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# A TO Z OF CONDUCTING AN AIRCRAFT TRANSACTION

## GKG Law, P.C. Webinar Series

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# Laying out the Transaction Process



# Establish Acquisition/Transition Criteria

- What is the mission?
- Identify prevailing reason to buy now: size, image, age, technology level, tax depreciation exhausted, value
- Determine budgets: acquisition and operating





# Create Mission Profile

- ➔ Evaluate your expectations: reliability, operating cost, hassle factors, requirements of personnel, maintenance requirements/downtimes, acquisition cost
- ➔ Evaluate models of equipment against criteria
  - City-pairs analysis: will aircraft do it?
  - Needs analysis: number of seats, configuration of seats, galley requirements, baggage capacity, lavatory, predictable operating costs
  - Cost comparison for particular mission between models
  - Operational support requirements at home-base and destinations



# Considerations

## → Preliminary Considerations, Economics and Logistics

- Market conditions
- Buy-In from all critical parties
- Timeframe for sale/purchase
- Budget for project: estimated sales price, lease start-up or breakage fees, tax on gain, advertising, attorney's fees, maintenance, commissions, escrow and IR fees





# Preparation for Sale

- ➔ Pre-Negotiation Strategies for Selling the Aircraft
- ➔ Positioning aircraft in market: pricing, competition, marketable equipment & cosmetics
- ➔ Seller buy-in of market conditions and pricing
- ➔ Analyze logbooks from pre-purchase facility perspective



# Pre-purchase Inspection

## → Buying or Selling Considerations

- Qualified facility - capable to address issues or independent from seller, if applicable
- Accomplish work to satisfaction
- Personnel on-site to oversee project
- Estimate “worst case” discrepancy list
- Defined aircraft condition by contract
- Establish appropriate communication and work-scope definition with vendor





# Take Away(s)

- Plan for the contingencies
- Develop a proactive stance rather than a reactive stance
- Communicate often with all related parties
- Be ready to close!





# Documenting the Transaction



# What Goes into the Letter of Intent

- Timeframe
- List of what equipment and documentation comes with the aircraft
- Purchase price and deposit amounts and conditions
- Inspection scope and facility
- Terms of a test flight and/or acceptance flight





# What Goes into the Letter of Intent cont'd

- Who pays what for discrepancies and aircraft movement costs
- Rights and obligations to accept / reject aircraft
- Delivery conditions and location
- Taxes
- Deal specific points



# Purchase Agreement

- The deal points from the LOI plus:
- More precise contractual language
  - Specifics of scope of inspection and acceptance / rejection rights and obligations
  - Detailed closing mechanics
  - Conditions to seller's obligation to close
  - Conditions to purchaser's obligation to close





# Purchase Agreement cont'd

- Representations and warranties
- “As-is” warranty disclaimer
- Risk of loss or damage
- Default and remedies
- Miscellaneous boilerplate provisions
- Exhibits (e.g. confirmation of acceptance after inspection, warranty bill of sale, delivery receipt, etc.)



# But...

- What if this is a back-to-back?
- Need to identify whose deposit is in escrow





# Factoring in the Timetable for Financing



# Planning / Timing Considerations

- Time required to arrange financing can exceed by several weeks the time required to inspect and close on an aircraft
- Lender selection 2 weeks
- Loan app / credit approval 2 weeks
- Lender document preparation 1 week
- Buyer review / negotiation of loan docs 1 week
- Execute docs and prepare for closing 1 week





# Tax Planning Issues regarding Financing

## → Non-recourse versus Recourse

- IRC Section 465
- Back to Back loan



# Planning an Ownership and Operating Structure





# Threshold Decision: In-house Flight Department versus External Management Company

- Convenience
- Human resources
- Expertise
- Control
- Additional cost versus cost savings



# Desire to Earn Charter Revenue

- Need to offset costs
- Accurately projecting increased revenue and expenses
- Tax considerations
- Coordinating scheduling





# Federal and State Tax and Federal Aviation Regulations Planning

- Facts relate to prior planning considerations
- Begin with state sales and use tax
- Overlay sales tax “structure” onto federal tax planning
- Reconcile with FAR compliance requirements



# Closing Remarks



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