Avoid These Mistakes When Buying An Aircraft

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Alan started as a corporate accountant preparing financial report submissions to the SEC. He was on the management team of long time NBAA member Citigroup Corporate Aviation. Alan’s responsibilities included overseeing all of the aviation department’s accounting, budgeting, bill payment and treasury functions. He was also responsible for the calculation and reporting of personal use for IRS and SEC purposes. In addition to his finance expertise, Alan has participated in the purchase or sale of approximately 60 turbine aircraft over the years (some of them twice).

Alan now provides consulting advice on fleet utilization, personal use and accounting/finance for aircraft operations. Alan is a Past Chairman and current member of the NBAA Tax Committee.
Dave Weil is the founder and CEO of Flight Dept Solutions, LLC ("FDS"). FDS is a business aviation consulting firm that provides customized solutions to its clients to make business jet ownership easier and more cost effective.

For over 20 years Dave held senior executive positions with prominent business aviation companies, including 17 years at TAG Aviation USA and its predecessor company, Aviation Methods.

Dave is a past Chairman of the National Business Aviation Association (NBAA) Tax Committee. Dave earned his CPA license while working for Ernst & Young and holds an MBA from UCLA.
Introduction

• IT HAPPENS ALL THE TIME - AN AIRCRAFT ACQUISITION BECOMES A DISASTER! WHY???

• WE’LL COVER SOME MISTAKES THAT FREQUENTLY HAPPEN BY GIVING YOU A MULTIPLE CHOICE TEST.

• THIS REQUIRES AUDIENCE PARTICIPATION. AFTER EACH QUESTION WE’LL SHOW MULTIPLE ANSWERS AND REQUEST THE AUDIENCE TO INDICATE WHICH ONE(S) ARE CORRECT.

• WE’LL ASSUME A JET TRANSACTION OF $1 MILLION OR MORE.
DO YOU **REALLY** NEED AN AIRCRAFT?

A. YES, BECAUSE EVERY OTHER CEO I KNOW HAS ONE SO I MUST NEED ONE TOO
B. YES, BECAUSE I KNOW A BROKER WHO CAN GET ME A GOOD DEAL
C. YES, BECAUSE I’M TIRED OF CHARTERING SOMEONE ELSE’S AIRCRAFT
D. YES, BECAUSE I DESIRE BETTER SECURITY WHEN I TRAVEL AND HIGHLY VALUE MY TIME
E. YES, BECAUSE I’M FLYING 400 HOURS PER YEAR ON THE AIRLINES AND CAN AFFORD IT
DO YOU **REALLY** NEED AN AIRCRAFT?

**ANSWER -**

A & B HAPPEN A LOT BUT OFTEN LEAD TO A BAD OUTCOME.

C, D & E ALL ARE GOOD REASONS NORMALLY.

THE KEY IS TO MAKE THE PRINCIPAL UNDERSTAND WHAT’S A GOOD REASON AND WHAT IS NOT, IF YOU CAN.
CAN YOU REALLY AFFORD AN AIRCRAFT?

A. I WILL DETERMINE THE OPERATING COSTS AFTER THE CLOSING
B. MY BROKER ASSURED ME THE OPERATING COSTS WERE LOW
C. THE MANAGEMENT COMPANY TOLD ME I COULD MAKE A PROFIT BY CHARTERING IT OUT
D. I HIRED AN ADVISOR TO PREPARE A BUDGET OF THE OWNERSHIP AND OPERATING COSTS
CAN YOU REALLY AFFORD AN AIRCRAFT?

ANSWER -

TOO OFTEN THE FOCUS IS ON THE ACQUISITION COST AND THE OPERATING COSTS ARE NOT FACTORED IN UNTIL AFTER THE PURCHASE.

YOU CANNOT MAKE A PROFIT CHARTERING OUT THE AIRCRAFT!

IT’S BEST TO KNOW ALL THE COSTS OF OWNERSHIP BEFORE YOU BUY.
DO YOU NEED AN AVIATION ATTORNEY?

A. NO, THE BROKER CAN HANDLE IT
B. NO, OUR CORPORATE ATTORNEY CAN HANDLE IT
C. YES, ALWAYS
D. IT DEPENDS
DO YOU NEED AN AVIATION ATTORNEY?

**ANSWER -**

UNLESS THE TRANSACTION IS VERY SMALL, YOU SHOULD ALWAYS RETAIN A QUALIFIED AVIATION ATTORNEY.

