



CLFP

Circular

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Thank you to our supporting associations



A MESSAGE FROM THE CLFP PRESIDENT

The CLFP Foundation is continuing its most successful growth period in history. As of the beginning of October, there are just over 800 CLFPs and Associates in good standing. This is an increase from the mid-600s at the beginning of the year. I would like to personally thank all the active CLFPs, as well as the CLFP Board of Directors, for their continued support and efforts toward strengthening the Foundation. I anticipate that this growth trend will continue for the remainder of 2019 and beyond.

The Foundation celebrated CLFP Week in August. CLFP Week provides an opportunity for active CLFPs to celebrate their designation with peers across the country and in their local communities. This year's celebration was the most successful to date. Thank you to all who participated and shared photos of your events. These networking opportunities are an important part in building the CLFP community that we as a Board are striving for.

The CLFP Foundation is proud to announce that the new and improved CLFP Foundation website is now live! This was a 2019 goal of our Marketing Committee and a special thank you goes out to all the members of that committee that contributed to the successful launch of the new website and to Ergo Integrated Technology Solutions who funded the project. Please check it out and let us know what you think: www.clfpfoundation.org.

The CLFP Foundation offers many services to active and prospective CLFPs. I wanted to take the opportunity to highlight a few. The first is the CLFP Mentor Program. The Mentor Program was created to assist candidates in preparing to take the CLFP Exam. The Program is voluntary and is offered at no additional cost to the candidate. A candidate will be assigned a Mentor upon request following formal application and receipt of fee for the CLFP Exam. Candidates are matched with a mentor

who is knowledgeable in areas of the Body of Knowledge that are of interest to the candidate. Or, the candidate may request a specific individual. Secondly, the Foundation offers a unique program called the Anonymity Program. It is designed for those who would like to study for and take the exam anonymously, with a public announcement being made only when certification is earned. Additional information on both programs, as well as all other services that the CLFP offers may be found on the CLFP Foundation's website.

There is plenty of time remaining in 2019 to get involved. If you have any interest in participating in the Foundation in any capacity do not hesitate to reach out to our Executive Director, Reid Raykovich, CLFP or any member of the Board. Please enjoy the fall months and I look forward to speaking to you all again at the end of the year.

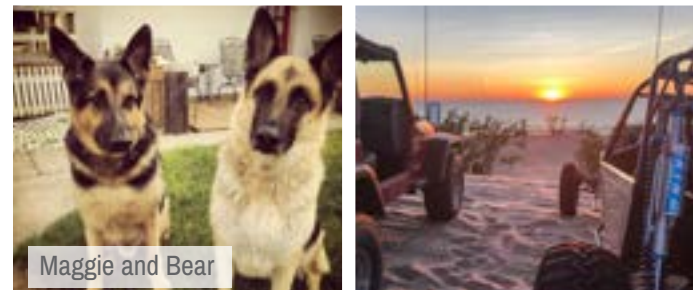


Andrew Eller, CLFP
CLFP Foundation Board of Directors
President

SPOTLIGHT



on Eric Wanberg, CLFP
Marketing Manager at AP Equipment Financing



Eric on a camping trip with his brother Skyler, girlfriend Maranda, dad Tim and Mom Sherri.

Want to be featured in a Circular?
Contact the Foundation today!

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

Buckshot Racing – they build custom off-road racing sand cars.

What was your favorite TV show when growing up?

Hogan's Heros, I love Lucy, and of course Friends.

Choose a movie title for the story of your life.

Patch Adams – "Our job is improving the quality of life, not just delaying death."

What was your favorite toy as a kid?

My Hot Wheels!

Can you play any instruments?

Guitar – I have both electric and acoustic and started playing 15 years ago.

What was your childhood nickname?

Wammmborg!

What are three things still left on your bucket list?

Travel outside the US, finish visiting the remaining 20 some odd National Parks in the US I haven't been to, enter an off-road race at some point in my life.

What is the worst pet you have ever had?

I've always had large dogs, and I've loved them all.

What's the last book you read?

A Dog's Purpose

What was the best concert you ever went to?

I've seen anywhere from 150-200 artists perform. Some of the top ones were Paul McCartney, Rush, Kaskade, Flume, Young the Giant.

Where's your favorite place in the world?

