

# It's Not Enough to Assemble an Aircraft Acquisitions Team – Buyers Need Experienced Professionals to Avoid Potentially Disastrous Results



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People who work in the private aviation industry constantly stress the need for would-be aircraft buyers and sellers to assemble a team of professionals to support them in the purchase or sale of business jet aircraft. That team includes brokers, attorneys, financial advisors, aircraft managers, technical advisors, lenders, insurers and title and escrow handlers. What's critical, however, is that the members of the team actually have experience and expertise in handling private aircraft transactions. A failure to include knowledgeable and seasoned pros on your team can have disastrous consequences.

The attorneys at Aerlex Law Group have handled over 1,000 whole and fractional aircraft acquisitions over the past 17+ years and while we regularly give this advice to potential or new clients, we tend to treat the guidance as pro forma, a given, "why of course, why would you do anything else?" That being said, I am approached periodically by would-be clients who want Aerlex to help them fix problems that have already erupted – and I am sometimes astounded to learn of mistakes that were made, even when the buyer or seller had legal counsel involved. What it proves, beyond a shadow of a doubt, is that our industry has its own unique methods and protocols and those procedures are in place for a reason. Here are a couple of examples (names have been omitted and the facts have been changed somewhat to preserve confidentiality).

I was contacted recently about what sorts of remedies might be available for a would-be buyer who had intended to buy a large, long-range, pre-owned aircraft in a situation where the parties had signed a purchase agreement and then, a few months later, the transaction had been cancelled. Among the facts I was presented with were the following:

- ➔ The buyer had made multiple seven-figure deposits and had paid the money directly to the seller and not into an escrow account.
- ➔ The buyer and seller had entered into a cancellation agreement, which called for the seller to refund the deposits, but no provision had been made for creating a mortgage or other security interest in the aircraft to protect the buyer's interest and encumber the aircraft until the money was repaid.
- ➔ Buyer had not sought to record anything on either the United States Civil Aircraft Registry or with the International Registry regarding the aircraft and, not surprisingly, the seller had not offered to sign and record a mortgage or security agreement with the FAA or file a notice of an international interest with the IR.
- ➔ The purchase agreement the buyer signed was with a party that did not actually own the aircraft but was an affiliate of the title holder; however, the entities were formed in two different states and it was unclear whether the party that had signed the purchase agreement had the authority to bind the aircraft owner.
- ➔ The buyer had run a title search on the aircraft prior to signing the purchase agreement, but had not sought to update the title search prior to signing the cancellation agreement and could not say, at the moment it contacted Aerlex, whether the owner still had clear title to the airframe or engines. In the absence of recorded interests, there was nothing recorded anywhere that would put a bona fide third-party purchaser on notice

of the previous buyer's rights regarding recovery of the unreimbursed deposits paid toward the aircraft. It is basic, black-letter law that a bona fide purchaser, acting in good faith and without notice of any other party's claim against the property, takes good title to the property despite any competing adverse claims. Parties holding competing adverse claims may bring an action only against the party who fraudulently transferred the property to the bona fide purchaser.

The buyer explained to me that they understood some, though not all of these potential risks, but the seller was rushing them to make the original deal and the buyer feared they would lose the aircraft to another purchaser if they didn't accede to the seller's demands. And then initial mistakes were compounded and cascaded as the transaction unraveled.

I doubt any of these problems would have occurred if the buyer had employed legal counsel, or a broker, or lender, or title company with aviation expertise – but that's not how this transaction had unfolded. The buyer's advisors didn't know what they didn't know.

The takeaway from this sorry tale should be clear: It's not enough to merely assemble an aircraft acquisition team; you need knowledgeable, experienced and savvy pros supporting you every step of the way – both to make certain things go right, but also to anticipate the potential problems in case things go wrong and help you avoid potentially ruinous mistakes. ■

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