



## **The Aircraft Purchase Process**

By Gary M. Goltz

The purpose of this article is to take some of the mystery out of the aircraft purchasing process and provide a broad overview of how an aircraft is acquired. Most aircraft acquisitions involve a team of professionals including an aircraft broker, an aircraft mechanic, an aviation attorney, a CPA, an aviation title company and a lender, among others. The process can take a week or a few months, depending on the nature of the transaction.

### **Aircraft Selection**

First, you select the aircraft type you want after detailed discussions with your aircraft broker. We have written a separate article that will assist you with the selection process that can be found on our website: [www.cjjets.com](http://www.cjjets.com). Based on your broker's review of the specifications and maintenance information provided by the sellers of the prospective aircraft, the broker will usually narrow your search to just a few aircraft of the particular model you have chosen. You may go and visit those aircraft and receive a demonstration flight which, is typically at the purchaser's expense.

### **Letter of Intent**

Once you have made your selection, a Letter of Intent ("LOI") is drafted with the general terms of the purchase, in particular setting forth the purchase price, amount of deposit, general terms of the pre-buy inspection and the expiration time for the offer. Frequently an aviation attorney would be retained by the seller/buyer at this point to assist in drafting the LOI. The purpose of the LOI is primarily to see if the parties can come together on all of the primary terms of the agreement.

### **Deposit**

If the offer is accepted, a deposit of 5% to 10% of the proposed purchase price is immediately wired to a third party aviation escrow company located in Oklahoma City, Oklahoma. All of the escrow companies are located in Oklahoma City so that they can be close to the FAA Aircraft Registry Division, where all of the documentation must be filed to transfer title to U.S. registered aircraft. The LOI provides that within a short period of time an Aircraft Purchase Agreement must be finalized or



the LOI is terminated. Frequently buyers will place a deposit with an escrow company prior to making the first offer in an effort to show how serious they are in purchasing an aircraft.

## **The Purchase Agreement**

The Aircraft Purchase Agreement is frequently drafted by an aviation attorney. The Seller's attorney generally prepares the initial draft, but this does vary. In some transactions your broker may utilize their form. The Aircraft Purchase Agreement provides all of the details of the terms of the purchase.

We strongly recommend using a form used by an experienced broker or hiring an attorney that specializes in aircraft transactions. There are many legal pitfalls that are unique to aircraft that a real estate or corporate attorney will not know. The way escrow works and title passes is unique to aircraft.

The Aircraft Purchase Agreement provides the purchase amount, the amount of the deposit, whether the deposit is refundable and if so, under what terms, the timing for the pre-purchase inspection and the purchase, the place for the pre-purchase inspection, certain representations by both parties, the warranties provided with the airplane, what happens if there is a default and much more. The standard warranty for a used airplane is that the title is warranted, but the condition of the airplane is not. The purpose of the pre-purchase inspection is to determine the condition of the aircraft. If the condition is not as represented, then the buyer doesn't have to close and the deposit is refunded.

## **Pre-Purchase Inspection**

Once the purchase agreement is executed by both parties, a pre-buy inspection will begin at a maintenance facility agreed upon by both the purchaser and seller. Jet and turboprop aircraft are highly complex machines that have maintenance requirements based on the calendar (day, month or year limits), hours flown or cycles (number of landings). A purchaser needs to know whether everything is functioning correctly, the exact maintenance status of the aircraft and its components, and whether the records are complete and accurate. The best way to accomplish this is through a comprehensive pre-purchase inspection by a maintenance facility familiar with the type of aircraft the purchaser is buying. This is one of the most important and critical steps in the entire process. It is extraordinarily unusual for an aircraft to be purchased, even between friends, without going through a



pre-buy inspection. The level of the pre-buy inspection is determined by consultation with the maintenance facility and can take as little as a few days, or as long as a few months. At the end result of the pre-buy inspection, the maintenance facility produces a list of discrepancies that they discovered during their inspection and will also point out those items that are due for replacement or overhaul because of time, cycles or calendar. Most Aircraft Purchase Agreements provide that the Seller repair the airworthy discrepancies at their expense. There is usually still some negotiation between the parties about what is considered “airworthy.” We could write an entire article on this subject. This negotiation can get quite complicated and is really best left up to an experienced broker and/or experienced mechanics. Discrepancy remediation costs typically run from \$10,000 to \$60,000 for turboprops and \$15,000 to \$600,000 for jets. Understanding the maintenance history and picking the maintenance facility can make a tremendous difference.

### **Technical Acceptance**

At the conclusion of the negotiation over what discrepancies will be paid for by whom, the purchaser will then execute the Technical Acceptance. The purpose of the Technical Acceptance is for the Purchaser to commit to buy the aircraft subject to remediation of the discrepancies. The deposit normally becomes non-refundable at the time the Technical Acceptance is executed. This is appropriate since the seller now has to commit the resources and time to fix the aircraft. Further, it provides a partial remedy should the purchaser default.

