

# TOOLS TO DETECT FRAUD

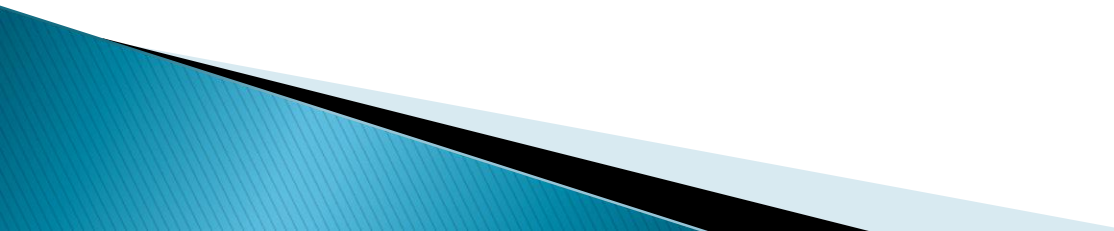
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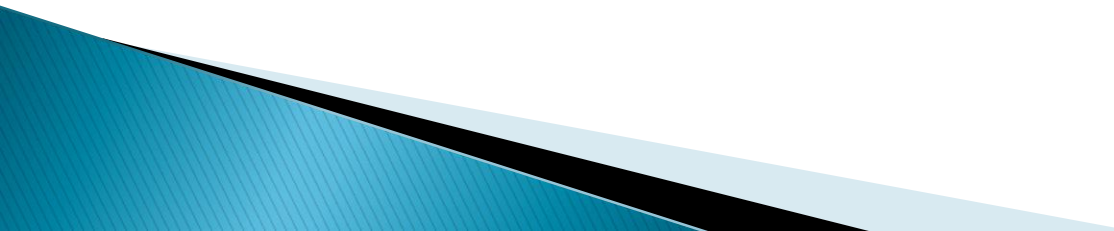
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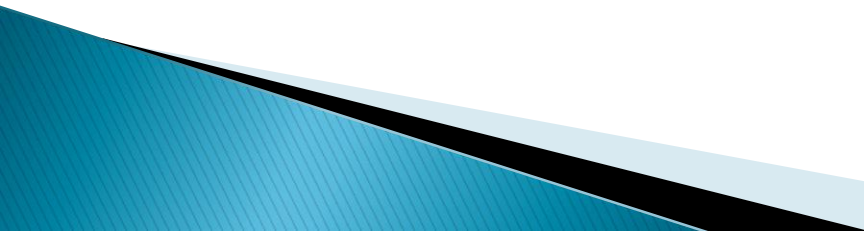
# A. Elements of Fraud

- ▶ 1. An intentional representation made or a concealment of a material fact where there is a duty to disclose a material fact; another species of fraud is a negligent misrepresentation.
  - ▶ 2. The representation is false or the concealment of a material fact results in a false representation being made (e.g., one party has exclusive knowledge of a material fact not known to the other party; or one party actively conceals a material fact from the other party);
  - ▶ 3. The misrepresentation is made with the knowledge of its falsity or without sufficient knowledge on the subject to warrant a representation being made;
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# A. Elements of Fraud (con't)

- ▶ 4. The fact concealed is material to the transaction and if not concealed would have changed the decision of the other party;
  - ▶ 5. The misrepresentation is made or the concealment of the fact is done with the intent by the making of the representation or concealing the fact to induce the other person to act on it;
  - ▶ 6. A person acts in justifiable reliance on that misrepresentation or the concealment of a material fact; and
  - ▶ 7. The representation, omission or concealment results in damage to the person relying on the representation, omission or concealment.
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## B. Types of Fraud

- ▶ 1. Forged documents
  - ▶ 2. False invoices
  - ▶ 3. Multiple sales of leases and/or equipment (double financing)
  - ▶ 4. Ponzi schemes
  - ▶ 5. No equipment (i.e., when an equipment lease is a disguised working capital loan)
  - ▶ 6. inflated invoices (goes hand in hand with No 5 above, resulting in working capital to lessee)
  - ▶ 7. kickbacks and undisclosed commissions
  - ▶ 8. fake or affiliated vendor or supplier
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## B. Types of Fraud (con't)

