

“New” Words To Live By

Last month’s article spoke about the idea of ‘Manufactured Tension’. You know - the idea of creating tension that is really not productive, and may just be posturing. No one likes it, no one benefits from it and deals often fall apart due to the frustration resulting from it.

What about the real tensions? In the last couple of weeks I have closed on two large aircraft. In both of these transactions I realized that there were new requirements and new contract terms to consider as part of what might be a larger paradigm shift in our industry. In the thick of a deal it is often hard to recognize these shifts. Now that the transactions are complete, I thought it might be helpful to articulate these nuances and help others see them in advance of what might look like manufactured tensions in the middle of the deal.

As we come out of this downturn, we are going to find a more cautious approach on many fronts. One that may look very different could be the lending segment. Often the idea of a client seeking a loan for the purchase of an aircraft was considered just a minor formality - never a make-or-break consideration for a deal. It was always just a matter of whom. Today this is not the case. The number of lenders interested in loaning for an aircraft has shrunk dramatically, as well as the remaining companies that will, having far different terms and covenants for funding.

Why consider this now? Easy; if you wait until the middle of a deal to start the process of identifying a lending partner, you may be too late. It will be critical before the hunt even begins for an aircraft to identify the lending partner, and have the commitment locked up.

So what is all this talk about “New” words to live by? These new words are in relation to the funding timeline; the notification to the lender about when to fund and on the basis of what criteria. I am focused in this article on the contract language and timing so that you do not find yourself in the middle of a deal - having used old timing words to outline to the seller when funding will occur - only to find out too late that it does not match the criteria of the lender. Rather than negotiate in

the middle of the deal for a different time line, know the criteria in advance and put it in the original contract terms. This should be done for the original LOI terms as well.

Here are a few examples from recent transactions I have been involved in. One of the transactions I just completed involved my client buying a foreign owned aircraft. This meant of course that the aircraft had to be de-registered from the selling country and put on the US registry. No real magic - just strict process and adherence to regulatory protocol...except for a couple of new twists...

The lenders now had a new, more conservative approach to releasing the funds. Typically when an aircraft is being de-registered by a seller, the buyer puts their funds into escrow. The escrow agent has clear irrevocable instructions that funds may be released to the seller upon our FAA receiving de-registration notification along with the appropriate Export C of A in favor of the US. The lender would in fact have funded to escrow before being able to attach the lien or even have the aircraft registered.

Today, I think you will find that the lender may be very reluctant to release funds, even into escrow, ahead of the aircraft being on the US registry. The seller will be just as reluctant to de-register an aircraft prior to knowing that the funds are in place. If the contract does not conform to these terms, there will be problems at the end of the deal. As with the

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Chicken or the Egg, which comes first?

An additional area that may cause concern to the lender today will be the fact that they will have to fund prior to the aircraft being issued a US Airworthiness Certificate. Again, in the old days the lender would allow for this gap and fund regardless. Today this may not be the case.



Now a contract must allow for the seller to de-register prior to funds going into escrow.

There can be no question about the lender’s desire or ability to fund prior to the issuance of the C of A. Do not leave this detail un-discussed, as it could create terrible consequences in the end if left unanswered.

Another new lending requirement may be that the funds cannot be released by the buyer’s lender without a two to three business-day notice to the lender for an internal audit by the lender’s side of all documents.

This can also cause problems in the end, if the contract calls for funding two business days after return to service. Leave room for the lender’s requirements to be met. Lenders are also going to be more stringent on their asset inspection requirements before funding. Be sure you understand these and incorporate them into the purchase contract from the start.

These are just a few of the changes happening as we return to an industry where business is taking place again. Paying attention to the new details will provide opportunity to create the “New” words to live by and help alleviate manufactured tension and potential lost deals for all of the wrong reasons.

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