

Avoiding the Race to the Bottom in a Seller's Market



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Inventory for many aircraft type, especially those of newer vintage, is significantly lower than it has been in over a decade. Additionally, transaction volume has increased. As a result, as attractive and popular aircraft are listed for sale, sellers are receiving multiple offers almost immediately. We are very much in a seller's market. Many buyers are looking for aircraft and becoming increasingly frustrated that their desired aircraft is not available for sale and/or that when an aircraft is listed for sale that there are multiple competing offers. In today's seller's market, buyers and their representatives must avoid the race

to the bottom and understand that the aircraft purchase process takes time. For example, establishing the ownership and operating structure for the aircraft takes time and the due diligence necessary on the aircraft prior to closing, such as the pre-purchase inspection and repair of discrepancies, takes time. Buyers must avoid skipping the necessary steps when acquiring an aircraft.

It is important to note that the establishment of the aircraft ownership and operating structure can be completed before the aircraft is sourced. Buyers who want to acquire an aircraft in 2021 should be putting the aircraft ownership and operating structure plan together with their aviation attorney and tax advisors now, so that when the aircraft is found

there is no additional planning needed. An attempt to purchase an aircraft immediately and complete the ownership and operating structure plan after closing will not work and may trigger unnecessary taxes and regulatory compliance issues.

Similarly, if lender financing is planned for the aircraft acquisition, a lender should be selected and the financial information the lender will require should be gathered and submitted, so that all documents are already with the lender

is necessary and while many sellers are limiting the scope of the inspections, buyers should seriously evaluate the scope and limitations of the inspection being made by the seller, as some items found after closing can render the aircraft inoperable for many months while repairs are done and parts are sourced. Moreover, in addition to the downtime, there can be significant costs associated with major repair work on aircraft.

In today's headlines we are all reading about



when the aircraft is selected. This will help the buyer avoid having to pay cash at closing and financing the purchase at a later date.

Additionally, if the buyer desires to engage a management company to manage the aircraft, various management companies can be vetted and a selection made prior to selecting the aircraft to be purchased. The management agreement can also be negotiated in advance of finding the aircraft, so that the parties can simply add the relevant and aircraft specific information to complete the management agreement once the aircraft is identified.

Furthermore, and most importantly, the due diligence on the aircraft being acquired should not be skipped. Preowned aircraft sales are on an "as is, where, as" basis. As a result, in almost all cases it is not possible (except in the case of fraud) to go back to the seller after closing to remedy items found to be wrong with the aircraft. A pre-purchase inspection of the aircraft

similar shortages in the housing market or perhaps experiencing it first hand while trying to buy or sell a house. We are also hearing stories of home buyers who did not inspect or even see a house prior to the acquisition of the house. As tempting as this path may be for a buyer eager to purchase an aircraft, this must be avoided in the used aircraft market. Buyers should not give up doing the necessary inspections on the aircraft to confirm the aircraft is airworthy, is in the condition as represented by seller, and meets the needs of the buyer. I say all this as a reminder that eventually the buyer will be a seller and when that time comes, it may not be a seller's market. ■

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