

# Tower Crane License Agreements (With Form)

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by Jacob W. Reby



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**Before your client swings a crane over somebody else's property, get permission to do it.**

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**LOOKING OUT** my office window in downtown St. Louis, I am greeted with what has by now become a familiar scene: Numerous tower cranes swing back and forth through the sky, continuously transporting loads of construction materials from place to place. Like many urban office patrons across the country, I have grown accustomed to their presence. However, as a real estate attorney, I cannot help but question the legal implications of these giant machines. For instance, is it legal or does it constitute a trespass or unauthorized intrusion to swing a crane's boom within inches of an adjacent building, or over the roof of adjoining commercial or residential property? If so, do the construction companies us-

ing these cranes pay for the rights to do so? If not, what, if anything, can disgruntled property owners do to stop the cranes?

Both residential and commercial property owners have legitimate concerns regarding the use of tower cranes on adjacent or adjoining property. These concerns include the risk of falling materials injuring both individuals and property, the risk of tower cranes swinging or falling into property, the loss of use and enjoyment of property, harmful effects on current or potential business, and maintenance of the overall peace of mind of urban property owners and patrons.

It is not the purpose of this article to detail the current state of the law regarding the use of tower cranes. What little law there is on the matter has been aptly summarized by Jesse Ishikawa in his article, *Tower Cranes, Trespass, and Temporary Airspace Use Agreements*, Probate & Property 63, January/February 2006. Suffice it to say that “[t]he state of the law regarding intrusions by tower cranes into neighboring airspace is far from clear.” *Id.* at 66. It generally appears that a property owner is entitled to exclusive ownership of as much space above his ground as he can practicably or does in fact occupy or use in connection with his land. However, it is very difficult for a property owner to obtain a temporary or permanent injunction for a temporary air space trespass when no actual damages have occurred. It appears that a crane swinging

over a neighbor’s property would be deemed an occasional act causing an inconvenience but not a real damage. The purpose of this article is to encourage those requiring the use of tower cranes to reach agreements with adjoining property owners before using the cranes. Although the law on the subject is admittedly unclear, disgruntled property owners have recently obtained settlements of \$100,000 or

more as a result of tower cranes trespassing over their properties. In all likelihood, it will never be possible to completely alleviate property owners’ fears and concerns over the use of tower cranes. Nevertheless, contractors can mitigate these concerns to a certain extent by using well-drafted license agreements. Such agreements would provide monetary

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**In all likelihood, it will never be possible to completely alleviate property owners’ fears and concerns over the use of tower cranes. Nevertheless, contractors can mitigate these concerns to a certain extent by using well-drafted license agreements. Such agreements would provide monetary compensation to property owners in exchange for their willingness to allow tower cranes to temporarily pass through the airspace above their properties.**

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compensation to property owners in exchange for their willingness to allow tower cranes to temporarily pass through the airspace above their properties. These agreements would also indemnify and insure property owners against any potential liability caused by the tower cranes. Finally, these agreements would dictate and govern the terms and duration of tower crane usage. A sample form of Tower Crane License Agreement is attached. As with all such forms, consider this a starting point for a document tailored to the specific circumstances of the parties.

## TOWER CRANE LICENSE AGREEMENT

This Tower Crane License Agreement (“Agreement”) is made as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“Licensor”) and \_\_\_\_\_ (“Operator”).

WHEREAS, Licensor represents that it is the owner/(tenant) of the premises located and numbered as \_\_\_\_\_ (the “Premises”); and

WHEREAS, Operator is preparing to install a tower crane to construct certain improvements at a site adjoining the Premises, which tower crane will from time to time swing over the Premises; and

WHEREAS, Licensor is prepared to permit Operator to construct and utilize its tower crane as proposed.

NOW, THEREFORE, for good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. License.** Licensor hereby grants to Operator a non-exclusive right and license to operate (and utilize the boom of) and swing a tower crane over the Premises. The boom of the tower crane shall at all times be no less than \_\_\_\_ feet above the highest improvement point on the Premises.

