



mla

Arts Brief

A Publication of Maryland Lawyers for the Arts: Left-Brain Support for Right-Brain People

VOLUME 3 | ISSUE 4

FALL/WINTER 2010

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The How-To Issue: Fiscal Sponsorships

by Marcia Semmes, MLA Executive Director

To the un-anointed, nonprofit status can seem like the Holy Grail. But it's not a license to print money and it's not for everyone — the loss of personal control, rigorous reporting requirements, and public scrutiny may outweigh the benefits of tax deductible donations and grants.

For start-up arts organizations and others that simply don't want to go through the hassle of applying for 501(c)(3) status, fiscal sponsorship may offer the best of both worlds — a way to offer would-be supporters the incentive of tax-deductible donations without the hassle of obtaining nonprofit status.

A fiscal sponsor is a nonprofit that accepts donations on another organization's behalf and funnels them through to the sponsored artist or arts organization, charging a percentage of the donation — normally between 5 and 10 percent — to do so. Because the fiscal sponsor is a tax-exempt 501(c)(3) public charity, donations are tax-deductible.

According to Dianne Debicella, director of Fractured Atlas's (FA) fiscal sponsor program, it's important to work with a fiscal sponsor familiar with the complicated legal issues involved because while fiscal sponsorships have been used in the nonprofit sector for decades, they are not mentioned in the Tax Code and have not been tested through litigation.

(continued on page 2)



The How-To Issue: Insure Your Art

by Marcia Semmes

Artists insure their houses, health, and cars, but many don't know how to go about insuring their work and the tools they need to make it. There's no one-size-fits-all solution: performing artists like actors, musicians, and dancers will need event coverage; filmmakers might need production coverage along with errors and omissions insurance; and craft artists might want to insure their equipment and raw materials.

Almost anything can be insured, and as Bob Middleton points out, "The arts know no boundaries." Middleton, the director of the Arts Insurance Program, Maury Donnelly & Parr Inc., has insured a veritable variety show of artistic endeavors, including a public artist who wrapped a gas station in gift wrap and put a big bow on the top of it, flaming trapeze artists, dancers who dripped paint on each other, and a movie about a robotic opossum.

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Founded in 1985, Maryland Lawyers for the Arts provides pro bono legal assistance to income-eligible artists and arts organizations, and educational workshops and seminars on topics affecting artists.

MLA is funded by the Harry L. Gladding Foundation; the Goldsmith Family Foundation; Mayor Stephanie Rawlings Blake, the City of Baltimore, and the Baltimore Office of Promotion and the Arts; The Wachovia Wells Fargo Foundation; and by an operating grant from the Maryland State Arts Council, an agency dedicated to cultivating a vibrant cultural community where the arts thrive. MLA also gratefully acknowledges the support of the Maryland Institute College of Art.

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MLA Arts Brief aims to educate and inform Maryland artists about legal issues affecting them. It is not intended as a substitute for legal advice. Artists with legal issues should seek legal counsel to address specific questions.

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(Fiscal Sponsorships from page 1)

As the FA web site notes:

“Many well-intentioned, legitimate organizations across the country provide fiscal sponsorship programs for artists. Very few of them are doing it legally, though, and most don’t even realize the danger in which they’re putting themselves and their sponsored projects. If the IRS ever decides to crack down, they could lose their 501(c)(3) status, and their sponsored projects could be forced to return any money raised under the arrangement.”

FA, which has approved more than 2,000 fiscal sponsorships since 2002, provides required oversight for funds raised and how they are spent, Debicella said.

Any individual with a Social Security number or organization with a tax I.D. number can apply for the FA program, Debicella said, so long as they have an arts focus and a charitable purpose, and don’t have investors or a commercial interest.

Individuals may have a specific project in mind, or seek support for ongoing work and creative development. Arts organizations — whether they are emerging arts organizations or mature organizations with limited staffs — can seek sponsorship for one-time artistic events or festivals, grassroots or DIY companies, or collectives or facilities.

Application to the FA program is not a competitive process, Debicella said, and some 97 to 98 percent of applications are accepted, so long as there is an artistic purpose and no commercial interest. The application is short and to the point, asking only for entity and project information, a brief budget, and a certification that no commercial interests are involved. The deadline for applying is the last day of each month, with applications reviewed before the 15th of the next month and approvals mailed out no later than the 15th of the following month.

