

Could this method slash your flying costs?

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Perhaps you like the idea of shared aircraft ownership but not the costs and flight-time limitations that accompany a contract with a fractional provider. If so, you may be a candidate for a deal in which two or more private parties agree among themselves to share an aircraft. Such an arrangement can give you access to a business jet almost on a par with whole ownership but at significant cost savings.

No one knows for sure just how many shared jets are flying. The FAA doesn't track shared ownership by category but reports that the vast majority of co-owned aircraft are piston-powered models shared by owner-pilots. Aviation attorneys and aircraft brokers see growing interest in the concept among business jet users, however.

"Everybody is looking to cut expenses in every area, so people are really attracted to the idea that they can get the lift they need and have somebody to share expenses," said Jonathan Levy, legal director of Advocate Consulting Legal Group in Naples, Fla., which specializes in aviation law and handles shared ownerships.

Aviation consultant Michael Fleming agreed. "Sharing of aircraft has been steadily increasing over the last two decades, [part of the trend of] making private aircraft available to companies or individuals with lower levels of usage," said Fleming, an attorney at the Wicks Group in Washington, D.C. and author of a National Business Aviation Association white paper called "Avoiding the Pitfalls of Sharing a Business Aircraft."

Could shared ownership make sense for you? For some individuals who've outgrown their jet cards or fractional shares and companies that are flying a lot less than they used to, the answer might be yes. Now come tougher questions: How do you find a suitable co-owner? And how do you ensure the union's success?

"Shared ownership works really well from a cost perspective," said Mike Nichols, an NBAA vice president, but he added a caveat: "It's great in theory, but difficult to manage. It's like a combination of marriage and a business deal."

Comparisons between shared ownership and marriage are common, which isn't surprising. Trust, communication and common values are among the requirements for success that experts cite. Co-owners cast their fortunes together, sharing an asset that's typically worth millions of dollars, and the decisions they jointly make impact the cost, safety, utility and every other aspect of the experience. Usage patterns, operating philosophy and personalities have to be in alignment for the relationship to work.

Similarities to marriage start with the difficulty of finding a suitable partner. You can probably identify several companies or individuals with a need for lift that complements yours. But unless they operate from the same airport or one very close, ferrying expenses could quickly erase any savings co-ownership would offer.

The Internet provides little matchmaking help, as no online service yet exists to hook up prospective jet partners. But that's OK, because your search should be localized. Tell aircraft brokers, area FBOs and charter operators and whoever's providing your lift now of your interest in shared ownership.

In the ideal shared-aircraft arrangement, the owners each need the airplane for about an equal amount of time, and they split fixed costs evenly. But if one owner wants 400 hours per year and the other 200, fixed costs can be apportioned accordingly. More important than hours flown is how prospective co-owners use the airplane (see 'Questions to Ask When Considering Shared Ownership' below).

Keep in mind that it's illegal for an owner to receive compensation for use of a business jet operated under Part 91—even from other owners. But exceptions in Part 91.501 of Subpart F, which applies to aircraft in excess of 12,500 pounds (maximum

takeoff weight) and all multiengine turbofan aircraft, define several shared-ownership arrangements that allow co-owners to receive payment for flight time.

Another critical issue: who besides the owners will have access to the aircraft? A company or individual may want to make the aircraft available to subsidiary companies, for example. If you or a co-owner anticipate using some of your flight time this way, you should agree on the extent of the usage and ensure that the sub-leasing arrangements are structured appropriately.

The two basic forms of shared private ownership are co-ownership and joint ownership. Which you choose depends on which owners provide the crew, how costs are shared, tax and liability considerations and other factors. A key point: if sharing in some form makes sense to the prospective owners—one wants the jet for personal use and the other for business or one plans to fly the aircraft herself and the other two want to have it professionally crewed—the ownership can be structured accordingly. The FAA’s regulatory framework provides enough flexibility to accommodate a wide range of shared-ownership situations.

In co-ownership, each co-owner may operate the aircraft independently or contract out individually or collectively for crew and management services. Companies have been sharing aircraft this way almost since business jets began flying. Hiring a management company can make this a workable option even if one or all owners don’t want the responsibility of operating the aircraft for themselves.

In joint ownership, codified under Part 91.501(c)(3), owners have more flexibility in charging among joint-registered owners. One owner can provide the crew and “each of the registered joint owners pays a share of the charge specified in the agreement.” This can minimize crewing complications, but attorney Fleming notes that joint ownership can be cumbersome if the arrangement involves several owners, which would also increase the risk of it being deemed an illegal “for hire” operation by the FAA.

Non-U.S. citizens face complications in entering shared-ownership arrangements due to Department of Transportation prohibitions against “foreign civil aircraft” receiving “remuneration for hire,” and arising from foreign nationals’ inability to register the aircraft as a U.S. citizen.

Sharing options including interchange and dry leasing allow compensation for access to a business jet operated under Part 91, but these arrangements don't involve shared ownership.

Tax and liability issues in shared arrangements can be complex, partly because where and why one owner operates the aircraft can affect federal and state taxes of all owners. "It doesn't matter where the aircraft is registered, but where it is hangared or operated," said Nel Stubbs, vice president of aviation consultancy Conklin & de Decker.

