

Preserving Anonymity in Aircraft Transactions and Operations

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In an era where technology has rendered information, especially personal information, more readily accessible than ever before, many prospective aircraft purchasers question how to protect their privacy and maximize anonymity.

Aircraft transactions – and their subsequent operations – involve a variety of documents that contain personally identifying information of the parties involved, even where entities with non-identifying names are used. Some of these documents are required by law to be filed with the Federal Aviation Administration’s (“FAA”) Civil Aviation Registry (“Registry”). Upon filing such documents with the Registry, these documents create a public record of the aircraft purchaser’s personally identifying information that is readily and easily available to any interested party. This article examines the scope and extent of such personally identifying information and provides different ownership and use structure options that an aircraft purchaser can use to preserve anonymity.

Documents in an Aircraft Transaction that Create a Public Record of the Purchaser’s Personally Identifying Information

The following are common documents in every aircraft transaction that are required to be filed with the FAA Registry:

- FAA Form 8050-2, the FAA Bill of Sale form: required to be filed with the Registry to accurately evidence transfer of aircraft ownership. The purchaser’s name, address, telephone number, and citizenship status are required to be provided on this form.
- FAA Form 8050-1, the FAA registration application: required to be filed with the Registry to act as a license plate on an aircraft. This form requires that the purchaser provide their name, address, and telephone number.
- Depending on the type of transaction, certain other documents may need to be filed with the Registry that provide additional personally identifying information, such as loan and security documents if the purchaser is financing the purchase.

Filing these documents with the Registry creates a public record of personally identifying information about the purchaser/aircraft owner. Anyone can request a simple title search on an aircraft or utilize the FAA’s website to search for the aircraft’s registration number to access publicly available personal information about the aircraft owner. This not only sheds light on the history of the aircraft and general facts about it, it also identifies the registered owner, including the owner’s address and phone number.

Methods to Structure Aircraft Ownership to Protect Anonymity

Achieving anonymity in an aircraft transaction invokes a sliding scale of choices. The level of anonymity depends on the level of privacy desired balanced against the amount of time and money the purchaser is willing to invest. If an aircraft is purchased by an individual rather than an entity, the ability to protect privacy is limited. On the other hand, more complicated entity structures using trusts can make it much more difficult for prying eyes to track aircraft movements. In some instances, the owning entity may bear a name that is easily recognizable as part of a larger business brand. Simply disassociating the name of the aircraft owner from a largely recognized brand is an easy first step on the privacy protection continuum. Remembering that data relating to the formation and ownership of business entities is typically available to varying degrees from the Secretary of State’s office in the state where the entity was formed, choices can be made to have the aircraft owning entity owned in turn by another entity or entities that do not blatantly identify a business, brand or individual(s).

An individual purchaser(s) of an aircraft can create a business entity to own the aircraft, such as a limited liability company (LLC), partnership or a corporation. Aircraft are most commonly purchased through the use of such an entity. Using one of these business entities for aircraft ownership can limit the amount of publicly available information about the person(s) behind the aircraft ownership. For example, an aircraft purchaser can create an LLC to own an aircraft, and the LLC can be structured such that no personally identifying information would be available from a review of the FAA website or searching the applicable Secretary of State website. The extent of anonymity depends on the specific business entity utilized and the state in which it is formed. Using these business entities does not guarantee complete anonymity, however, as a title search may yield some personally identifying information depending upon the circumstances. An added benefit of having a business entity own an aircraft is that when created and maintained properly it can protect the principals from personal responsibility for the debts and liabilities of the entity. For example, a bank generally cannot pursue a principal's car or house when seeking repayment of a debt.

Continuing down the scale of increased owner privacy, owner trusts are a commonly used and FAA-approved mechanism to register aircraft. An owner trust is an arrangement where a trustee (generally a business entity) owns the aircraft on behalf of a trustor (an individual or business entity) for the trustor's benefit. The aircraft is titled to and registered under the trustee's name, but the benefit of the trust, including the right to operate the aircraft, goes to the owner of the trust, namely the trustor. Under an owner trust, the trustor enjoys all of the benefits of aircraft ownership while not being publicly reflected as the owner on the Registry. This provides an extra layer of separation and anonymity for the trustor. Additionally, the trust documents that grant rights in the aircraft to the trustor generally are not publicly available. Thus, owner trusts can provide stronger privacy protections than registering through the business entities discussed above. An owner trust also can be used where an aircraft purchaser cannot satisfy U.S. citizenship requirements for aircraft ownership. Those citizenship requirements, however, are beyond the scope of this article. It is worth noting that an owner trust generally should not have either a discernable positive or a negative effect on an owner's tax situation. For these reasons, utilizing an owner trust is a viable tool, though it is not without both initial and ongoing costs.

Once the aircraft has been purchased and registered, one should further keep in mind that there will be publicly available information resulting from onboard equipment. The FAA requires aircraft in certain airspace to be equipped with Automatic Dependent Surveillance-Broadcast ("ADS-B"). ADS-B "Out" transponders – which are used to broadcast aircraft identification, position, altitude and velocity to other aircraft, as well as to air traffic control – include aircraft data linked to the Registry. On Nov. 4, 2019, the FAA announced two programs to ensure operator privacy in light of the new ADS-B requirement: (1) the Privacy ICAO Address ("PIA") Program which was implemented in January 2020; and (2) the Limiting Aircraft Data Displayed ("LADD") program, which replaced a prior, related data blocking program known as a Block Aircraft Registry Request ("BARR").

Certain operations, such as time sharing agreements and Joint ownership arrangements, also require the owner to file a lease to lawfully operate the aircraft; particularly large aircraft subject to the truth-in-leasing requirements of 14 CFR § 91.23. Information submitted to the FAA under these requirements is subject to Freedom of Information Act requests and may be used for identification purposes.

The determination as to what type of entity is best suited to own an aircraft is very fact-specific. It is important to note, however, that in utilizing an entity for aircraft ownership, an aircraft purchaser should be mindful of: (i) avoiding illegal charter; (ii) ensuring that any possible tax consequences are vetted; and (iii) ensuring that tax structuring is consistent with FAA's rules for operating aircraft. As such, it is important for an aircraft purchaser to seek the advice and counsel of qualified aviation counsel and tax specialists at the outset of the transaction to avoid unintended consequences.

Conclusion

Aircraft transactions require filing certain documents with the FAA Civil Aviation Registry that creates a public record of personally identifying information of the aircraft purchaser. The more removed one wishes to be from an aircraft, the more time and expense is needed for the process. Notwithstanding that, owners have tools at their disposal to preserve anonymity, the first step being structuring aircraft ownership through an appropriate entity. However, the specifics of each transaction will dictate the options for how best to structure the aircraft ownership.

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