Once accepted into the program, FA will review the sponsored artist’s grant proposals and solicitation letters, Debicella said. Some 70 to 80 percent of donations come from individuals and through FA, the sponsored artists can accept online donations by credit card (up to \$5,000 per transaction) with no additional fee for credit card processing, automatic recurring monthly donations, and non-cash donations of equipment and materials.

For foundation grants, FA files an application, with the sponsored artist or arts organization a “project” within the larger application, Debicella explained.

Debicella said the National Endowment for the Arts is the only major arts funder she's aware of that won't accept fiscal sponsorships.

Checks are issued weekly at the sponsored artist's request, Debicella said, and recipients then have 90 days in which to spend the money.

Lily W. Susskind, founder of Baltimore's Effervescent Collective (www.effervescentcollective.org), said FA's fiscal sponsor program was "very supportive" when her group was in the first stages of figuring out its mission statement and budget.

Susskind, who graduated from Goucher College in May 2009, explained that the school provided funds for some of her earlier dance projects, but that after graduation, the company was really "too small to catch the attention of a major funder."

Fiscal sponsorship provided a path to funding, Susskind said, and the organization got its first \$750 grant from Ignite Baltimore in October. The Effervescent Collective is clearly the type of emerging arts organization that deserves support: In September, Baltimore's *City Paper* named it Best Dance Company of 2010.

Fractured Atlas is a national non-profit arts service organization that provides a variety of services to artists. Individual memberships are \$95 per year and organizational memberships are \$195. For more information, see www.fracturedatlas.org. ■

(Insure Your Art from page 1)

The Arts Insurance Program works with Fractured Atlas (FA), a national arts service organization with more than 100,000 members, leveraging the nonprofit's buying power to develop programs that provide cost-effective coverage for artists.

Emily Gray, director of FA's liability insurance program, says **comprehensive general liability** (CGL) is the one kind of business insurance that every kind of artist should have. CGL covers two things: damage to a location and injury to an uninvolved bystander or audience member. It also covers legal fees if you're sued because of either one. In the context of a dance or theater company, for example, that might mean a suit by an audience member injured by something falling off the stage during a performance or damage to the theater itself when a set falls over. For a craft artist or visual artist, it would cover a visitor's slip and fall in one's home studio, or a hole accidentally knocked in the wall of a gallery or a venue hosting a craft show. CGL does not cover injury to employees or volunteers, or damage to company property.

CGL is often a cost of doing business in the art world. Theaters will generally require a certificate of insurance to rent their space, cities to issue permits for filming, and schools to get permission to teach. Most venues will not include artists in their liability insurance coverage.

Gray recommends a minimum of \$1 million in CGL coverage, the amount most often required for rentals and permits, which starts in the neighborhood of \$300 to \$350 per year through Fractured Atlas.

General liability policies for most craft artists run between \$350 and \$450 minimum annually, with coverage available for artwork, equipment, and materials based on the total value, generally from \$300 to \$600 (assuming the value is between \$10,000 and \$100,000).

The minimum cost of the film general liability is \$430 and the equipment is \$330. Filmmakers may also need errors & omissions (E&O) insurance, Gray noted, which covers situations like misrepresentation and copyright infringement. Filmmakers must go through clearance counseling with an attorney to get it E&O, making it "one of the most aggravating policies to get," Gray said, with a minimum premium of \$2,500.

Fractured Atlas has simplified the standardized insurance application, Gray said, to make it easy to understand, and Fractured Atlas members can submit online at www.fracturedatlas.org/site/liability/GI. Members are able to submit applications online through the Fractured Atlas website using a simple, streamlined application. Generally, applicants are asked to describe how they go about their work, for example, a **visual artist** might need coverage for paintings in storage, in transit, and on exhibition, which would generally run \$500 annually for up to \$200,000 in coverage. Gray described a recent situation in which a vandal threw sculptures installed on a Michigan campus into a nearby lake. The works were not completely destroyed, but they were seriously damaged, Gray said, and the insurer paid for the artist to go back out to Michigan to repair the damage.

The insured value of a piece of art is based on the selling price or appraised value, Gray said, and if neither of those is available, an estimate is used, based on works of comparable media and size. The insurer is generally quite trusting about taking the artist's word on value, she said.

