
Aircraft Ownership

A Legal and Tax Guide

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Buying and Selling an Aircraft

The purchase or sale of an aircraft is a big step. Many aircraft purchasers and sellers don't realize the legal ramifications of an aircraft buy/sell transaction. This can be a dangerous mistake. Careful planning and professional counsel are necessary to traverse the legal and technical issues you are bound to encounter when you are buying or selling an airplane.

This chapter is intended to walk you through the process. First, we'll review the legal issues related to aircraft sales agreements, warranties, transfer of title, and transfer of risk of loss. Next you'll get a guided tour through the major items you should address in a written agreement to buy or sell an airplane. The last section of this chapter will provide a review of legal issues you should consider if you are planning on financing an aircraft purchase.

Laws Governing Aircraft Sales Transactions

In order to achieve uniformity in the laws dealing with sales and other commercial transactions, virtually every state in the United States has adopted a uniform code of commercial law. This code is known as the Uniform Commercial Code (generally referred to as the UCC). It has been in existence since the late 1930s.

The UCC has a special section, Article 2, that is devoted entirely to sales transactions. For purposes of Article 2, a sales transaction is defined as a sale of "goods." The UCC defines goods as tangible and movable personal property.

Because an aircraft is tangible (you can touch and feel it) and movable (we certainly hope so), it qualifies as "goods" under the UCC. That means any purchase or sale of an aircraft is subject to the requirements of the UCC.

All too often, aircraft purchasers and sellers make the mistake of thinking that the UCC applies only when professional sellers or buyers are involved in the transaction. That's simply not true. The UCC pertains to all sales of goods, regardless of whether professional buyers and sellers (the UCC calls them "merchants") are involved.

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So how does all of this affect you and your decision to buy or sell an aircraft? Actually, it will have a significant effect on how you structure and follow through on your aircraft buy/sell transaction. The discussion below focuses on some of the major impacts of the UCC on your aircraft buy/sell deal.

The need for a written agreement

Many aircraft buyers and sellers have been stung by a cavalier attitude toward their aircraft sales transaction—you don't want to join their ranks. Often, they don't even consider reducing their deal to a written agreement. That can be a big mistake.

Section 2-201 of the UCC requires that any sales transaction for the sale of goods that exceeds \$500 or more must be in writing to be enforceable. Therefore, if you do not prepare some kind of writing evidencing an agreement, the courts may not be able to enforce the verbal terms of your deal.

Regrettably, aircraft owners have often been convinced that a bill of sale will serve as a written "contract" for the purchase or sale of their airplane. This is usually not true. The bill of sale is an important document. However, it does nothing more or less than transfer title to an aircraft. It is not meant to be, nor should it be looked upon, as a substitute for a written agreement designed to spell out the intentions of the parties to an aircraft purchase or sale.

How formal and detailed must your agreement be? The UCC is fairly lenient on this issue. All that the UCC requires is that you prepare some form of writing (1) sufficient to indicate that you have entered into a contract with someone else, (2) signed by the party against whom you are seeking enforcement, and (3) including at least some kind of a statement that you are buying or selling an airplane.

However, good common sense and case law dictate that it would be a lot smarter to set out the details of your deal in a well-drafted aircraft sales agreement. The simple act of working through a written agreement forces you to consider the risks of the transaction. Just as important, the detailed agreement allows both you and the other party an opportunity to formally record your intentions and avoid misunderstandings or miscommunications later. If your airplane purchase or sale runs into problems, a verbal agreement or a weak written agreement may only inflame an already dicey situation.

If your agreement was only verbal, it may not even be enforceable under the UCC. Even if it is enforceable because your behavior or the behavior of the other party indicates that an agreement existed, it will now be a battle of your word against the other party's word. That's not a good place to be when you are talking about the sale of an airplane that might have involved tens or hundreds of thousands of dollars.

If you are working with a weak written agreement, you also have hazards to deal with. The UCC states that if a written agreement is in place, your oral statements may not be used to contradict anything in the writing. Therefore, if you have a written agreement that is not complete or sufficiently detailed,

and you and the other party verbally agreed to modifications or additions later, evidence of those modifications or additions may not be considered if a dispute arises.

