

Spring  
2017

# CLFP CIRCULAR

*News for Leasing and Finance Professionals*

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## Message from the President



**Amy Spragg, CLFP**  
*Managing Director*  
**Pacifica Capital**

It feels as if 2017 just started, yet we are already in June preparing for summer vacations, graduations and the planning of another new school year. In this brief period of time, there has been monumental progress at the CLFP Foundation. We have held three Academies for Lease & Finance Professionals in Minneapolis, Atlanta and Chicago already this year. We have had an impressive 60 new CLFPs and Associates added in 2017, bringing our total membership to 443 and are anticipating reaching 500 by the end of the year.

Our Committees have been hard at work accomplishing their initiatives to ensure the Foundation continues to stay up to date on emerging technology, industry knowledge and networking opportunities. Specifically, the CLFP Body of Knowledge was completely rewritten to better organize and reflect the current processes, changing regulations and challenges in our industry. This Body of Knowledge will serve as the template for the Handbook Committee to update the book which will be professionally edited later this year.

The Exam Committee has completed the new online exam which has officially been rolled out, tested and adopted by the Foundation. In order to continue with utmost integrity for our members, there are four versions of the exam complete with clearer and more precise questions and relevant essay problems for each section. The new exam has been well-received and has been completed in far less time than exams of the past. Now the excuse of, “I don’t have 8 hours to spend to take the test” no longer applies. Applicants can go at their own pace and complete the exam as quickly or slowly as they wish (within the allotted time, of course).

The ALFP Committee has just completed the update of the curriculum to reflect the changes on the exam and give the class a new, more interactive feel.

On August 24th, we will be celebrating our 3rd annual CLFP Day. It is a wonderful opportunity to celebrate the designation with other CLFPs in your region. Please look for information for an event near you or plan your own gathering. It can be as small or large as you want, we just want; to see our membership get together and recognize their participation in a great industry and Foundation. If you would like to plan an event in your region, please contact Reid and she will help you with the process.

There are still many opportunities for you to get involved in our Foundation. Please feel free to contact Reid, myself or any of our board members to discuss how you can become a bigger part of this growing and thriving organization. I appreciate your participation and input and look forward to seeing you at our next industry event.

Amy Spragg, CLFP  
2017 CLFP Board of Directors President

# Academy for Lease & Finance Professionals 2017 Update

The CLFP Foundation has worked with five different companies to host the first three Academies for Lease & Finance Professionals for 2017. The first was in Minneapolis, MN co-hosted by International Decision Systems and KLC Financial; the second was in Atlanta, GA hosted by Patriot Capital, and the third was co-hosted by BMO Harris and ECS Financial Services. 46 of the newest CLFPs attended an Academy for Lease & Finance Professionals. Below are the remaining ALFPs for 2017; however, we are also planning on holding an additional Academy in the Philadelphia, PA area in November. Please let Reid know if you are interested in attending.

## Walnut Creek, CA

June 22 - 24, 2017

*Hosted by Allegiant Partners  
and Ivory Consulting Corp.*

Registration and  
general information [here](#)

## Seattle, WA

July 23 - 25, 2017

*Hosted by Orion First Financial*

Registration and  
general information [here](#)

## Dover, NH

August 17 - 19, 2017

*Hosted by Ascentium Capital*

Registration and  
general information [here](#)

## Southern CA

October 12 - 14, 2017

*Hosted by First National Capital*

Registration and  
general information [here](#)

## CLFP Committee Members

The CLFP Foundation attributes a large part of its success to the involvement of the CLFP Committee Members. Below are the Committee members for 2017. If you're interested in joining a committee, please let Reid know; it's the best way to get involved and support the Foundation.

