

Winter
2017

CLFP CIRCULAR

News for Leasing and Finance Professionals

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Thank you to our supporting associations



Message from the President



Amy Spragg, CLFP
Managing Director
Pacifica Capital

As we all get settled into 2017, I can't help but reflect on the state of our thriving CLFP Foundation and the strides we have made over the past several years. Under the leadership of Reid Raykovich, our Executive Director, with the help of the CLFP Board and members who have graciously donated their time and expertise, the Foundation's membership has grown from 177 in the beginning of 2014 to 402 at the end of 2016. This represents a 125% increase in members over the last 3 years alone and our outlook for future growth continues to remain strong.

In response to the growing interest in the CLFP Foundation, the first onsite board of directors meeting of the Foundation was held in January in Scottsdale, AZ to develop a strategy for taking the Foundation to the next level of professionalism. At the board meeting, the following committees were entrusted with establishing standards and policies for each area of the Foundation's core competencies.

- The **Marketing Committee** will continue to increase brand recognition for the CLFP by expanding the scope of our marketing efforts to more segments of our industry.
- The **Body of Knowledge Committee** will focus solely on updating the Body of Knowledge as constant changes, new products and regulations are introduced to the industry on a regular basis.
- The **Handbook Committee** will continue to revise, edit and perfect the CLFP Handbook which requires constant revision to keep up with the latest developments in our industry.
- This year, the **Exam Committee** will be creating several versions of the online exam and will include a new essay section to emphasize mastery of the subject matter.
- The **ALFP Committee** will continue to update the course literature and tools to ensure attendees gain knowledge and feel equipped to sit for the CLFP exam.
- The **Recertification Committee** was formed to offer an annual educational element to our members. This educational program will be focused on informing members of relevant changes in the industry. A mastery of the materials will be mandatory for recertification as a CLFP.

There is great excitement within the Foundation community and many opportunities to participate in the Foundation's activities. Seven ALFPs have already been planned for 2017. Reid, our Board, and many of our members will continue their efforts to promote the Foundation while attending several educational and networking conferences held by NEFA, NAELB and ELFA over the year. On August 24th, we will be celebrating our 3rd annual CLFP Day in which we will gather regionally to celebrate our designation as well as participate in a charity event. Look for details for a CLFP Day in your area, or explore the possibility of organizing a group yourself.

The excellent state of the CLFP Foundation would not be possible without the constant dedication and commitment of our members. I'd like to take the opportunity to thank Reid, Sandy Vigilia, the current and past Board of Directors, and all of the other members and corporate partners that generously give their time and expertise to the CLFP Foundation. For those members that have not had the opportunity to become actively engaged with the Foundation, please consider getting involved. You can offer to serve on a Foundation committee, host or become an instructor at an ALFP in your area, work the CLFP booth at an upcoming conference, or attend a CLFP Day in your area. Participating at CLFP events provides a great opportunity to meet emerging talent in our industry and learn from our expert community of CLFP peers. I am honored to serve as your President in 2017 and look forward to seeing you all soon!

Amy Spragg, CLFP
2017 CLFP Board of Directors President

Academy for Lease & Finance Professionals 2017 Schedule

Hosted by International Decision Systems and KLC Financial, the first Academy for Lease & Finance Professionals (ALFP) proved to be a success with 94% of attendees passing the CLFP exam.

There are six other scheduled ALFPs for the remainder of 2017; however, two of them have already sold out! Below is the schedule:

Atlanta, GA

March 23 - 25, 2017

Hosted by Patriot Capital
Registration and general
information [here](#)

Chicago, IL

May 4 - 6, 2017

Hosted by BMO Harris and
ECS Financial Services

Walnut Creek, CA

June 22 - 24, 2017

Hosted by Allegiant Partners
and Ivory Consulting Corp.

Seattle, WA

March 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](#)

Spotlight on Andrew Eller, CLFP

This quarter's spotlight is on Andrew Eller, CLFP - Assistant Vice President and Assistant Controller at First American Equipment Finance. Andrew is also the Secretary for the 2017 CLFP Board of Directors and Chair of the Exam Committee. Andrew is married to Eileen and has two daughters, Claire (3 years old) and Riese (11 months old).

What was your favorite TV show when growing up?

ABC's TGIF Lineup, SNICK (Saturday Night Nickelodeon)

What are three things still on your bucket list?