All in all, the best advice is for you to get a professionally drafted buy/sell agreement. Your costs of preventing problems will be minimal compared to the costs you might incur if you have to untangle problems later. You can take a look at the ingredients for a basic airplane buy/sell agreement a bit later in this chapter. The CD that accompanies this book also contains a specimen agreement you and your lawyer might find helpful as a starting point for drafting your own agreement.

Warranties

The UCC also provides guidance on warranties. Creating or disclaiming warranties can be one of the most important elements of your aircraft buy/sell deal.

First, let's take a look at how the law defines a warranty. Generally speaking, a warranty is considered to be a promise or guarantee that the goods you are selling or buying will meet certain standards. Therefore, if the airplane you are selling fails to meet those standards, then the buyer may have the ability to recover damages against you.

If you are involved in an aircraft buy/sell transaction, you have to make some decisions regarding warranties. If you are the buyer, are you going to demand warranties as part of your deal? You may certainly be interested in extensive warranties—especially if you are purchasing a brand new airplane, or an airplane that is still covered by manufacturer's warranties. However, even if you are purchasing a used aircraft, you might expect certain warranties to apply. For instance, the seller may be representing that her aircraft had a complete engine overhaul a specified number of flight hours before your intended purchase. You may want to require that the seller warrant that important representation before you make your purchase.

If you are the seller, you most likely want to avoid being held liable for any warranties. Again, warranties may be an unavoidable part of doing business if you are a manufacturer selling a brand new airplane. However, if you are selling an aircraft you purchased used or an airplane you have used for many years, you may have a justifiable concern if you are asked to make warranties concerning issues that may predate your purchase of the aircraft. You may not even want to warrant the condition of the aircraft in any manner. After all, you have placed your faith in the maintenance logbook of the aircraft and the certificated mechanics that worked on your aircraft. Do you want to stick your neck out based on someone else's work?

Before you start making demands or decisions regarding warranties on the aircraft you are buying or selling, you should be aware of the different types of warranties recognized by the law in the UCC. There are essentially three types of warranties recognized by the UCC—express, implied, and warranties of title.

Express warranties. Express warranties are warranties that come from the actions or words of the aircraft seller. If you are an aircraft seller, you may be surprised to find that your actions or words can create a warranty. This is true even if you do not specifically use the words “warranty” or “guarantee” in discussions with your buyer (this should help you more clearly see the need for a written agreement).

UCC Section 2-313 tells us that express warranties can be created in three different ways. First, you can create an express warranty by making an affirmative statement of fact or tacitly guaranteeing that your airplane has certain features or capabilities. A second method of creating a warranty is to use certain descriptive words in reference to your aircraft. One final way for you to create a warranty is to use a sample or model intended to represent the airplane you may be selling. Under any circumstance, if you are the buyer and you wish to hold a seller to an express warranty, you will have to show that you relied on the warranty in making the decision to purchase your aircraft.

Affirmative statements of fact. If you are an aircraft seller, affirmative statements of fact are probably the most likely source of express warranties. Certainly, an express, written warranty by an aircraft manufacturer qualifies as an affirmative statement of fact. However, you can make affirmative statements of fact that create warranties in more subtle ways. For instance, a verbal statement that your aircraft has been painted within the past year may create an express warranty.

In even more subtle ways, your aircraft logbook may be making express warranties on your behalf—and without your knowledge. See how this happens to an unsuspecting seller in Case 1-1.

Case 1-1

Edward Miles, Richard W. Keenan and Kenneth L. “Dusty” Burrow, Appellants, v. John F. Kavanaugh, Appellee
Court of Appeals of Florida
350 So. 2d 1090 (1977)

OPINION BY: Hubbart, J.

OPINION: This is an action for breach of express warranty and misrepresentation in the sale of an airplane. Judgment was rendered for the plaintiff-buyer and the seller-defendant appeals. Party defendants responsible for repairing the airplane prior to the sale also appeal. We affirm.

In March, 1973, the plaintiff [John Kavanaugh] answered a newspaper ad placed by the defendant [Richard Keenan] advertising the sale of a used 1956 Cessna 172 private airplane. The plaintiff and defendant Keenan met on several occasions to examine the airplane and to discuss the sale. The defendant Keenan stated that the engine in the airplane had recently been completely overhauled during which time a number of new mechanical parts had been placed in the engine. The defendant Keenan gave the plaintiff an engine and propeller logbook detailing the mechanical repair and flight history of the airplane which the plaintiff carefully inspected.

