

“Exit Strategies” for Aircraft Ownership

A wise businessperson considers an “exit strategy” when planning a multi-million dollar acquisition. Such planning is simply a good business practice, note attorneys Jim Cooling and Jessica Pownell

An important part of the process of acquiring a business aircraft is designing an “exit strategy” in the event the owner decides to later upgrade, switch to a different model, lease or sell the aircraft.

The good news is that, while an aircraft seller certainly will have different concerns and motivations than a buyer, the exit process usually is no more complicated than acquisition. – In fact, a seller has much less planning and research to accomplish prior to the sale. Once the aircraft is sold, the matter is out of the seller’s hands entirely. Though each transaction is different and has its own unique (and often unpredictable) nuances, the process for selling an aircraft usually follows a standard format, and an aircraft seller will generally find that the steps to selling an aircraft track closely with those he or she experienced when buying the aircraft.

The first step for a seller is finding an aircraft buyer. Many aircraft sellers engage an aircraft broker at this stage. A good broker will help a seller establish the list price (and then assist with price negotiations with potential buyers), create a sales listing and specifications sheet for the aircraft, pursue leads, and otherwise initiate a potential sale.

Once a seller has a serious potential buyer, the parties may do a short letter of intent delineating the major business points of the deal, such as the price, which party will pay the inspection and aircraft movement costs, and where the aircraft will be inspected and delivered. Letters of intent are usually nonbinding on the parties and more of an expression of the parties’ shared intention to negotiate in “good faith” to reach an agreement. In most transactions, a buyer will put up a deposit on the aircraft at this stage. A deposit and the letter of intent’s terms governing the deposit are important to a seller because, if the deal falls apart, a nonrefundable deposit can compensate a seller for his or her investment in the deal and for the loss of other potential sales while the aircraft was off the market.

It is important that, prior to executing the letter of intent, the buyer and seller each should engage an experienced aviation attorney to protect their respective interests throughout the transaction. , Because attorneys usually are not paid on commission, the attorney advises solely on whether the contract terms are good for the client. As well, a seller should beware that any attorney engaged by the buyer is not also an attorney for the seller. A buyer’s attorney will advocate for the buyer and will not be concerned about the interests of the seller; thus, it is important that the seller engage his or her own aviation attorney.

After execution of the letter of intent, the parties will usually proceed to negotiate a sales agreement further detailing the terms of the letter of intent and the specifics of the deal. Then, a buyer typically inspects the aircraft (pursuant to the agreed upon terms of the sales agreement). For the seller, this means that the aircraft may be out of service for several weeks, and,

depending on the agreement of the parties, the seller may have to pay out-of-pocket to correct discrepancies.

As the parties approach the closing date, they will prepare applicable title transfer documents and, usually, forward such executed documents to an escrow agent who will actually file the documents at closing. For instance, transfer of title for an FAA-registered aircraft requires the filing of a bill of sale and releases for any security interests on the aircraft (and possibly other documents, depending upon the specifics of the transaction).

Usually, the seller is only involved with the title transfer filings; that is, a buyer will then separately file its registration documents. However, if the buyer plans to move the aircraft to a different registry after the sale, the buyer may ask the seller to provide certain documents required for the transition. While the documents required will be specific to the transaction and depend upon the registries involved, in most situations, the buyer may need an export certificate of airworthiness and/or a deregistration request from the seller. Prior to issuing an export certificate of airworthiness, the applicable country may require that one file various documents and have the aircraft inspected.

As alluded to above, the parties will often finalize the sale and transfer title at a “closing,” where funds are released and all documents are filed. The parties may decide to schedule a conference call, at which the parties, their counsel, the brokers, and the escrow agent all get on the phone, work through any final issues, confirm that all are ready to close, and then release the funds and file the documents.

After the closing, the seller may need to deal with a few minor housekeeping issues, such as transferring any warranties to the buyer. After that, however, the seller is usually done with the transaction and free to focus his or her energies on (hopefully) a new aircraft.