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Filming Location Agreements: Lights, Camera ... Negotiate ... Action!

When filming occurs on private property, a location agreement is a must, from the perspectives of both the production company and property owner.

By **Maxwell Briskman Stanfield** | February 07, 2020



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For property owners, granting a production company access to your property might seem like a no-brainer—who wouldn't want their property featured in that next big blockbuster movie or hit television series? However, when filming occurs on private property, a location agreement is a must, from the perspectives of both the production company and property owner.

As a property owner, the financial reward for allowing a production company to use the property—and the potential to help raise the profile of the featured location—can be very enticing. No different than any other use or occupation of a piece of property, allowing a party access comes with inherent risks and openings for potential liability. Often, production companies have their preferred “form of” location agreement ready to use when a shoot approaches, but property owners should be mindful to read, understand and negotiate the agreement's provisions prior to signing and giving the go-ahead.

As with any agreement, depending upon which side you represent or which side you are on (property owner or production company) and the type of property (i.e., hotel, apartment building, commercial facility, single family residence, etc.), there are certain considerations and nuances that require attention. The following is a summary of some key provisions that comprise just about any location agreement and are most often negotiated between the parties.

Grant of Rights

Under this provision, the property owner grants to the production company certain rights to enter the property for the purposes of recording. Production companies often ensure that this clause contains specific items, such as:

- The right for the production company to enter the property, make use of the property, and bring personnel and equipment onto the property.
- The right to have no obligation to use any of the recordings in the final cut of the recording or to depict the location in any particular manner. In fact, a separate section of the agreement will likely note that the production company owns the recording.
- The right to depict the location in any and all media related to the production for whatever purpose.

Often, property owners will want to push back in some areas, such as defining the scope of use of the property. These considerations are known as access rights, breaking down important details like the days and times the property can be used for filming, or any portions of the property that may be off limits. These details need to be set forth in the location agreement before production begins on the site.

Compensation

In order to be a valid contract, there must be some element of consideration. Often in location agreements, this comes in the form of a monetary payment. Depending on the amount of time the production is on the property, if it is disrupting business, or other factors, these payments can become large.

However, alternate forms of consideration are occasionally implemented. For example, the potential benefits of the publicity associated with the property appearing in the production could be taken into account. Imagine a striking hotel that appears in a television show. Perhaps people will want to stay in the place where their favorite actor performed.

Portrayal of Property, Logos, Marks (Including Third-Party IP Rights)

Location agreements originating from the production company will likely state that the production company has the right to portray and depict the property however the production company sees fit for that specific recording. Property owners, meanwhile, will often want to request that the production company agrees to portray the property in a positive light or include a prohibition against portrayal of the property in a way that might harm the reputation of the property or the property owner—especially if there are unavoidable scenarios that will clearly identify a property.

Permission to record visible signs, trade names, trademarks or logos is another point of negotiation. There are various reasons why or why not a production company or property owner may want or not want this to occur (perhaps a property owner would not want its logo shown in a horror movie being filmed). Incidental or background inclusion may not require ownership permission, but this needs to be analyzed on a case-by-case basis. Consideration should also be given for intellectual property not owned by the property owner (i.e., third-party IP) that may be included in recordings. Express permission from such third parties may need to be obtained prior to use.

Property Owner Representations

The agreement should also include certain representations from the property owner, such as ownership of the property, power to grant all rights under the agreement. It is important to remember that if the property is managed by a manager or management company who is acting on behalf of the owner, the representation should state that such a manager has obtained all necessary authority and power from the owner. Be mindful when filming in apartment buildings or tenant spaces—permission from a tenant likely does not grant the proper authority to conduct the requisite filming activities, etc.

Review of Recordings

The property owner might request a right in the agreement to review the recordings. From the production company's position, this can often slow down, or outright halt, the production—especially if the recordings are intended to be used for multiple projects. Depending upon how much leverage the property owner has, the production company might agree to a review right that is limited to a certain amount of time the property owner has to review and approve.

Grantors Release and Waiver

This is the provision where the property owner agrees to release the production company from any potential causes of action it has or may have in the future. This provision is important for the production company to have included, but property owners may want to try to narrow the scope of the release, depending upon the circumstances. Common disclaimers in this provision include the disclaimer of defamation, invasion of privacy, right of publicity, trespass, copyright infringement and nuisance.

Injunctive Relief

Location agreements frequently contemplate a property owner's right to injunctive relief (also known as equitable relief). An injunction by court order would require a defendant to take or refrain from taking certain action. In this circumstance, an injunction might prohibit the production company from distributing the recording. Obviously, this would be worst-case scenario for production companies, so injunctive relief is often negotiated so that the property owner's remedy is limited to monetary relief.

Property owners often accept the position where, if the production company fails to comply with any provision of the location agreement, the property owner has the immediate right to halt production until a resolution is agreed upon. If no resolution can be achieved, then the agreement terminates immediately, and the property owner is entitled to any location fee earned up until the point of termination. The property owner forgoes the right to be able to halt distribution or use of the recording.

Indemnification

This is probably the provision of which we are all most familiar and a concept that can, at times, be tricky to pin down. Indemnification is essentially a promise by one party to cover the losses of another party, if those losses arise out of a particular situation or agreement. Location agreements regularly include indemnification provisions whereby the production company agrees to indemnify the property owner against certain kinds of claims and damages. As an example, think of a situation where someone on the property trips and falls resulting in injury. This could potentially give rise to indemnification liability. Most production companies will want a "carve out" from the indemnification provision that excepts any negligence or willful misconduct on the part of the property owner.

As we can see, there are several provisions and nuances to crafting a well-drafted location agreement. Keeping in mind that this is just an overview and that there are additional provisions to these types of contracts that are not discussed in this article, it is important for legal counsel to review and advise on any location agreement under consideration—no matter if you are on the production company's or the property owner's side of the table.

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