

Guidelines for Joint Ownership Agreements

I. Eligibility Checklist

- A. Determine whether parties are eligible to enter into a joint ownership agreement under 91.501(b)(6)
- B. Joint Ownership Defined, an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement.
- C. Why Joint Ownership.
 1. Joint Ownership gives parties enormous flexibility to structure aircraft operations to meet usage needs.
 2. Joint Ownership can provide management companies and their clients with flexibility in utilizing client aircraft.
- D. Is the aircraft a “large” aircraft (within FAA definition – i.e., more than 12,500 pounds maximum certificated takeoff weight)? Is aircraft a multi-engine turbojet airplane?
- E. If the aircraft is a helicopter, or if it is “small,” determine whether NBAA exemption applies and permits operation under FAR Part 91.501. If operations are not performed pursuant to the NBAA exemption, individual exemption from FAA is required.
- F. Is the aircraft registered in the U.S.? If not, aircraft is not eligible to engage in joint ownership operations.
- G. If aircraft is U.S.-registered but is “owned, controlled or operated” by a company that is not a U.S. citizen under the relevant aviation statutes and regulations, such aircraft will be deemed a “foreign civil aircraft” which may result in additional regulation and licensing by the

Department of Transportation. Consult experienced aviation counsel if aircraft is a U.S. registered foreign civil aircraft.

II. Terms and Conditions of Written Contracts

- A. Identity of the Parties.
 1. Name address, place of incorporation or organization, if not acting in individual capacity.
 2. Who is doing the deal?
 3. Will the parties be acting in their individual or corporate capacities?
 4. Do they understand the different consequences that follow their choice of capacity?
 5. Given the type of agreement, are they bound to act in a corporate capacity?
 - a. For example, if Corporation A wants to use the aircraft, but wants to set up a shell corporation to avoid being on the title to the aircraft, then the arrangement may not be in compliance with FAR Part 91.501, because the “users,” who want to own part of the aircraft and pay for its operation, must appear on the aircraft registration.
- B. Recitals.
 1. The “Whereas” clauses at the beginning of the contract are traditionally used to describe what each party brings to the deal and their respective intentions.
 2. Echo the appropriate language from FAR Part 91.501 when stating the intentions of the parties.
- C. Subject. The aircraft is the “subject” of the agreement. Describe it as accurately as possible, using year, make, model, serial numbers for the airframe and engines, etc.
- D. Consideration.
 1. What is being paid for the operation of the aircraft?
 2. What will be paid for ownership of the aircraft?
 3. Are these amounts clearly separated and defined?
 4. The parties may want to address the purchase of the interest in the aircraft in a separate document. The parties should avoid reducing all charges to a single hourly

cost, or any other payment structure that looks more like a rental than a shared ownership.

E. Taxes.

1. Allocation of Depreciation. Ideally, the relative percentages for ownership, depreciation, and usage should all correspond.
2. State Taxes. State sales and use taxes, aircraft registration fees and local personal property taxes vary considerably from state. Make sure that the parties understand their responsibilities for these taxes before they become due.
3. Excise Taxes. Ideally, joint ownership is subject to fuel taxes rather than the IRC §4261 7.5 percent Federal Excise Tax (FET), but if an owner or operator is deemed to have too much possession, command and control, the IRS could assess the 7.5 percent FET on the amounts paid.

F. Risk Allocation.

1. If an independent contractor (management company) is providing management services to the joint owners, then some protection from liability can be given to the owners if the documents properly reflect that the management company bears the responsibility for the decisions requiring aviation expertise. However, there is no way to completely insulate the owners from possible liability. When drafting this language, balance the parties' concerns about civil liability with the need to address operational control (FAA) and possession, command and control (IRS). Ideally, each owner will have operational control and possession, command and control over the aircraft when using it, yet, in a civil liability lawsuit, the owners may be able to use the independent contractor relationship with the management company as a shield to liability. All the parties should understand the interrelationship of FAA, IRS and civil liability concerns.
2. The parties will naturally differ on who should hold whom harmless for what. Again, any indemnification language should

be carefully drafted so as not to affect the FAA and IRS considerations mentioned above.

3. Insurance. Make sure that all parties are named as additional insureds, and that the carrier fully understands the entire arrangement.

G. Operation/Management.

1. Consider all of the standard items in an arm's length management agreement, even if the joint owners are related parties. Also consider the effect on possession, command and control when delineating rights and responsibilities.
2. Each owner shall use the aircraft for and on account of its own business only, and will not use the aircraft for the purposes of providing transportation of passengers or cargo in air commerce for compensation or hire.
3. Each owner shall refrain from incurring any mechanics or other liens in connection with inspection, preventative maintenance, maintenance or storage of aircraft.
4. Each owner shall abide by and conform to all such laws, governmental and airport orders, rules and regulations, as shall from time to time be in effect relating in any way to the operation and use of the aircraft.

H. Scheduling.

1. Determine who will have final authority (precedence) in the scheduling of the aircraft (first come first serve, order of priority, etc.).
2. Requests for flight time shall be in a written format, mutually convenient to, and agreed upon by each of the owner's.

I. Maintenance.

1. Who shall be responsible for securing maintenance, preventive maintenance as required or otherwise necessary inspections on the aircraft.
2. No period of maintenance, preventive maintenance or inspection shall be delayed or postponed for the purpose of scheduling the aircraft, unless said maintenance or inspection can be safely conducted at a later time in compliance with all applicable laws

and regulations, and within the sound discretion of the pilot in command.

J. Additional Equipment: Provisions should be made for how the cost for additional equipment or aircraft modifications, including the cost of replacement or substitute parts is to be shared among the owners.

K. Dates and Term. Give thought both to the term of ownership and the management of the aircraft. The parties approach to these terms will differ based on their intentions when entering into a joint ownership arrangement.

- L. Boilerplate (standard) provisions relating to:
1. Notices
 2. Further assurances/duty to cooperate
 3. Assignment
 4. Construction of Terms
 5. Severability
 6. Force Majeure
 7. Compliance with laws
 8. Integration clause/amendment
 9. Arbitration as a means of resolving disputes

M. Truth in Leasing. Not applicable, because the parties use the aircraft is by right of ownership, not pursuant to a lease.

N. Signature Blocks. Ensure that they match the parties.

III. Pre-Operation Checklist

A. Insurance. Make sure that all parties are named as additional insureds, and that the carrier fully understands the entire arrangement.

B. Modification of Agreement. No change in the Agreement or modification shall be effective unless it is signed by all owners.

Disclaimer

NBAA offers these guidelines as an aid to its Members who are considering entering into a dry lease arrangement. They are based on FAA and IRS regulations and statutes, and are not to be considered as an opinion or an interpretation of these rules. No document can fully cover all of the possible variations that arise in individual circumstances. This guideline is not intended to be a substitute for the advice and counsel of an attorney experienced in aviation law.

Insurance Considerations – Joint Ownership

Company A (Owner Furnishing Flightcrew)

Company B (Owner Using Company A's Flightcrew)

Will carry the liability and physical damage (hull) coverage on the aircraft with all joint owners named as Named Insured's.

Will need to have a "Purpose of Use" or "Approved Use" clause in the policy that allows for paying a charge under the joint ownership agreements.

Will want adequate liability coverage limits to ensure sufficient coverage if the liability coverage has to be shared with the other joint owner(s).

May have a problem with the Worker's Compensation exclusion excluding liability coverage for all joint owners if an employee of any one of the joint owners is injured on the aircraft.

All joint owners will want a Certificate of Insurance verifying coverage's provided under the policy, or preferably, a copy of the full policy.