Dance, theater and other **performing artists** may also require event insurance. The minimum quote for event insurance is \$380, but a number of factors, including duration of the event, activities, and total attendance, can

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(*Insure Your Art* from page 3)

take it significantly higher. The standard policy provides \$1 million per occurrence with a \$3 million aggregate for the policy year and permits unlimited additional insureds, typically the landlord of a rented venue.

Middleton emphasized the importance of **workers' compensation insurance** for any performing arts organization. It's a necessity for organizations that have even one employee, he said, and it can be difficult for some artists to obtain due to the exposure they present to insurers. Dancers and movement-related artists, for example, are prone to potentially severe injuries, and many have to go into an assigned risk or state program.



Image courtesy of Kevin Griffin Moreno

Artists also need to be aware of how an insurance carrier classifies them, Middleton said, especially if they are doing performances. Most film and visual artists have standard classifications, but insurance companies are notorious for trying to put performing artists and production staff in classifications that are higher than correct classifications and in many cases make no sense.

Middleton cited the example of a major Midwest ballet company that an insurance carrier had classified as a YMCA. "It took six months and a major hearing before a state insurance board to convince the insurance carrier that they were not a YMCA, but in fact a ballet school. This saved the client over \$100,000 in premium over three years," he told *Arts Brief*.

Musicians can insure their instruments, including brass, woodwinds, strings, and percussion as well as accessories like cases, amps, and sheet music, for a minimum annual premium of \$300.

Fractured Atlas also offers policies for public artists and teaching artists, including workers' compensation and volunteer accident insurance. Arts nonprofits of all sorts can get volunteer accident insurance at \$175 per year for \$500,000 coverage per accident for an unlimited number of volunteers.

Following submission, applicants can expect to receive a quote within three to four days. Once a quote is issued and accepted by the applicant, the insurance can be purchased instantly, binding coverage.

Individual memberships in Fractured Atlas are \$95 per year and organizational memberships are \$195. For more information, see www.fracturedatlas.org. ■

How to Groom a Unicorn: Business Loans for Artists

by Bill Richardson*

When I was asked if I'd like to contribute an article for *Arts Brief* on the topic of how artists can get financing, my reaction was "Sure, of course." I was just about to finish a book I've been writing, *How to Groom a Unicorn*, so this seemed to be a suitable segue.

Financing for artists? This could be something of a challenge. But there's always a way to get from here to there. Here's the GPS. Just be aware that like a GPS, you may need to call for assistance when you reach a roadblock.

So to start. You're an artist, but you have to go to work and you have to pay the bills. Do what's expected of you. Earn a living. Get a real job. Make something of yourself.

You wish you could find a way of balancing both sides of your brain, possibly turn making your art into making a living. Running a business seems too complicated. What should you do?

Start out by sharing your intentions with your affinity group, the people who love you, are related to you, or in some cases, both. At Thanksgiving, drop by and see Uncle Frank and Aunt Flo. Bring maybe a six pack and a bottle of wine. The conversation may go something like this. “So what are you doing with yourself these days, Art? Did you find a job yet?”

“Well, in fact,” you reply, “I’m getting ready to start my own business.”

“A business? What type of business?” Aunt Flo will ask.

“What are you — a Limited Liability Corporation (LLC), a sole proprietor, or a partnership?” Uncle Frank will inquire.

“You did register with the state, right? What about the feds?”

“Well,” you pause. “The details are still being worked out.”

This is the only response that you have at this point. Feeling under-prepared and a little embarrassed, you realize you need to get a better story together before you visit Grandma.

On the ride home you decide that you need to do some research. Get on the internet and Google some of the things Uncle Frank asked about.

You learn that if you’re selling your art, you’re already a sole proprietor. There aren’t any entry formalities and sole proprietors aren’t required to register with the Maryland Department of Assessment and Taxation unless a personal property return is required. Sole proprietors may use their Social Security numbers for identification purposes.

LLCs and partnerships must obtain a federal tax identification numbers and register with the state. We’ll leave the discussion on corporations and equity financing for another day, because, well it’s complicated, and for artists the most common organizational form is the LLC, which insulates its owners/members from liability for the business’s debts and actions. Artists can apply to form an LLC — after doing a name and trademark search — by filing the Articles of Organization on the State Department of Assessments and Taxation’s web site at www.dat.state.md.us/sdatweb/artorgan.pdf. You’ll also need to fill out the Combined Registration application at www.marylandtaxes.com. You may also need a business license. A good checklist of requirements can be found at: choosemaryland.org/startbusiness/Pages/Registration.aspx.



