

Fall
2016

CLFP CIRCULAR

News for Leasing and Finance Professionals

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Thank you to our supporting associations



Message from the President



Bob Fisher, CLFP
Sr. VP, Business Development
Ascentium Capital

2016 continues to be a strong year for the Foundation! CLFPs have continued to grow with 353 CLFPs in good standing. We have two more Academies remaining in 2016, one in Malvern, PA which is sold out and one in Littleton, CO which is close to selling out. If you have not made your reservations you may in fact have to wait until 2017.

As you may be aware, the Academy, is a three-day event that covers the mandatory sections of the exam in-depth, as well as the three most popular electives, and on the final day, approved candidates may sit for the exam. New sections will be added to our current Body of Knowledge, Handbooks, and exam shortly. Our new online CLFP exam has been well-received and will continue to grow and evolve over the foreseeable future. Financially, our CLFP Foundation remains on firm footing.

This message will go to print in mid-September by which time 2016 will be rushing to a close. I have been excited and humbled this year by the dedication of our Executive Director, Executive Committee and of course our 2016 Board. Our Volunteers continue to amaze me with their ideas, dedication and willingness to roll their sleeves up and support our Academies, social functions and being the message bearers of the CLFP Foundation and the CLFP Designation. I challenge all of our active CLFPs to not let the year close without mentoring other leasing professionals to accept the challenge of earning their own CLFP designation. Your Board is currently working on next year's Academy locations and sponsors.

During the final months of this year in addition to the scheduled academies, we will also be present at our supporting Association (ELFA, NAELB, and NEFA) meetings. Take a few minutes to stop by our CLFP Booth to say hello and pick up some information.

Our Executive Committee is hard at work with our Strategic Planning for 2017, 2018 and beyond. As we finish the year, the plan will be presented to our entire Board for approval and implemented for future years. Our industry continues to evolve with new regulations in accounting, legal decisions, product maturation, new product offerings and your CLFP Foundation will continue to make every effort to meet the challenges

A handwritten signature in black ink, appearing to read 'Bob Fisher', written in a cursive style.

Bob Fisher, CLFP
President, 2016 CLFP Board of Directors

September 25th, 2016

1st Annual CLFP Celebration Day

On August 25, 2016, Certified Lease & Finance Professionals (CLFPs) across the country celebrated their designation with parties held in Seattle, Portland, Los Angeles, Houston and Minneapolis. This was the first year where multiple events were planned for the same day and with the success of it, will remain a tradition for years to come.



Southern California Celebration

The largest turnout was in the Los Angeles area which was hosted by Banc of California and First Foundation Bank; where 20 CLFPs from Southern California (and one from Austin, TX) gathered at Ra Sushi. Amy Spragg, CLFP, Vice President of the CLFP Board of Directors stated, "The CLFP Celebration Day in Southern California last week was a fantastic evening filled with fabulous food and fantastic networking. It is always such a pleasure catching

up with fellow CLFP's to discuss current changes within the industry and opportunities for growth and advancement."



Portland Area Celebration



Pacific Northwest Celebration



Northland Capital Celebration

Quick Notes From the ELFA Legal Forum

By Barry Marks

This year, as every year, we attended the Equipment Leasing and Finance Association Legal Forum. This year's Forum was held in San Francisco and Barry, Bill (Phillips, III), Matt (Evans), and Tammy (Hogan) all attended or participated in Forum-related activities. Bill presented a Lessor Liability overview as part of an insurance panel with Beth Henderson and Barry held forth on the "Hot Topics" panel along with industry veterans Michael Leichtling and Frank Peretore.

The following are a few notes from the Forum that may be of interest:

- The California Department of Business Oversight has responded to the ELFA's questions (including one raised by Barry). See the article on the latest insanity elsewhere [here](#).
- If you thought California's licensing made no sense, check out Illinois Senate Bill 2865, which ELFA and others are opposing vigorously. The Illinois law would apply to all loans under \$250,000 (regardless of the size of the borrower). Other onerous features include:
 - Any loan in violation of the law would be unenforceable AND the law can be enforced by civil suits, which would encourage class actions.
 - Lenders are required to post a \$500,000 surety bond. Lenders are required to determine that monthly payments are less than 50% of the debtor's net monthly income.
 - Numerous disclosures similar to those applicable to consumer loans under federal and state law would be required despite the fact that these are commercial loans.
 - The state would have a broad right to refuse to issue licenses.

Please bear in mind that the Illinois bill is proposed legislation. The bill was temporarily withdrawn on the request of ELFA and as of this writing its future is uncertain. Other states are rumored to be exploring similar laws.

