

PBPA Podcast Transcript
Episode 32– Short and Suite: Renting Out Space for
Special Events or Occasional Use
(20:00 minutes)



Sireesha ([00:00](#)):

Is your nonprofit considering renting out its space for occasional events? In this episode of the PBPA Podcast, we'll be talking about legal tips and considerations for nonprofits who rent out their space on a onetime or limited use basis. James Reed will speak to us about what your nonprofit should consider before deciding whether or not to periodically lease out its space.

Sireesha ([00:32](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at [pbpatl.org](#). Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:42](#)):

James Reed is an associate with Morris Manning and Martin in Atlanta, where he focuses on commercial real estate law, including leasing. Thanks so much for being here to speak with us, James.

James ([01:55](#)):

Of course. I'm happy to do it. Thanks for having me.

Sireesha ([01:58](#)):

So James, we often have clients who have some great real estate come to us when a third party approaches them about renting out their office or building. For example using their great patio for a special event or their gym for weekly afterschool programming by another organization. And it seems like a great idea for the nonprofit. They get some revenue and make use of their space when they aren't using it already. But before a nonprofit, hands over the keys, what are a few questions an organization should ask themselves before renting out their space?

James ([02:42](#)):

Yeah, absolutely. You know, before putting anything sort of pen to paper here or getting any sort of agreement signed with a third party, I think the organization really needs to kind of take a step back and look at whether or not such a relationship would be permitted under an existing master lease the organization's mortgage, for example, or even their insurance provider. I think looking at those three different types of existing relationships the organization has will be really beneficial in understanding whether or not you could even move forward with a project like this in the first place. You know, stepping aside from the legal documents or underlying documents themselves, there's a also the

question of whether or not the owner or the organization of the space is, is familiar with the condition of the space.

James ([03:35](#)):

I don't wanna get into this too heavily. It's a, it's a very nuanced premise liability question here, but is the, uh, owner or the organization even familiar with the physical condition of their space? You know, there might be some duties that could arise on the part of the organization to make sure that the space is relatively safe. For example, are all the life safety systems working on the property? Um, are there any unsafe conditions that the owner or the organization is aware of? You know, certainly if there's a large hole in the middle of the floor that someone could walk through and hurt themselves in, that could create some liability against the owner or the organization here. So just making sure that you have a baseline familiarity with the space before you go and license or lease it out is gonna, you know, ensure that the premises is safe and that you are not, you know, opening yourself up to claims.

James ([04:31](#)):

I think that, you know, some other questions that you need to be asking yourself are security. You know, if the space is being exclusively used by the licensee, this might be less of a concern. But for example, if you're running out a portion of the space are there going to be incidents where folks will have access to confidential or sensitive information of the organization or even other licensees using the space? So you definitely wanna keep that in mind because you certainly don't want a breach of the organization's security, but further a breach of potentially another licensee's security. And then I think the, one of the other big questions too, is the licensee going to be opening up its use to third parties of the general public? And if so, we really need to take a look at, you know, insurance and, and really providing for that use within the, uh, document itself.

Sireesha ([05:31](#)):

Like you mentioned, uh, we have clients who might be offering a portion of their building out to an organization to have, you know, a party or a gala, but then they have to worry about locking up their own files because they don't want to have those available for any third parties and violate their, and their obligations for retaining confidential files. Well, those are all questions that you mentioned that, that a nonprofit should ask themselves. Are there specific questions that a nonprofit should ask the third party, the potential licensee who is interested in leasing out the space?

James ([06:11](#)):

Oh, absolutely. You know, I think from a sort of nuts and bolt suspenders kind of thing, asking about, um, for insurance, you know, I'm certainly not an expert in insurance, but you know, I, I know enough to know that the licensor the, the nonprofit should be listed as an additional insured on the licensee's insurance policy. Um, more generally speaking, I think when you're asking a nonprofit or when you're ask when the nonprofit's asking, um, a potential licensee to use their space, you kind of wanna look at several things here. I think when, what and where is a good starting place. You know, when will the licensee be using the space, whether that's the one time single use, whether that's twice weekly or, you know, potentially a more long term daily use for a set term. Um, you really need to be able to narrow that down in the document.