THE USE OF AN EXPERIENCED BROKER/CONSULTANT CAN OFTEN HELP REDUCE THE LEGAL COSTS.
WHO IS ADVISING YOU?

A. WE DON’T NEED AN ADVISOR
B. A PILOT WHO THE CEO MET ON A CHARTER FLIGHT
C. A BROKER WHO BOUGHT AN AIRPLANE FOR A FRIEND OF THE CEO
D. A CONSULTANT WHO MADE A PRESENTATION AT THE NBAA CONVENTION
WHO IS ADVISING YOU?

**ANSWER -**

ALL BUYERS SHOULD HAVE AN ADVISOR UNLESS THE BUYER IS VERY EXPERIENCED. (E.G. ALAN WHEN HE WORKED AT CITIGROUP)

ADVISORS SHOULD BE VETTED BY PERSONAL REFERENCES FROM SOMEONE YOU TRUST AND/OR INVOLVEMENT WITH INDUSTRY GROUPS (E.G. NBAA, NATA, NARA)

IN REALITY, YOU NEED A TEAM IN PLACE TO GET THE BEST RESULT:

- Lead Aviation Consultant / technical consultant / broker
- Company aviation department manager / management company
- FAA regulatory expert
- Tax expert
- Accounting / Finance / Treasury experts
- Aviation Insurance Broker

**CAVEAT:** Be sure there are no conflicts of interest
ARE YOU FOCUSED ON THE RIGHT TYPE OF AIRCRAFT?

A. A CONSULTANT CAN GET ME A GREAT DEAL ON A G-III
B. MY FRIEND HAS A CHALLENGER 600 AND LIKES IT
C. A BROKER HAS A LEAR 35 IN INVENTORY AND IS WILLING TO LET IT GO AT A FIRE-SALE PRICE
D. A LONG RANGE AIRCRAFT BECAUSE I DON’T LIKE TO STOP
E. OUR ADVISOR IS ANALYZING OUR NEEDS IN ORDER TO MAKE A RECOMMENDATION
ARE YOU FOCUSED ON THE RIGHT TYPE OF AIRCRAFT?

ANSWER -

IF YOU WANT THE BEST OUTCOME, ANALYZE THE PRINCIPAL’S TRAVEL NEEDS.

Your Aviation Consultant should prepare an analysis of the aircraft’s mission and flight profile:

• Where and how far (miles / hours) are your typical flights? Need appropriate range.

• What is the passenger load factor? Need appropriate number of seats.

• What airports are most convenient for the buyer’s travel? Need appropriate landing performance.

• Do you want to charter the aircraft? Need Part 135 equipment compliance.

• The answers help determine the type, size and maybe model of aircraft that is warranted.
  – Jet, Turboprop, Piston, Helicopter – Large, Midsize, Light or Very Light Jet
  – New or Pre-Owned? Lots of cheap aircraft available. There’s a reason.
    • Are you prepared to be the aircraft’s last owner?
WHAT ELSE DO YOU NEED TO PLAN FOR WHILE THE ACQUISITION PROCESS IS TAKING PLACE?

A. NOTHING, THE OTHER STUFF CAN BE DONE LATER
B. HOW TO FINANCE THE AIRCRAFT UNLESS PAYING CASH
C. HOW TO OPERATE THE AIRCRAFT – FIGHT DEPT OR MGMT COMPANY
D. CONFORMING THE AIRCRAFT FOR PART 135 CHARTER USE
E. HOW TO MINIMIZE OR AVOID SALES TAX
WHAT ELSE DO YOU NEED TO PLAN FOR WHILE THE ACQUISITION PROCESS IS TAKING PLACE?

**ANSWER -**

- B, C, D & E all need to be considered.
- Have you identified & contracted with a Management Company that is right for you?
- Do you have someone on staff who will manage or be the liaison to the Management Company?
- If self-operating, do you have the aviation staff/crew either currently on board or identified?
- Failing to plan is planning to fail.
DO YOU NEED A LAWYER TO PREPARE THE LETTER OF INTENT (LOI)?

A. WE DON’T NEED AN LOI
B. NO BECAUSE IT’S NOT BINDING
C. NO BECAUSE THE BROKER CAN DO IT
D. ALWAYS
E. ONLY TO REVIEW IT
DO YOU NEED A LAWYER TO PREPARE A LETTER OF INTENT (LOI)?