- In addition to the news on the state front regarding the regulation of lenders, the ocean of federal regulatory laws continues its natural ebb and flow. More "flowing" and less "ebbing" as we might expect. One of many regulatory concerns on which we are keeping our eye is the continued jostling as to which federal agency has actual enforcement power over certain activities in our industry. Under Dodd-Frank, the Consumer Financial Protection Bureau ("CFPB") continues to assert dominance over commercial as well as consumer activities, which may or may not be what Congress intended. It has been reported that the CFPB this year has created additional enforcement and investigative teams, which could signal its intent to expand into commercial loan or possibly lease transactions.
- Several attendees were shocked to learn that some states have laws requiring the licensure of motor vehicle financiers, including lessors. In many cases, these laws require dealer licenses for lessors or leasing companies who sell equipment to lessees or third parties at the end of the term. We have been dealing

with these laws in several states, including Florida.

- Managed solutions (services bundled with equipment lease contracts) continue to be a challenge although more and more lessors are becoming comfortable with relying on waivers of defenses and other protections. Creativity and an educated risk-benefit analysis are necessary where vendors insist that services be included and not separately contracted for or separately billed.
- During the panel on “drafting tips from a litigator’s perspective” several insurance-related issues came to the fore. In particular, being certain that the lessor is named additional insured on liability policies (and, if possible, casualty damage policies) is essential: without being an additional insured, the lessor cannot enforce the policy if the lessee refuses to cooperate. Moreover, it is essential that the box for “lender loss payee” be checked rather than “loss payee” alone as a lender loss payee enjoys additional protections, including the ability to file claims. We reported on these things earlier but they continue to be problems for many leasing companies.
- Some leasing companies, frustrated by stacking by merchant cash advance companies and subordinate liens by creditors in general, have begun to address this issue in UCC filings. They are adding something like the following to the collateral descriptions:
 - Debtor has contractually agreed not to pledge, mortgage, encumber or otherwise permit the collateral to be subject to any other lien, security interest, encumbrance or charge. Accordingly, the acceptance of any security interest by anyone other than the Secured Party will constitute tortious interference with the Secured Party’s rights.

This language may have the intended effect of driving off high-risk lenders whose subordinate loans may bankrupt your otherwise (moderately) healthy borrower. However, it remains to be seen whether such provisions will result in successful litigation in “tortious interference” cases. Just because you call it tortious interference does not make it so. If you include such a provision in your UCC filings expect to receive calls from creditors requesting waivers of such a provision, particularly if your security interest is not limited solely to the specific equipment your company is financing. Consult with your lawyer before crafting such language to include in the filing. If the statement about the prohibition on further liens on the collateral is not consistent with the lease or EFA, your company could incur liability to the customer.



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.

In the News...

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

- [Tony Sedlacek, CLFP joins Orion First as VP of Portfolio Management](#)
- [Mae Philpott, CLFP joins Quality Leasing](#)
- [Rosanne Wilson, CLFP participates in the American Cancer Society Relay for Life Fundraiser](#)
- [H. Krollfeifer, Jr., CLFP appointed as Township Committeeman](#)
- [Steven De Simone, CLFP Graduates From an MIT Graduate Course in Fintech](#)
- [Andrew Nere, CLFP - Honored to be ranked on Inc. 5000's Fastest-Growing Private Companies for 2016](#)
- [NEC Financial Services Celebrates its 30 Year Anniversary](#)

Save the Date

Academy for Lease & Finance Professionals

September 22 - 24; Malvern, PA

CLFP Exam

September 24; Malvern, PA

NEFA Fall Funding Symposium

October 6 - 8; Bloomington, MN

ELFA Annual Conference

October 23 - 25; Palm Desert, CA

Academy for Lease & Finance Professionals

November 3 - 5; Littleton, CO

CLFP Exam

November 5; Littleton, CO

NAELB Western Regional

November 11 - 12; Orange, CA

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.

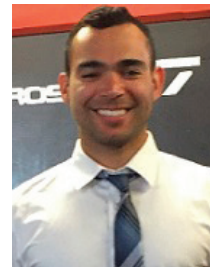
New CLFPs*



Don Cosenza, CLFP
North Mill Equipment Finance



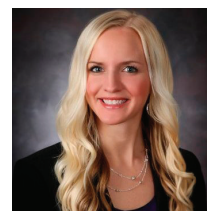
Michael Green, CLFP
Dakota Financial



Dirk Onink, CLFP Assoc.
TEQLease



Jill Molitor, CLFP
Stearns Bank



Kayla Perlinger, CLFP
Stearns Bank



Joe Schluender, CLFP
Stearns Bank

***Not pictured: Phil Davidson, CLFP - Ivory Consulting**

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LeaseTeam, Inc.

Gold


Pawnee Leasing Corporation

Silver

Allegiant Partners Corporation

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Maxim Commercial Capital
NAELB
Padco Financial Services
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