### ALFP

#### Committee

*Amy Spragg, CLFP\**  
*Paul Fogle, CLFP*  
*Beth McLean, CLFP*  
*Jake Nguyen, CLFP*  
*Kayla Perlinger, CLFP*

### Body of Knowledge

#### Committee

*Bob Humber, CLFP\**  
*Chris Enbom, CLFP*  
*Kevin Prykull, CLFP*  
*Lia Wax, CLFP*

### Exam

#### Committee

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*Sarah Michael, CLFP*  
*Ashtyn Mohanlall, CLFP*  
*Joe Quintero, CLFP*  
*David Passafiume, CLFP*

### Marketing Committee

*Joe Schmitz, CLFP\**  
*Eric Bunnell, CLFP*  
*Bob Fisher, CLFP*

### Handbook Committee

*Leslie Brown, CLFP\**  
*Rob Boyer, CLFP*  
*Donnie Bunn, CLFP*  
*Deb Reuben, CLFP*

### Recertification Committee

*Marci Slagle, CLFP\**  
*Shari Lipski, CLFP*  
*Bruce Owens, CLFP*  
*Kirstin Patterson, CLFP*

\*Denotes the Committee Chairperson

# Annual ELFA Legal Forum Recap

*By Barry Marks, Esq., CLFP*

With our entire office at the ELFA Legal Forum, we could blanket the sessions and cover all those of real interest. We also brought home a wealth of materials. Here are a few things we learned (there is always more to learn!) or as to which we could share information with other attendees. If you have requested an in-depth review of any of the sessions, we will be sending it to you soon. If anything below strikes you as meriting research or advice, please let us know:

**Co-Lessees and upstream guaranties.** There was a lot of talk in one session about co-lessees and upstream (subsidiary) guaranties; although, that was not what they were being called in the session. We have warned in the past that co-lessees are not generally a good option in lieu of a traditional parent/owner guaranty. There are many co-lessee issues, especially in the case of true (FMV) leases, although careful drafting can address most of them.

The problem is that if a financially stronger subsidiary co-leases with its parent, or if it guaranties its parent's obligations, courts may find that there is no consideration and/or that the guaranty is a voidable fraudulent transfer. There are things we can do, such as reciting (if we can find or create) consideration. The same rule often holds true of brother/sister affiliates where two companies owned by the same parent guaranty one or another's obligations.

**Leasing in Mexico.** Among other things, a lively session on Canadian and Mexican leasing, hosted by Jon Fleisher of Cassels Brock, resulted in the observations that it saves time for actions in Mexico if the original lease or loan document is already in Spanish as well as English when signed. Otherwise, the court appoints a translator and... need we say more? Even then, repossessions are likely to take from four months to a year.

**Leasing in California.** Nothing new in the horror that is the California Finance Lender Law, except that now it is the subject of further amend to apply it to mere "finders." The main reason we note the subject here is so that anyone who thought only foreign countries like the one waiting to pay for the wall are backward, anti-business, and weird won't think we are immune from such things.

**Leasing in New Jersey.** Speaking of which, New Jersey Revised Statutes 56:12-60 et seq, the Consumer Protection Leasing Act, defines a lease as follows:

"Lease" means a contract or other agreement between a lessor and a lessee, other than a fleet lease, a fair market value commercial lease, or a TRAC lease, entered into after the effective date of this act for the use of a motor vehicle by the lessee for a period of time exceeding 120 days, whether or not the lessee has the option to purchase or otherwise become the owner of the motor vehicle at the expiration of the lease. A lease shall not be deemed to be a retail installment contract, as defined in subsection (b) of section 1 of P.L.1960, c.40 (C.17:16C-1), unless the lessee, for no or for a nominal consideration, becomes the owner, or has the option of becoming the owner, of the motor vehicle at the end of the term of the lease. NJ 56:12-61 (emphasis added)

In other words, a lease of a motor vehicle for a fixed price purchase option that is an approximate fair market value is arguably a consumer lease! There are many adverse consequences to this designation, so do not enter into a lease with anything other than a nominal purchase option (\$1.00 for example), a TRAC or literally "fair market value" purchase option with a New Jersey lessee. No 10%, 20% or agreed-price purchase option for vehicles. Thanks, Tony Lamm for something new to us.

