

Service problems? You need a paper trail

When your provider's performance falls short, you may be entitled to remedies—especially if you've documented your complaints.



When your aircraft is late or you experience other problems with a flight, what do you do? Perhaps you complain to your provider's service representative. If you're really ticked off, maybe you complain loudly. But there's something else you should do: document the problem in writing.

Why? Because while your management contract may state that you're entitled to remedies, your provider might insist that you prove your case. At a minimum, you may be due a credit based on your hourly flying rate for the duration of a delay. If you've negotiated your contract well, however, you also may be able to claim a default by the provider if you've suffered a few delays over the course of a year.

If that's the case, and you get fed up with service problems, you may be entitled to a higher payout on the provider's repurchase of your share. For example, in some well-negotiated contracts, a provider that is in default isn't entitled to a remarketing fee upon the repurchase of the share. These fees ordinarily run about 7 percent of the repurchase price, so the ability to prove a default may save you a lot of money when your contract ends.

Yet, if you wait until you want to sell your share to claim this default, it may be difficult, if not impossible, to prove. First, you'll have to establish the length of the delay, which may be tough because memories fade over time. And the provider may claim the delay was due to

some *force majeure* event, like weather or unexpected mechanical problems with the aircraft. There again, long after the fact you may be hard pressed to prove otherwise.

True, the provider's files preserve your service history, but unless you've negotiated a special provision that allows you to inspect and copy these records, the provider probably isn't required to share them with you.

To preserve your rights, keep copies of all documentation relating to your flights, including the times trips are scheduled, the requested and actual departure times, the actual arrival times, the reasons stated for any delays and any other pertinent information.

If you experience delays or other problems on a flight, contact the provider immediately in writing and detail what happened. Request an explanation and supporting documentation that is signed by the flight crew as well as the provider's senior operations personnel. If you're not satisfied, put the provider on notice of your claim at that time. If the provider admits that the delay or other service problem is not excused under the contract, get that admission in writing right away and ask for a copy of the provider's service record for your account that confirms the unexcused default.

In some cases, aggregating service problems to prove a default is made more difficult by

the fact that the owner holds multiple shares in the same model aircraft. For example, say you hold a one-sixteenth share in each of three Hawker 800XPs (only because the provider didn't have available a three-sixteenth share in one aircraft). When you call to book a flight, you probably don't specify which share you're using because to you, they're all the same. Yet, if it takes three delays

to constitute a default under each share, who's to say to which share a particular delay applies? There's no necessarily correct answer to this question. To protect yourself, you should negotiate up front a provision that aggregates the delays under each share. That way, you have the same rights as an owner of the same size share in a single aircraft.

Whether you own a single share or several, it's in your interest to maintain your own service records and to establish the occurrence of any problems at the time they arise. In a business where, literally, time is money, that paper trail may be valuable indeed. □

Negotiate a Contract that Protects You

Here are a few tips to negotiate into your management contract that will help you prove your case and receive compensation for service problems.

- Add a default provision for the provider that, in addition to covering "material breaches" of the contract, identifies specific service defaults that are deemed to be material, such as several unexcused flight delays of more than 60 minutes in any 12-month period.
- In conjunction with the default provision, add a remedy provision that, in addition to authorizing all legal remedies, includes a waiver of the remarketing fee.
- Add a provision entitling you and your representative to review, inspect and copy all of the provider's records relating to the servicing of your share and the provider's performance of your contract.
- Review carefully the definition of *force majeure* in the contract to make certain that it truly covers only circumstances beyond the provider's reasonable control.—J.B.

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