four must-read documents

WADING THROUGH LEGALESE PROBABLY ISN'T YOUR IDEA OF FUN, BUT FAILURE TO STUDY THESE AGREEMENTS CAN BE A COSTLY MISTAKE_by James D. Butler

AS I NOTED IN MY FEBRUARY/MARCH COLUMN, the salesperson for your fractional provider will do his best to convince you that everyone signs the same simple contract and that the terms are "just boilerplate." In fact, as I explained, those terms require careful consideration because they govern your rights and obligations with respect to what likely will be a multimillion-dollar investment–and they are negotiable. Here's a look at four key documents you'll be asked to sign and what they mean to you:

1. Binder/Deposit Agreement. If your provider is awaiting delivery of your aircraft, it will want you to put up a deposit to hold your share. This document should identify the tail number of the specific aircraft in which you're buying the share, guarantee that the pricing won't change and include a firm delivery date. Most important, it should clearly state how and when your deposit becomes nonrefundable.

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2. Purchase Agreement. This is the contract through which you'll purchase your share. Make sure it fully describes what you're buying. It's not just the airframe, but also the engines (which should be specifically identified) and equipment, as well as any warranty rights, maintenance records, certificates and the like. If you're buying a share in a new aircraft, check that the number of hours on the airframe is minimal (just as you'd check a new car's odometer).

Equally important, make sure you carefully read the language in the purchase agreement that determines how the provider will repurchase your share at the end of your contract term. All too often, buyers don't consider the likely decline in value of their aircraft, and thus of their share, when projecting the "all in" cost of their investment. Make certain you understand how the valuation process will work and how your share will be valued.

3. Master Dry Lease Exchange Agreement. This document governs the relationship among all fractional owners in your program. Essentially, you agree to share your airplane with every other owner, thus enabling the provider to use the entire fleet to service all the owners. This arrangement is a common feature of all fractional programs–so much so that you may rarely, if ever, actually fly on the aircraft in which you own a share.

4. Management Agreement. This document governs the core issues of your investment. Nominally, it reflects your appointment of the provider as the manager of your aircraft and as the administrator of your program. More importantly, it details the commitments and responsibilities of the provider to serve you and to maintain and insure your aircraft.

The management agreement tells you when and how many hours you can fly and what costs you'll incur when you do. It describes how your flight time will be calculated; what you'll pay if fuel prices rise; and how far in advance you must reserve your flight. It spells out your right to interchange–in other words, to use other models of aircraft in the fleet–and how you'll be charged if you do. It specifies "peak travel days" when greater restrictions apply on your use of the aircraft; and it maps out the service areas within which you can fly.

If you suffer service problems, the management agreement is the place you'll look to find out whether these problems constitute a default by your provider and what remedies you have. If your salesperson has described to you how the program operates and has promised you any special concessions, these commitments should be in black and white in your management agreement.

I can't say it often enough: It's your contract documents, not the slick brochures or sales pitches, that govern your rights and obligations as a fractional owner. Read and negotiate them carefully or you may make a very costly mistake. ■

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From June/July 2008 Issue