The logbook reflected that on May 16, 1972, the engine had been given a major overhaul in which new mechanical parts were placed in the engine all in conformity

with the manufacturer's engine overhaul manual. The repair work had been done by the defendant [Kenneth L. "Dusty" Burrow] whose work was certified in the logbook by the defendant F.A.A. inspector [Edward Miles]. Based on the accuracy of this information, the plaintiff purchased the airplane from the defendant Keenan. The plaintiff specifically testified that he would not have purchased the airplane had he not been able to inspect and rely upon the information contained in the logbook.

The plaintiff flew the airplane without incident for several months. Thereafter, he experienced a harrowing engine malfunction while the airplane was in flight. On December 5, 1973, he took off from a narrow airstrip in the Everglades approximately fifty miles out of Miami. After takeoff, the engine began to lose power, shake violently and emit a loud clanking sound. The plaintiff was barely able to land on the Everglades airstrip without crashing.

Subsequent thereto, the plaintiff had to arrange at considerable expense for the airplane to be transported in parts to an aircraft repair shop and there completely reoverhauled. It was there discovered that the prior overhaul had not included new parts as represented and that the prior overhaul had been performed in a completely defective manner. All parties to this appeal agree that the logbook contained inaccurate, misleading and false information about the prior repair history of the airplane.

The plaintiff paid approximately \$350 to transport the airplane from the Everglades for repairs and \$5,700 for the re-overhaul job. In addition, the plaintiff estimated his loss of use of the airplane during this repair period to be \$600.

The plaintiff sued the defendant Keenan and the defendants Burrow and Miles for breach of express warranty and misrepresentation. After a non-jury trial, the court awarded a judgment in favor of the plaintiff against all defendants in the amount of \$5,800. The defendant Keenan appeals questioning his liability on the sale of the airplane as well as the amount of damages awarded. The defendants Burrow and Miles appeal solely on the damages issue.

I

The first issue presented by this appeal is whether a private party, who sells his used airplane to a buyer and to induce the sale shows the buyer an engine and propeller logbook setting forth the repair history of the airplane, expressly warrants the accuracy of the information contained in the logbook within the meaning of Florida's Uniform Commercial Code, Section 672.313, Florida Statutes (1975). We hold that the seller expressly so warrants the accuracy of the information contained in the logbook where it forms part of the basis of the bargain between the parties.

The controlling law in this case is set forth at Section 672.313, Florida Statutes (1975), as follows:

"672.313 Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) *Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.* [Emphasis added.]

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) *It is not necessary to the creation of an express warranty that the seller use formal words such as 'warrant' or 'guarantee' or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement*

purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." [Emphasis added.]

The official comments of the above provision of Florida's Uniform Commercial Code is instructive on the issue presented in this case and state in part as follows:

"(1)(b) makes specific some of the principles set forth above when a description of the goods is given by the seller.

A description need not be by words. Technical specifications, blueprints and the like can afford more exact description than mere language and if made part of the basis of the bargain goods must conform with them." [Emphasis added.]

In the instant case, the defendant Keenan gave the plaintiff-buyer the engine and propeller logbook which, much like a blueprint, set out in some detail the prior repair and flight history of the airplane. The accuracy of the information contained in the logbook formed the basis of the bargain as the plaintiff relied upon the accuracy of such information and would not have purchased the airplane if he had not been permitted to see the logbook. The logbook thus constituted a description of the goods purchased by the plaintiff and an express warranty of the accuracy of such description.

The defendant Keenan argues that he never in so many words warranted the accuracy of the information contained in the logbook and was in fact ignorant of the admittedly false information on the prior repair history of the airplane. The simple answer to that argument is that an express warranty need not be by words, but can be by conduct as well, such as, the showing of a blueprint or other description of the goods sold to the buyer. Moreover, fraud is not an essential ingredient of an action for breach of express warranty and indeed it is not even necessary that the seller have a specific intention to make an express warranty. It is sufficient that the warranty was made which formed part of the basis of the bargain. We find such an express warranty in this case through Keenan's showing of the logbook to the plaintiff without which this sale would never have been made. For breach of such warranty, the defendant Keenan is liable to the plaintiff. *Downs v. Shouse*, 18 Ariz. App. 225, 501 P.2d 401 (1972).