- ▶ 9. identity theft
- ▶ 10. unknown agreements (side letters and undisclosed purchase options)
- ▶ 11. undisclosed split transactions
- ▶ 12. representations that equipment is new when in fact it is used
- ▶ 13. fraudulent financial statements
- ▶ 14. fraudulent delivery date and unknown sale/leaseback transactions

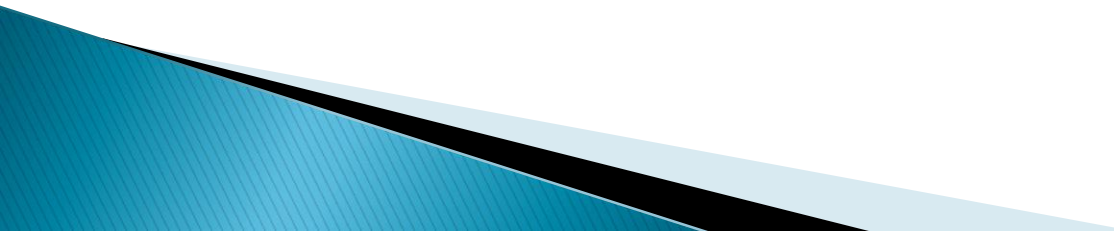
# C. Warning Signs

- ▶ 1. Evidence of a phone bank set up with trades, bank, vendor, etc. Use of cell phones rather than a landline phone.
- ▶ 2. Questionable trade references.
- ▶ 3. Request for a landlord waiver is refused.
- ▶ 4. Lessee will not provide financial statements.
- ▶ 5. Broker, vendor, and lessee are all located in different parts of the United States with no explanation of commonality.
- ▶ 6. Checking account number references a new account.
- ▶ 7. Business name, address, and phone number are not on check.
- ▶ 8. Application is incomplete.
- ▶ 9. Home or business addresses are post office boxes.
- ▶ 10. Credit references reflect many closed accounts.
- ▶ 11. Phone number and area code do not coincide with the address.
- ▶ 12. Job title misspelled or unusual fit to type of employment.

# C. Warning Signs (con't)

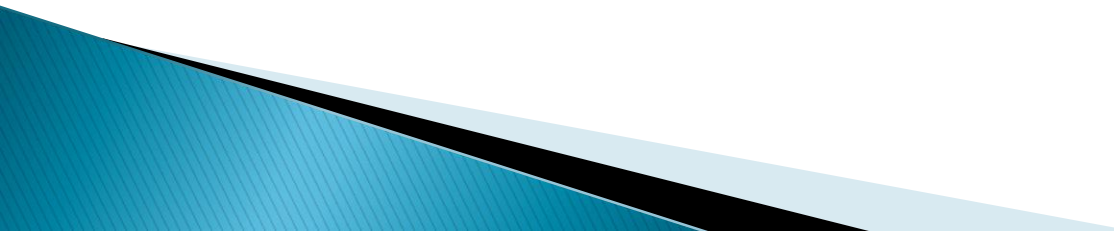
- ▶ 13. Years of employment do not correlate with age of principals.
- ▶ 14. Does the business answer the telephone "hello" rather than with a business name?
- ▶ 15. Guarantors are unrelated to the business.
- ▶ 16. A transaction that has multiple recent inquiries.
- ▶ 17. A financial statement that is not signed or has an unusual format.
- ▶ 18. The lessee has a mystery affiliate.
- ▶ 19. Commonality between lessee and vendor as to names, phone numbers, addresses, etc.
- ▶ 20. Unable to reach vendor or lessee by phone, always receiving answering machine.
- ▶ 21. Any situation where you are asked to make numerous exceptions.
- ▶ 22. Pressure to rush transaction or decision by lessee or vendor.

# ADVANCE RENTAL CHECKS (Or Security Deposit Checks)

- ▶ 23. An advance rental check is (a) drawn on a personal account; (b) drawn on a different bank than indicated on the application; (c) does not contain bank address/branch information; (d) a counter check; (e) a cashier's check; or (f) a money order.
  