James ([07:15](#)):

I think the, the "what" question is gonna be, what is the use gonna be for, you know, when we're talking about what that is, I think we want to be as precise and specific as possible when describing the nature of the use. And I think the other prong of that is being able to know that the use is in compliance with any necessary governmental approvals or laws generally, you know, you certainly don't want illegal or, other activity going on in the space that you might otherwise need a permit for. And then I think the where section of this, um, designating where the space is gonna be located, again, a lot of the times, if, if the whole space is gonna be used, it's sufficient just to state that. But if it's really only gonna be a portion of the overall organization space, you might wanna designate that on an exhibit, for example.

Sireesha ([08:10](#)):

And I do want to mention when you're talking about the use and what is gonna be happening on the premises, there's so many movie companies in Atlanta now, and now we hear from clients often about requests from movie companies to, to film on this on their ground. I just wanted to make a quick mention to our audience that we actually have seen such an influx of this happening that we created a separate webcast, just to address this specific question about what should a nonprofit do when a movie production company approaches them and asks to use their space. So I'll include a link to that on the page for this episode.

James ([08:56](#)):

Yeah, that's a very, that's a very good point. I mean, we've actually seen a couple of those consensus arise in our practice at the firm here. And, um, you know, with Georgia being such a hotspot for the, the movie and film industry, you know, that insurance requirement is gonna be all the more important, you know, if people are doing stunts or, um, you know, explosions or fires or anything like that, you really need to ensure that the space has the proper coverage to protect, you know, the licensee, the third parties, and of course the non-profit, the licensor. I think that also brings me up to a, brings up another good point here about how the space is gonna be used, you know, in regards to maybe a movie set, if someone's going into the space and having to build a set, you really need to consider what kind of work your licensee can do in the space and can be as simple as sort of setting up tables and chairs for an event to as <laugh> intense or, or invasive as, you know, building a partitioning wall or, or making other substantial improvements to the property. So you really wanna make sure that those are getting installed correctly and then, you know, removed by the end of the license term.

Sireesha ([10:08](#)):

My next question, James, is once the nonprofit decides that, okay, we're going to do this, um, we want, we're ready to license out this space, it's time to probably get a document in place. And so the term that is often used is a "license agreement". And some of our listeners might be wondering, as I've said it before, what's that, what's license agreement? Um, how is that different from a lease? So can you clarify what's, what's the difference between a lease and a license?

James ([10:38](#)):

Yeah, absolutely. And you know, this is, uh, something that has been litigated not only in Georgia courts, but across jurisdictions, uh, throughout the country. Um, you know, first I will say just because your document refers to itself as a lease or a license and refers to the parties as licensee and licensor or tenant and landlord, proceed with caution here because a court is going to look at a number of factors when making a determination as to whether your document is a lease or a license. All the more reason you need great counsel to help navigate all these issues and prepare a good document for you.

James ([11:17](#)):

But at the baseline level, the difference between a lease and a license is that a lease is an exclusive possessory interest in the premises to the tenant. It's granting a third party an estate or an interest in the property, whereas a license is merely a privilege to enter the premises for a particular purpose. So it's a very, um, it's a very specific legal distinction here. But you know, the important thing here to note is that whether there's an interest in land being passed or is it just simply the permission to use the land is granted. Um, like I said, the courts are gonna look at intent here, so if you're calling it a license, but it, it actually amounts to a landlord tenant relationship, a court will define it as a lease. And, you know, without getting too in depth about these differences here, the key thing to keep in mind is a license is typically freely revocable and does not create an interest in the property. A lease is going to have more hurdles that need to be jumped through to be able to terminate the relationship and and evict the tenant. So again, it's a very complicated, uh, distinction and it's very technical I should say. So all the more reason you need to have a great attorney to, to help draft your documents.

Sireesha ([12:40](#)):

Yes, definitely. And if you're a client of PBPAs, you can reach out to PBPA to help you out with drafting an agreement like this. And generally speaking, James, what should a nonprofit be thinking about, um, as they are thinking about putting together a license agreement?

