

2016 ELFA Legal Buyers Guide

A brass scale of justice is the central focus, resting on a wooden surface. The background is a warm, dimly lit library with tall wooden bookshelves filled with books. The lighting creates a professional and scholarly atmosphere.

Seeking Legal Guidance?

These equipment leasing
and finance lawyers are
ready to serve you

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ELFA
EQUIPMENT LEASING AND
FINANCE ASSOCIATION



Hot Legal Issues in Equipment Finance

What are the latest developments and trends in the law affecting equipment finance? Here's a list of some of the top legal issues facing ELFA members

Geo-Tag; You're It

Was your equipment "really" delivered? Does your collateral "really" exist? Is it "really" at the proper location? Geotagging should provide these answers! Geographical tagging, or geotagging, is a low-cost verification tool that provides funding sources with additional confidence and information about the delivery and existence of their equipment/collateral. With the rise of mobile computing and enhanced Internet capabilities, geotagging is becoming increasingly more feasible and logical. It is an efficient method to reduce risks of fraud involving nonexistent, missing and/or double-financed equipment. Currently, geotagging is not widely used in the industry but its popularity is starting to grow. Learn more in the March/April 2015 Leasing Law column at <http://bit.ly/1VQ8apP>.

Unraveling the Risks of Bundling

Financing contracts that include some combination of equipment, services, supplies, consumables and software (collectively, "bundled solutions") are an industry hot topic. However, this financing product presents some unique risk and operational challenges to third-party lenders. Once largely the domain of captive finance subsidiaries, many vendors and end-users are now asking their funding sources to consider entering into this niche area by taking an assignment of the receivables arising from bundled solutions agreements. A funding source contemplating offering true bundled solutions will need to consider carefully whether it has the requisite risk appetite, operations capability and the right mix of vendors. Learn more in the May/June 2015 Leasing Law column at <http://bit.ly/23KOkSy>.

Know Your Customer: Beneficial Ownership Rule

On July 30, 2014, the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury issued its proposed rule for public comment on the development of a customer due diligence regulation that will require financial institutions to identify and verify beneficial ownership of account holders. The proposed rule represented a departure from current FinCEN regulations under which financial institutions exercise their own judgment in making risk-based assessments whether to require beneficial owner information for legal entity accounts. The proposed rule covered only financial institutions that are subject to a customer identification program requirement under FinCEN regulations. The public comment period for the proposed rule closed on Oct. 3, 2014. As of February 2016, the final rule has not been issued. On Dec. 24, 2015, FinCEN made two additional documents related to the proposed Beneficial Ownership Rule available to the public for comment. The comment period for those two documents ended on Jan. 25, 2016. Learn more in the July/August/September 2015 Leasing Law column at <http://bit.ly/1X5smVN>.

Regulation RR: On Track

On Christmas Eve 2016 the federal government will drop a lump of coal into the stockings of every sponsor of equipment lease and loan securitizations. That is the day when Regulation RR (for Risk Retention) will become effective for all nonmortgage securitizations. The general rule is that the originator or sponsor of the transaction must hold, while the asset-backed securities (ABS) are outstanding, at least 5% of the "credit risk" for the assets that are transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer. Learn more in the October 2015 Leasing Law column at <http://bit.ly/1Sv8GvC>.



ELFA Legal Resources

Are you looking for information about legal issues pertaining to the equipment leasing and finance business? Don't miss these resources:

2016 LEGAL FORUM—

The premier event for attorneys serving the equipment finance industry, May 1–3 in Denver. Details: www.elfaonline.org/events/2016/LF/.

LEGAL COMMITTEE—

A member and staff resource on a wide range of national and international legal issues impacting the leasing and finance industry. For more information, contact Ed Rosen at erosen@elfaonline.org.

ONLINE TOOLS—Consult these recently updated tools, all available free as a benefit of your ELFA membership, at www.elfaonline.org/Issues/Legal/:

■ **50 State Survey of Motor Vehicle Insurance Requirements—**

Survey of the financial responsibility and insurance requirement laws applicable to motor vehicle lessors.

■ **Executive's Guide to Lease Documentation—**

Synopsis of issues that may arise during negotiation, drafting and administration of equipment lease agreements and related documents.

■ **Executive's Guide to Remedies—**

Synopsis of remedies available to lessors under many lease agreements and applicable law.

■ **State Law Compendium—**

50-state guide to compliance, highlighting selected state statutes and regulations deemed problematic by attorneys who practice in these commercial jurisdictions and business people who operate in them.