Travel to every continent, run a marathon, and learn how to speak 3 - 5 languages

What is the best concert you ever went to?

Pearl Jam

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

Cairo, Egypt

What was your favorite toy as a kid?

Legos



Andrew and Claire



Andrew, Claire and Eileen



Andrew, Claire and Eileen



Claire, Eileen and Andrew



Andrew and Riese

Back to the Basics - Part I: Corporate (LLC, etc.) Authority

By Barry Marks, Esq., CLFP

In an ideal world all we should need is to have the President or Vice President of a company sign a document and we would be good-to-go. The problem is that company officers are only authorized by law (automatically) to sign documents and engage in activities in the corporation's "ordinary course of business." Note that I slipped in "corporation." The general rule is true for other legal entities but, unlike corporations, limited liability companies, limited liability partnerships, limited partnerships and general partnerships do not, traditionally have the same officers as corporations. In other words "the President" may mean different things outside the corporation world. More on that in a later issue when we will discuss LLC's, limited partnerships and the like.

Corporations have been around since the 17th century in England, where they were originally formed to protect investors financing exploration of the New World. Common law and some state statutes grant authority to four statutory officers (President, Vice President(s), Secretary and Treasurer) and assistants to the Secretary and Treasurer. These officers are generally considered to have authority to act in the corporation's ordinary course of business. In other words, the President has authority to buy inventory, for cash or on time, and to sign a contract to sell goods or provide services that is the chief business of the company. Other "officers" such as managers and directors (meaning officer-directors and not members of the Board of Directors, which is every bit as confusing as it sounds) may be named but do not automatically have authority.

Any officer's authority may be expanded or limited by the Articles of Incorporation or By-Laws of the corporation. Copies of the Articles of Incorporation may be obtained from the Office of the Secretary of State of the state in which the corporation is incorporated, but the By-Laws are generally maintained only in the corporation's books. These can be certified by an officer of the corporation by their weight and reliability is less certain. Also, By-Laws can generally be changed by vote of directors, without shareholder vote.

In most cases, especially for smaller corporations, Articles and By-Laws do not specify things that the officers can do outside the ordinary course of the corporation's business. This leaves a question as to whether entering into a lease or financing of a delivery truck, printing press, telephone system or other equipment useful in the business is or is not in the ordinary course.

One of the reasons we are so concerned about all of this is that any shareholder who thinks an officer has entered into a contract outside of the scope of his or her authority can attack that contract as *ultra vires*, a fancy Latin word that means "unauthorized." Moreover, a creditor can attack an unauthorized commitment, particularly if the corporation is in bankruptcy.

Given this uncertainty, the classic closing package requires that the corporation's Board of Directors specifically approve equipment leases and financings. The Board of Directors of corporations have the authority to elect and determine the authority of all officers unless expressly prohibited by the Articles of Incorporation or, in some cases, By-Laws. Armed with a copy of the Articles and By-Laws and evidence of the Board's approval in the form of Board Resolutions, we can generally be comfortable that the execution and performance of the contracts is duly authorized.

In the traditional closing, the By-Laws and Resolutions are attached to a certificate signed by the corporate Secretary of another officer, certifying that those attachments are true and correct copies. The certificate may also include incumbency information, in the form of sample signatures of the officers who will sign the Lease or EFA and a certification that those are the correct signatures of the persons named, who hold the offices specified. Some Secretary of State offices will provide lists of officers named in annual report filings by the corporation as additional evidence.

So what happens when the Board is too busy or the deal is too small or some Board member is out of the country, etc.? One exception to the requirement of actual authority is "apparent authority." This theory allows a lessor or lender to rely on the appearance that the officer has authority to act. It is why we do not worry over the fact that a reasonably clever person can forge signatures or otherwise defraud other parties in preparing false Secretary Certificates and such. Once it is established that the lessor or lender was reasonably diligent and relied in good faith on the documentation furnished, most judges will rule that the signer had apparent authority. This is particularly true if the corporation put the signer in the position to exceed his authority, such as an actual corporation Vice President creating a bogus resolution.

We can also argue that leasing or financing essential equipment is really in the ordinary course of the corporation's business and under the basic statutory authority of senior officers. Like apparent authority, however, this is an argument, not a certainty. It is best reserved for use in the unfortunate situation where a fraud has occurred and we are looking for a reason to bind the lessee or borrower.

