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Negotiators to the Rescue

ALA members share their tips on leasing and negotiating.

BY MARY A. REDMOND

"Negotiation stars" are there to give you advice, tips and tools.

Law firm administrators wear many hats. The challenges you face will determine the hat you choose. Which one are you wearing today? It is the Chief Financial Officer visor as you crunch annual budget numbers? You must prepare multiple spreadsheets and develop your best plan "B." Don't forget your cheater eyeglasses while you burn the midnight oil.

Today your job description calls for a psychic with a crystal ball. How can you project the firm's future when none of the experts and gurus agrees on the recovery? Economic authorities predict recovery patterns resembling a bowl of alphabet soup. Will the recovery look like a "V," "W" or worse yet, the dreaded "L?" That "L" pattern is a long flat line with no recovery in the near future.

Today is it the Controller's hardhat in preparation for the copier contract negotiations? Are you heading for a meeting with the Information Technology Manager concerning the new laptop and desktop computer leases? What hat fits that job?

Negotiation "opportunities" begin as soon as you walk in the door and before you pour your fist cup of java. You're lucky if they end when you close your eyes at night. Some days those opportunities feel like challenges that will break you. How do you survive? You may feel alone and stranded on an island with no life raft on the horizon. Reach out to your ALA colleagues. Help is that near. "Negotiation stars" are there to give you advice, tips and tools. Let's look at three areas where I received superb tips from ALA members whom I met at the 2010 ALA Annual Conference in Boston.

LEASE, CASH, LOAN! OH MY!

Large, mid-size or small firms split on which financing decision fits for their firm. All were in agreement about partner personal guarantees. They are not available, except when the bank offers no other options.

The Controller of a 35-attorney firm in the Southwest told me that his bank always required partner guarantees. The managing partner felt the firm was now financially strong enough to cease providing guarantees. The controller and I negotiated a technology lease for $500,000 with a leasing company without guarantees. One challenge was to find a leasing company to finance $500,000 with 70 percent software, consulting and installation costs.

WHY FIRMS DECIDE TO LEASE

1. Fixed rate financing with low upfront costs.
2. Flexible payment terms for technology leases between 36 and 60 months.

3. One hundred percent financing with installation and training included.
4. Multiple end of lease options including renewals, return or asset purchases.
5. Quick approval process.
6. Off load technological obsolescence and asset disposal on the leasing company.

Karen Griggs, Executive Director, Baker Sterchi Cowden Rice LLC, told me that her firm leases laptops and desktop computers for three years, and four to five years for servers and dictation equipment. The structure allows for cash flow flexibility.

Griggs' equipment utilization plan includes cascading the computers to users who need only have access to litigation support and electronic discovery software. Cascading is a process in which computers are initially assigned to employees with high capacity needs. They are often referred to as power users. Power users always receive the newest technology assets. Usually cascading occurs around year two to three of the lease. When new equipment arrives, power users surrender their old equipment to those who may use little more than e-mail and Microsoft Word.

Tracey Skjeveland, Chief Financial Officer, Merchant and Gould P.C. saw her firm move from two-year desktop and laptop leases to three-year lease terms. Although not simple, the firm decided to replace one-third of the firm's computers every year. The process is easier on the technology department to roll out and retire desktops and laptops with a more gradual approach.

The option to return all equipment at lease end relieves the firm of disposal problems and responsibilities. Computers are full of clients' and the firm's confidential information. Due to Environmental Protection Agency (EPA) regulations, copiers, computers, printers and servers must be disposed of properly.

Disposal violations result in heavy EPA fines. In order to protect confidential information and the environment, proper disposal processes and documentation are critical.

TEN TIPS FROM ALA NEGOTIATORS

1. **Crush It:** Ben Sotelo is Firm Administrator at Vaughan, Fincher & Sotelo, PC, a boutique law firm located in Northern Virginia. He retains every copier hard drive. He has an agreement with a disposal company to crush the hard drives and properly dispose of the remaining bits and pieces. The supplier invited Sotelo to watch the process to be sure they fulfilled their obligations.