■ **State Tax Manual—**

Reference guide designed to aid equipment finance companies in tax compliance and planning.

■ **What's New in the Law—**

Summary of recent case law impacting the equipment finance industry.

Due Diligence for Municipal Lessors

Lessors engaged in leasing to city, county and state governments are well aware that one of the principal distinctions between this type of government leasing and traditional private company leasing is the non-appropriation clause. A typical non-appropriation clause provides that the lessee may terminate the lease at the end of any of its fiscal years if its governing body does not appropriate funds to pay the next year's rents. Perhaps the greatest uncertainty facing municipal lessors is the wide range of state laws. Unlike the UCC, there is no uniform state statutory system governing municipal leasing. Lessors financing municipal leases to out-of-state lessees should study carefully the applicable laws and, in most instances, obtain an opinion of local counsel at least as to the enforceability of the lease. Learn more in the November/December 2015 Leasing Law column at <http://bit.ly/1Ks2Qlp>.

The Nuts and Bolts of Bundled Transactions

Financing bundled agreements involving equipment, services, supplies and/or software (MS deals) is a very hot topic. MS deals will not replace standard leases in the near term. However, they will become a larger proportion of equipment financings and will likely soon become a mainstream offering. Funders will put themselves in the best position to meet this new reality head-on and to shape the way these deals are completed and accepted in the market by carefully considering key issues, including contract enforceability, standard templates, vendor performance representations and related indemnification, revenue recognition, no assumption of obligations, downsize and cancellation rights, common document deficiencies and UCC financing statements. Learn more in the January/February 2016 Leasing Law column at <http://bit.ly/1R5BTLY>.



Legal Services Listings

The listings in this directory are paid listings.
Information was provided by each law firm.



This symbol indicates the firm is an ELFA member

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Based in Chicago, Illinois, Askounis & Darcy, PC represents banks, equipment lessors, finance companies, lease brokers and equipment vendors on a national basis in commercial and fraud litigation, bankruptcy/workouts, governmental investigations, collections, transactions and appeals. Askounis & Darcy's experience includes representing creditors in the Wildwood, EAR, Allied Health, American Screw and Sysix fraud litigation. Askounis & Darcy also recently won an appeal in the Minnesota Supreme Court, upholding a vendor's warranty in favor of the lessor.

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Leasing is a specialized, technical and very important part of Bernstein-Burkley, P.C.'s practice. We represent small-, middle- and large-ticket equipment lessors in the enforcement of their leases. Whether in state or federal court, our firm is well-qualified to represent the interests of equipment lessors and others in the leasing industry. Managing partner Robert S. Bernstein created and founded the first national network of attorneys with proven expertise in lease enforcement, LEAN (Lease Enforcement Attorney Network).

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Blake, Cassels & Graydon LLP is one of Canada's leading business law firms with 11 offices across Canada and internationally. Recognized by the leading directories (including Chambers Global, The Canadian Legal Lexpert Directory, IFLR1000, Who's Who Legal, The Best Lawyers in Canada and Legal Media Group's Guides, The Legal 500) as having Canada's pre-eminent financial services practice with extensive experience in equipment finance and leasing, asset-based lending, banking, project finance, structured finance and financial services regulatory.

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With more than 240 attorneys, Chapman represents equipment finance companies and funding sources in a variety of transactions, including asset-based loans, conduit warehousing and term securitizations. We represent finance and bank leasing companies in individual equipment finance transactions, portfolio acquisitions and dispositions and other strategic transactions, and provide regulatory, tax and commercial law advice. We also represent clients in distressed and troubled equipment finance transactions, including in litigation and bankruptcy matters.

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The National Equipment Leasing and Finance Group at Clark Hill PLC offers clients road-tested experience that ranges from lease enforcement, vendor programs, inventory/dealership financing and implementation. Our team of professionals have litigation, bankruptcy, banking, corporate and government experience to provide our clients unparalleled service. With offices in Arizona, Delaware, Illinois, Michigan, New Jersey, Pennsylvania, Washington, D.C., and West Virginia, our team stands ready to respond to the challenges you face. For more information on our Equipment Leasing and Finance Group, visit clarkhill.com.

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Founded in 1981 with a goal of providing financial service companies with experienced counsel in all facets of their business, we regularly represent equipment leasing companies and commercial lenders in lease and loan documentation, real estate financings, workout negotiations, portfolio acquisitions, collections, litigation and bankruptcy matters. We offer our leasing and lending clients practical legal solutions to protect them from operational, compliance and legal risks and defend their collateral while maximizing recovery.