After completing your various forms and registrations, you’re good to go. You’re a business owner (Don’t forget to put those registration fees on a credit card — they’re business expenses). Business cards get ordered and you launch your web site.

Getting back around your affinity group should be exciting. Fortunately for you and because you’re building momentum, Christmas is just around the corner. This is a perfect time to generate some interest and get some advice. This year you’ll have something fresh to say when people ask, “What are you up to these days?” It feels good to be able to respond that you’ve started your own business, that you have a web site up and running.

Everyone still has questions that you’re as yet not prepared to answer. You feel like you’ve painted yourself into a corner — exposed yourself to your friends and the entire family right before Christmas dinner. Unlike when you first mentioned your plan to Uncle Bob, you can’t go home again. The party’s at your house.

“Where are you going to sell your paintings? Who are your customers? How much money can you make doing that?” All valid questions. The answers to which will be the foundation of your business plan.

The business plan tells potential lenders that you’ve thought about these questions and figured out some solutions. It includes a detailed description of the business and location, products for sale, financing, management, a market analysis, and a marketing plan. As the Small Business Administration points out, if you’re

just starting a business, you won’t have a lot of information to plug into some of these areas, so instead, focus on your experience and background as well as the decisions that led you to start this particular enterprise. There are lots of templates out there, but the SBA’s web site is a good place to start: www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/index.html.

Experience has also taught you how to handle your personal finances, so now you do the same thing for your business. You set up a savings and checking account in your company’s name and apply for business credit cards. One day, while in Best Buy, you buy a copy of QuickBooks to help you to stay financially organized. Immediately after getting back home load the software, open the program and put the amount that you just paid for the software under the expense column. You’re running a business now.

By speaking with vendors that you use frequently, you find that they're willing to set you up with a Vendor Account. Vendor Accounts allow you to pay for your purchases over time, with more attractive terms and rates than the credit card companies offer. The vendor's representative informs you that this is the quickest way of establishing a business credit profile.

Taking a break from all this business transacting you spend the next several weeks making new art. When your painting is substantially but not fully completed you feel a need to get back to the business side of your brain. You decide to name the painting *Loose Ends* and to get back to doing research to find more available sources of financing.

One of those sources is Merchant Accounts, which provide credit as well as cash advances for you to use for whatever purpose you find suitable. As a start-up business owner, you find that your personal credit score is used to qualify you for approval. The minimum score for this program is 720, which you have. Properly utilizing the merchant accounts you manage to build a line of credit.

You now have the funding to build your inventory, trick out your website and focus more closely on creating. Lithographs you've had made of your painting *Loose Ends* (sub-titled, *Unfinished Business*) begin selling on the internet in quantities beyond what you can supply. Several part-time employees are hired to help with the packaging and shipping (employees bring further registration requirements for things like unemployment insurance and workers' comp). Before too long you're making a profit, business is booming, you out-grow your space. The local banker is aware of your situation and has you apply for an SBA loan. SBA loans, which are partially insured by the government, are intended to help small businesses obtain financing for everything from acquiring inventory to purchasing real estate. The banker advises you to get a term loan for purchasing a gallery, along with a line of credit for operating capital.

NEED MLA'S HELP?

Are you an artist with a legal issue?

To find out if you qualify for pro bono legal services, visit www.mdartslaw.org or call 410.752.1633.

With proper documentation, your loans get approved. With the new cash infusion, you buy a small studio/gallery in a bohemian neighborhood near the center of town. Other artists want to rent space from you to display their work. Uncle Frank stops by and wants to talk to you about how he'd be interested in investing in your company. Grandma even comes by on occasion to keep the place nice and tidy.

A major skateboard manufacturer sends you a proposal. They want to use your art on the decks of their new line of long-boards. You hire a CPA and an attorney to manage your assets and protect your intellectual property.

Finally, one day, you get a call from a publisher that asks you if you'd like to be considered to illustrate a much anticipated new novel, *How To Groom A Unicorn*.

Wait, you think. Is this all a dream?

Of course it is.

