

The Art of Buying Your Aircraft

Part 2 – The Deal

A buyer searched long and hard to find the “perfect” aircraft. After a few months, he found his “perfect” aircraft and scheduled an examination with the owner. After going through the log books and finding no surprises, he decided that a test flight would be in order. The test flight went well and he decided that this was the aircraft that he wanted to buy. He was so prepared to purchase this aircraft that he brought a certified check to complete the deal along with the necessary charts and equipment he would need to fly the aircraft home. When he arrived back at the airport from the test flight, he noticed a gentleman talking to the owner. This individual was a VERY interested buyer who offered more money for the aircraft. The result was that the aircraft had been sold out from under the first buyer during his test flight.

In another unrelated situation, a disgruntled aircraft buyer has taken the aircraft’s previous owner to court because of a dispute. The first question asked by the judge is – “Who has a signed copy of the purchase agreement between the two parties?” No one answers. In any courtroom, it is the responsibility of the plaintiff (the buyer in this case) to prove that a “wrong” was committed on the part of the previous owner. Without a signed purchase agreement, it is unlikely that he will be able to prove his point and win his case.

These scenarios play out over and over across the United States every day because buyers and sellers don’t take the necessary steps to protect themselves

Part 2 of this series of articles focuses on the deal itself. At this point, I have presumed that you have done your homework and understand what aircraft meets your needs and fits within your budget. By this point, you have most likely searched long and hard to find two or three aircraft that fit within your purchasing requirements. Now what?

Some readers may think that the following advice is too complicated or irrelevant but this article is aimed at individuals who have purchased more cars and/or homes than aircraft and need assistance in completing the deal and protecting their interests.

For the purposes of this article, I am presuming that all aircraft of interest are located some distance from your location so that any examination you want to perform would involve travel. Let’s also presume that you have these aircraft arranged in priority of interest. I am also presuming that preliminary negotiations have taken place regarding the price and the basic terms of the deal (contents and condition of the aircraft, next steps to be performed, etc.). One suggestion would be to have the first aircraft on your list professionally appraised. A professional appraisal can be performed by someone local to the aircraft and the report would clearly identify the condition of the aircraft and its contents along

with the fair market value. This will ensure that the aircraft is worth pursuing and if the negotiated price is in line with current market values for that specific aircraft. If you are dealing with a dealer or broker, don't be surprised when the fair market value is lower than the negotiated price. Keep in mind that the price from dealers and brokers also includes their commission. The appraisal will be your first "pass" to determine if the aircraft is priced within reason and in the condition as advertised. Aircraft photos taken from 20 feet away do not show blemishes and log book "problems" or damage history are typically not advertised. A Certified Appraisal can help include or eliminate an aircraft quickly in your decision making process without having to travel to the site and find that the aircraft really is not what you expected. For this article, let's presume that you have a Certified Appraisal Report in hand, the aircraft pricing is reasonable and the condition is as advertised. You want to go forward on this aircraft. What steps do you take now?

You obviously want to fly the aircraft before writing the check and signing the papers but before doing so you need to formally structure the deal before buying that airline ticket. One of the most important components of ANY aircraft deal is the written and signed purchase agreement. Now I'm not an attorney here and I am not dispensing legal advice (please consult an attorney for this) but one of the biggest mistakes anyone can make is not capturing the terms and conditions of the purchase on paper. One of the best examples of a purchase agreement can be found on the AOPA website. It is easy to read and fairly complete since it covers many of the items buyers are concerned with. The key reason for having a purchase agreement is to protect your interests as a buyer and those of the seller along with clearly identifying the roles and responsibilities of both parties. Once both parties enter into this agreement, it is a legally binding document and failure to perform under the contract can result in penalties. For example, when the aircraft was sold out from under the buyer in the first scenario and presuming that a signed purchase agreement was in place, that action by the seller may be considered as a breach of contract. In that situation, the buyer may wish to seek some sort of legal recourse. From the buyer's perspective, he has invested quite a bit of time and money in the purchase of that specific aircraft and an agreement was made regarding the purchase price and conditions for the conclusion of the deal. If the seller elected to breach the agreement and sell the aircraft to someone else before the first deal concluded, then in my opinion the buyer has a right to some compensation for his time and effort. Depending on the situation, other penalties may be assessed against the seller as well.

In another example, the perspective buyer wants every single item on the prepurchase exception list to be addressed – none of which are related to the airworthiness of the aircraft. If the seller has negotiated the purchase agreement successfully, that issue will already be addressed as part of the terms and conditions of the sale. As a result, the sale would be saved along with hundreds of dollars in unnecessary expenses on the part of the seller.

In general, negotiating a purchase agreement is not terribly difficult but it would be helpful if you have someone available who understands legalese or you can consult an attorney. The important point here is to cover the key items of concern in the purchase and negotiate the right exit clauses or conditions wherein the deal falls apart and either party can back out without penalties. For example, a good purchase agreement will state the negotiated (and accepted) price of the aircraft and stipulate that the aircraft is "as advertised". As a buyer you have a right to expect that the aircraft is in airworthy condition and ready to fly. Let's say that no appraisal was performed and when you arrive to examine the aircraft, it is not "as advertised" (possibly the avionics are different than advertised or the airframe shows corrosion). You now have a reason to terminate the agreement and both parties can walk away without liability (although many buyers would be very upset to find this out after making the trip to see the aircraft). A good purchase agreement should also detail who performs the prepurchase examination (or who chooses the mechanic) and what items will be addressed by the seller as a result of the exception report. This can be a problem area because the seller doesn't want to put another penny into the aircraft but if an expensive AD has not been complied with then the aircraft is not airworthy and someone will need to correct this situation. It is better to talk this situation through up front early in the deal than in the mechanic's shop with the aircraft torn apart.

Depending on the terms of the agreement, there may be "earnest money" involved that holds the aircraft until the terms of the purchase agreement are completed. Everyone has a different opinion about earnest money since experienced buyers typically don't write any checks until the deal is completed but if this is a really good aircraft and there are many potential buyers, you may want to consider putting a deposit on the aircraft as part of the purchase agreement. It is not a good idea to write a check directly to the seller for obvious reasons but you may want to consider an independent, mutually agreed to third party such as an attorney, mutual friend, or bank who holds the earnest money until the terms of the agreement are completed to each party's satisfaction.

Presuming that the Certified Appraisal is in hand, the purchase agreement has been signed and you have successfully test flown the aircraft, we move on to the next step. The final article in this series will cover the prepurchase inspection from the buyer's point of view as well as highlight any financing and title considerations.



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