2. **Give It Away:** Richard "Dick" Nigon, CLM, Chief Financial Officer, Robins, Kaplan, Miller & Ciresi LLP, disposes of some technology assets by selling them to employees. Proper documentation when disposing of assets in this manner is critical, advises Nigon.

3. **Provide Timely Notice:** Patti J. Lane, CLM, Director of Administrative Services, McKenna Long & Aldridge LLP, warns other administrators about lease automatic renewals. She remembers a horrible automatic renewal experience she had with another law firm. They missed giving the required 90-day end of lease notice. This resulted in a 12-month renewal as well as expensive shipping costs when equipment was finally returned. She instituted an excellent tracking system at her current firm, which provides timely notification.

4. **Track It or Big Penalties Apply:** A Midwestern firm allowed lease schedules to automatically renew. They didn't notice until $3 million in technology leases were automatically renewed. After paying three renewal payments, they woke up to the mess. By then, they were in deep trouble. Twelve additional full rent payments were due. The leasing company offered one additional option. Spread the 12 renewal payments over 19 months. Cash flow was improved but the firm paid $332,000 more than they would have paid for a bank loan. *The lesson: provide written notice regarding insurance coverage changes, equipment relocation, lost or damaged equipment and end of lease disposition notices.*

5. **Retain Document Copies:** Another tip from Lane involved a lease that she inherited from a predecessor in a previous firm. The lease had

Mary A. Redmond, *Founder*, INDEPENDENT LEASE REVIEW, INC.

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been sold to a new bank. Lane could not find all document copies and called the Lessor. While requesting copies of the missing documents she discovered that the current Lessor's documents were for a fair market value purchase option. The original Lessor's documents had a $1.00 purchase option. Considerable time was invested in negotiating with the current Lessor to reach a satisfactory resolution.

6. **What About Operating Leases:** Operating lease treatment for technology assets is almost impossible to structure due to equipment obsolescence. Ray Lichtner, CPA and Executive Director, Poyner Spruill LLP, told me that copier equipment upgrades seem to have slowed a bit and his firm is considering placing digital copiers on at least a five-year term or perhaps longer. Due to proposed accounting standards changes, Lichtner thinks most leases going forward will be treated as capital leases.

7. **Interim Rent Sneaks In:** Both Griggs and Skjeveland advise administrators to watch out for interim rent. This is added rent charged between the equipment delivery and lease commencement date. For long installation computer projects or telephone systems, this can add three to 12 extra payments to your lease. Language is tricky and you need to examine contracts closely.

8. **Copier Click, Pricing:** Michelle Ritz, Director of Firm Administration, Traub Lieberman Straus & Shrewsberry LLP, was our first negotiation star honored in June of this year. Immediately after attending my ALA Annual Conference workshop titled "Leasing: The Fine Print Financial Implications," Ritz returned to her office ready to negotiate with her copier dealer. She challenged his pricing on a simple high-volume black and white copier, removed the automatic six-month extension clause and improved the maintenance program coverage. By the time she had finished, her savings totaled $14,436.

9. **What Holidays Do You Take?** Ms. Lane reminded me that one of her copier maintenance lease contracts says their equipment is not covered on vendor holidays. Because they are one of the largest copier companies in the world, she figures her firm does not take the same holidays that the vendor does. If she needs copier service on one of the supplier holidays, the firm could end up paying $500 for the first 15 minutes of on-site service.

10. **Software Leases May Be Tricky:** Skjeveland shared one rough negotiation involving the fair market value purchase price on software. Not only was the firm hit with interim rent (see #7 above), the leasing company told the firm that the software purchase price would be only slightly less than new software. After three years of payments, they would pay for the software a second time. Extensive negotiations ensued.

Leasing is a popular choice but one that can be filled with costly surprises. Before you sign your next lease, call one of your ALA colleagues for counsel. Many of them have been through the rough waters and come out winners on the other side. ❋

about the author

Mary A. Redmond founded Independent Lease Review, Inc., a client-side advocate-consulting firm. She can be contacted at *Mary@ReviewYourLease.com* or 913.441.4108.