

Legal Issues and Risk Management for Makerspace Entrepreneurs

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ROPES
& GRAY

Three Bad Events

- Blood
- Fire
- Paper

Three Bad Events

- **Blood: Dead in the Woodshop**

A member with 24 hour access comes in at night to use the woodshop alone. Her hair catches in the machine. As she gets pulled in, she can't reach the emergency off switch. She is found dead in the morning.

Three Bad Events

- **Fire: Laser Cutter up in Smoke**

The laser cutter's air hose gets disconnected. The operator doesn't notice and leaves the area. The laser cutter overheats, catches fire and destroys itself. Another member sees the fire and puts it out with the fire extinguisher in the shop before anyone or anything else is hurt.

Three Bad Events

- Paper: Left Holding the Lease

You and two friends open John, Jo and Jerry's Makerspace. The only paperwork any of you sign is when John and Jerry sign a \$10,000 a month two year lease for a small warehouse space for John, Jo and Jerry's Makerspace. When you can't find others to join you, John and Jerry skip town. The landlord sues you and the court says you're personally liable to pay the rent for two years unless the landlord can find a new tenant because you and John and Jerry were partners. That's \$240,000!

Liability Risk Management

- Make bad events better
 - Lower the probability of a bad event
 - Minimize the loss/damage
- Minimize liability
 - Minimize the liability for individuals
 - Minimize the liability for the organization

Important Law for Makerspaces

- Torts & Accidents
- Entity Formation
- Contracts & Leases

Kinds of Torts/Accidents

- Machine/tool/mechanical hazards
- Chemical/ventilation hazards
- Fire
- Slip & fall
- Nuisance, noise, pollution
- Transportation accidents

Kinds of Tort/Accident liability

- Dangerous facilities
 - wet floors, blocked exits, precarious piles, broken locks, dark entryway
- Bad tools
 - Poorly labeled or maintained, broken or malfunctioning tools
- Poor safety
 - Inadequate safety policies, procedures, signage or enforcement
 - Poor ventilation, lighting
 - inadequate supply of safety equipment
- Actions of others
 - Negligent hire, training or supervision
 - Liable for the actions of your employees or other agents
- Ultrahazardous activities

Dead in the Woodshop and Laser Cutter Up in Smoke

- Possible theory of liability?
- How could you
 - Lower the probability of that bad event
 - Minimize the loss/damage
 - Minimize the liability for individuals
 - Minimize the liability for the organization
- How can the law help you?

Entity Formation

- Type of Entity
 - Partnership, Corporation, Sole Proprietorship
 - Liability differences
 - Tax differences
- Formation/registration
 - Nonprofit status

Contracts/Leases

- Leases & Licenses
- Contracts
 - Construction
 - Suppliers/purchase contracts
 - Employees/contractors
 - Insurance
- Individual vs. representing organization

Asylum Membership & Service Agreement

Explanation of Provisions:

1. Duration of Agreement and Termination
2. Description of Services
3. Member Obligations
4. Fees
5. Risk of Use
6. Interruption of Service
7. Relationship of the Parties
8. Partial Invalidity
9. Waiver
10. Lease/License

Summary of Advice

- Make bad events better
 - Develop excellent safety practices
 - Avoid the most dangerous activities
 - Understand legal theories of liability to predict where problems could arise
 - Try to solve the problems before they happen
- Minimize liability
 - Take care hiring and supervising your employees/volunteers
 - Use entity formation to minimize individual liability
 - Buy appropriate insurance

More Law For Makerspaces...

- Regulations & Taxes
- Employment Law
- Intellectual Property
- Criminal Law

Regulations & Taxes

- Zoning/variances
- Building code/permits
- Fire code – max # of people, aisles and exits clear, fire exits, clearance from lights, etc.
- Americans with Disabilities Act (ADA) - handicap accessibility to public places
- OSHA
- Noise, pollution, endangered species and other environmental
- Chemical/hazardous/flammable materials/waste storage/containment/disposal
- Parking – resident only, time limits, capacity limit, required to build additional
- Taxes – sales and income tax, gross rental tax for landlords, other?
- Business license
- Registration for charitable solicitations

Employment Law

- Minimum wage and working conditions
- Contracts/offer letters
- Worker's compensation
- Payroll taxes
- Benefits - Affordable Care Act, state law mandates
- 1040's, W-2s, 1099s
- Contractors vs. employees
- ADA - reasonable modifications for employees

Intellectual Property

- Trademarks
 - organization's name, logo
 - through use or state or federal (\$375) registration
- Copyright
 - articles, books, drawings, paintings, sculptures, movies
 - automatic or through U.S. Copyright Office (\$45)
- Patents
 - for inventions/products

Criminal Law

- Theft, property damage or violence
 - against/by staff, members, guests or strangers
- Embezzlement/fraud