



Ready to Buy & Fly?

Best Practices & Teaming Strategies for a Successful Aircraft Acquisition

Chris Younger, GKG Law, P.C.

with Special Guest

Lee Rohde, Essex Aviation Group, Inc.

Steps to a Successful Aircraft Transaction

Disclaimer



This presentation is being provided for general information and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult your attorney or other advisor concerning your specific situation and for any specific legal or financial questions you may have.

GKG Law, P.C.

About Us



- Aircraft Purchase & Sale Transactions
- Aircraft Ownership & Operating Structures
- Federal & State Tax Planning
- IRS, State & FAA Audits & Enforcement Actions
- Personal Use Guidelines & Calculations
- Aircraft Ownership Trusts

Essex Aviation Group, Inc.

About Us

- New Aircraft Acquisitions
- Pre-Owned Aircraft Acquisitions
- Aircraft Refurbishment
- Aircraft Completion Management
- Private Jet Charter Consulting
- Private Jet Lease
- Fractional Aircraft Ownership
- Private Jet Membership



Steps to a Successful Aircraft Transaction

Timeline



WEEK 1	WEEK 2	WEEK 3 - 4	WEEK 4
<ul style="list-style-type: none">▪ Engage aviation counsel and tax counsel▪ Engage aircraft acquisition specialist	<ul style="list-style-type: none">▪ Determine mission specific requirements▪ Determine makes, models, price points that meet mission requirements▪ Complete tax analysis and ownership structuring planning	<ul style="list-style-type: none">▪ Identify short list of candidate aircraft▪ Complete preliminary review of aircraft and associated records▪ Draft letter of intent▪ Negotiate purchase price and ancillary issues with aircraft seller and its team▪ Execute finalized letter of intent	<ul style="list-style-type: none">▪ Shop for financing (compare lenders, negotiate terms; provide due diligence disclosure financial information)▪ Shop for external aircraft management company (if not managing in house)▪ Begin building flight department (if managing in house)

Steps to a Successful Aircraft Transaction

Timeline (*continued*)



WEEK 5	WEEK 6	WEEK 7 - 8	WEEK 8
<ul style="list-style-type: none">▪ Draft/negotiate/execute aircraft purchase agreement▪ Sign loan term sheet▪ Meet with candidates and make final selection of desired management company▪ Continue building internal flight department	<ul style="list-style-type: none">▪ Begin aircraft pre-purchase inspection▪ Obtain lender credit committee approval▪ Negotiate management company agreements	<ul style="list-style-type: none">▪ Complete pre-buy inspection▪ Negotiate discrepancy repairs▪ Final Aircraft Return to Service▪ Negotiate loan documents▪ Prepare documentation to implement ownership and operating structure	<ul style="list-style-type: none">▪ Document any agreed holdbacks for post closing items▪ Conduct dry run closing call(s)▪ Conduct closing

Steps to a Successful Aircraft Transaction

Necessary Parties



CEO, CFO, COO

Corporate general
counsel

Accountant/CPA/tax
consultant

Aviation counsel

Aircraft acquisition
expert

Commercial lender

Lender's counsel

Escrow agent/FAA
title attorney

Pre-purchase
inspection facility

Aircraft manager
and/or chief pilot

Aircraft technical
consultant

Owner trustee, if
required

FAA designated
airworthiness
representative (DAR)
(import transaction)

Customs broker
(import transaction)

Steps to a Successful Aircraft Transaction

Key Closing Checklist Items



CHECKLIST	✓	ADDITIONAL ITEMS (see <i>Timeline slides</i>)
Deposit from buyer	✓	Tax planning & implementation documents (i.e., dry lease)
FAA & IR title searches	✓	Management agreements
FAA bill of sale	✓	Loan documents (separate checklist likely)
Warranty bill of sale	○	Trust documents, if applicable
Aircraft registration application		
Lien release(s), if required		
Declaration of international operations, if required		
LLC citizenship statement, if applicable		
International Registry TUE registration for all parties		
Hull & liability insurance		
Confirm fly-away exemption & related state forms		
Rental appraisal, if applicable		
Position aircraft at delivery location, if other than pre-purchase inspection		
Fund escrow with balance of purchase price		

Steps to a Successful Aircraft Transaction Closing



- Work through transaction and loan checklists
- Conduct at least one dry-run closing prior to actual closing
- Conduct closing via conference call or irrevocable written instructions
 - Release funds out of escrow
 - File FAA bill of sale and aircraft registration application
 - File aircraft security agreement, if applicable
 - Register contract of sale and, if applicable, international interest, with IR
 - Release warranty bill of sale and remaining escrow documents out of escrow
- Issue delivery receipt

Steps to a Successful Aircraft Transaction

Post-Closing Issues



- Post-closing title searches
- Obtain fly wire, if required
- Fuel receipt or other proof of aircraft location at closing
- Transfer all applicable programs/contracts
- Implement ownership and operating structure
- Ensure company and aircraft manager comply with all tax planning requirements
- Revisit tax planning and operating structure periodically to ensure it remains appropriate, and adjust as necessary to address changes in the law or business circumstances

Steps to a Successful Aircraft Transaction

NOL Carrybacks – CARES Act



- Business aircraft owners often incur Net Operating Losses (NOLs) due to accelerated depreciation deductions (including 100% expensing).
- Under the TCJA, effective generally with respect to NOLs arising in 2018 or subsequent years, NOLs could only be carried forward (not back) and could be deducted against only 80% of taxable income in future years.
- Under the CARES Act, these limitations are temporarily relaxed.
 - NOL carryforwards can offset 100% of taxable income in 2020 or earlier years.
 - In 2021 and later years, taxpayers can deduct: (1) NOL carryforwards arising in 2017 and earlier years against 100% of their taxable income (because the TCJA 80% limit did not apply to NOLs arising in 2017 and earlier years), and (2) NOL carryforwards arising in 2018 and later years against up to 80% of their taxable income.
 - Taxpayers can carry back NOLs arising in 2018, 2019, and 2020 up to 5 years (back to 2015 for 2020 NOLs).
 - NOL carrybacks applied to tax years prior to 2018 can be particularly valuable to “C” corporations due to higher corporate income tax rates in those years.

Upcoming Webinars



Options for Third-Party Aircraft Use & Carriage of Candidates for Elected Office	June 18, 2020 at 1 pm ET
Use of Ownership Trusts & International Registry Issues in Aircraft Acquisitions	July 16, 2020 at 1 pm ET
Income Tax Considerations: Family Offices & Business Aircraft	Sept. 17, 2020 at 1 pm ET
Federal Income & Excise Tax Implications of Personal & Entertainment Use of Business Aircraft	Nov. 19, 2020 at 1 pm ET
Sales & Use Taxes on Aircraft: Latest Developments & Key Planning Tools	Dec. 17, 2020 at 1 pm ET



Questions?

Chris Younger

cyounger@gkglaw.com
(202) 342-5295

GKG Law, P.C.

1055 Thomas Jefferson St. NW
Suite 500
Washington, D.C. 20007
www.gkglaw.com

Lee Rohde

lrohde@essexaviation.com
(603) 766-1390

Essex Aviation Group, Inc.

33 Deer Street
Unit 2A
Portsmouth, NH 03801
www.essexaviation.com