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Ferns, Adams & Associates is a California law firm representing numerous bank, commercial finance companies, credit unions and leasing (both auto and equipment) companies, in all aspects of creditors' rights, such as collections, replevin actions, defense litigation, bankruptcy litigation and documentation review. The principals of Ferns, Adams & Associates have been involved in the equipment leasing industry for over 36 years and have been very active in both the ELFA and NEFA. We have appeared in most every state and federal court in California and are very aggressive in our approach to litigation and collections in general.

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Foster & Wolkind, P.C. is a New York law firm offering a broad range of legal services. We vigilantly represent and advise financial institutions of all sizes throughout New York State and specialize in equipment finance litigation and creditors' rights. For more than 20 years, we have maintained a culture of providing personalized, attentive and cost-effective services. Contact us to learn more about how we can work together.

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Hemar, Roussio & Heald, LLP is a Los Angeles-based law firm specializing in equipment leasing, commercial law, creditors' rights and bankruptcy. For more than 35 years, we have served the equipment leasing and financial industry with distinction in such areas as pre-judgment writs, recovery of collateral, workouts, receiverships, bankruptcy litigation and judgment enforcement. We handle cases throughout California diligently, aggressively and with an eye toward cost-effectiveness.

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Jaffe Raitt Heuer & Weiss is a Michigan based, full-service, 100-plus attorney corporate law firm. Jaffe has an experienced leasing and finance law team, providing "cradle to grave" services to our clients on lease and loan matters, including origination, enforcement, litigation, collection, insolvency, receivership and bankruptcy assistance. Jaffe also provides corporate law support to our leasing and finance clients, including such matters as choice of structure, tax, financings, merger, disposition, employment, acquisition and regulatory support. Jaffe is the only Michigan-based law firm member of ELFA.

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Jennings, Haug & Cunningham is a full-service AV rated law firm founded in 1937 in Phoenix, AZ. Our attorneys represent banks, equipment lessors and funding sources in all aspects of equipment leasing and asset-based finance including litigation, insolvency and transactional matters. Our attorneys are regularly engaged in significant proceedings throughout Arizona and the Southwest. Our attorneys have developed a national reputation representing national, regional and community banks, sureties, asset-based lenders and equipment lessors. We work with our clients to limit their financial exposure, protect their contractual rights and recover their collateral interests.

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You work hard to finance the heavy machinery that drives American growth. You build relationships that depend on trust. When that trust is violated, you need to take action. When your customers file bankruptcy or try to avoid their obligations, we can help. Whether you finance heavy equipment, trucking fleets, aircraft or other manufacturing equipment, our attorneys will start the job off right and finish the job quickly. Visit www.kesslercollins.com or call Dan Callahan or Howard Rubin at 214-379-0722.

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With more than 200 lawyers, Lavery is the leading independent law firm in Quebec. Our highly experienced equipment financing team, recognized by leading directories (including Canadian Legal Lexpert Directory and Best Lawyers International) and a member of CFLA, ELFA and LEAN, regularly advises lessors, financial institutions and corporations on a vast array of financing issues, domestic or cross-border. Whether your transaction involves leases, floor plans, conditional sales, loans with or without security on property (including in the context of securitizations, vendor programs or syndicated loans), infrastructure, international finance or the financing of aircraft, ships, railcars or heavy equipment, Lavery will guide you effectively through all critical stages to the successful completion of the financing transaction.

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Magnozzi & Kye, LLP specializes in commercial litigation, bankruptcy, creditors' rights, secured transactions, replevins and collections. We deliver expert counsel to secured creditors to assist in the closing of transactions as well as the enforcement of their rights to recover collateral and collect debts. We pride ourselves on our ability to swiftly respond to our clients' needs and accomplish their goals in a cost-effective manner without compromising the high quality of our services. The firm covers state and federal/bankruptcy courts in New York, New Jersey and California as well as nationwide through our network.

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We offer banks, leasing companies, captives, originators, funding sources and other lessors and lenders prompt, service-oriented representation based on over 40 years of experience in financing nearly every type of equipment through a wide range of transactions. Our nationwide practice includes forms preparation, litigation and bankruptcy, municipal leasing, deal negotiation, structuring complex transactions and UCC, real estate and tax advice. Visit www.leaseawyer.com for a firm description and copies of our informative newsletter.

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Messerli & Kramer is a highly regarded, full-service law firm based in Minneapolis. Our equipment leasing and creditors' rights team has extensive experience in all aspects of equipment leasing and finance transactions and litigation, asset-based lending, and banking and finance. We routinely handle lease and loan documentation and enforcement matters, inventory/dealership financing, replevins, collections and judgment enforcement, business and fraud litigation, portfolio acquisitions, bankruptcies and workouts, receiverships and appeals throughout the upper Midwest and across the country.