Silver Lake Sand Dunes in Michigan.

What are you passionate about?

Family, friendship, music, and my current marketing position at AP Equipment Financing.

What are you currently watching on Netflix?

Just finished watching Breaking Bad for the 3rd time now.

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

I'd love to visit Switzerland.

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

I'm an extremely good whistler, and I've been known to take some decent pictures.

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

I'm digging Orange right now.

Who is your least favorite superhero?

Batman.....

“DEAR LESSEE”

A Brief Set of Answers to Common Lessee Questions

It is not at all uncommon for lessees and their counsel to ask what seem to be perfectly logical questions about equipment finance, only to have lessors and their counsel sigh and shake our heads. Here are a few of our customary answers to common lessee questions.



Article by
Barry S. Marks,
Esq., CLFP

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.



Why do I have to pay rent whether or not the equipment works?

There are two types of “leases” you will run across in your business. The first is what we often call a *rental agreement or lease from inventory*. This is like a rental from Hertz or UHaul, a lessor in the business of renting equipment it holds for that purpose. Those “lessors” are responsible for the equipment; generally, if the equipment doesn't work, you bring it back and stop paying until it is repaired or replaced.

Leasing in *equipment finance* is different in many respects. Essentially, a lease of this type takes the place of financing business equipment by borrowing money from the bank. In a lease that is called a *finance lease* by the Uniform Commercial Code (“UCC”), which is part of your state's law, the lessor is like the bank. It is only in the transaction because it is providing financing, not because it is in the equipment rental business.

Also, many “leases” are leases in name only. They are actually loans. Leases with \$1 or mandatory purchase options, for example, are treated by the UCC as security agreements. You should read them the same way you would promissory notes, loan agreements and security agreements. There are other types of leases, but we will deal here only with UCC finance leases and loan-type leases.

Always keep in mind: If you borrow money from a bank to buy equipment, and use the equipment as collateral, you must pay the bank whether or not the equipment works. If you have a problem with the equipment, you must look to the vendor to fix the problem. In a UCC finance lease, or a lease that is really a loan, the situation is the same. You pay rent and then take whatever action you can against the vendor. (Note that your lease says that you have the benefit of vendor warranties, even if the lessor “owns” the equipment for legal purposes.

Why can't I cancel the lease? Why can't I just prepay the principal?

The lessor has paid the vendor for the equipment. It has also incurred expenses in preparing the documents and closing the transaction. The Lessor used its own cash or credit lines and expects to make a reasonable profit from the transaction. It has taken a risk regarding your credit. Unlike a loan, there is no “principal” in a lease. Unless your lease otherwise provides, you may not “prepay” without the lessor's consent. The lessor has the legal right to require you to compensate it for its costs, risk and anticipated profit, and not just get its money “back.” As it is not in the equipment business, it probably does not want the equipment back before the end of the lease term and has not made arrangements to sell equipment that comes back unexpectedly.

Why can't I reduce rent payments for disputed amounts or money owed to me by the lessor?

The lease operates the same as a promissory note or any other “unconditional” agreement. The lessor and often its creditors and assignees are relying on a steady stream of rent in quoting you the rate you are paying. That stream cannot be interrupted because you think the lessor has done something wrong. Read the lease carefully and ask about anything you do not understand BEFORE signing. You can bring an action against the lessor after you pay your rent; you are not giving up the right to hold the lessor accountable, only to withhold rent because you feel justified.

Why must I agree not to assert defenses against an assignee of the lessor?

Many lessors reserve the right to borrow against the rent stream or to sell the lease to another lessor. This is essential to the lessor's business and for the rate you are quoted. Agreeing to pay the assignee no matter what happens is just an extension of your agreement to pay rent to the lessor (no matter what), BUT this language in the lease does not release any right you have to sue the lessor (as opposed to the assignee) if the lessor has violated your rights or injured you in some way.

What is an indemnity?

An indemnity is your obligation to provide the legal defense to a claim or to pay, or reimburse the indemnified person for, any losses.

Why do I have to indemnify the lessor?

Again, the lessor is only providing financing. You selected the equipment and you are using the equipment. Almost every time someone is suing because of injury caused by the equipment, or because they claim they have somehow been damaged by the lease, the first person they look to is you. The lessor, however, may be an attractive target as well. There are many old laws and cases in which owners of equipment who rent it to others are held accountable. Even when the lease is really a loan, some judges will allow a damaged party to sue the “lessor.”