### **Closing and Aircraft Delivery**

The Closing can be quite complicated. Simply put, the escrow company coordinates the exchange of the purchase funds in return for the filing with the FAA Aircraft Registry the FAA Bill of Sale and the FAA Application for Registration. The filing of the FAA Bill of Sale effectuates title transfer and the FAA Application for Registration causes the aircraft to be registered in the name of the purchaser. If there is a lender, certain lien documentation is filed with the FAA. Aircraft liability and hull insurance is put in place at this time. With aircraft of a certain size, including many turboprops and jets, documentation is filed with International Registry of Mobile Assets (the “IR”). The escrow company and many aviation attorneys will handle the necessary filings with the IR for the parties to the sale. Brokers for both sides are involved in the Closing and help to coordinate the Aircraft Delivery, which is done as part of the closing. An Aircraft Delivery Receipt is the written evidence of the acceptance of the aircraft by the purchaser and is executed at closing. The escrow fees generally run from \$400 to \$4,000 and are dependant on the size of the transaction. You do not



earn interest on your monies while they are held in escrow. The escrow fees are normally split equally by the buyer and seller. The fees for the IR are generally paid by each party and run from \$400 to \$1,000 per registration.

There are many ways to conduct closings. Many closings are handled via teleconference, with all parties attending including the buyer and seller and their representatives, such as attorneys, lenders and brokers. These closing calls typically last less than 30 minutes unless a seller insists on releasing the FAA Bill of Sale from escrow to the FAA only after the seller's bank has confirmed receipt of funds. Even this confirmation can be done by email. Frequently, transactions are closed based on simple written closing instructions provided by both the buyer and the seller.

### **Post Closing Issues**

There are many post-closing issues. The new owner needs to be thoughtful about that first flight. Insurance should be in place and a properly trained crew should be retained. Where the first flight originates and terminates can affect sales and property taxes. As such, it should be carefully planned.

If you are using an aircraft management company, most of the post-closing logistical issues will be taken care of for you. You should have the agreement with them completed, negotiated and executed prior to the closing. If you have your own pilots, they will need to have a means for paying for fuel, emergency maintenance, hotels, rental cars, airfare, etc.

Navigation database subscriptions for the aircraft's navigation systems must be current to fly legally. Certain paperwork must be on the aircraft. If you intend to fly the aircraft at, or above 29,000 feet, the aircraft must be RVSM certified and a manual must be filed and approved by your local FAA Flight Standards District Office. Your pilots, legal counsel or management company can handle most of these issues.

Maintenance must be kept current or the FAA could ground your aircraft, or worse yet, your safety could be compromised. Before you depart on your first flight, you should know who is going to maintain your aircraft and generally what to expect in terms of annual maintenance costs.

Your aircraft should be hangared, especially if you live in an area subject to severe weather. Some insurance requires hangarage. Hangarage is always recommended to preserve the paint, interior, and operating systems of your aircraft.



Fuel prices can frequently be negotiated with the aviation fuel provider (referred to as, “Fixed Base Operators” or “FBO’s”). Often, you can receive a discount on your fuel if the FBO also provides you hangarage services.

Many jets have service contracts that are assigned to the new owner. Such transfer is not automatic and usually requires a formal assignment and a transfer fee. Follow up is essential with these providers to assure no lapse in service or benefits. This is especially true with engine maintenance programs, as a lapse in service could result in significant loss in the value of aircraft.

Aircraft that are used by companies for business must develop corporate policies for use of the aircraft, particularly non-business use. Improperly handling non-business use can result in significant tax consequences, including the disallowance of deductions. Again, an aviation CPA or legal professional is key to help you avoid the legal and tax pitfalls of aircraft acquisition and ownership.

Your pilots will be generally required by your insurance company to go to training at a professional pilot training facility with simulators. Costs for such training range from \$4,000 per year for turboprops to over \$35,000 per year for some of the larger jets. The initial training costs more than the annual recurrent training. Some training can be done in your own aircraft. There are disadvantages and advantages to both methods. Some schools book up early and this requires advance planning.

Lastly, many owners will make a decision for tax or other reasons to place their aircraft with a management company that will charter their airplane for an hourly lease rate. This is commonly referred to as charter or Part 135 operations. There are pros and cons to doing this. Generally, you will be able to generate income that can defer operating costs, but at the same time your valuable asset will diminish in value because of the increased use. Careful study should be made of the costs of Part 135 operations and the management company.

## **Conclusion**

Select the right airplane and utilize experienced professionals and you will enjoy years of aircraft ownership. We have only touched on the highlights of the aircraft purchase process. The involvement of professionals dedicated to aircraft transactions will provide you the assistance to make this process go smoothly and efficiently, with the best result possible.

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