

An Aircraft Dry Lease Agreement...Think You Don't Need One?

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You're a nice guy. You want to help your friend while simultaneously offsetting some of the unspeakable expenses associated with owning your airplane. This could be a "win-win" opportunity for both of you. So, you routinely let your friend use your airplane and he pays you a fee. Since he's a friend, there's no reason to have a written agreement; right?

After all, if he damages your airplane, he's going to pay to get the aircraft repaired and back to the same condition it was before the damage occurred. While your airplane is out of service for 60 days, he's going to cover the cost of you having to rent another airplane. While he's at it, he's also going to pay you for the loss in value to your aircraft since it now has a damage history and you may not be able to sell it in the future for as much as a similar aircraft with no damage history. What a nice friend.

You're also confident that if there's a mechanical issue while he's operating your aircraft, such as a blown tire due to improper braking or engine damage due to a hot start (neither of which are covered under an aircraft insurance policy), he's going to pay to have it repaired. Why? Because you're friends!

Not so fast! What if the engine damage isn't discovered until your next maintenance inspection, or he says the tire was worn before he flew the aircraft? What if there's no coverage because he violated the terms of your insurance policy while operating the aircraft? What if someone is severely injured and they decide to come after you as the aircraft owner? When it comes to money and personal responsibility, we see lifelong friendships fade quickly. Don't be one of those guys who think it can't happen to you. I currently have a client whose longtime friend and fraternity brother won't return his phone calls after the fraternity brother damaged his airplane. His fraternity brother's response is "See if the insurance company will cover it. It's not my problem." My client considered him family until this occurred. Now he's having to decide whether to sue his former friend or not. A detailed discussion and written lease agreement may have prevented this, or at least outlined who is responsible for what if something goes wrong; and things do go wrong!

This example of "No good deed goes unpunished" is more common than you may think. After all, damage to an aircraft or potential liability if someone is hurt, can result in large sums of money. Who is the court going to believe if there's no written agreement? It's your word and understanding against his.

Although it may be safer not to let anyone use your aircraft, there are some benefits to leasing it including maximizing its use and recovering some of the expenses associated with ownership. However, like any financial transaction, it's important that the owner (the Lessor) and the person leasing the aircraft (the Lessee) understand their respective roles and responsibilities. Don't leave it open to interpretation and assumptions. Spell the terms out clearly in a lease agreement. Even if you're only letting someone use it one time. The cost to you could be significant if something goes wrong.

An aircraft lease agreement should include but not be limited to: the term of the agreement, the amount of “rent”, scheduling of the aircraft, operational control and pilot issues, written inspection and acceptance procedures before the Lessee takes possession of the aircraft, who’s responsible for operating expenses, who authorizes and pays for repairs and maintenance, who’s responsible for buying the insurance, how much and what types of insurance coverage are acceptable, who has title to the aircraft, legal and approved use of the aircraft, inspection of the aircraft by the Lessor, tax issues, how an accident or incident will be handled, who’s responsible for incidental damages such as loss of use, loss of revenue, loss of value, and attorney’s fees, storage and security of the aircraft when in the Lessee’s possession, when and how the aircraft will be returned to the Lessor, indemnification and hold harmless provisions, as well as remedies if either party is in default of the agreement.

In the Insurance section of the lease agreement, you will need to address compliance with all the terms, conditions and endorsements outlined in the policy. Those terms should include approved uses, territorial limitations, pilot approval and training requirements, the agreed hull value for the aircraft, the deductibles, the liability limits, and additional insured status to name a few. You will also need to get approval from your underwriter prior to leasing the aircraft. NOTE: some policies allow for reimbursement of expenses but do not allow you to charge a fee for its use. Discuss your plan with your aviation insurance specialist.

Additionally, you may need to include a “Truth-In-Leasing” statement in the agreement as outlined in FAR 91.23. If so, you will need to carry a copy of the agreement in the aircraft and submit one to your local FAA FSDO prior to beginning any operations under the lease.

Whether you’re the Lessor or Lessee, it’s imperative that you carefully read and discuss the terms of any lease agreement with your aviation attorney, aviation insurance specialist, and your tax advisor prior to signing it. Although it may seem like a lot of work, it may prevent you from having to deal with a costly mess if something goes wrong. ➔