

Spring/  
Summer  
2014

# CLP CIRCULAR

News for Leasing and Finance Professionals

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## Message from the President



**David Normandin, CLP**  
Sr. VP - Banc of California

The CLP Foundation is continuing to gain momentum in 2014. We are making solid progress towards reaching our growth goal of 40 new CLP's in 2014. Year to date, 9 candidates have passed the exam and 36 more are registered to sit for the exam. Additionally, awareness and interest is continuing to increase in the Foundation. So far this year, the Foundation has exhibited at the NEFA Summit in Scottsdale and the NAELB Annual Conference in Orlando. In both cases, the booth sold out of handbooks on hand and interaction and conversation regarding the Foundation was brisk. Thank you to those of you who participated in supporting the exhibit hours and who coordinated events.

Financially, the Foundation is doing well and tracking very closely to the 2014 budget. Thank you to the advertising and partnership program sponsors for your continued support. There continues to be great opportunities for additional organizations and individuals to be involved so please contact our Executive Director, Reid Raykovich, CLP at 206.535.6281 or reid@clpfoundation.org if you have questions or interest about sponsorship.

The Foundation has officially launched the Associate CLP Program to allow younger professionals the opportunity to mentor with an industry leader to increase their knowledge and skills and sit for the CLP exam under a new CLP Associate designation. We currently have several candidates that have communicated their interest in this program. Please reach out to our Executive Director, Reid Raykovich, CLP if you have an interest in mentoring the next generation of leasing professionals.

The Foundation is partnering with the NEFA to schedule, organize and staff 4 Institutes for Leasing Professionals. The schedule is as follows:

- Chicago Area - Hosted by ECS Financial Services - July 23-24; More information [here](#)
- Southern California - Hosted by Banc of California - August 8-10; More information [here](#)
- Seattle Area - Hosted by Financial Pacific Leasing - August 12-14; More information [here](#)
- Maryland - Hosted by FSG Capital; More information [here](#)

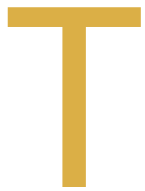
We are currently looking for instructors for each of the ILP's, so please contact Reid Raykovich, CLP if you have an interest in leading a session.

As you can see, there is a lot going on at the Foundation and none of this would be possible without the incredible community of CLP designees. Thank you for your commitment to the CLP standards of excellence and continued investment in our community.

Best continued success,

A handwritten signature in blue ink that reads "David Normandin". The signature is stylized and cursive.

David Normandin CLP



# The Ramifications of Evergreen Clauses

By Joe Schmitz, CLP

There is almost no topic more controversial in small-ticket and mid-market leasing than Evergreen clauses. Does it have a place in our lease and financing market? Are there benefits to Evergreen clauses and who benefits? Are there problems? Should anything be done about it? This article attempts to address some of these questions.

What is an Evergreen clause? With many leases including some \$1.00 buyout or capitalized leases, it is a clause in the lease agreement that states that the lessee must notify the lessor before the end of the agreement of what they will do at lease-end, or the agreement will automatically renew for a period of time and the lessee will have to make additional payments. An example of an Evergreen clause is something like this:

“Upon expiration of the initial term, this agreement shall automatically renew for successful additional terms unless Lessee provides notice of intent to return Equipment to Lessor no later than sixty (60) days prior to expiration of initial term or any successive renewal term.”

The history of Evergreen clauses come from service agreements that were intended to act as long-term contracts, but avoid any legal issues with perpetual contracts. There were benefits to both parties of the agreement. The service provider would have an ongoing contract and the client would have an agreement where there was no fluctuation in price. However, in small and mid-market equipment leasing, Evergreen clauses have become primarily a benefit for the lessor and that creates issues for the parties involved and the leasing community in general.

First, who benefits from Evergreen clauses? And are there any legitimate reasons for this clause in an equipment lease? For lessees, it allows them an opportunity to make an informed decision about the best way to resolve the end-of-lease options. It may provide them additional time to find a buyer on their own for the equipment, gives them time to find replacement equipment, or allow them to keep the equipment longer without having to purchase it as a capital expenditure which might create tax, accounting and legal issues.

For the lessor, there are also benefits. A timely notification gives the lessor the opportunity to find a buyer for the equipment. It also allows the lessor time to develop a new lease approval for the lessee for replacement equipment. Or the time to structure a creative alternative such as arranging for the lessee to purchase some of the equipment on the lease while returning the rest. If a lessor has a lessee that will neither return the equipment nor purchase it for a fair market value, the Evergreen clause gives the lessor an additional tool to manage their collateral. Finally of course, non-notification generates additional revenue for the lessor.

What are the issues with an Evergreen clause? For the lessee they can be significant. Most lessees do not understand the ramifications of this clause when they sign the lease and how it might affect them in three, four or five year's time. They don't schedule a reminder to send notification and therefore end up contractually guaranteeing additional payments – often a year or more than they initially agreed to. The reason is that some lessors use this clause in a manner not historically intended – as a revenue generator far in excess of the terms of the lease as the lessee understood them. This allows certain lessors to compete unfairly in the marketplace by either lowering their pricing due to the expectation of higher gains at lease-end, or simply making profits at lease-end that is out of line with what the lessee intended. This is especially egregious when the agreement is a \$1.00 buyout or capitalized lease.

Does enforcement of an Evergreen clause create issues for the lessor? For the lessor, it does open them up to greater legal liability. A lease with an automatic renewal may be found by the courts to be a perpetual contract. Legal costs, judgments and damage awards may be forthcoming. For the lease broker/lessor who assigns a lease contract to a funding source and that funding source enforces an Evergreen clause, the broker/lessor may also find themselves in legal difficulty as well, even though they did not receive any additional revenue. Finally, the lessor may find that having a reputation of engaging in Evergreen contracts on lessees not fully informed means that the lessor will not receive repeat business and the lessor's competitors use that evidence of those practices to create a competitive advantage.

