

Rules and Regulations of Equipment Leasing  
Part of the Body of Knowledge to become a  
Certified Leasing Professional

Presented By  
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\$595 for NAELB, UAEL, ELA Members  
\$695 for Non-Members

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830 Phillips Lane (adjacent to airport)  
Louisville, KY 40209  
(502-367-2251)  
Room Rates \$89  
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8:00AM to 5:00PM

A seminar on the rules and regulations for equipment leasing including Income Tax requirements, SFAS #13 for GAAP accounting, and requirements for a Legal Lease "Article 2A" and a Disguised Conditional Sales Contract for

“Article 9”. Plus History of Leasing, Terms, Pricing and Structuring, and What is required for you to know to sit for the CLP exam.

## Commercial Equipment Leasing

### ❖ Day One

- **HISTORY OF LEASING**
  - ◆ Industry Standards and ‘Code of Ethics’
  - ◆ Ancient applications of leasing
  - ◆ Recognition of leasing under English Common Law
  - ◆ Beginning of leasing in the United States
  - ◆ Early U.S. leasing, leasing in the transportation industry
  - ◆ U.S. leasing by “captives”
  - ◆ WW II era leasing activity
  - ◆ General trends in the development of modern leasing
  - ◆ Bank involvement in leasing
  - ◆ Development of accounting standards for leasing
  - ◆ The evolution and content of tax rules governing leasing
  - ◆ Government involvement in the development and growth of leasing
  
- **CLASSIFICATION AND TERMINOLOGY IN LEASING**
  - ◆ Leasing defined
  - ◆ Market divisions within the leasing industry
  - ◆ Types of leases
    - Non-Lease
    - 501C Lease
    - Tax Lease
    - TRAC Lease
    - Split TRAC Lease
    - Municipal Lease
    - Federal Lease
    - Sale-Lease-Back
  - ◆ The broker’s role in the lease transaction
  - ◆ Basic elements of a lease transaction
  - ◆ Basis for a tax view of a lease
    - IRS Revenue Ruling 55-540
    - IRS Revenue Procedure 01-28 (revised 75-21)
  - ◆ Basis for an accounting view of a lease transaction
    - FASB 13
  - ◆ Basis for a legal view of a lease transaction

- Article 2A
- ◆ Basic definitions
  - Section 38 property
  - Recourse vs. non-recourse
  - “At risk” rules
  - Bundled lease
  - Close-end lease
  - Gross lease
  - Full pay-out lease
  - Guidelines lease
  - Net lease
  - Money over money transaction

- **LEASE PRICING/STRUCTURING**

- ◆ Time use of money concept
- ◆ Cash flow diagrams
- ◆ Structuring of a payment
  - Principal plus interest
  - Amortizing payment
  - Residual
- ◆ Use of Calculator
  - HP 17II+ or HP12C
- ◆ Basic elements of a lease transaction
  - Term
  - Number of payments
  - Number of advance payments
  - Equipment cost
  - Indirect costs
  - Lease payment
  - Residual value
  - Security Deposit
  - Lessor’s yield
  - Other fees/costs
- ◆ Tax Lease Pricing
  - Noncancelable
  - EBO’s
  - Terminations
  - Early Terminations
- ◆ Understanding the transaction
  - Application of the cash flow diagram to the lease transaction
- ◆ Mathematical computation for a lease transaction
  - Solving for any unknown element in the transaction
  - Calculator & Computer based pricing
  - Determining the rate factor for a lease transaction
  - Computing unusual payment structures
    - Skip payments
    - Step payments
    - Irregular payments
    - Seasonal payments

- ◆ Definitions of terms
  - Internal rate of return
  - Stream rate
  - Basis points
  - Points

## **LEASE VS. BUY DECISION MAKING**

- ◆ Selling the lease vs. buy decision
- ◆ Elements of the lease vs. buy decision
  - Equipment considerations
  - Budget and decision making
  - Conveniences
  - Financial statement impacts
  - Tax consequences
  - Cash flow issues
  - Costs
- ◆ Example of Lease VS Buy

### ❖ Day Two

## **LEASING LAW**

- ◆ Basis for U.S. leasing law
- ◆ Statute of Frauds
- ◆ Bundle of rights concept
- ◆ Legal definition of a lease
- ◆ Rights associated with a lease
- ◆ Warranties
  - Express warranties
  - Implied warranties
- ◆ Article 2-A of the UCC code
  - Requirements to comply
  - Effects of meeting requirements
  - Exclusion of warranties under Article 2-A
- ◆ Exclusion of warranties under contract terms
- ◆ Definitions
  - After acquired title
  - Novation
  - “Jointly and severally liable”
  - Terminal Rental Adjustment Clause (TRAC)
- ◆ Bankruptcy
  - Types of bankruptcy
    - Chapter 7
    - Chapter 9
    - Chapter 11
    - Chapter 12
    - Chapter 13

- Payment priorities in bankruptcy
- Bankruptcy terminology
  - Date of filing the petition
  - Automatic Stay
  - Liquidation
  - Proof of claim
  - Bar date
  - Relief from stay
  - Preferences
  - Adequate protection
  - Plan
  - Cram Down
  - Confirmation
  - Executory contract
  - Secured creditor
  - Deficiency
  - Re-affirmation
- Treatment of a lease in bankruptcy
  - Chapter 7
  - Chapter 11
  - True lease treatment
  - Secured transaction treatment
  - Unsecured transaction treatment
- ◆ Requirements for registration as a foreign corporations
  - Definition of “doing business”
  - Effects of non-registration
    - On lessor
    - On lessee
  - Requirements to meet tax obligations regardless of registration
    - Sales and use taxes
    - Property taxes
    - Income taxes
      - Venue of tax liability

