

The Nuances Of A Transaction

In today's recovering market, buyers and sellers struggle with many aspects of the proposed transaction. There are so many variables that go into a successful transaction - price, terms, buyers, sellers and equipment, as well as attorneys, brokers and lenders. It can be dizzying at times to keep all these components in mind. Yet to not acknowledge that they are all at play in a transaction would be to doom the proposed transaction to failure. So let's take them one at a time and look at the impact they each have on the outcome.

I have often said this is not an airplane business but a people business - people selling people airplanes. First let's look at the people. For any transaction there must be a willing seller. This may sound overly simplistic, but it is not. I have come across so many aircraft represented for sale and when offers are actually placed after days of work reviewing maintenance history and reading logs - even traveling to visually inspect them, the seller will say they have decided not to sell. After a fresh look at the numbers they find the market to be at a place they just can't make a transaction work for them.

I sometimes think that some of the tough questions are not asked by brokers in advance. Often the thought of having a new listing keeps these qualifying questions from being asked. Instead, vetting the seller is actually more important than vetting the buyer. What a terrible time for both sides to find that after all the advertising and time spent sending out information and viewing the plane, finally what you thought everyone wanted - a real offer - comes in, and the seller opts not to sell.

When representing a buyer there are equally difficult questions to have answered before entering into a market. Likewise, as a selling broker it is disappointing when the buying side does not believe the carefully articulated pricing guidance from the very first call regarding the offering. It could save everyone an enormous amount of time if the buyer would focus on the input from the seller's broker and eliminate aircraft that are clearly not at the buyer's sweet-spot.

Another area that would help dramatically in the process is for there to be accuracy in the status of the aircraft being represented. We never talk about a listing we have until we've actually visited the aircraft, reviewed the logs and records and have verified the specifications with the client's help. If there are repairs, 337s or "stories", it is better to disclose them to an inquirer on their first call rather than later in the process when the revelation could be viewed as a repurposing of the deal.

If the reality of the aircraft status would create a deal-breaker or a different value proposition to the buyer, it would be important to share that information from the start.

With some regularity a buyer or seller will not want to use an aviation attorney and instead use their in-house or general counsel to negotiate the LOI and Purchase Agreement. There is typically no comparison between even the most common of real estate transactions and the simplest of aircraft transactions. Customary reps and warranties in real estate are so different that a buyer and seller may never get together on a contract and for all of the wrong reasons.

On a transaction as important, and valuable as an aircraft purchase, the few added dollars that a highly skilled aviation attorney can bring to the table is a drop in the bucket compared to the value of the lost transaction for either side. Tax, and regulatory requirements as well as operational complexities can be mitigated and shaped in such a positive way with a skilled legal professional at both the buyer's and seller's side.

Lending continues to be problematic for the Business Aviation industry as we continue to move forward in this recovery. Two years ago even the highest net worth individual and the largest corporations typically sought debt in the acquisition. Money was cheap, easy to get and the idea of tying up important capital often was just not palatable to the buyer.

Approximately 80-85% of every transaction I was involved with then had lending as a component; whereas today only 5-10% of the buyers would even want/qualify for an aircraft loan. Lending has become so restrictive and is determined by an aircraft's age and the more difficult process and covenants

established today. This change in lending takes a huge portion of the buying population out of our recovery. Staggering!

'Certainty' is a word I use as often as 'price' with my clients. If I am representing a seller, I work hard to educate them on the challenges that buyers have, as well as help them understand what the right price is to pay for a certain aircraft. With little or no traditional lending available and continuing concern for the global economic recovery, this may mean for sellers that finding a buyer that can demonstrate a certain amount of ability to close on a transaction may be as valuable as the price itself.

When representing a buyer, I work to keep them focused on demonstrating their certainty of the outcome for the seller. For example, I find that if a buyer has a difficult transaction but has great delivery conditions spelled-out and a non-refundable deposit in place at the time of the contract signing (rather than at the end of a pre-buy inspection), this speaks volumes about the certainty of the buyer's commitment to really purchase the aircraft and go the distance to close the transaction.

The very simple nuances above can make the world of difference when it comes to a deal or no deal.



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