning first and your position last. The other side will then have to listen to your reasoning before knowing your final position. If you state your position first and then try to justify it, your opponent is likely to reject it out of hand without listening to your reasons.

Ask them to explain their position. Asking the other side to explain their reasoning and requirements may expose weaknesses in their position or suggest alternative solutions.

Empathize. Show concern and understanding for the other side’s needs and problems. Emphasize common goals and shared experience. If something is funny, laugh.

Consider precedents. Be familiar with the established and accepted patterns for transactions of the same type. If the precedents are in your favor, use them as arguments. If the precedents go against you, be prepared to argue why they don’t apply.

Look for other options. Consider other acceptable means of meeting the concerns of both sides. Finding acceptable alternatives is one of the most valuable skills of a negotiator.

Beware the “standard printed form.” Don’t trust what is portrayed as the “standard printed form.” Don’t hesitate to cross out portions of a form or add an addendum.

Avoid on the spot decisions. A good negotiator seldom makes an important decision on the spot. Take time to review information, consult with others, and think about a decision without pressure.

Consider using an intermediary. Having a lawyer or other representative handle negotiations can aid in maintaining objectivity and insulate you from pressure and arguments. Also, it is easier to back away from a position taken by your intermediary.

Concluding Negotiations

Once a basic agreement is reached, any remaining details should be worked out and the agreement put in writing. Beware of “mere details” and “oh-by-the ways” which can significantly alter the terms at the last minute. Don’t gloat over what you feel is a favorable result. Rather, you want the other side to feel good about the agreement so they won’t later renounce or challenge it.

Resources

Fisher, Roger, William L. Ury, and Bruce Patton. *Getting to Yes, Negotiating Agreements Without Giving In*. Since its original publication in 1981, *Getting to Yes* has been translated into 18 languages and has sold more two million copies. This universal guide to the art of negotiating personal and professional disputes offers a concise strategy for coming to mutually acceptable agreements.

Fisher, Roger and Danny Ertel. *Getting Ready to Negotiate: The Getting to Yes Workbook*. This companion volume to *Getting to Yes* will help you prepare a successful negotiation strategy.

Ginder, Jennifer.. *Square Feet: The Artist's Guide to Renting and Buying Work Space*.. Although this 160-page publication is designed for Canadian artists, it answers many questions about locating, renting, and buying space that will be relevant to artists who live elsewhere. It includes many helpful worksheets and a real estate glossary. Available for free on-line (www.artscape.on.ca).

Kartes, Cheryl. *Creating Spaces: A Guide to Real Estates Development for Artists*. This is an in depth guide for artists who want to act as their own developers. It addresses criteria for finding space, financing, design issues, co-ops, and more.

Rudd, Eric. *The Art Studio-Loft Manual For Ambitions Artists and Creators*. The author uses his own experience to help other creative people find, secure, fix up, and finance studio space.

Stark, Peter B. and Jane Flaherty. *The Only Negotiation Guide You'll Ever Need: 101 Ways To Win Every Time In Every Situation*. Stark and Flaherty provide an overview of negotiation including listening skills, non-verbal communication, and the importance of aiming for win-win agreements. Their section on power and their concrete tactics for getting the best possible deal are especially helpful.

These books and many others on arts law and business practices are available in the St. Louis Volunteer Lawyers and Accountants for the Arts library, located within the Regional Arts Commission office, 6128 Delmar. You can search the library's e-catalog by visiting www.vlaa.org.