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NEWS

Announcing ABN's

TOP 40

ARTISTS TO WATCH

**THINGS
TO KNOW**

**Before Signing
a Studio Lease**

**Art's Role in the
TECH REVOLUTION:**

**Artist-in-Residence Programs
at Silicon Valley Companies**



DECOR

**Business Tips and Tricks
from Pease Pedestals**

**Use Daily-Deal Sites to
Attract New Customers**

**Framing Industry
Innovations**

NEGOTIATING AN ART STUDIO LEASE

WHAT YOU NEED TO KNOW BEFORE SIGNING ON THE DOTTED LINE

After months or years of searching, you have finally found the ideal studio space. The location, light, and rent all meet your criteria. The only thing between you and your ability to move in and start creating art is the dreaded lease.

Negotiating an art studio lease presents many unique challenges. The first of these challenges is the “use clause,” which defines the purposes for which the tenant can use the premises. Few landlords object to a gallery use, but some might find it disturbing that paint and other flammable materials will be on the premises. Thus, if you need more than just a retail space, the use clause must clearly stipulate that the lessee has the right to use the premises for creating art in addition to using it as a gallery.

However, your problems do not end there. The fine print of the lease often contains numerous clauses that might thwart the intended use of the space. Most leases stipulate that the tenant may not use or occupy the premises in violation of the building’s Certificate of Occupancy or local zoning or environmental laws. Accordingly, your attorney must review the Certificate of Occupancy for the building and the zoning laws to ensure that the proposed use is permitted, even if you have overcome the hurdle of spelling it out in the use clause.

Most leases contain a hazardous-materials provision, which prohibits the tenant from keeping any hazardous or

flammable materials on the premises. Moreover, the tenant is generally liable for the cost of removal of any such materials, for the cost of any remedial action incurred by any governmental authority, and for personal injury or property damage arising from any violation of this provision.

Leases are complex instruments. You may think you have agreed upon the rent, but you will soon find out that the rent figure is only a base number, because the rent is often subject to annual percentage increases or increases based on the Consumer Price Index. The tenant often must pay a pro rata share of real estate tax increases and, depending on the location of the premises, a pro rata share of common area charges over a base year. Other items that are quick to add up include electricity, water, sewer, insurance, garbage removal, snow removal, and extermination services. You should immediately ascertain their cost so that you can determine whether the deal is still financially feasible for you.

If you default on a lease that you personally signed, you may face a huge amount of personal liability, which may equal the amount of the unpaid rent and other financial obligations for the remainder of the term of the lease. This amount of liability varies, depending on the state in which the property is located. Therefore, it is advisable to ensure that the tenant be a limited-liability company (LLC) or a corporation. The cost of organizing either entity is minimal, especially compared to the potential liability you would face



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if the lease were in your name. On the other hand, landlords may still want a personal guarantee because they recognize that LLCs and corporations have limited or no assets from which to recover damages in the event of a default.

If the landlord requests a personal guarantee, it is generally limited to a “good-guy” guarantee, which means that if the tenant knows that he or she will be unable to pay the rent and wants to return the premises to the landlord, then the tenant must give the landlord notice of his or her intention to vacate the premises and pay all of the rent and other charges due through the date set in the “notice to vacate.” The length of the notice to vacate is subject to negotiation, but is generally 90 days. The tenant must also deliver the premises in “broom clean” condition or in any other condition that the lease stipulates and must hand the keys to the landlord. If the

tenant meets all of these conditions under a good-guy guarantee, the guarantor is no longer liable for obligations arising after the vacate date. However, the LLC or the corporation is still liable for the obligations under the lease for the balance of the term or until the landlord finds another tenant.

Most leases stipulate that the tenant is in default and can face lease termination if he or she is late in the payment of rent or if he or she fails to comply with any other lease provision. Hence, it is important to negotiate a “notice clause,” which states that the landlord must give the tenant some number of days’ notice and the opportunity to cure the default before the landlord’s right to terminate the lease comes into existence. The typical recommendation is 10 days’ notice for monetary defaults and 30 days’ notice for nonmonetary defaults.

To seal the deal, a landlord will often agree to give a tenant either some period of rent abatement or a cash allowance to make improvements to the premises. Otherwise, the landlord might decide to make some improvements, such as painting, electrical work, and lighting, before the commencement of the lease term.

In short, negotiating a studio lease can be a daunting task for an artist. Having an experienced attorney representing you in structuring the deal before signing a term sheet or a letter of intent and negotiating the lease is as important as priming your canvas with a good gesso. **ABN**