- **LEASE DOCUMENTATION**

- ◆ Parties to a contract
  - Elements of the lease documentation file
  - Lease documents
    - Lease contract
    - Schedules and exhibits
    - Delivery and Acceptance
    - Guarantees
    - Corporate resolutions
    - Real estate waivers
    - Fixture filings
    - UCC filings
    - Additional collateral agreements (non-leases only)
    - Purchase order
    - Cross default agreement

- Invoice
- Funding/advance funding agreement
- Purchase options
- Other miscellaneous documents
- Forms of contract
  - Standard lease agreement
  - Master lease agreement
  - Plain language agreement
- Elements & provisions of a lease contract
  - Identification of the parties
  - Identification of the vendor/supplier
  - Equipment location
  - Terms
  - Purpose/intent of agreement
  - Acceptance of equipment by lessee
  - Disclaimer of warranties
  - Article 2-A provisions
  - Assignment
  - Rental commencement and other payments
  - Non-cancellation provisions
  - Disclaimer of agency
  - Lessee/Lessor signatures
  - Choice of law/venue
  - Security deposits
  - Limited amendments, power of attorney
  - Provisions for location and use of equipment
  - Ownership provisions
  - Renewal provisions
  - Agreements for insurance, provisions for loss and/or damage
  - Insurance requirements
  - Responsibility for liens and tax liability regarding equipment
  - Lessee indemnification of lessor
  - Lessor assignment, waiver of defense clause
  - Service charges, late fees, interest
  - "Time of essence" provisions
  - Default provisions
  - Cross default clause
  - Remedies to default
  - Provisions regarding multiple lessees
  - Agreement regarding enforcement expense
  - Modifications, changes, severability
    - Attachments, schedules & exhibits
- Equipment lease guarantee
  - Purpose of the guarantee
  - Use in the lease transaction
  - Elements of the equipment lease guarantee
    - Parties to the guarantee
    - Guaranteable interest
    - The guarantee made by the guarantor
    - Guarantor primarily responsible under the contract

- Waiver of guarantor's rights
- Deliver & Acceptance
  - Purpose of the Delivery & Acceptance
  - Use of the Delivery & Acceptance
  - Elements of the Delivery & Acceptance
    - Acceptance and representations regarding equipment
    - Instructions to pay vendor
    - Unconditional nature of acceptance
- Corporate resolution
  - Purpose of the Corporate Resolution
  - Use of the Corporate Resolution
    - Resolution to lease
    - Resolution to guarantee lease
  - Elements of the Corporate Resolution
    - Authority of corporation to enter into lease and/or guarantee
    - Identification of authorized signers for the corporation
- Fixture Filings
  - Purpose of a Fixture Filing
  - Use of the Fixture Filing
  - Form used for Fixture Filings
  - Filing requirements
  - Protections offered from a fixture filing
    - Issues not protected
- Real Estate Waivers
  - Purpose of the Real Estate Waiver
  - Use of the Real Estate Waiver
  - Form of the Real Estate Waiver
    - Landlord Waiver
    - Lender's Waiver
  - Filing requirements for a Real Estate Waiver
  - Elements of the Real Estate Waiver
    - Identification of the parties
    - Legal description of the property
    - Statement of consideration
    - Intent and agreement on the nature of the "fixture" covered by the Real Estate Waiver
    - Waiver of certain rights by Landlord/Lender
    - Permission to reclaim "fixture" upon default by Lessee
    - Signature acknowledged by a Notary Public
- UCC Filings required by Article 9
  - Purpose of UCC filings in the lease transaction
  - Type of filings
    - Blanket filings
    - Purchase money filings
  - Form of the UCC filing
    - UCC-1
    - UCC-2
    - UCC-3

- Filing requirements
    - Authority
    - Filing location
    - Timeliness
    - Fees
  - Invoice
    - Parties to the invoice
    - Purpose of the invoice
    - Content of the invoice
    - Use of the invoice
    - Form of the invoice
    - ACH Payments
  - Purchase Order
    - Parties to the purchase order
    - Purpose of the purchase order
    - Content of the purchase order
      - Representations required by vendor
      - Disclaimers and conditions set by Lessor
    - Use of the purchase order
    - Form of the purchase order
  - Funding/advance funding agreement
    - Parties to the agreement
    - Purpose of the agreement
    - Use of the agreement
    - Contents of the agreement
    - Potential dangers of use
  - Purchase/renewal options
    - Parties to the option
    - Types of options
      - Purchase option
      - Call option
      - Put option
      - Renewal option
    - Use of the option
    - Form of the option
    - Potential effects of the option in the determination of the nature of the agreement
      - True lease treatment
      - Treatment as secured transaction
- ◆ Lessor liability issues
  - Potential liabilities of Lessor
    - As owner of the equipment
    - As financier of equipment
  - Liability protections for Lessor
    - Article 2A Finance Lease
    - Contractual provisions
    - Insurance
    - Business practices
  - The issue of Agency
- ◆ Equipment in inventory/repossessed equipment



- Lessor's status in sale or lease
  - Sale to end-user
  - Wholesale disposal
  - Commercially reasonable sale
- Lessor liabilities
- Possible Lessor protections
  - Contractual
  - Insurance
  - Indemnity
  - Hold harmless