Using Google Meet
Audio & Video

To mute/resume your audio, hit the mute button on the bottom left of center
*6 if calling in

To pause/resume video, hit the video button on the bottom right of center
In the upper right corner of your meeting screen, you will find the tab for the chat box.

Chat messages will be displayed for all attendees.
Any URLs will be shared in the Chat box.

In the upper right corner of your meeting screen, you will find the tab for the chat box.
You can turn captions on at the bottom right of the screen.
The live captioning will differentiate which attendee is speaking.
Leaving the Meeting

To leave the meeting, you can press the phone icon at the bottom center of the screen.
Reference Shot of Features

- View meeting participants
- Chat with meeting participants
- Pin a participant
- Remove a participant
- See additional settings, such as recording the meeting, changing your video resolution, and changing layout

- Share meeting details with guests
- Turn microphone on or off
- Leave meeting
- Turn camera on or off
- Share your screen or give presentations
Equity and Justice

The Maryland State Arts Council (MSAC) celebrates our state's diversity and promotes the role of the arts to connect people, bridge our differences, and inspire an appreciation of our shared humanity. Because the arts have the power to transform individuals and communities, MSAC is committed to advancing diversity, equity, and inclusion in all aspects of our organization and across all the communities of our state, and in supporting our partners in modeling the same commitment.
Vision
The Maryland State Arts Council plays an essential role ensuring every person has access to the transformative power of the arts.

Mission
Maryland State Arts Council advances the arts in our state by providing leadership that champions creative expression, diverse programming, equitable access, lifelong learning, and the arts as a celebrated contributor to the quality of life for all the people of Maryland.
Goal 1. Increase Participation: Broaden MSAC’s constituency, providing avenues designed to increase pathways to engagement

Goal 2. Provide Intentional Support: Embrace thoughtful and targeted approaches to serving known and yet to be known MSAC constituents

Goal 3. Build Capacity: Work strategically to further build organizational and governance capacity to ensure that MSAC is capable of vigorously delivering on its mission

Goal 4. Leverage Connections: Further enhance current relationships and involve additional partners, collaborators, and constituents who will benefit from and advance the work of MSAC

Goal 5. Bolster Maryland Arts: Showcase the high caliber, diverse and relevant work of Maryland’s artists and arts organizations; their contributions to community vitality and MSAC’s role as a catalyst
Welcome
MARYLAND VOLUNTEER LAWYERS FOR THE ARTS

Premises Liability for Artists and Creatives

How to think about liability when reopening your gallery, studio, venue, restaurant or other creative commercial space

Wednesday, July 29th, 2020
Adam Holofcener, Esq.
Disclaimer:

Opinions and conclusions in this presentation are solely those of the author unless indicated otherwise. This presentation provides general information and is not intended to be and should not be taken as legal advice. This presentation is not intended to and does not create an attorney-client relationship. Legal advice must vary with individual circumstances, do not act or refrain from acting on the basis of this presentation without consulting professional legal counsel. Contact Maryland Volunteer Lawyers for the Arts when you come across these issues.
We Get It…

• Artists and creative business owners want to re-open.
• Government support is dwindling or was never there.
  • $$$ is needed.
• A return to normalcy is desired.
• But how do you reopen safely, both in terms of human safety and a low or limited risk to your business?
First off, are you incorporated?

- Sole Proprietorships + Partnerships v. LLCs + Corporations
  - Personal liability v. Business Liability
Resources!

There are competing/intersecting/ever changing forms of guidance from several different angles:

- The Centers for Disease Control and Prevention (CDC) - Business and Workplaces
- Maryland Strong: Roadmap to Recovery
- The Future of Maryland's Arts Sector: Strategies for Stability and Sustainability

MSAC's guide even provides Best Practices for In Person Engagement for:

- Community Centers and Co-Working Spaces
- Retail Galleries
- Indoor Concert Venues
- Museums
- Outdoor Venues for the Performing Arts
- Outdoor Venues for the Visual Arts
- Theatres
Keep In Mind:

• While these guidelines and best practices provide information related to reopening, they DO NOT speak to legal duties owed to customers, patrons, and employees, as well as potential liability.

• ***Remember! These guidelines also DO NOT speak to WHEN you may reopen your particular creative business. In Maryland, when you can reopen your particular business is based upon your particular COUNTY’s government deciding what phase of reopening is appropriate for that particular geographic area. If you have questions, please consult your local health department and/or Executive’s office.***
So, what liability are we talking about?

- What is a Tort?
- Wrongful Act
- Duty of Care
- Negligence
  - But For
TAKE A DEEP BREATH!

Legally speaking, it may be very difficult for a particular patron to show that:

- BUT FOR your (or your employees’)
  - NEGLIGENCE
  - (related to a specific DUTY OF CARE that you REASONABLY owe the patron)
  
  - the patron would have contracted COVID-19 from YOUR business
  - and NOT on the way to your business or from your business or at some other intervening moment between when they visited your store and when they actually received a positive diagnosis of COVID-19.
So, why are we talking about this if the chance of a legal claim being brought against you for a tort related to a patron contracting COVID-19 on your premises is likely very difficult?

• Juries
• The Wheel of Justice Turns Slowly (and Expensively)
• Don’t you want to be able to conduct as accurate a risk analysis re: reopening as is possible?
A NOTE ON CONSUMER LAWSUITS:

• A MYTH HAS BEEN CREATED RE: FANG BARING PERSONAL INJURY ATTORNEYS WHO BRING FRIVOLOUS LAWSUITS TO PREY ON UNSUSPECTING BUSINESSES AND FORCE THEM TO GO UNDER.