**Managed/Bundled Equipment Finance Structures.** The services portion of the agreement undermines its lease-like qualities, so hell or high water provisions and other lease protections may be vulnerable to attack. The strength of the vendor, or whoever is supplying the services or other consideration to the lessee/borrower is essential. If the vendor/service provider fails, the customer is likely to argue that (1) the services were an essential part of the agreement and (2) as the services are not "goods," the transaction is not governed by UCC Article 2A and the lease is not a finance lease. While the hell or high water language of the lease should protect the lessor, there is room for a judge to exercise some discretion. A vendor guaranty or buyback is one additional protection that may be added by a cautious lessor or lender, but its value is also dependent on the credit of the vendor.

**Digital Transformation of Equipment Leasing.** Although use of electronic documentation has become more popular in commercial finance, generally the equipment leasing industry has been slow in adopting the improvement, with use less than 20%. There is still no on-point case law regarding electronic documentation in the equipment finance context, although there has been helpful case law supporting perfection and control from electronic documentation in cases involving mortgages and other financial instruments. One key issue remains how lenders will treat electronic chattel paper, especially where lessors need flexibility in “papering out” electronic documents such as pdf’s and faxes. This is an emerging area of the law and our industry best practices in which we are heavily involved.

**Legal Update.** The annual survey of cases of note is one of the highlights of the conference. Special thanks to Pamela Martinson, Larry Holmes and Marc Hamroff for their hard work and superb analysis, much of which we repeat here. We have been unable to locate some of the cases in time for this issue, so we are relying on that analysis but the rage, silliness and any typos are all ours.

*“Nominal consideration” consideration includes return cost.* In re Ajax Integrated, LLC (NY). What happens if a “true” lease requires the Lessee to pay more to return the equipment than to exercise the purchase option? UCC 1-203(d) happens:

“(d) Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised.”

If it the purchase option price is \$1,000,000 but the cost to de-install, recertify, pack, insure and ship the equipment is \$2,000,000 the \$1,000,000 is nominal, just as if it were \$1.00.

And the Insane Jurist of the Month Award goes to: The judge in re Lightning Bolt Leasing, LLC (Bankruptcy decision in FL, the state where a judge tried to declare the Graves Amendment unconstitutional) ruled that a TRAC lease was NOT a true lease ignoring (unless maybe it was improperly presented).

“In the case of motor vehicles or trailers, a transaction does not create a sale or a security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.”

The judge shrugged off this statute, which is THE LAW on this issue, with this observation: “shifting the entire risk of ownership, as opposed to a certain adjustment (the TRAC payment obligation), as is the case here, is not within the protection of the statute.”

Well, you see yer honor, the purpose and effect of the TRAC is to shift the entire risk of ownership (which is to say the depreciation, additional maintenance cost, etc.) to the lessee.

*Saying a lit-tle too much.* In re Sterling United. Hey, kids, what’s wrong with this description of collateral on a UCC financing statement?

“all assets of the Debtor... including, but not limited to, any and all equipment, fixtures, inventory, accounts... and located at or relating to the operation of the premises at ...”

Well, boys and girls it is OK to just say “all assets” in a financing statement (the filing ) even though it is a no-no to say only that in a security agreement ( the contract). And as we all know, saying too much can lead to...imperfection. If you said, “What does and located at or relating to mean?” Go to the head of the class.

Does it mean “all assets including the ones at the location” or “all assets that are at the location?” The debtor moved and took his assets with him. The judge didn’t know



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what the words meant, so he asked a linguistics professor. I think we all agree that if a linguistics professor is the one deciding what your legal documents mean, you are in trouble. The lender got lucky on this one.

No No Novation. In re Fair Finance Company. Was an amended and restated loan agreement merely an amendment that left the existing security interest in place (with priority) or did it terminate the old loan and replace it with a new one, meaning the security interest was also terminated and replaced? If the latter, there was no consideration for the granting of the new security interest and it may have been a fraudulent transfer, voidable in bankruptcy.