Finally, there are implications for the leasing community at large. With the internet nothing is secret. A disgruntled lessee can post their grievances for the whole world to see. The more there is a perception that the leasing industry has practices that are not in the best interest of the lessee, especially when so many lessees are small business owners and are almost indistinguishable from consumers, the more likely that our industry will become highly regulated which will create enormous costs on lessors and lessees alike.



*Joe Schmitz, CLP is the owner of F.I.T. Leasing and has been involved in the leasing industry since 1990. He has written in various publications about leasing, financing and credit and blogs about small business issues at <http://fit-biz4u.com/blog/>*

## Thank you to our supporting associations



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[www.NEFAAssociation.org/event/FundingSymposium](http://www.NEFAAssociation.org/event/FundingSymposium)



**NEFA**  
National Equipment Finance Association

## CLP Spotlight - Bob Fisher, CLP

### **What is your favorite aspect about the equipment finance industry?**

My favorite aspect of the equipment finance industry is that every day brings different challenges and opportunities. Unlike other professions, the equipment finance industry never seems to become boring or “just a job” as we are forced to become creative in a highly competitive marketplace. Also, after 30 years in the industry, I have been honored to forge many long-term relationships with sources and competitors. I have seen small companies grow to large ones through hard work and perseverance.



**Bob Fisher, CLP**  
*Senior Vice President*  
*Ascentium Capital, LLC*

### **What is your background in the industry?**

It began in 1982 with The CIT Group and I have had a career path as a Regional Sales Manager, Regional Operations Manager and Credit Officer for the Eastern United States. CIT was a terrific experience as it afforded me the ability to work and travel in many places around the country. After almost 10 years, I moved to the Chicago area working as a National Credit Manager for two leasing companies that used public income funds as their funding method. In 1995, I started to become active in various associations, NEFA (UAEL), ELFA (ELA), EAEL and NAELB. It was in UAEL that I discovered the CLP program and designation. Shortly thereafter, I formed Fisher-Anderson, LC in Des Moines, IA and received my CLP designation in October 1998.

I joined Main Street Bank in Kingwood, TX in 2004 and am currently a Senior Vice President with Ascentium Capital, LLC managing our wholesale indirect business.

### **What are the biggest challenges in your day?**

The biggest challenge in my daily role is to provide programs and products that my sources can use to grow their business and to set them aside from their competitors.

### **If you won 50 million dollars in the lottery, what would you do with the money?**

Spend It!

### **What is the most interesting place you have ever visited?**

As a young man I visited Southeast Asia and found it to be quite intriguing and beautiful. I have always wanted to visit again. I also had the chance to vacation in Rome and Amalfi, Italy. The history in Rome was overwhelming and the Amalfi Coast was fantastic. I guess if I won the lottery I would visit both, but for months at a time.



**Bob's Maltese "Holly"**

## CLP Noteworthy News

### **Paul Knowlton, CLP Quoted in Equipment Finance Advisor**

Marlin Business Services Corp., Union Bank, N.A., and Seika Machinery, Inc. (SMI), have formed a strategic alliance that will provide financing solutions for SMI's advanced machinery customers. "Union Bank is excited to facilitate the alliance with Marlin and Seika Machinery as Marlin provides customized financial solutions and streamlined financing for Seika's customers," said Union Bank Vice President and Program Manager Paul Knowlton.

### **Arvest Equipment Finance Announces Three Promotions**

John Harders, CLP and Teena Smith, CLP were both promoted to Assistant Vice-President and Eric Bunnell, CLP was promoted to Vice-President.

### **Innovative Lease Services (ILS) College Scholarship Open to Students Nationwide**

Committed to enabling the American Dream of small business ownership, Innovative Lease Services, Inc. is pleased to announce the first annual Scholar Program for Collegiate Business Students is open to applicants.

"I am reminded every day of my college experience and its impact on my entrepreneurial and business skills." Andrew Nere, CLP, CEO of ILS said, "At ILS, our mission is to enable and empower the American Dream of small business ownership. Part of that vision is to contribute to those exceptional students who demonstrate great potential as future business leaders."

## Fun Fact

**France's Eiffel Tower can grow by more than 6 inches in summer due to the expansion of the iron on hot days.**



## Save the Date

**Institute for Leasing Professionals - Midwest**  
July 23-25 - Northbrook, IL

**Institute for Leasing Professionals - So. Cal.**  
August 8-10 - Irvine, CA

**Institute for Leasing Professionals - Northwest**  
August 12-14 - Federal Way, WA

**Institute for Leasing Professionals - East Coast**  
October 11-13 - Baltimore, MD

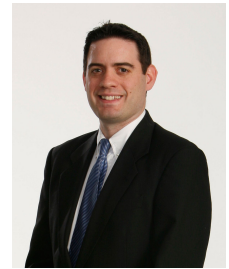
## New CLPs

*April 2014 - May 2014*



**Heather Ayers**

*First American Equipment Finance*



**Todd Buzard**

*First American Equipment Finance*



**Lisa Collins**

*First American Equipment Finance*



**Nathan Gibbons**

*First American Equipment Finance*



**Cory Laske**

*First American Equipment Finance*



**Karen Leastman**

*First American Equipment Finance*



**Jonah Michael**

*First American Equipment Finance*



**Chad Oleson**

*Better Programs, Inc. (TurboLease)*