• THIS MYTH IS NOT TRUE, HOWEVER, IT CONTINUES ON TO THIS DAY TO PUSH THROUGH TORT REFORM MEASURES, INCLUDING THOSE LINKED TO PROPOSED PIECES OF LEGISLATION THAT WOULD LIMIT BUSINESS LIABILITY RELATED TO COVID-19 TYPE CASES.

• FOR THOSE INTERESTED IN TORT REFORM, WATCH THE GREAT FILM HOT COFFEE BY SUSAN SALADOFF
WHAT ABOUT EMPLOYEES WHO GET SICK FROM COVID-19 ON YOUR PREMISES?

• OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION - GUIDANCE ON PREPARING WORKPLACES FOR COVID-19

• MARYLAND WORKERS’ COMPENSATION

• UNEMPLOYMENT CLAIMS - GOOD CAUSE/JUST CIRCUMSTANCES

• AMERICANS WITH DISABILITIES ACT - REASONABLE ACCOMMODATIONS

• DISCLOSURE OF SICK EMPLOYEE

• SICK TIME/PAID LEAVE - MARYLAND HEALTHY WORKING FAMILIES ACT
How can I start to think about minimizing risk?

TO WHOM DO I OWE A WHAT DUTY OF CARE?:

• INVITEE (CUSTOMER) - DUTY TO REASONABLE AND ORDINARY CARE TO KEEP THE PREMISES SAFE AND TO PROTECT THEM FROM ANY UNREASONABLE RISK THAT THEY COULD NOT DISCOVER THROUGH THE EXERCISE OF ORDINARY CARE.

• LICENSEE (SOCIAL GUEST) - DUTY TO EXERCISE REASONABLE CARE TO WARN OF A DANGEROUS CONDITION KNOWN TO THE BUSINESS, BUT NOT EASILY DISCOVERABLE BY THE SOCIAL GUEST.

• BARE LICENSEE (SALESPERSON) - DUTY TO REFRAIN FROM WILFULLY OR WANTONLY INJURING OR FROM CREATING NEW AND UNDISCLOSED SOURCES OF DANGER.

• TRESPASSER - DUTY TO REFRAIN FROM WILFULLY OR WANTONLY INJURING OR ENTRAPPING.
Defend against liability for mishandling a COVID-19 transmission re: Employees:

- Develop written procedures.
- Document education, implementation, verification, and enforcement of procedures.
- Train employees to self-report COVID-19 symptoms.
- Actively encourage sick employees to stay home.
- Employees who live with or are exposed to COVID-19 positive individuals/family members should also alert employer to determine whether employee should stay home.
- Develop signage and notices at entry points re: customers informing the business if they have experienced COVID-19 symptoms or been exposed to a COVID-19 positive individual.
- Refer to CDC guidance, which changes frequently.
Securing the Business Premises:

• DEVELOP A MORE ROBUST CLEANING AND DISINFECTING PROCESS FOR THE PREMISES (REVIEW CDC GUIDANCE WITH BUSINESS SPECIFIC SUGGESTIONS).
  • DOCUMENT SANITATION SCHEDULE AND EXECUTION: DATE, TIME, AND EMPLOYEE INVOLVED.
  • CREATE SECURE ENTRY POINTS FOR SCREENING/SIGNAGE.
  • RESTRICT ACCESS TO PARTS OF PREMISES THAT EMPLOYEES/CUSTOMERS NEED NOT ENTER.
  • CONSULT WITH LOCAL HEALTH DEPARTMENT/TRADE ASSOCIATION FOR ADDITIONAL GUIDANCE.
Thinking about a Liability Waiver and Release?

- WAIVERS CAN HELP LIMIT LIABILITY RELATED TO NEGLIGENCE BY A BUSINESS.
- EXCULPATORY CLAUSE
- EXCEPTIONS:
  - INTENTIONAL HARMS OR RECKLESS, WANTON, OR GROSSLY NEGLIGENT CONDUCT
  - GROSSLY UNEQUAL BARGAINING POWER
  - TRANSACTIONS AFFECTING PUBLIC INTEREST (UTILITIES, COMMON CARRIERS, ETC.)
  - PATENTLY OFFENSIVE
Assumption of Risk:

• Plaintiff had knowledge of the risk of danger,
• Appreciated the risk, and
• Voluntarily confronted the risk of danger.

Knowledge and appreciation of risk are Objectively evaluated: whether a person of normal intelligence in the same position would have understood the risk.

An attorney should assist in properly drafting a Liability Waiver and Release/Assumption of Risk language.
Established in 1985, Maryland Volunteer Lawyers for the Arts is dedicated to protecting the rights of Maryland artists and arts organizations through pro bono legal services and educational opportunities.

Maryland Volunteer Lawyers for the Arts
120 W North Avenue, 305A
Baltimore, Maryland 21201

info@mdvla.org
www.mdvla.org

Facebook: @MDVLA
Twitter: @MarylandVLA
Instagram: @MD_VLA
Discussion
Reflection

https://tinyurl.com/ydy445f6
Please share any reflection on this meeting. We have time to hear a few in real time.

Please send any additional reflections to msac.commerce@maryland.gov.
Upcoming:

To explore and register for other Envision offerings, please see a full list of events here:

https://www.msac.org/events/virtual-events
Thank You!

To learn about similar topics, news & to keep in touch, please join our mailing list at https://tinyurl.com/MSACMailingList