The document said that the debtor granted the lender a security interest, the same sort of language used for a new debt. If the language said that the existing security interest was continued and the original debt outstanding, but on amended terms, things might have been better for the lender. Always be careful any time you amend a loan or lease document or change anything in the deal as part of a workout, additional advance, release of collateral or other post-closing event.



*Barry S. Marks, founding shareholder at Marks & Associates, P.C., concentrates his practice in the areas of equipment leasing, commercial lending and finance and general business law. When he is not working, Barry finds time to write poetry and the occasional short story. He is a past president of the Alabama State Poetry Society and was Alabama's Poet of the Year in 1999. His first book, Possible Crocodiles, was named Alabama Poetry, Book of the Year for 2010 and his second, Sounding was a finalist for the Eric Hoffer Award for small press publications. Barry was also the 2017 recipient of the Edward A. Groobert Award for Legal Excellence from the ELFA.*

## **In the News**

**[BlackRiver Business Capital Adds Stephanie Hall, CLFP as EVP](#)**

**[Arvest Records 25% Growth](#)**

**[KLC Financial Promotes Spencer Thomas, CLFP to President](#)**

**[Tamarack Adds 4 New Industry Veterans](#)**

**[First National Capital Opens New Office, Adds 10](#)**

**[First American Equipment Finance Announces 46% Growth](#)**

**[AP Equipment Financing Hires SVP of Vendor Finance](#)**

**[Ivory Consulting's SuperTRUMP Selected to Support Solar Transactions](#)**

**[Summit Funding Group Adds Matt Ross, CLFP as VP of Sales](#)**

**[Tamarack Implements Salesforce for Channel Partners](#)**

**[Beacon Funding Promotes Toby McDonough, CLFP, Appoints Kapel](#)**

**[Rob Boyer, CLFP Receives 2017 Fenig Advocacy Award](#)**

**[Barry Marks, Esq., CLFP Receives 2017 Groobert Award](#)**

**[AP Equipment Financing Implements DocuSign and eOriginal](#)**

**[Beacon Funding Adds 4 Sr. Leasing Consultants](#)**

## Spotlight on Sandy Vigilia

*This quarter's spotlight is on Sandy Vigilia, the Executive Administrator for the CLFP Foundation. Sandy joined the Foundation in January 2017 and has two daughters, Taylor (23) and Karli (18) and a Sheltie named Bentley*

***At which store would you like to max-out your credit card?***

Nordstrom (it wouldn't take long)

***What was your favorite TV show when growing up?***

Family Ties

***Choose a movie title for the story of your life.***

Reckless

***What was your favorite toy as a kid?***

Barbie (of course)

***Can you play any instruments?***

No

***What was your childhood nickname?***

George which turned to D-Dord (by my Dad)

***Do you have any strange phobias?***

Fear of snakes

***What, or who, are you a "closet" fan of?***

Kardiashians (don't hate)

***What are three things still left on your bucket list?***

I have no bucket list that way I won't disappoint myself

***What is the worst pet you have ever had?***

A bird which flew away

***What was the best concert you ever went to?***

Didn't go to many (Hall & Oats – yes I'm old)

***Where's your favorite place in the world?***

Hawaii (so far)

***What's the last book you read?***

Not a big reader – The Firm

***What are you passionate about?***

Passion

***What are you currently watching on Netflix?***

Prison Break

***If you could visit anywhere in the world you've never been, where would you go?***

Amsterdam

***What's your secret talent that no one knows about?***

Wouldn't you like to know?

