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Co-Ownership: The Right Structure and Agreement

In a perfect world, all general aviation aircraft would be wholly owned by an individual, by a married couple, or by a single business entity. However, economic realities often don't allow sole ownership of an aircraft. Even if the Direct Operating Costs (DOCs) are manageable, fixed expenses such as the aircraft payment / depreciation, hangar, insurance etc. are often too high without them being split among several owners. Even if all co-owners use the aircraft exclusively for recreational purposes, co-ownership is serious business and should be run like a business.

How should title be held?

Individual owners who don't need to expense their aircraft to a business can simply hold title in their own name (in some states, title should be held in a revocable trust to avoid probate). However, if two or more co-owners will operate the aircraft, taking title as two individuals exposes each to the other's negligent actions. For this reason, Limited Liability Companies (LLCs) are often used as a firewall between Member A's actions and Member B's assets. A typical LLC structure has a single LLC owning the aircraft, with the members either as individuals or a member's business entity. If the LLC receives any income (such as rental by a member's company) a multi-member LLC usually requires the annual filing of an IRS Form 1065 partnership tax return. Alternatively, two or more co-owners (or their business entities) can each own separate LLCs, and those separate LLCs become co-owners on title with the FAA. This structure is often beneficial when one (but not all) members need to accelerate depreciation differently than other members. As an example: Co-Owner #1 flies only for personal use, and is the sole member of his LLC. Co-Owner #2 needs to take Section 179 or "Bonus" depreciation, so her LLC's sole member is her operational business corporation. Since each LLC is a single member LLC, each are disregarded entities for tax purposes, no "partnership" style entity exists, and no 1065 tax return need be filed.

The Written Agreement

Regardless of structure, anytime two or more co-owners (who are not already husband and wife) take title to an aircraft, there should be a professionally drafted co-ownership agreement that clearly identifies each co-owners' rights and responsibilities toward each other. Without one, misunderstandings can turn the best of friends into the worst of enemies. Too often, co-owners

wait to purchase an aircraft, and then start discussing the terms of the agreement. Too late! The time to start codifying the terms under which the members will fund and maintain the aircraft's operations is before the purchase. Sometimes, the process causes potential owners to realize that their future co-owner isn't really a good fit after all.

Common areas of ownership that need to be addressed are:

- 1) How will flights in the aircraft be scheduled? Can one co-owner fly anytime without limitation?
- 2) Where will the aircraft be based, and which co-owners can decide to change it?
- 3) How much are the flight hour contributions (for DOCs and reserves) and fixed monthly contributions?
- 4) If the above contributions are insufficient to keep the aircraft airworthy (or heaven forbid, make the aircraft payment), which co-owners will kick in additional short-term funding? Note: nearly all lenders will require all co-owners (as individuals) to be borrowers or guarantors on the loan.
- 5) Can pilots other than co-owners fly their aircraft? For how much per hour? What pilot qualifications are required?
- 6) How much can a co-owner spend on maintenance or repairs without the consent of the other co-owner(s)? Is this amount higher if the aircraft is AOG a thousand miles away?
- 7) What about upgrades? Don't have ADS-B yet? There are hundreds of configurations and costs structures.
- 8) What happens when one or more co-owners want to sell? Any restrictions? Do the others have a first right of refusal?
- 9) What if two or more co-owners think another is a reckless pilot or not honoring their agreement? Can they be forced to sell?
- 10) What happens when a co-owner dies, becomes insolvent, or gets a divorce? The last thing an aircraft owner wants is to have a former co-owner's non-flying spouse calling the shots.

Who should draft?

Naturally, the author of this article is an aviation attorney, and would suggest that the drafter be highly experienced with similar agreements. Non-aviation attorneys are a step in the right direction, but often don't know what questions to ask. AOPA has co-ownership "templates" on their website, but still advises its members to use them in conjunction with legal counsel (not as a "fill in the blank" questionnaire).

Aircraft co-ownership is not for everyone. Sometimes though, it is the only economically viable option for ownership. Ultimately, the prospective co-owners must decide for themselves how to hold title, and what the terms of their co-ownership agreement will be. Most importantly, these decisions should be made before any obligations are incurred to purchase an aircraft.

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