  - ▶ 24. An advance rental check address: (a) matches the principal's home address; (b) matches the address on the principal's bureau, current or previous address; (c) matches or is similar to the vendor's address; (d) is a p.o. box.
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# EQUIPMENT ISSUES

- ▶ 25. With respect to equipment, a generic invoice that is not numbered or dated.
  - ▶ 26. Equipment seems to be an overkill.
  - ▶ 27. Incomplete equipment descriptions.
  - ▶ 28. Resistance to providing brochures, model or serial numbers with respect to Equipment.
  - ▶ 29. Equipment location is different than lessee's address.
  - ▶ 30. Equipment is not suitable for a particular business.
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# VENDOR ISSUES

- ▶ 31. With respect to a vendor, the vendor is new.
- ▶ 32. The vendor does not want the leasing company to contact the lessee.
- ▶ 33. Lessee owns or has a vested interest in the vendor from whom they are getting the equipment.
- ▶ 34. Vendor is not listed in the phone book.
- ▶ 35. Vendor has no resale number, an invalid number, or a number belonging to another business.
- ▶ 36. Any vendor payment that is required to go to some other address than on the invoice.
- ▶ 37. Generic invoice that has a low number or no number at all.
- ▶ 38. Invoice date is over thirty days.
- ▶ 40. Vendor extraordinarily pushy for payment.
- ▶ 41. Unsolicited cold call from vendor, especially not local.

# VENDOR ISSUES (CON'T)

- ▶ 42. Invoice has a payee other than vendor of equipment.
- ▶ 43. Vendor promises large dollar funding immediately.
- ▶ 44. Vendor is a corporation or limited liability company is not listed with Secretary of State or not in good standing.
- ▶ 45. Vendor is not an authorized dealer for the equipment.
- ▶ 46. Vendor's address is a P.O. Box.
- ▶ 47. Vendor ships equipment to a P.O. Box.
- ▶ 48. Vendor answers the phone with a different name than that on the invoice.
- ▶ 49. Vendor check is returned due to wrong or incomplete address.
- ▶ 50. Vendor presents only an 800 number and does not have a local listing.
- ▶ 51. Vendor is physically with lessee when funding occurs or on a three way call.

# D. Actions to be Taken when Fraud is Suspected

- ▶ 1. Confront the obligor—not the vendor who you have a relationship with. However, if there is no relationship with the vendor other than the one transaction then you can confront that vendor.
- ▶ 2. Play off obligor against the vendor.
- ▶ 3. Call the authorities?
  - ▶ a. local police?
  - ▶ b. Sheriff?
  - ▶ c. Prosecutors office?
  - ▶ d. FBI?
  - ▶ e. US attorney?
- ▶ 4. Contact Outside counsel
  - ▶ a. initial letter
  - ▶ b. commencing an action

# D. Actions to be Taken when Fraud is Suspected (con't)

- ▶ 5. Some Search Tools
- ▶ a. Lexis nexis
- ▶ b. State and county courts, state filings, tax liens
- ▶ c. PACER
- ▶ d. Bankruptcy information
- ▶ e. Periodicals (i.e. *American Banker*, etc)
- ▶ f. Google
- ▶ g. Better Business Bureau and Chambers of Commerce
- ▶ h. Segment sites have fraud alerts
- ▶ i. Black book on line—for investigators.
- ▶ j. Free Demographics
- ▶ k. Association of Certified Fraud Examiners (ACFE) publishes an anti-fraud resource guide
- ▶ l. credit reporting and search agencies—experian, trans west, equifax, Dun & Bradstreet Reports, and others.
- ▶ m. social media (check instagram, facebook, twitter)
- ▶ n. internet searches
- ▶ o. geotagging

# E. Weighing the Options

- ▶ 1. After you have internally learned about fraud, do you choose to pursue it through outside counsel or cut your losses and move on?
- ▶ 2. Do you contact the authorities?
- ▶ 3. What do you do about vendors who you may want to continue to do business with?
- ▶ 4. Cost-benefit analysis
- ▶ 5. Asset Search
- ▶ 6. Emotional issues and the larger picture