***If you were a crayon, what color would you be?***

Salmon

***Who is your least favorite superhero?***

Spiderman



Sandy's youngest daughter Karli with Bentley



Sandy and her oldest daughter Taylor



Sandy with her mother, brother and two sisters



Bentley



## New CLFPs



**Kim Adair, CLFP**  
*Amur Equipment Finance*



**Mark Belanger, CLFP**  
*Beacon Funding Corporation*



**Mike Borelli, CLFP**  
*Patriot Capital*



**Chase Collins, CLFP Assoc.**  
*First American Equip. Finance*



**Roberta Conditorio, CLFP**  
*First American Equip. Finance*



**Patrick Dolan, CLFP Assoc.**  
*ECS Financial Services, Inc.*



**Mazen Elrayes, CLFP**  
*First American Equip. Finance*



**Drew Feller, CLFP**  
*BMO Harris Equip. Finance*



**Rebecca Gabor, CLFP Assoc.**  
*Beacon Funding Corporation*



**Alexander Goyins, CLFP**  
*DLL*



**Michele Hiscock, CLFP**  
*Northland Capital*



**Nate Jakway, CLFP Assoc.**  
*First American Equip. Finance*



**Mike Jez, CLFP**  
*BMO Financial Group*



**Bill King, CLFP**  
*Bancorp South Equip. Finance*



**Daniel Leis, CLFP**  
*ECS Financial Services, Inc.*



**Nancy Maynard, CLFP**  
*First American Equip. Finance*



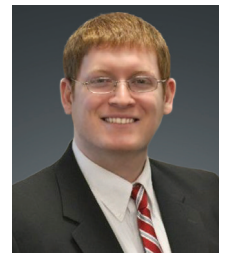
**Mary Jo McCormick, CLFP**  
*Northland Capital*



**Toby McDonough, CLFP**  
*Beacon Funding Corporation*



**Zack Miller, CLFP**  
*First American Equip. Finance*



**Greg Nicoll, CLFP**  
*ECS Financial Services, Inc.*



**Greg Pabich, CLFP**  
*Northland Capital*



**Ina Pantelejeva, CLFP**  
*ECS Financial Services, Inc.*



**Steven Pearce, CLFP Assoc.**  
*ECS Financial Services, Inc.*



**Jason Peryea, CLFP**  
*First American Equip. Finance*



**Stephanie Richards, CLFP**  
*Beacon Funding Corporation*





**Chris Santy, CLFP**  
*Patriot Capital*



**Ellyn Schueller, CLFP**  
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**Jason Seitz, CLFP**  
*BMO Harris Equip. Finance*



**Christopher Shifflet, CLFP**  
*First American Equip. Finance*



**Cassandra Smith, CLFP**  
*Northland Capital*



**Brooke Thompson, CLFP**  
*First American Equip. Finance*



**Megan Trutt, CLFP**  
*First American Equip. Finance*



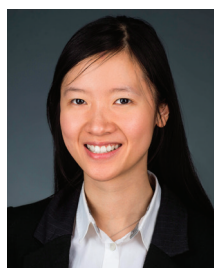
**Natalie Udvare, CLFP**  
*BMO Harris Equip. Finance*



**Sanjay Wadhwani, CLFP Assoc.**  
*ECS Financial Services, Inc.*



**Dale Wallner, CLFP**  
*Beacon Funding Corporation*



**Jenny Yan, CLFP**  
*Beacon Funding Corporation*



**Carlie Yeandle, CLFP**  
*BMO Harris Equip. Finance*

**\*Not pictured:**

**Jed Evans, CLFP - Wells Fargo Equipment Finance**  
**Angie Jensen, CLFP - Amur Equipment Finance**  
**Jenni Mott, CLFP - BMO Harrie Equipment Finance**

## Save the Date

***Academy for Lease & Finance Professionals***  
June 22 - 24; Walnut Creek, CA

***CLFP Exam***

June 24; Walnut Creek, CA

***Academy for Lease & Finance Professionals***  
July 20 - 22; Gig Harbor, WA

***CLFP Exam***

July 22; Gig Harbor, WA

***Academy for Lease & Finance Professionals***  
August 17 - 19; Dover, NH

***CLFP Exam***

August 19; Dover, NH

***ELFA Operations and Technology &  
Lease and Finance Accountants Conference***  
September 11 - 13; Charlotte, NC



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