The lessor looks to you to keep it out of any litigation, and to reimburse it or pay directly any claim made against it due to the lease or your use or possession of the equipment.

This includes not only lawsuits but taxes, expenses, claims by workmen and repairmen and any other cost or exposure related to the lease.

Why do I have to have so much insurance?

This is both a credit protection and to protect the equipment's value as collateral. If the lease is a UCC finance lease and not a loan, the lessor is looking to the equipment both as collateral and as a source of additional income when the lease ends and you buy it or it is sold to someone else. Your indemnity obligations and the risk of litigation are why liability insurance is required.

Why are there so many potential defaults and why don't we have more notice and grace periods?

Always remember that the lessor does not make a profit if your business does well. At most, it is paid the rent and, in a finance lease, some benefit from disposing of the equipment when the lease ends. Lessors want to be certain that, if you do not honor your agreements, or your business falters, they can take action necessary to protect themselves. In many cases, your failure to adhere to the terms of the lease exposes the lessor to immediate loss or liability. Also, many defaults cannot be cured and in some cases, the lessor cannot give you notice because it will not know that you have defaulted.

Why are there so many "remedies" and can the lessor collect twice?

No judge will allow the lessor to collect from you more than you owe. In a finance lease, the equipment belongs to the lessor so, in addition to damages you pay, the lessor might be able to sell the equipment if it has appreciated in value. Read your lease carefully because most lessors will not change the remedies language.

Why doesn't the lessor make representations? Why isn't there a lessor default provision?

The lessor has one and only one duty after it pays for the equipment: to observe your right to the use and "quiet enjoyment" of the equipment so long as you are not in default. What would you expect any lender to do other than provide a loan? If the lessor does something in violation of your rights, including anything unrelated to the lease it may have legal liability to you through a separate action, although not through your cancelling the lease or withholding rent.

What if the lessor is affiliated with the vendor?

Some vendors have formed lessor subsidiaries or other affiliated entities. Courts have acknowledged that these are separate legal entities and their leases can qualify as UCC finance leases. Before you question any of this, remember that, even if the lessor is the vendor and not a separate company, the lessor may be selling the lease or assigning the rent to a third party. That third party is enabling the lessor to do business with you by transferring funds to the lessor. Your rent rate and the availability of the lessor to do business with you is dependent on the lessor and its own lenders and buyers to be assured that you will honor your agreements to the best of your ability and not interrupt the flow of rental payments. Whether the lessor is a vendor, an affiliate of the vendor or a totally separate company, you must pay the rent in all events, but you still have legal recourse against the vendor for warranties and other claims.

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2019 ACADEMY FOR LEASE & FINANCE PROFESSIONALS (ALFP) UPDATE

The Foundation is wrapping up a very busy year in terms of the Academy for Lease & Finance Professionals. Eleven have been held across the country since January 2019. Only one ALFP remains, and it sold out over a month ago! We are already starting to book ALFPs for 2020 and there are three private Academies, and two public, all before May 2020. The two public ALFPs with open spots are:

FT. LAUDER DALE, FL

*Host: Fleet Advantage
February 6 – 8*

OVERLAND PARK, KS

*Host: Arvest Equipment
Finance
April 23 – 25*

Space is limited and the majority of ALFPs are now selling out, so act quickly!



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CLFP WEEK 2019

For 2019, the Foundation decided to extend the CLFP Celebration day from just one day, to an entire week. CLFPs and Associates gathered in fifteen different cities across the United States with events in: San Francisco, CA; Tustin, CA; Portland, OR; St. Cloud, MN; Rochester, NY; Fort Smith, AR; Milwaukee, WI; Seattle, WA; Philadelphia, PA; Houston, TX; Chicago, IL; Scottsdale, AZ; Devils Lake, ND; Knoxville, TN, and Grand Island, NE!

Here are some of the photos captured from each of the events!

CHICAGO, IL



FORT SMITH, AR



GRAND ISLAND, NE



MILWAUKEE, WI



PACIFIC NORTHWEST & SOUTHERN CALIFORNIA



SEATTLE, WA



SCOTTSDALE, AZ



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