II

The second issue presented by this appeal is whether the measure of damages in a breach of warranty action in the sale of a defective airplane may include the expense of transporting the airplane for repairs, the expense of overhauling the airplane, and damages due to a loss of use of the airplane during repairs. We hold that such expenses and losses are recoverable when proximately caused by the breach of warranty.

The law is clear under Florida's Uniform Commercial Code that the measure of damages in a breach of warranty action where the goods have been accepted by the buyer include any consequential damage proximately caused by the breach of warranty. Sections 672.714(3), 672.715(2), Florida Statutes (1975); *Council Bros., Inc. v. Ray Burner Co.*, 473 F.2d 400 (5th Cir. 1973). In the instant case, the plaintiff's expenses in transporting the airplane for repairs and overhauling it to conform to the express warranty as contained in the logbook plus the loss of use of the airplane during the repairs were all proximately caused by the breach of express warranty. Consequently, all such expenses were recoverable in this case.

The defendants do not contest the above principles of law but contend instead that the overhaul bill was excessive and unnecessary. Without going into detail as to each part replaced and the technical mechanical nature of the overhaul, we are satisfied that the bill was reasonably related to restoring the airplane to its original warranted condition and see no valid reason for upsetting the award made. *Downs v. Shouse*, 18 Ariz. App. 225, 501 P.2d 401 (1972). The judgment appealed from is in all respects affirmed.

The moral of this case is that aircraft sellers must be sensitive to the fact that they may be making warranties whenever they present logbooks for inspection by buyers. Whether they are willing to be held liable for those warranties is a question that should be addressed in a well-drafted aircraft buy/sell agreement.

If you are buying a new airplane, the seller will usually make an express, written warranty. Often the warranty will be a “limited” warranty. Usually the warranty is considered limited because it will extend for a set amount of time after your purchase (usually a few years). Your new aircraft warranty will often be limited to defects in material and workmanship under normal use. Every warranty is different, so you are obliged to read the warranty on your new aircraft carefully. One big question you may want answered is whether the warranty covers airworthiness directives (ADs) (see Chap. 7) issued within the warranty period. You may also want to know exactly what parts are covered, and those that are specifically not covered by the warranty. Many manufacturers’ warranties have an extensive list of components and parts not covered by the warranty.

Description of the airplane. Another way you can (knowingly or unknowingly) create a warranty is to use descriptive language in the process of selling your aircraft. Generally speaking, the law says that if you use certain “trade terms” to describe your aircraft, you may have created an express warranty. One possible example of such a warranty would be a description of an aircraft as being “airworthy” or “aerobatic.” Here again, a well-drafted buy/sell agreement will go a long way toward clarifying your intentions and the intentions of the other party.

Use of “samples or models.” The law also states that if you use a sample or model, you may create a warranty. Practically speaking, this type of warranty may only apply if you are an aircraft dealer or a purchaser buying an aircraft from a dealer. The most obvious example of the creation of this type of warranty would include a demonstration flight in an aircraft that is meant to replicate the flight characteristics of the aircraft to be sold. If the aircraft you purchased or sold does not measure up to the aircraft used as a demonstrator, it may trigger a claim that express warranties were breached.

Reliance by purchaser. UCC section 2-313 indicates that an express warranty is only created if the buyer reasonably relied upon the warranty in deciding to make the purchase of an aircraft. Sometimes courts have said that in order for an express warranty to be created, the warranty must have become the “basis of the bargain.”

The first circumstance where this would come into play is the situation where the seller makes certain statements about an airplane and the situation indicates that the parties intended for the statements to become a part of the aircraft sales agreement. This would be apparent in a circumstance where the seller indicates in a written sales agreement that the aircraft she is selling is IFR capable. If the buyer indicated that he intends to do substantial IFR flying, the representation that the aircraft is IFR capable has obviously become part of the “basis of the bargain” and an express warranty has been created.

A more difficult situation may exist if the statement was not made in the written sales agreement, but sales literature posted by the seller in pamphlets or website advertisements indicates that the aircraft being sold is IFR capable.