[Optional: During the term of this Agreement Operator may also use \_\_\_\_\_ square feet of the Premises shown on the attached site plan as a construction staging area. Operator will not otherwise disturb Licensor’s improvements on the Premises.]

**2. Compliance with Laws.** Operator shall assemble, operate, and utilize the tower crane in accordance with all laws, rules, and regulations and shall [Optional: by \_\_\_\_\_, 20\_\_\_\_] secure all necessary permits and licenses to operate the tower crane.

[Optional: Throughout the term of this Agreement, Operator shall at its sole cost and expense, (a) comply with all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, courts, departments, and commissions; and (b) the requirements of all policies of public liability, fire, and other insurance at any time in force with respect to Operator’s project.]

**3. License Fee and Term.** This Agreement shall terminate upon the earlier of: (a) Operator’s removal and disassembly of the tower crane; or (b) \_\_\_\_\_, 20\_\_\_\_. Within five (5) days of the date of this Agreement, Operator shall pay Licensor \$\_\_\_\_\_ as a one-time payment for this license.

**4. Insurance.** Upon request, Operator shall furnish insurance certificates to Licensor with respect to the tower crane and its operation and name Licensee as an additional insured.

[Optional: Before commencing use of the tower crane over the Premises, Operator shall: (a) at its own cost and expense and for the benefit of Licensee maintain insurance in the amount of three million dollars (\$3,000,000) for injury or death to any one person and any one accident and in the aggregate of not less than five million dollars (\$5,000,000) for injury or death to more than one person at any one accident; and (b) furnish Licensor with a certificate of insurance naming Licensor as an additional insured and providing Licensor with 20 days' prior notice of cancellation or amendment to the policy.]

**5. Indemnity.** Operator shall indemnify and hold Licensor and all of its owners, residents, invitees, and agents (collectively, "Indemnitees") harmless from and against any and all liabilities, fines, claims, injuries, damages, actions, proceedings, judgments, [Optional: disruption of utility services, disruption of access and egress] costs, and expenses of any kind or nature whatsoever served against or sustained by the Indemnitees due to or arising out of any act, instant, event, or omission or negligence of Operator, its employees and agents, in connection with the use of the tower crane.

[Optional: Licensor may also require the owner of the adjoining property to join in the indemnity given by Operator.]

[Optional: Operator will not swing loads or transport construction materials over or on the Premises during the following times:\_\_\_\_\_. Operator will promptly correct any damage and remove any debris from the Premises caused by or resulting from Operator's construction activities. Before erecting the tower crane, Operator will provide Licensor with a letter from a licensed engineer stating that in his opinion the erection and operation of the crane will not cause damage to Licensor's building because of lateral stress.]

**6. Binding Agreement.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective mortgagees, subcontractors, tenants, successors, and assigns. This Agreement constitutes the entire agreement between the parties respecting the subject matter hereof and supersedes all prior verbal or written agreements. [Optional: The prevailing party (as determined by the court) in any action brought to enforce or interpret the terms of this Agreement shall be entitled to recover its reasonable attorneys' fees and court costs in such action, including on appeal.]

**7. Voluntary Execution.** The parties have acknowledged that this is a fair and reasonable agreement; it is not the result of any duress, coercion, or undue influence exercised by either party upon the other, or by any other persons upon either; that each party understands its respective rights and obligations hereunder, all relevant facts and obligations hereunder, and all relevant facts surrounding this matter; and that each party clearly understands all provisions of this Agreement and has signed this Agreement freely and voluntarily upon the advice of respective counsel, or has knowingly waived representation by counsel.

**8. Authorization.** Each party represents and warrants to the other that it is duly authorized to execute and deliver this Agreement. This Agreement may be executed in counterparts. The parties agree to recognize fax signatures. [Optional: Time is of the essence in this Agreement and the performance of all obligations hereunder.]

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