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Moritt Hock & Hamroff LLP is a full-service, AV- rated commercial firm with 20 areas of practice and 60+ attorneys based in New York with offices on Long Island and in Manhattan. We have attained a national reputation over the past 35 years, representing members of the equipment leasing and finance industry including asset-based lenders, finance and leasing companies, banks and independent companies of varying size and specialty. Some of the largest, most well-known companies in the industry rely on us for services that include drafting, negotiation and structuring of loan and lease agreements, creating and documenting specialized programs, transactions and portfolio sales, capital markets, formation, purchase and sale of leasing companies, as well as workouts, litigation, creditors' rights and bankruptcy representation.

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Nutter is a full-service, Boston-based law firm. Our commercial finance team represents equipment lessors and lenders in syndication and origination transactions involving all types of equipment and other capital assets. In the last five years, we have advised clients in connection with more than 500 transactions having an aggregate deal value exceeding \$5 billion. Our hallmarks are technical sophistication, deep knowledge of market conditions and deal structures, client responsiveness and practical business judgment.

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Peretore & Peretore, P.C. is a New Jersey/New York business law firm with 30 years of experience representing national and regional financial institutions and lessors from the transactional stage through the litigation stage in state, federal and bankruptcy courts. Frank Peretore is the published author of *Workouts and Enforcement for the Secured Creditor and Equipment Lessor*, LexisNexis, 2015, and *Secured Transactions for the Practitioner: How to Properly Perfect Your Personal Property Lien and Assure Priority*, 2015.

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The law firm of Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP was founded upon the principle that a client's interests can only be fully protected through informed, insightful, and effective legal representation. As attorneys and business people, we appreciate that retaining legal counsel is a means and not an end. Mindful of the cost of legal representation, we seek to aggressively pursue and protect the multi-faced interests of our clients, while maintaining competitive and flexible billing rates and fee structures.

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A full-service corporate firm with more than 400 attorneys in offices located in Arizona, Florida, Illinois, Indiana, Wisconsin and Washington, D.C., Quarles & Brady provides sophisticated, experienced counsel to companies in all types of lease documentation, acquisition, negotiation and enforcement, including litigation and bankruptcy. Quarles provides detail-oriented, cost-effective services to minimize risk and maximize recovery, investing in the clients' success and helping clients achieve their business goals.

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Formed in 1940, Ray Quinney & Nebeker is Utah's top financial institutions law firm. For many decades, we have represented leasing companies, banks and other commercial lenders in documenting lease and loan transactions and handling real estate financings, workouts, collections, litigation and bankruptcy matters. We also have many years of experience in specialized areas, such as aircraft transactions, regulatory compliance and entity formation. Our objective is to make a meaningful contribution to our clients' success.

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Robbins, Salomon & Patt, Ltd. is a full-service business law firm. We represent equipment lessors, banks and other financial institutions in lease and loan documentation, litigation, workouts and restructurings. We represent our clients in commercial litigation, in state and federal courts, at the trial and appellate levels, on a national basis. We also represent our creditor clients in bankruptcy court matters on a routine basis. Innovation, efficiency and attention to detail are RSP's hallmarks.

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Thompson Coburn attorneys understand the complexities of equipment leasing and finance and find workable solutions to our clients' challenges. From structuring, negotiating and documenting to handling tax issues, closings, workouts, litigation and bankruptcy, we provide a full spectrum of services. We represent lenders and lessors in various industries, including motor vehicle, industrial, commercial and manufacturing equipment. We have a niche practice in transportation with a nationally recognized maritime practice. The firm was named by BTI Consulting as one of the 2015 top 25 firms most recommended by general counsel as well as among the 2014 BTI Client Service 30.

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Winston & Winston P.C. is a niche firm with over 35 years of litigation and transactional experience in the states of New York, New Jersey and Connecticut. Jay Winston authors the industry leading guide entitled: The Complete Guide to Credit & Collection Law (1996-2016) (2000+pages). We represent leasing companies, banks, finance companies, asset-based lending companies, etc. Tri-Statewide representation enforcing commercial loan and lease agreements; workouts and forbearance agreements; recovery by ex parte replevins; bankruptcy litigation; post-judgment enforcement actions; fraudulent conveyances; charging orders; drafting & negotiating commercial loan agreements and commercial defense litigation; Jay Winston is Martindale AV Preeminent® (2015).