

The Legal Side of VLJ Ownership, Part I:

There are important legal considerations for the individual VLJ owner; fractional share owner; VLJ fleet owner; and the VLJ block-hour card owner. We are not in the business of law at Very Light Jet Magazine so we enlisted the services of J. Christopher Robbins, Esq., senior partner of Robbins Law Firm, P.A., to guide us through the maze. Part I will deal with some of the legal considerations for the individual VLJ owner.

Chris is a lawyer, a private pilot, an NBAA member, and an aircraft owner. He serves as counsel to many companies in the aviation sector, including air charter companies, aircraft brokers, FBOs, corporate flight departments, and aircraft manufacturers. In addition to handling transactions and legal compliance, Chris' firm has defended air-crash litigation. Chris is also a published author and he frequently lectures on aviation law and entrepreneurship.

VLJM: Chris, tell us about the legal structure of VLJ ownership as it applies to the Individual VLJ owner. Should the jet be titled to a corporation?

CHRIS ROBBINS: Regrettably, there is no easy answer to the question of how one should structure the ownership of a new VLJ. Thanks to conflicting government regulations and a policy battle between the FAA and the IRS, this remains a touchy subject for many aircraft owners.

When confronted with this issue, most corporate attorneys will have a knee-jerk reaction and advise you to title an aircraft in the name of a single-asset or "pass-through" entity. That is a company that will own the aircraft and likely nothing else, a strategy to minimize your exposure in the event of a loss. This corporation or LLC, they would further urge, will then provide the aircraft to you or your core business as needed.

And your lawyer and accountant will probably further advise you to run the new aircraft-holding company business as if it were an earnest for-profit venture, so that you may satisfy current IRS regulations that stand between you and the fruits of depreciation. This is incomplete advice and a trap for the unwary.

As it turns out, government, like turbojet aircraft, sometimes follows Sir Isaac Newton's Third Law of Motion. For every force there is an equal and opposite force. In this case, the force of the IRS is opposed by that exerted by the FAA.

In stark contrast to the IRS regulations are tough FAA rules. Under these rules, a corporation, LLC, or other entity cannot operate an aircraft for hire unless it first obtains a commercial operating certificate under parts 121 or 135.

At first blush, you would not be out of line to wonder how you are providing aircraft "for hire" when you are piloting or riding in your own jet. Indeed, the regulations at issue once focused only on bona fide commercial operators like airlines and air taxi services.

No longer. On the theory that nearly anyone providing air-transportation should be subject to the world's most comprehensive safety and operating regulations, the FAA has redefined what "for hire" means. FAA regulations, including the so-called "major enterprise test," have determined that your single-asset entity is providing you air transportation for hire, even if no money changes hands and you are the only passenger or pilot. Making matters worse, these regulations are vague and almost always construed against owners.

Luckily, there are clever workarounds that often satisfy both federal government agencies, as well as your liability insurance carrier. They are, however, largely fact-driven and will be determined by the nature of your business, the

intended use of your aircraft, the number of anticipated users and investors, taxation objectives, and other issues.

Traditional Considerations

As most of us know, the primary motivation to go through these hoops is to secure limited liability protection. This concept is the centerpiece of any question posed by your risk-management department that starts with the words, "what if?" What if my plane crashes? What if my passengers are injured during a turbulent flight? What if there is damage to personal property? When these things occur, you - and your core business - need to be insulated from claims.

Whatever structure your new company takes, there are traditional considerations, driven by the laws of your state or the state of incorporation. To achieve your risk-management objectives, you and your partners, if any, must adequately capitalize the company, observe corporate formalities, abstain from commingling corporate funds with personal funds or funds of other entities, file corporate tax returns, pay payroll taxes when applicable, document corporate decisions, and much more. Failure to do so can spell peril in the event of a loss or catastrophe.

Similarly, an aviation sector corporation or LLC needs special bylaws or articles of organization (mentioned below). These are to your company what the Constitution and Bill of Rights were to the nation. Your aviation attorney will help you craft these.

We often hear that the LLC is the device of choice for aircraft ownership. Does this option actually protect an owner from liabilities relating to use and operation of the VLJ?

While LLCs are very popular, they are not right for everyone. Let's briefly review the benefits and drawbacks of the limited liability company:

An LLC provides its owners with the potential protection against personal liability and an option to be taxed as a corporation or to exist as a pass-through entity. In addition, with an LLC, profits and losses can be distributed in a variety of ways; the distribution is not limited to percentage of ownership.

An LLC also offers flexible management structure. Founders are free to organize them in nearly any fashion they see fit. In some states, there is also less ongoing paperwork than a corporation; An LLC is not required to hold annual meetings or to keep formal minutes, while an S Corporation is required to do so.

Whereas only U.S. citizens and resident aliens may own an S Corporation, an LLC can be owned by any combination of individuals or business entities. There is also no limit on the number of investors.

That said, LLCs have certain drawbacks, too. While they require less on-going paperwork in most states, they require far more to get started - at least correctly. Since there are few state-imposed guidelines, LLC founders must draft comprehensive operating agreements to address many basic issues and to minimize the likelihood of future disputes.

The dearth of established state law precedents has indeed made LLCs conflict-prone. I have handled a disproportionate number of disputes between LLC owners who failed to draft meaningful (or logical) operating agreements to govern their relationships. Categories of disputes have included whether owners can sell their interest, what their obligations are to cover cash shortfalls or operating losses, whether the manager can divest the LLC of major assets, the fiduciary duties of owners and managers who seek to establish competitive enterprises, and much more.

As you can see, the LLC is hardly foolproof. A lawyer with an aviation law background will be able to tell you whether the LLC is best for you and set it up properly.

What if the owner is also planning to pilot the plane. What are his legal concerns?

This is known as the Owner-Pilot Problem. VLJ operation poses a major pitfall for some of us. Under the law of most states, individuals are always personally responsible for their own negligent acts. It is the same rule applied on the road. For example, if you borrow your brother's automobile and cause an accident on the road, you and your brother can both be held liable for the damages. The rule is the same in the sky. If, as pilot of your company's VLJ, you cause a loss, you could be liable together with the aircraft's owner. And it does not matter that you own the company that owns the VLJ.

If you own the aircraft in a separate entity, you will need to ensure that you are personally covered by insurance when piloting. Since many VLJ owners and users will likely be their own pilots, this is a concern to bear in mind, especially when you start shopping for liability insurance.

How does your firm work with the individual owner and individual owner- pilots of VLJs and what service options do you offer?

Our work includes drafting offers and contracts, negotiating terms, sealing deals, and overseeing closings. We also review aircraft financing and insurance proposals for our clients. We work for buyers, sellers, fractional managers, and corporate flight departments.

Chris - thank you for that valuable information.

Read more about Robbins Law Firm's aviation law services at RobbinsLaw.org.

The Legal Side of VLJ Ownership, Part II will discuss some important legal aspects of the increasingly popular VLJ fractional share owners and VLJ block hour purchases. Send questions and comments on this series to legalside@verylightjetmagazine.com.