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FRAUD ALERT: Checklist for New Transactions

This article outlines some of the ways brokers and funding sources can protect themselves against lessee, vendor or broker fraud.

At the outset, we need to distinguish between the truly fraudulent transaction, in which the parties (usually the vendor and lessee) conspire to arrange funding for non-existent equipment, from those situations in which other legal defects may exist. The latter situations may or may not involve fraud and include the failure to obtain proper authorization from the lessee's Board of Directors, forged or unauthorized signatures and deviations from proper legal documentation.

More and more funding sources are insisting on protection against both types of problem and many brokers are finding themselves exposed to significant potential liabilities. We continue to believe that the best answer is to adopt and consistently use proper procedures and to acquaint themselves with the responsibilities which their funding sources expect them to assume. At the same time, we believe that the funding sources should be willing to bear the risk of any defect in their own documentation, such as the lack of enforceability of remedies provisions or failure to insist on properly-worded corporate resolutions.

Here are a few of the ideas which we have heard or formulated; we would be interested in hearing any others you may have:



- **Get a copy of the signer's driver's license** ó This provides some protection against forged signatures, particularly in states where a copy of the driver's signature is included on the license.
- **Insist on corporate resolutions** ó Not all funding sources require resolutions and they

may be unnecessary in multiple transactions with the same lessee. The first time business is done with a new lessee, however, it is advisable to obtain either a certificate signed by the secretary of the corporation stating that standard resolutions have been adopted by the corporation's Board of Directors or a copy of a consent in lieu of meeting signed by all of the directors. The resolutions should state that the lease transaction is approved and that the officers are authorized and *empowered* to enter into the relevant documentation. Some very good lessors do not bother with resolutions for small transactions clearly financing equipment necessary for the lessee's business. This is simply a matter of risk acceptance. Extra care should be taken if the equipment might be used by an employee of the lessee outside the business (company cars, personal computers).

- **Check Secretary of State** ó In order to ensure that all of the directors have signed a consent, and to check the name of the officer signing the lease (and the secretary if a Secretary's Certificate is furnished), the broker should contact the Secretary of State in the state in which the lessee was incorporated. This may or may not be the same state as the site of the lessee's principal office. Most Secretary of State offices are very busy and a long hold may result, but the information obtained will be invaluable. In addition, the Secretary of State can confirm whether the corporation is in "good standing", which does not affect its ability to transact business but indicates whether it has paid certain annual fees and is a *bona fide* corporation.



- **Check the existence of lessees and vendors** ó A call to the Secretary of State will generally confirm whether a corporate vendor or lessee exists. Another good idea is to require the new lessees or vendors furnish a copy of the page of their local telephone book indicating their name and address. A "D&B" or similar check is often money well spent. Generally checking out whether these businesses actually exist will furnish some comfort against the worst type of fraud.
- **Use the smell test** ó A judgment call may be the best defense against fraudulent transactions. If the deal is an unreasonable rush ("the financing we had fell through and the equipment is being delivered tomorrow"), the economics are too good to be true, some excuse is given as to objects to why it is impossible to check bank references or obtain other standard data, an eyebrow should be raised. If a new vendor called unsolicited and has the same area code as the lessee, some additional investigation is warranted. As one of our clients has put it, the better the deal and shorter the timeframe, the more likely it is that there is a problem somewhere.
- **Find out who you are dealing with** ó This may be the simplest thing, and the hardest, to do. Where the vendor insists that he will arrange for all documentation to be signed by the lessee, the broker is completely at the mercy of the vendor's good faith. If you must deal with someone by long distance, call another member of ELA, NAELB or another leasing association, a local lawyer or accountant, or someone else who might be able to check out the parties (we know everyone likes to keep their sources confidential). Ask questions and try to get a feel for whom you are dealing with. This advice applies not only to the companies involved, but the individuals. Many brokers and funding sources have been "stung" by newly-hired independent broker agents.



- **Adopt a closing checklist and stick to it** ó There is no excuse for taking less than the standard set of papers. If the lessee objects to signing three times, furnishing bank references, etc., the marketing issue is not the only one which should guide your decision.

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