**ANSWER** -

It’s normal to have an LOI but can go straight to the acquisition agreement.

The consultant can prepare the LOI but the lawyer should review it.

The LOI should include:

- Identification of the parties (buyer & seller).
- Identification of the specific aircraft & related equipment coming with the aircraft.
- Includes purchase price and specifics concerning the deposit.
- Discusses demo / test / delivery flights - are they allowed & who pays for them.
- Pre-purchase inspection facility & scope outlined.
- Specifies as to who pays for which discrepancies.
- Defines the rights & obligations of the Buyer to accept/reject the aircraft.
DO YOU ALWAYS NEED A PRE-PURCHASE INSPECTION?

A. NOT IF THE SELLER IS A FRIEND
B. NOT IF YOU’RE BUYING A NEW AIRCRAFT
C. NOT IF THE AIRPLANE RECENTLY CAME OUT OF A MAJOR INSPECTION
D. YES
DO YOU ALWAYS NEED A PRE-PURCHASE INSPECTION?

ANSWERS -

YES for a Used Aircraft! - Buyer ‘s Point of View -

• Inspection to take place at a reputable facility, independent of Seller influence (many times at an OEM facility).

• In-depth inspection, within a reasonable time frame.

• Buyer wants the right to reject the aircraft within a reasonable time frame after receiving the inspection report.

• Buyer usually pays for the inspection but if the opportunity arises Buyer may want to observe an already scheduled Seller paid major inspection (e.g. C or D Check).

• Buyer will want the inspection facility to repair the items rather than the Owner.

• Buyer wants adequate test flight(s).
DO YOU ALWAYS NEED A PRE-PURCHASE INSPECTION?

**Seller’s Point of View -**

- Seller wants to limit what is looked at by the inspection facility.

- Seller does not want to build a new airplane for the Buyer (may include in the PA that if over X dollars are required to remediate then aircraft will not be sold).

- Seller should have a representative at the inspection facility to review findings as they are uncovered in order to handle them currently. Airworthy items fixed by Seller.

- Inspection report should be issued to both Buyer and Seller simultaneously, NO SURPRISES.

- Return to service – inspection facility determines when the aircraft is again deemed airworthy.

- Seller will want to limit the number of “test or check flights” – wants to have the delivery flight (if there is one) be the “check flight”.

DO YOU ALWAYS NEED A PRE-PURCHASE INSPECTION?

NEW AIRCRAFT-

• Inspection of a new aircraft is different than a pre-purchase inspection for a used aircraft.

• Buyer should have Experts monitor the construction of the new aircraft as it is being manufactured, especially during the interior completion phase.

• Seller’s representatives are reviewing that the aircraft is in compliance with the representations made and agreed to in the purchase agreement.

• Buyer’s Inspectors looking for proper fit and finish, and that all contracted components are installed or included and new and that the component manufacture dates are recent and consistent with the manufacture date of the aircraft (example avionics, life rafts, APU, etc.)
IS IT OKAY TO CREATE THE PURCHASE AGREEMENT BY CUTTING AND PASTING FROM AN EARLIER DEAL?

A. IT MAY BE A COST EFFECTIVE WAY TO CREATE THE PURCHASE AGREEMENT

B. IT’S NEVER A GOOD IDEA

C. IT DEPENDS ON WHO DOES THE CUTTING AND PASTING
IS IT OKAY TO CREATE THE PURCHASE AGREEMENT BY CUTTING AND PASTING FROM AN EARLIER DEAL?

**ANSWER** -

IT’S OKAY AS LONG AS AN EXPERIENCED AVIATION ATTORNEY IS INVOLVED WITH THE FINAL VERSION.

**Purchase Agreement (PA)** –

- Who should draft the Agreement? Both parties want their “paper” to be used so they think that they are in control and fully understand what is in the agreement.

- Tip, Seller can give in and use Buyer’s agreement as long as it includes important provisions to them (i.e. pre-purchase inspection details, Delivery instructions, “As Is, Where Is”, etc.)
The PA Includes deal points from the LOI plus the following:

- Representations & warranties of clear title.
- Responsible party for approval of and correction of discrepancies from pre-purchase inspection.
- Pre-closing conditions.
- Fuller details of aircraft & equipment.
- Default triggers & remedies.
- Tax details.
- Bills of Sale and Delivery Receipt.
- Governing law.
- Confidentiality clause.
- Import / Export details if applicable?
Q & A

Thank you!