



## Acquiring an Aircraft – Timing Considerations -By Keith G. Swirsky-



The process of acquiring a used aircraft can go smoothly, or it can have bumps in the road. The bumps will generally relate to various issues, including notably, coordinating the timing of all aspects of the transaction to allow a closing without delays. Imagine putting together a five course dinner, and when the entrée and other courses are cooked to the right temperature, the baked potato has another thirty minutes left, turning a perfect meal into one that is less than ideal. Or worse, imagine putting together an aircraft transaction this way. The purchase agreement typically lays out the timetable for the buyer to proceed with closing, usually within two days after the aircraft is returned to service from the inspection facility. In the event that a “baked potato” is still cooking by the closing deadline and the buyer is unprepared to proceed to a closing, the seller could potentially declare the buyer in default under the purchase agreement and/or leverage the delay to negotiate more favorable terms.

Once an offer letter is executed, it is reasonable to assume that the process of negotiating a purchase agreement and conducting the inspection and corrective work could occur as quickly as three or four weeks, assuming the aircraft is not a new model still under warranty, which could shorten the timeframe. This article discusses significant timing issues that must be addressed in the context of this three to four week timetable.

When a buyer finances the purchase of an aircraft, now more than ever, the financing is usually the “long pole in the tent,” so to speak. The financing process, beginning with selecting a lender and ending with funding the closing, typically requires the longest lead time in an aircraft deal (assuming the buyer has identified an aircraft for purchase, has an offer letter and there are no repairs with particularly long lead times). The process of selecting the lender normally takes three weeks once the initial phone calls are made. This timetable includes obtaining several loan proposals, selecting the best lender and negotiating to improve the loan terms being offered. Some lenders will submit a loan proposal without having financial statements of any type in their possession (although financial statements will be required later in the process), while other lenders require a high level financial disclosure before submitting a loan proposal. Further, most lenders will ask for the specific aircraft specifications, and a copy of the purchase agreement (or at least the offer letter).



Once the buyer selects the lender and executes and performs under the term sheet, the lender will proceed to credit committee approval. The credit committee approval process has become more comprehensive today than at any time historically. Not long ago, credit committee approvals could be rushed and based on limited documentation. Now the lending environment requires substantial financial disclosure and due diligence. Depending on the borrower's trade or business (meaning, whether it is easily understandable by the lender), the quality of financial statements and other data submitted, and other considerations principally concerning the buyer's creditworthiness, the credit committee approval process can take anywhere from one to four weeks.

In many cases, the lender will not prepare loan documents until credit committee approval is imminent. After circulation of the loan documents, it is reasonable to allow one to two weeks for review and negotiation between the buyer's and lender's counsel. During this time period, lender's counsel would also circulate a closing checklist, identifying all documents needed by the lender to close the loan. Lenders' closing checklists have grown significantly in the number of documents needed; and again, additional time must be built into the process to ensure that the buyer has the time to provide to the lender all documents required in closing checklist. It is prudent to add an additional three to five business days to anticipate the delays associated with providing and correcting all such documentation.

Adding up the weeks identified above, starting from contacting lenders to funding the loan, the buyer should allow from seven weeks to ten weeks. While the minimum is certainly possible, the maximum is realistic, and a prudent buyer should plan accordingly. Thus, in order to coordinate an aircraft purchase transaction without any finance related "baked potatoes" delaying closing, the buyer should start the process of selecting a financial institution prior to signing a letter of intent to purchase an aircraft.

This advice has an inherent problem. As mentioned, many lenders are reluctant to provide a financial proposal without identifying a specific aircraft by serial number. Lenders are accustomed to basing the payments and other terms on the age and anticipated residual value of a specific aircraft. Because of this inherent problem, a buyer will need to narrow down the targeted aircraft to a few aircraft models, years, and prices. Without a specific aircraft, unless the targeted purchase range is narrowly defined, it will be difficult for a lender to provide an accurate financial proposal.

On the basis of the assumption that the buyer will narrowly define the aircraft model, year and price to help the lender to provide a financing proposal, the buyer should indeed select a lender and provide a comprehensive financial package prior to entering into an offer letter for the acquisition of an aircraft. After the aircraft is selected, the buyer can request credit committee approval, and the timeline suggests that the loan can be funded in four to seven weeks. At the four week mark, this should coordinate well with the balance of the transaction; at the seven week mark, the loan process could be a delaying factor in the transaction.

Other considerations related to financing may also be present in the purchase transaction. For example, in the event the aircraft is being imported to the United States, there will be a very clear requirement by the lender regarding deregistration and issuance of the U.S. Certificate of Airworthiness as part of the closing, which should be clarified prior to the execution of the purchase agreement. Further, lenders may have last minute appraisals or "final" internal document reviews needed prior to funding. Any



lender requirements that might delay the closing should be determined in advance, and reflected in the purchase agreement. The typical language that closing will occur within a limited number of days of the return of the aircraft to service may have to be modified, which could come at some cost if done after signing the purchase agreement.

There are other timing considerations that are relevant and should be anticipated. Many delays in transactions relate to unanticipated repairs or maintenance or delayed parts. Many times, sellers and/or brokers, eager to proceed to a closing (out of concern that the buyer may not perform), request a closing date to be scheduled prior to completion of the inspection and corrective work. Buyers may liquidate investments, or, more likely, schedule a trip on the aircraft, anticipating that the closing date will be met. Certainly misplaced expectations will turn into disappointment, and unnecessary pressure will be placed on the parties. While the transaction closing typically is not jeopardized, the buyer's representatives will be pressured to discuss ways to accelerate a closing. This can lead to rash decisions made without sufficient thought and from a disadvantageous bargaining position.

Separately, state tax planning should be conducted well ahead of the anticipated closing date. In today's environment, states are hungry for sales tax dollars, and it is particularly important to review the relevant state law statutes, make any necessary filings, and put into place any needed documentation prior to closing. The timetable should ideally allow two weeks to conduct and implement any needed state tax planning.

Lastly, while not necessary to conducting a closing, when an aircraft management company is retained by an aircraft buyer, it is customary for the management company to assist in any pre-purchase inspection oversight, particularly if the aircraft is being placed on the management company's Part 135 charter certificate. If this is the case, then the parties will likely desire to have the management and charter documentation executed prior to closing. This process includes selection of a management company, negotiation of the business terms of the deal, and preparation and negotiation of management company documentation. Ideally, two or three weeks should be factored in for these activities.

To allow for an orderly purchase process, two checklists should be created. One checklist should relate to timing matters and should show a timeline reflecting all aspects of the transaction. The second checklist should be the document production checklist and assignment of responsibilities with due dates associated therewith. In the event of financing, there would likely be another checklist prepared by the lender and dedicated to the loan and ancillary documents. Attention should be given to these matters to allow for a smooth aircraft purchase transaction.

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