



Aviation Alert from Hardy Law

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September 22, 2011

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Hello!

Two topics I thought you may find interesting:

First, the co-founders of a Florida-based company were sentenced to prison September 20 for charges arising from unauthorized aircraft charter operations.

Second, is it better to enter into a short-form aircraft purchase agreement and work out issues if and when they arise, or take time to address issues in advance that may or may not arise during the sale process?

As always, please contact me if I can be of service.

Joe Hardy
Hardy Law, LLC
joe@joehardylaw.com
404.941.JLaw(5529)





Prison Time for Unauthorized Charter Operations!

It's not hard to run afoul of the Federal Aviation Regulations (FARs) against unauthorized charter (FAR Part 135) operations. For example, say your company buys an airplane for use in its business, and your corporate attorney or accountant gives you some good general corporate advice and suggests you set up a separate subsidiary to house the airplane and employ the pilots. Makes sense for liability shielding purposes, but the FAA views this as a "wet lease", which is an unauthorized charter operation.



I often explain to clients that the consequences of violating these regulations, even inadvertently, can be devastating: FAA fines up to \$25,000 per flight (with multiple flights over several years, I've seen these fines run in the millions) and/or denial of insurance coverage after an accident.

As if those weren't enough incentive to get it right, you can now add to the list prison time for conducting unauthorized charter operations. On Tuesday, the co-founders of Platinum Jet Management, LLC were sentenced to 30 month and 18 month prison terms, plus three years of supervised release, for multiple offenses "arising from a conspiracy to commit continuous, willful violations of regulation requirements for the operation of commercial charter aircraft." Platinum Jet was conducting unauthorized charter operations when a Challenger 600 aircraft it was operating crashed on takeoff in Teterboro, New Jersey in 2005. Fortunately, nobody was killed in the accident, but all eleven people aboard the aircraft and several people on the ground were injured, and much property was damaged.

The U.S. Attorney didn't just go after the founders. A pilot for Platinum Jet was sentenced in August to six months in prison and six months of house arrest. The "director of charters" for Platinum Jet was sentenced to one year of parole and ordered to pay \$200,000 in restitution. And the pilot controlling the aircraft that crashed is still being tried separately in Florida.

The Federal Aviation Regulations can be counterintuitive sometimes. But with a little planning and structuring, and knowledge of the FARs, aircraft can still be operated safely and legally to meet an individual's or company's needs.

Aircraft Purchase Agreements: Short or Long Form?

I sometimes get a call to help a client "close an airplane purchase" after they signed a one-page aircraft purchase agreement (APA). They were excited about owning an airplane, and were pressured to get something in writing, and heard these APAs are all standard boiler plate anyway, so they didn't want to get a lawyer involved for no reason.

Sometimes those sales proceed to a smooth closing, and their gamble pays off. More often, however, issues come up that weren't addressed in the agreement. For example, is the seller required to fix the in-flight entertainment system, or is that not

an "airworthiness discrepancy"? Or if the pre-buy inspection reveals severe corrosion in the wings, can the buyer back out? What happens to the deposit? Then a lot of people spend a lot of time trying to work it out, usually against a deadline. Sometimes deals fall apart. Sometimes they fall apart and head to litigation.

Taking the time up front to try to work through at least some potential issues can save time and heartache down the road. I'm not saying that's a perfect approach. I've seen some APAs "overlawyered", and it's never possible to cover all contingencies.

My personal preference is to try to spell out some details for at least the more relevant terms of the specific deal, as all aircraft purchases are different in some areas. There will always be some risks for both parties, but spending time up front thinking about those factors seems to help things run smoother, and result in less expense overall, then either (a) signing a one-pager and dealing with issues that come up later, or (b) over-negotiating a 50-page agreement that nobody can understand later on anyway.

I have seen this approach occasionally result in a deal falling apart. But my thought in those cases is that it is better to realize you don't have a good agreement at the start, than to realize that after everyone has invested substantial time and money and starts looking for ways to recoup their losses.

About Joe Hardy

I believe in people working together for aviation safety- combining talents and efforts to help business aviation run smoothly and safely. I am a pilot and attorney specializing in aviation transactions and mediation- especially aircraft buying and selling, aircraft financing, and setting up ownership and operational structures to comply with the Federal Aviation Regulations.

Joe Hardy
Hardy Law, LLC
404.941.JLaw (5529)
joe@joehardylaw.com
www.joehardylaw.com

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