

# Preparing for an Aircraft Purchase: How to Become the Most Prepared and Qualified Buyer



AMANDA APPLGATE, PARTNER, AERLEX LAW GROUP

**A**s the supply for quality pre-owned aircraft inventory has begun to shrink (especially in certain large cabin models), I see more buyers devoting time to advance preparations to ensure that they are perceived by sellers as the most qualified, attractive buyer. **If you are in the market for an aircraft and want to expedite your purchase and closing, consider taking the following steps prior to making your first offer.**

## BUILD YOUR ACQUISITION TEAM EARLY & PRIOR TO THE FIRST OFFER

**Aircraft Broker/Consultant** – Select a consultant or broker who knows the global market for the aircraft type you are purchasing. The broker/consultant must also be respected among his peers. There are certainly instances when an offer is not taken as seriously if the broker representing the buyer lacks experience with the particular category of aircraft being sought or has had previous conflicts with the broker on the other side.

**Aviation Counsel** – Retain counsel in advance so she is ready to jump into a deal once the aircraft is selected. This will save valuable time later. Including a provision in the Letter of Intent (“LOI”) that the buyer will have an initial purchase agreement to the seller within three days of signing of the LOI will be very appealing to a seller. But this can only happen if aviation

counsel has already been identified, retained, and is up-to-speed on the specifics of the deal.

**Technical Representative** - Hire the right technical expert so that he is ready to start immediately once the aircraft is identified. The technical representative will review aircraft maintenance records and identify any inspection items that must be rectified. The technical representative can also help determine which aircraft is the best aircraft to make an offer on, based on aircraft pedigree.

**Lender** – As in all transactions, sellers prefer cash deals. But if the aircraft is going to be financed, contact lenders and select a lending partner before a specific aircraft is chosen so that lenders are able to close quickly once the aircraft is identified.

**Management Company** - Is the aircraft going to be managed by a third-party provider? Will charter be allowed on the aircraft when not being used by the aircraft owner? Selection of a management company early in the process means you will have the management company acting as your advocate throughout the acquisition. Many management companies don’t start charging management fees until the aircraft is acquired, so there is valuable advice available at little cost by selecting early.

**Insurance Broker** – Decide if the insurance will be procured through the management company or if you need an insurance broker to provide the comprehensive coverage to diminish liability concerns.

**Escrow Agent** - Identify your escrow agent and obtain their wire instructions so you are ready to send a deposit as soon as you have an accepted LOI. This demonstrates to the seller that you are a committed buyer.

## ESTABLISH YOUR OWNERSHIP STRUCTURE

Your aviation counsel can help you determine the following: What entity

will own the aircraft? Does the proposed structure make the most sense, based on the intended use of the aircraft and the potential tax implications for those who will use the aircraft? Is the ownership structure legal under the Federal Aviation Regulations?

Retain a qualified aviation tax attorney and CPA who can review the ownership structure to make sure it is the best tax-plan available.

What are the sales and use tax consequences of the ownership structure?

Are there adequate liability protections under the ownership structure or at least adequate insurance for all parties involved in the ownership structure?

## DON'T SWEAT THE SMALL STUFF

There are a number of miscellaneous items that often get negotiated in the LOI and purchase agreement. These items comprise a small amount of the overall transaction cost, and having flexibility on them may make your offer stand out. Understanding the cost of these items and your position on them before the LOI may allow your offer to appear more competitive than another offer. One approach is to have the seller pay all of these costs and then adjust the purchase price higher since that is the number the seller will most likely focus on. Some of the small items are **Escrow Fees, Aircraft Movement Costs, Customs and Registration Change Fees (if applicable), and Registration Number Change Fees.**

Spending time and effort at the beginning of the aircraft acquisition process to prepare as much as possible, can lower the naturally-occurring stressors related to aircraft transactions. ■

**AERLEX**  
LAW GROUP

11900 West Olympic Boulevard, Suite 450  
Los Angeles, CA 90064-1171

310-392-5200 • Fax: 310-392-5255

aapplegate@aerlex.com • www.aerlex.com