For example, an airplane purchased outside of but flown within California can escape state use taxes if it's employed in interstate commerce. But if one owner flies to California for personal reasons while the others go strictly for business, the aircraft could be ineligible for the exemption. Your agreement should specify who is responsible for taxes when you're not the one onboard, Stubbs said.

On the federal level, depreciation schedules for individual owners will be affected by other owners' use. Additionally, the IRS doesn't always agree with the FAA that these arrangements are non-commercial and has in some cases held co-owners liable for the same Federal Excise Tax levied on charter and fractional flights.

In considering liability and insurance, the owners' assets are only one factor, said Brint Smith, vice president of John F. Throne & Co. Insurance Marketing in Seattle, and chair of the NBAA Aviation Insurance Committee (AIC). Aircraft type and seating capacity, its usage and operational territory and the crewing policy must also be factored in. If the owners' risk profiles differ substantially, the costs can be apportioned accordingly, said John Averill, an insurance broker with the aerospace division of Insurance Office of America.

"That just happened to me last week," added Averill, who is a member of the NBAA's AIC. "One owner was completely satisfied with \$50 million [in liability coverage]. The other said, 'We've got to have \$100 million,' so that's an additional 3,300 bucks. The second [owner] will pay the difference."

Regardless of the insurance policy, if you or your co-owner operates the aircraft in a

manner that breaches the coverage, the insurance for all owners can be invalidated. An “invalidation of insurance” clause can protect the other owners in these situations, but such clauses, which are common on large fleets, are difficult to obtain for a single aircraft, Averill said.

Shared ownership is an option not just for prospective aircraft buyers but also for current owners with more airplane than they want or need. Stubbs said her company has seen more interest among current jet owners in selling a share since the economic downturn. But selling a share in a wholly owned—or already co-owned—aircraft is more challenging than going into shared ownership from scratch.

“When you sell an interest in an existing airplane, you have brown lace-up shoes size 11, and if someone wants size 12 in black, they can’t buy in,” noted Josh Mesinger, vice president with Boulder, Colo.-based J. Mesinger Corporate Jet Sales. Mesinger has purchased several jets on behalf of co-owners. To improve the odds of arranging such a deal, Mesinger advised, owners should network and spread the word about its availability among business associates. But he added that many owners in this position “don’t want friends to know” they’re trying to sell a portion of their airplanes.

Stubbs said anyone thinking about buying into a jet this way should find out whether there are any liens on the aircraft, review its historical operating costs and determine responsibility for upcoming scheduled maintenance. For example, if a hot section overhaul on the engine is due soon, what part of the cost are you expected to pay?

If co-ownership is like a marriage, then a shared-ownership agreement is the all-important prenup, with one major difference: the agreement codifies rules designed to maintain the relationship, not define what happens if it fails. The agreement spells out all aspects of the arrangement: how the aircraft will be operated, how access will be shared, how scheduling will be handled and how costs will be apportioned. It also covers aircraft maintenance and upgrades policies and even the minimum runway lengths the co-owners may use.

Paradoxically, one of the first orders of business in drafting a shared-ownership agreement is determining when it will end. “Co-ownership should have a finite life,” said attorney Levy. “Figuring a way to smoothly unwind [ownership] in advance is

very important.” He suggests a three-year period, with the option of extending the agreement, ensuring all access to a jet for a reasonable period without unduly shackling an owner who wants to exit the arrangement.

You should consult an aviation attorney, not a general corporate attorney, to draft a shared-ownership agreement. “These matters are highly specialized, and approaches that might appear to make sense to corporate counsel, such as placing the aircraft and flight department in a special-purpose company, can have dramatic FAA or tax implications,” said Fleming.

Costs of handling the paperwork vary with the complexity of the transaction. Levy’s firm charges a fixed fee, an atypical practice, usually between \$3,000 and \$25,000 depending on the size of the aircraft. Whatever the amount, it’s almost invariably money well spent considering the benefits shared ownership can yield—and the price an ill-advised arrangement can exact. As Fleming noted, “While there is a cost associated, it pales in comparison to such things as the tax and liability exposure.”

Questions to Ask When Considering Shared Ownership

Before inking a shared-ownership deal, you need to ask lots of questions to make sure you and the other owners are a good fit, advised aviation attorney Michael Fleming. “I had a client’s partnership fail because one of the partners smoked in the aircraft.

“Ask, ‘Can we get along with this partner?’” Fleming suggested. “‘Can we share cooperatively without conflict? Do we work and play well together?’”

Here are some more questions to consider:

- Will the same category of jet work for all?
- How frequent are multi-day trips that keep the aircraft inaccessible to the other owner or owners?
- Do one or all owners have frequent pop-up trips that could conflict with another owner’s needs?

- Conversely, do you travel to the same cities, possibly enabling you to double up and further cut costs?
- Do the owners share views on avionics upgrades, carriage of pets and other matters large and small?
- Who will provide the crew?
- How will scheduling be handled?
- How will the owners be billed?