

LOOKING AT DEALS THROUGH THE REAR VIEW MIRROR



Whether it is a song on the radio reminding you of a place you have been or a beautiful sunset, the idea of looking back usually evokes good feelings and great memories, but sometimes it can also evoke feelings of regret and disappointment. It is no different in the aircraft transactions we all have been involved with. Either as end users or aircraft professionals, sometime during our ownership or sales career we have looked back.

This article is not about the good feelings of the past, but rather about the idea that if I could do it over I would do it differently on the structural or detail level of the deal. This article is about learning from the past and working the deal with more care and a greater eye towards details.

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Let's say an owner gives a set of aircraft specifications to the broker. In more cases than not, the broker will update times and reprint them on his or her letterhead. Big mistake. If they are reprinted as I just stated, then there is an obvious reliance that overtakes the responsibility of the broker to verify and endorse rather than just reprint. The prospective buyer may later say I relied on those specs to buy your aircraft.

A broker must verify the specs either in person or through one of his or her technical staff prior to printing. Of course, the responsibility of the buyer is to also verify and not totally rely on the specs. In fact, most specs have some verbiage printed on the bottom of the spec sheet that says, "Specifications are subject to verification". If each of the participants in the transaction - the owner, the broker and the buyer - rely less on someone else to do the work and take verification responsibility sooner and more often for themselves, less disputes will arise.

Getting past the specifications comes

a good contract after so many iterations.

There is no excuse for not bringing in an aircraft specific attorney to help in this process. In fact the view from the "rear view mirror" will almost always show that it is here in the contract that the vagueness of the contract or even a slight shift of words will allow one side of the deal or the other to claim reliance and be able to claim no responsibility for a deal gone bad!

Assets are being bought and sold with such high value, that not investing in the team here in the contract phase is just asking for a problem. Next comes the pre-buy inspection. This is such an important piece of the puzzle. I believe that it is at this point that the responsibility of the buyer to understand and accept inspections begins in earnest.

Buyers should choose facilities that are familiar, or even better, authorized service facilities of the specific manufacturer. The most expansive inspection should be carried out on the buyer's behalf and at the buyer's expense. As a buyer, this is insurance, this is where the rubber meets

“BOTTOM LINE - BE RESPONSIBLE IN A DEAL. DO NOT SIT BACK AND RELY ON THE OTHER PARTY TO BE RESPONSIBLE FOR YOU!”

I have written several articles over the years about building the winning team, the structure and parts of a deal and the complexities of sales transactions. Since an economic shutter like the one we are going through always brings new entrants to the field of ownership as well as a flood of new people hanging up a shingle to be aircraft professionals, I thought I would re-address the topic of doing it right so looking back through the rear view mirror will evoke the thought of a beautiful sunset and good feelings!

There are many parts to selling an aircraft. Let's start way back and move through it step by step. If one is a broker and not a dealer, there tends to be a natural reliance on the owner to supply accurate information on the listing. This reliance then passes to the prospective buyer who expects the broker's information to be correct. At what point must each participant move off of the reliance position and on to the responsibility position?

the offer letter. This is typically, but not always, a non-binding document that sets out the buyer's desire to buy with offer price and terms. This is again, another critical part of the transaction and should not be minimized just because it is considered non-binding. Each party to this letter, the buyer and broker, should be considered responsible for its accuracy and for understanding the details. Great care should be taken to read and respond to it literally and not to interpret it. The response should be clear and provide no room for misunderstanding.

If from this set of communiqués a deal in principle is struck, it should always be followed up with a mutually agreed upon purchase contract. This is a vital part of the roadmap and must be detailed and factual in its development. More times than not a contract that was used years ago just keeps getting used and often as it passes from one broker to the next keeps getting changed. Sometimes these changes are only slight but it may not be

the road and your informed decisions about proceeding or not to purchase are made. If reliance in the deal continues past this part of the deal, it should be a reliance on the part of the inspecting facility, not the broker or owner of the aircraft. I caution each of you as buyers to read carefully the small print of the work order signed at the inspecting facility and be sure that you do not allow the facility to waive its responsibility for negligence and reliance upon its findings.

Bottom line - be responsible in a deal. Whether you're the buyer or seller, you have a responsibility to be aware, alert and accountable in your part of the transaction. Do not sit back and rely on the other party to be responsible for you. Keep the rear view mirror for those good feelings and great sunsets, not as a road map for wishing you had done it differently.

■ Jay Mesinger is the CEO of J. Mesinger Corporate Jet Sales, Inc. He hosts the Aviation Leadership Roundtable found at www.jetsales.com and is also the Chairman of NARA (National Aircraft Resale Association).