James ([13:00](#)):

Absolutely, and I think, you know, we've, we've been kind of dancing around all of the important provisions here. What I would say is you definitely need to have a term and a termination provision. So the term, going back to the "when" that I was describing and the nature of the use, um, you know, how often are they going to be there? Is this a single time use? We need to be really clear on that. If it's a, uh, regular relationship that sort of extends out for maybe a year or two, then specify what hours of operation are you. You really can have as much creativity and specificity as possible here. When, when discussing what that term should be. Oftentimes in our licenses that we draft for our clients at Morris Manning, we will provide for a termination right in that either party has the right to freely terminate the agreement with 30 days notice. You know, that termination provision is, um, is really, is really critical and beneficial to our clients in a lot of instances. So my advice is to clearly say what the term is and to provide some sort of termination right for the parties.

James ([14:06](#)):

You know, I think probably more important than the term or termination here for, for the business minded folks, uh, payment, uh, you know, what, what is that going to look like? How much is that going to be? How often is it gonna be paid? Is there a need to secure some sort of deposit beforehand whereby you as the licensor, um, have the ability to draw on that in the event that there's some sort of damage to the property. So payment is very important and I would not, you know, hesitate to expand upon that as much as you can in your document.

James ([14:41](#)):

I think another really important provision here is gonna be insurance specifying what type of coverage you want your licensee to have when it's using the space. You know, repeating myself a little bit here, listing the, uh, licensor as an additional insured, making sure you have coverage for property damage for bodily injury. Um, you know, this is something you're definitely gonna wanna talk to your insurance brokers about here and make sure that you have the right coverage. You know, certainly having a party

might not need, a party at the space, might not, you know, warrant as much coverage as, as a movie set, but these are just things that you need to consider here. And then, you know, one of the most, kind of like hotly negotiated concepts in a contract can be an indemnification clause. And indemnification without getting too much into it is an obligation for one party to essentially make whole or more plainly put, cover the costs incurred by another party in connection with that party's wrongdoing or violation of the document. So if someone breaks a, breaks a window on the space, for example, and you have this indemnification provision, the licensor can look to that provision to be made whole by the licensee who either broke the window or a third party, you know, using the space in connection with the licensee broke the window. So those are really critical things that I would, I would take a look at when drafting a license.

Sireesha ([16:13](#)):

I do want to go back to one of the first ones you mentioned, and that's about the term, the length or duration that the licensee would be using the space. And I'm just wanting to point out that, uh, if a nonprofit is regularly engaging in renting out their space, they should talk to their accountant probably and look into whether or not that could, revenue could be classified as unrelated business income tax. If a nonprofit is regularly engaging in business that's not substantially related to its mission, then that income could be taxable. Um, so if your organization currently or might in the future license out space on a regular basis, um, we actually have a webcast on UBIT, which is the acronym for Unrelated Business Income Tax. And I'm gonna drop a link for that, uh, on this episode's page. James, now one last question I have for you is also related to what's going on in this space when a licensee is renting out a nonprofit's space. What if that space is being rented out for a special event and the licensee will be serving alcohol, um, at the event? Is there anything in particular that a nonprofit should keep in mind or be aware of in that situation?

James ([17:39](#)):

Yeah, absolutely. You know, to kind of as simply put as possible, you know, everything just needs to be in compliance with applicable laws. Uh, you know, said more, more specifically, I think that would include whatever municipal or county requirements exist for a space to be able to serve alcohol. And on the other front too, the licensee needs to have the proper licensing to be able to serve alcohol, uh, whether they're, whether the licensee itself is the one serving the alcohol or, um, it's hiring out a third party catering company, for example, to do so. Um, you really just wanna make sure that the space is in compliance and the use is in compliance. Um, and again, going back to the document, you need to make sure that you're requiring your licensee to act in compliance with applicable law.

Sireesha ([18:33](#)):

I'll just also make a plug for a resource, another resource we have on that that goes into a little more detail about, uh, serving alcohol at a special event. James, those are all the questions I have today. Thank you so much for walking us through these important considerations. We really appreciate you sharing your time and expertise with us today.

James ([18:56](#)):

Of course, this was a great opportunity. I know, uh, you know, real estate and development are, are really hot in the Atlanta area and so, it's definitely a very creative and intelligent way to use your space to license it out to third parties. So, I'm happy to help and provide a little bit more information here on this topic.

Sireesha ([19:15](#)):

Thanks, James.

James ([19:16](#)):

Thank you.

Sireesha ([19:18](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.