It's your dream and it's right now. ■

**Bill Richardson is an independent financial consultant. He can be reached at mdbusinessconsultants@gmail.com.*

The How-To Issue: Reach the Copyright Office

The Copyright Office recently opened a toll-free line, part of an ongoing effort to improve copyright public services. Callers can now dial 1-877-476-0778 to ask questions about copyright registration, including use of the electronic Copyright Office (eCO), the Office's online registration system.

When patrons call the toll-free line, they will be prompted to select the Copyright Public Information Office (PIO) or the Copyright Technology Office (CTO) help desk, depending on the nature of their inquiry. PIO information specialists address copyright and registration-related inquiries; CTO help desk staff assist eCO users. Recorded information is also available.

The Copyright Office also continues to improve its online registration, which anyone can now use to register basic claims to copyright, even those who intend to submit a hard copy(ies) of the work(s) being registered. Basic claims include literary works, visual arts works, performing arts works, sound recordings, motion pictures, and single serial issues.

According to the web site www.copyright.gov/eco/, advantages of the eCO include a lower filing fee of \$35 for a basic claim, the fastest processing time, online status tracking, secure payment by credit or debit card, electronic check, or Copyright Office deposit account, the ability to upload certain categories of deposits directly into eCO as electronic files, and 24-hour per day availability, except for routine maintenance every Sunday from 12:00 midnight to 6:00 AM Eastern Time. ■

Hexagon's No-Play, No-Pay PRO Policy

by Keri Anne Griffith, Esq.*

Baltimore music is booming. Dan Deacon is a veritable household name in hipster homes and dorm rooms across America. Beach House started small but now tour by bus and play arenas. And the ever-upbeat In Every Room has been noticed by one of the gatekeepers of music trends: Pitchfork.

I remember the first time I saw In Every Room perform and the first time I booked them shortly thereafter. As a newer band, they drew smaller crowds, but their energy was fierce. Band member and one-time Hexagon collective member Chase O'Hara told me he was determined to make a career out of his music. Confession time: my reaction was to feel sorry for him. I was a new lawyer in need of work who'd played it safe and chosen law over creative aspirations. I thought to myself, "Can a musician really make it on music alone?"

To my happy surprise, In Every Room and related side project Winks are both succeeding at a rapid pace. How did they get there? How does a new band climb that ladder? Whether illegal warehouses or legal arts collectives, small venues are an integral bridge for new talent. The accessibility of performance space is, in my opinion, a big part of Baltimore's current creative renaissance. For example, early in their adventures In Every Room frequently performed at Hexagon, a small, nonprofit arts and music venue that is run entirely by volunteers.

If you look at Hexagon's website, you'll see the following mission statement proudly displayed:

The Hexagon Space is a peer-operated venue in Baltimore, Maryland that provides an all-inclusive outlet for the arts with an emphasis on supporting local and under-exposed artists and performers.

Founded in August 2008, Hexagon still pursues that mission, and it's not alone. Various Baltimore venues, like CCAS and 2640, also support emerging artists. However, one thing makes Hexagon unique: its open policy on the blanket licensing fees charged by Performance Rights Organizations ("PROs"). In January 2010, Hexagon publicized to all who were listening that it would no longer pay PROs.

Let's back up. Performance Rights Organization sounds like a good thing — like the Bill of Rights or Civil Rights. For some participating artists who use PROs to earn money when their compositions are played elsewhere, it can be a good thing. That income is often referred to as "royalties." PROs seek and obtain payment of fees for the public performance of licensed music at every imaginable type of venue — from dive bars with juke boxes to huge rock clubs. PROs tend to assume that all venues play licensed songs. Instead of venues tediously tracking whether and which songs played are licensed by organization X, Y, or Z, the major PROs lead by offering venues a flat, annual rate called a blanket licensing fee. With a blanket fee, it's possible for a venue that hosts 300 licensed songs in a year to pay the same annual rate as a venue that only hosts three.

Although no longer involved at Hexagon, I participated in decision-making about blanket PRO fees. The issue arose in late 2008. The PRO reps didn't care that our performers never really played "that kind of music," that show attendance was usually far below capacity, or that we barely paid our rent. At least one letter referenced the scariest of L words: litigation. Unsure and inexperienced, we negotiated a lower temporary fee and paid.

