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**Aircraft Purchase Agreements**

By Greg Reigel

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**Why Use An Aircraft Purchase Agreement?**

It always surprises me when a potential aircraft buyer is unsure of whether he or she should use a purchase agreement when buying an aircraft. Most of these individuals have purchased homes and no doubt used a purchase agreement in such transactions. Yet, many of these same individuals would spend the same amount of money to purchase an aircraft, and often times a great deal more money, without the protection of a written aircraft purchase agreement.

Aircraft purchase agreements should be used in almost every aircraft sale transaction. First, the law in most states requires that a contract for an amount greater than \$500.00 be in writing in order for it to be enforceable. This is called the statute of frauds. Although exceptions to this legal doctrine exist, complying with the law is usually safer than hoping you will be able to take advantage of an exception.

Further, using an aircraft purchase agreement can also help avoid confusion and misunderstandings. If the agreement clearly explains how the transaction will happen, when it will happen and what is included in the deal, the greater the likelihood that the buyer and seller will each know the other party's expectations and the less chance for surprises or misunderstandings.

**What Terms Should Be Included?**

The number and complexity of the terms that should be included in an aircraft purchase agreement will often times be dictated by the type and value of the aircraft being purchased/sold. Although by no means inclusive, the following terms provide a good place to start.

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Identify the Parties. The agreement should identify who is selling the aircraft and who is buying the aircraft. Although this sounds simple to do, it isn't always clear who is the seller and who is the buyer. It is very common for aircraft to be registered in the name of a corporation or limited liability company. In that case, the individual with whom you are negotiating is not the owner of the aircraft and should not be listed as the seller. The registered owner of the aircraft should be identified as the seller.

The buyer on the other hand, can be an individual or a corporation or limited liability company. If an individual is the buyer, that person will be listed and upon registration will be the record owner of the aircraft. To fully take advantage of release and indemnity language discussed in greater detail below, the seller may also want to consider having an individual buyer's spouse execute the purchase agreement.

If a corporation or limited liability company will be registering the aircraft, the purchase agreement should identify that entity as the buyer. Alternatively, an individual can sign an agreement as the buyer and, as long as the agreement allows the buyer to assign his or her rights under the agreement, that individual may still assign the agreement to a corporation or limited liability company prior to closing. The corporation or limited liability company then becomes the buyer and can close on the transaction without the individual ever entering the chain of title. From a liability perspective, this can be important.

Identify the Aircraft. The aircraft purchase agreement should identify the aircraft with as much detail as possible. At a minimum, it should include the make, model, N-number and serial number for the aircraft. Ideally, a list of all avionics, logbooks, handbooks, additional equipment and any accessories should be included. Also, if the seller intends to retain certain items, those items should be specifically identified and excluded from the transaction. By taking the time to detail exactly what is and isn't being sold, you will prevent misunderstandings at delivery.

Purchase/Sale Price. The agreement should specify how much is being paid for the aircraft. If the buyer will be giving the seller a deposit or earnest money, that fact should be included. Also, what happens to the deposit when it is given to the seller? Will the money be placed in escrow or simply held by the seller? If an escrow agent is not involved, the buyer will need to obtain some assurance that his or her deposit will not simply disappear into the seller's pocket making the buyer's recovery from the seller difficult or impossible if the transaction does not close. The agreement should also state under what conditions the seller must refund the deposit to the buyer.

The buyer's method of payment should also be stated. Is it a cash transaction or will financing be involved? If financing is involved, the buyer may want to include language that makes the transaction contingent upon the buyer obtaining financing on terms acceptable to the buyer. That way, if the buyer isn't able to obtain satisfactory financing, the buyer will not be forced to complete the purchase on financially unacceptable terms.

Will other consideration be given to the seller, such as a trade? If so, to the extent that it is possible, the item(s) to be traded to the seller should be identified with the same amount of detail used to describe the aircraft being purchased. This will help avoid later confusion.

Documents. The agreement should include a statement about which documents the seller will sign and

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deliver to the buyer at closing. Usually this includes a Bill of Sale (FAA Form 8050–2) and a signed current Registration Form (FAA Form 8050–3).

**Pre–purchase inspection.** In most transactions, the buyer will want to have a pre–purchase inspection performed on the aircraft. The purchase agreement can specify who will perform the inspection, what qualifications that individual must possess and where the inspection will take place. Also, the buyer should make the agreement contingent upon the buyer's satisfaction with results of the inspection. Although the buyer is usually responsible for the expenses associated with a pre–purchase inspection, the agreement should address which party is responsible for what expenses related to the inspection.

**Warranties.** It is possible to include a variety of warranties in the purchase agreement representing certain conditions of the aircraft (e.g. warranties of airworthiness, merchantability, fitness for a particular purpose etc.). However, due to space limitations most of these warranties will not be discussed here.

From a buyer's perspective, the warranty of title is probably most important. This warranty ensures that the buyer receives title to the aircraft free and clear of any liens or mortgages. Although the buyer will still want to obtain a title search of the FAA Registry's records for the airplane, having the warranty of title included in the purchase agreement will help to minimize the risk of any unrecorded liens or interests in the aircraft.