Guaranties are particularly troublesome. It can be argued that a guaranty of another's obligations is never in a corporation's ordinary course of business. Then again, where a holding company does nothing other than guaranty its subsidiaries' obligations...maybe. Guaranties are often targets for judges. Suretyship defenses, such as requirements that the lessor or lender first sue the lessee or borrower,



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The advertisement features a blue background with a white mountain range icon at the top. Below the icon, the text "Looking for a national lending partner?" is written in white. In the center, there is a photograph of five business professionals (three men and two women) in business attire, smiling and shaking hands. At the bottom, the text "Let's talk today!" is followed by contact information for Bob Fisher, CLFP, including a phone number (281.348.2017), a website (Ascentium.Info/105g), and an email address (BobFisher@AscentiumCapital.com). The Ascentium Capital logo is in the bottom right corner.

come up if the document does not address them. Some courts have inquired as to the consideration (value) to the guarantor of signing the guaranty, especially where the guarantor is not a corporate parent or shareholder, but a subsidiary or affiliate with no interest in the lease or loan itself.

Once upon a time, all this was addressed by requiring an Opinion of Counsel (a legal opinion letter) to the effect that the document is “duly authorized, executed and delivered and is the legal, binding and enforceable obligation of...” along with opinions as to the authority of the signer and other legal matters. Legal opinions are often required for larger transactions, but in many cases, they are too expensive to be justified. Moreover, the lawyer is going to require the same documentation as the lessor or lender in order to justify the opinion.

In the last few years, modified officer’s certificates have become popular for smaller transactions. These certificates state that the officer signing the documents (i) has the authority under the corporation’s Articles and By-Laws, and (ii) routinely signs similar documents, which are in the ordinary course of the corporation’s business. They are very similar to legal opinions, but are given by corporate officers. They may provide apparent authority but the officers obviously do not carry malpractice insurance, so their value is questionable.

So...what is the bottom line/takeaway/part of all this you need to remember? A judgment call is necessary when accepting anything short of the traditional corporate resolution/legal opinion evidence of authority. The fact is that claims that a transaction is *ultra vires* or not duly authorized and signed by an authorized officer are rare. We cannot say what is enough, all a lawyer can do is alert clients to the risks, but we also prefer our clients take into account the practical realities.



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.



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In the News

(Click on the links below to read the entire news story)

- [First American Ranked No. 14 Large Company Culture](#)
- [David Lempko, CLFP joins Key Equipment Finance](#)
- [Update on Gerry Weston, CLFP](#)
- [Update on H. Krollfeifer, Jr.](#)
- [Nancy Pistorio, CLFP Named President of Madison Capital](#)
- [TEQlease Provides Financing for Tangi Academy](#)
- [CLFP Foundation Adds 15 CLFPs](#)

Save the Date

NEFA Spring Summit

March 15 - 17; Long Beach, CA

Academy for Lease & Finance Professionals

March 23 - 24; Atlanta, GA

CLFP Exam

March 25; Atlanta, GA

NAELB Annual Conference

April 27 - 29; Memphis, TN

Academy for Lease & Finance Professionals

May 4 - 5; Chicago, IL

CLFP Exam

May 6; Chicago, IL

CLFP exams may also be taken through a proctor at a time and location that is convenient for you. Please contact reid@CLFPfoundation.org or call: (206) 535-6281 to schedule your exam today.

New CLFPs*



Ashley Cook, CLFP
Kinetic Leasing



Robin Cook, CLFP
International Decision Systems



Lesley Farmer, CLFP
KLC Financial



Kevin Kelly, CLFP
KLC Financial



Sarah Kelly, CLFP
KLC Financial



Jared Keepman, CLFP
KLC Financial



Kristie Kosobuski, CLFP
International Decision Systems



Dan Nelson, CLFP
Tamarack Consulting



Melissa Orsburne, CLFP
International Decision Systems



Sheena Reeves, CLFP
Canon Financial Services



Wade Rignell, CLFP
Umpqua Bank Vendor Finance



Shannon Smith, CLFP
KLC Financial



Patrick Swanson, CLFP
KLC Financial



Rhonda Van Vark, CLFP
Tamarack Consulting

***Not pictured: Juan-Carlos Garcia, CLFP - Bank of the West**

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