Hexagon didn't want to support a scheme that, among other things, went against our mission and made venues pay more if patrons were going to dance, but we saw no alternatives. For a small venue, it's very David vs. Goliath. Over the next year, we researched. We learned about a successful arts organization in Providence, R.I., called AS220 that had refused to pay blanket PRO fees. AS220 gave us a model to follow. It was time to write our policy.

Would we only let artists play their own original music? Did that include music with samples? Samples of what length? What about public domain? Did we trust musicians not to lie or rebel on stage? If they screwed up, it was us on the line not them. And what about Creative Commons, or even more murky and confusing, what about music that was considered Fair Use of another composer's material?

Hexagon's collective agreed that Baltimore Club and mash-ups akin to Greg Gillis' Girl Talk *should* be considered Fair Use. Would we test our ideals in a shark tank with deep-

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pocketed PRO legal teams? Under the current PRO regime, an artist had a better shot of getting away with such experiments than a venue. But artists needed venues and venues needed artists!! Catch-22.

Eventually, Hexagon's community settled on the following language:

[A]ll material performed at The Hexagon Space must be original, in the public domain, or covered under Fair Use. . . . The Hexagon Space supports the free flow of art and creativity in the marketplace of ideas.

Hexagon left the Fair Use door ajar but opted not to define its limits in a black-and-white way. If an issue arises, which is rare, it's handled on a case-by-case basis. Happily for Hexagonians, most performers, even the ASCAP and BMI members, react to explanations about the anti-blanket-fees policy with a jovial "Right on! We don't play covers anyway." ■

**Keri Griffith is an associate with the Law Offices of Peter G. Angelos.*

Americans for the Arts Prez Urges Post-Election Action

The mid-term elections are fast receding into history, but artists must keep working to make sure that newly elected leaders at the federal, state, and local levels understand the profound role the arts play in spurring economic growth and job creation, Robert L. Lynch, the president of Americans for the Arts, said in a post-election message.

Lynch noted that state and local government arts funding to the nation's 100,000 nonprofit arts organizations has dropped as much as 16 percent in the last two years, while private gifts declined \$1.2 billion. The nation's 2.2 million professional artists have experienced unemployment at twice the rate of other educated, professional workers.

Lynch emphasized the importance of impressing on the new congressional leadership that arts organizations are part of the small business sector, and artists are among the millions of business entrepreneurs fueling the economy.

Additionally, he pointed out, arts education training is integrally linked to the development of creative and innovative workforce skills essential to future workers to compete effectively in the 21st Century global economy.

Americans for the Arts (www.artsusa.org) looks forward to working with the bipartisan Congressional Arts Caucus and Senate Cultural Caucus on Capitol Hill, Lynch said, and will soon begin conducting the next installment of national research to document the size, impact, and trends of the nonprofit arts industry for its Arts and Economic Prosperity IV study. The previous study demonstrated that the nonprofit arts industry generates \$166.2 billion of economic activity annually, which supports 5.7 million full-time equivalent jobs.

The arts advocacy organization urged artists and arts organizations to start working now to stave off adverse federal legislation by:

- Sending a letter of congratulations to each elected leader (federal, state, and local levels), identifying yourself or your organization as a resource on arts policy issues.
- Asking all freshman members of Congress to begin thinking about joining the bipartisan Congressional Arts Caucus or Senate Cultural Caucus.
- Working with state and local arts advocacy organizations to develop a unified message to newly elected state and local leaders.
- Making plans to come to Washington D.C. on April 4-5, 2011, for National Arts Advocacy Day on Capitol Hill. ■

Many thanks!

As usual, we couldn't have done our job of helping Maryland artists without the wonderfully generous help of our supporters, including those who made our 25th Anniversary Party such a success: the Arts Insurance Program LLC, the Maryland Film Office, The Young Lawyers Section of the Maryland State Bar Association, Clark Priftis Art, The Wine Source, and Two Boots Pizza.

It's Not Too Late...

...to make a tax-deductible donation to MLA for 2010. Just use the "Donate" button on our web site, mdartslaw.org. Your donation helps us help artists like this satisfied client, who wrote to us:

"This is to thank you for your help last month with my work situation. Your response was prompt and generous. I am happy to inform you that ... thanks to your referral ... we had the best possible outcome. I'm not sure how many states have a wonderful organization like Maryland Lawyers for the Arts, but they should."