Most sellers will want to include a disclaimer in the purchase agreement stating that the buyer is purchasing the aircraft "As-is". This language is intended to limit the seller's responsibility for any defects or unknown conditions in the aircraft. If the buyer is having a thorough pre–purchase inspection performed by a qualified mechanic familiar with the specific aircraft, inclusion of this disclaimer in the purchase agreement is probably not a great concern for the buyer.

**Choice of Law/Venue.** If the transaction involves a buyer and seller from different states, it may be prudent to include language in the purchase agreement that governs what law applies to the transaction and where any disputes would have to be resolved.

**Waiver and Release of Liability.** The seller will want waiver and release of liability language in the purchase agreement to limit potential liability for injury or damage sustained by the buyer arising out of the buyer's use of the aircraft. The language should be in bold, all caps letters to make sure it is obvious and not buried in the fine print of the purchase agreement.

Waiver and release of liability language will not release a seller from responsibility for the seller's intentional acts or gross negligence. Nor will it prevent possible claims from third–parties who are injured or damaged by buyer's use of the aircraft or from the buyer's minor children. However, it will prevent the buyer, and the buyer's spouse if the spouse has signed the purchase agreement, from suing the seller if a defect in the aircraft causes an accident that results in injury or damages.

### **What Remedy Does An Aircraft Purchase Agreement Give You?**

First, an aircraft purchase agreement is not a 100% guarantee that a buyer or seller will not be sued. In

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this litigious world, I don't know that such a guarantee is possible. Further, the purchase agreement alone does not make anyone do anything. If a buyer or seller does not want to comply with his or her obligations, the purchase agreement will not change that. However, the purchase agreement will give you the ability to go to court and have a judge make the non-performing or "breaching" party comply with his or her obligations.

If the purchase agreement is drafted clearly and with sufficient detail, it may be possible to have the court specifically enforce the agreement (e.g. make the breaching party do what the purchase agreement says he or she is supposed to do). An example would be where a buyer refused to complete a transaction even though the seller and the aircraft complied with all of the terms of the purchase agreement. In this case, a court could force the buyer to purchase the aircraft.

Alternatively, the court may award money damages for losses incurred by the non-breaching party. An example of this is when a seller refuses to return a deposit even though the buyer has complied with all of the terms of the purchase agreement and has a right to return of the money. In this situation, a court could enter a judgment against the seller in the amount of the unreturned security deposit.

### **Conclusion**

An aircraft purchase agreement is a valuable tool to ensure that each party to an aircraft purchase transaction receives what is expected. It prevents confusion and misunderstanding and provides

security that a party will have recourse if the other party to the transaction fails to perform as required. With minimal up-front time and expense, both buyers and sellers can protect their interests and maximize the likelihood of an uneventful closing and purchase.

### **Aircraft Mechanic's Liens In**

**By Greg Reigel**

#### **Aircraft Mechanic's Liens In by Greg Reigel**

#### **Aircraft Mechanic Liens In Minnesota**

By Gregory J. Reigel

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If you provide storage, repair, maintenance or other services to aircraft, you have the ability to assert a lien on that aircraft and retain possession until you have been paid. This is commonly referred to as a mechanic's lien.

What isn't as commonly known is that, in Minnesota, you don't necessarily lose your lien rights if you no longer have possession of the aircraft. The situation arises when an owner pays you with a check

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and leaves with the aircraft. Later, the bank dishonors the check. Now what?

Under Minnesota Statute § 514.221, you can re-assert your mechanic's lien against an aircraft by filing a verified statement and description of the aircraft and the work done or material furnished. The Statement must be filed with the "appropriate office under the Uniform Commercial Code." This would be the FAA's Aircraft Registry in Oklahoma City, OK.

The verified statement must include N-number, make and model of the aircraft, amount owed for the services and date of last work. The statement must be signed in ink, with title if on behalf of a corporation or limited liability company and must be accompanied by the \$5.00 filing fee.

Also, if the owner of the aircraft is located in Minnesota, you may want to file the statement with the Secretary of State. Although it is not necessary to perfect your lien, it will provide notice to anyone who doesn't know to check with the Aircraft Registry.

This is called "perfecting" your mechanic's lien and must be done within 90 days after you provide the work, materials or service. Once perfected, you now have a lien on the aircraft.

Perfection secures the amount you are owed with the aircraft. You then have several options. First, in

order to sell the aircraft, the owner will need to pay you and obtain a release before the owner can give a buyer clear title to the aircraft.

Second, you also have the ability to repossess and foreclose on the aircraft. This means you can force a sale of the aircraft and then receive payment out of the proceeds of the sale. Any excess money is given to the owner.

Under the first option, you run the risk of having to wait until the owner attempts to sell the aircraft. The second option gives you more control, but is also more costly than simply waiting. However, under either option you are definitely in a better position to get paid than you would be without the lien.



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