

## Legal Pilot



OWNING AN AIRCRAFT WITH others can be an affordable way to enjoy flying. Not only is the cost of the original investment and many of the fixed costs shared, but also there's a better overall utilization of the investment. If more than one aircraft is co-owned, flexibility becomes an added benefit.

Wouldn't the same benefits apply to a homebuilt project? The cost of the kit, equipment, and tools would be shared, and the time to completion reduced with the sharing of the workload, right? Not necessarily. For co-ownership of a building project to work successfully, many factors—legal and otherwise—must be considered.

A fair amount of projects are launched with enthusiasm and dedication only to fall by the wayside for one reason or another. "I can probably build this in a year," may be indicative of a good attitude, but it may be overly ambitious and could lead to frustration and disappointment. A project that goes exceptionally well with consistent, uninterrupted work requires at the very least doing "three to five." This time frame can mean enjoyment for some, but a prison sentence to others.

Successful projects are often survivors of divorces, bankruptcies, ill-

# Co-Own a Homebuilt Project

Avoiding the pitfalls of having a partner

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nesses, and many other unpredictable life changes. In the usual course of things, a part breaks or is lost. You order a new one. The wrong one is delivered. In time you get the

*The handshake is essential, but life can change in many unexpected ways over the term of a typical project.*

right one, but the tool to install it is missing—maybe lent to a friend—but you can't remember who it was. So, when you see that completed aircraft at Lakeland or Oshkosh, no matter how basic it may look, give

that builder a hand, for he or she put a lot more into it than simply time and money. That completed aircraft is a symbol of dedication and Olympic endurance.

Co-owning a project can work and work well, but the fundamental task is to *clearly identify the expectations* of each person.

If the goal is to acquire an aircraft for less money, forget it. Instead, consider that a good, used aircraft can be purchased with the same or less money and certainly with fewer hassles. The major reason for the failure of a co-owned project is unresolved differences in each partner's expectations, usually centering on money and time issues. The project falters, and the parties end up talking to lawyers instead of to each other.

After a study and a realistic appraisal of your own money, skill, and time constraints, as well as those of your prospective partner(s), you'll be better able to determine what your mutual expectations really are. If your mutual goals and expectations embody the joys and hardships of the journey as well as the destination, consider moving forward.

### What About a Written Agreement?

"My partner is a really good person, very skilled and trustworthy, and I

have known him (her) for many years. We don't think a legal document is necessary. What could go wrong that we could not work out?" Plenty. Certainly, if you do not have good rapport and mutual trust and respect, a written document will not cure potential problems. The handshake is essential, but life can change in many unexpected ways over the term of a typical project. A carefully drawn written agreement is essential, and even if the project never sees completion, it may help preserve the mutual respect, trust, and friendship between the parties.

Should you go to a lawyer to work out an agreement? I advise not to do that right off. To draft a suitable contract, an experienced aviation lawyer must spend considerable time to extract from each person goals, time and money commitments, expectations, and responsibilities in the event particular problems arise. This could become quite expensive. In most cases, project partners should get together and draft as detailed an agreement as they can, considering as many curve balls life can throw. This can serve as a good test. If you cannot get together on an agreement, how will you build an aircraft as a team? Legal advice on the format of the final document is a good idea.

Here are some basic considerations:

■ Keep the flying agreement separate from the building agreement. Certainly, there can be a basic understanding of how flying costs will be shared, but the co-ownership of a project has many bridges to cross before the aircraft is ready to fly.

■ Establishing a corporation is often advisable in the co-ownership of flying aircraft. While it does not protect individuals from consequences of their own negligence, a corporation insulates each participant from the other's negligent acts or omissions. In a partnership, on the other hand, all partners bear full responsibility for each other's conduct. A corporate shell may not fulfill the same needs in the building phase of a project, however, and legal advice in each particular arrangement should be sought before spending the money to form a corporation for the purpose of working on the project.

■ Spell out how the division of time, skill, and money is to be worked out between the parties. It's not unusual for one participant to be the more skillful or the one with the tools and the experience, while the other commits to the funding. These arrangements should be clearly spelled out before starting a project.

■ Plan on the project costing more money and taking more time than originally anticipated. Equipment needs may change, mistakes can and will occur and will need extra money and time to correct, tools will need to be purchased, and more. Spell out how each of these events will be handled. Prepare for the unexpected.

■ Determine who in the partnership will be responsible for accurate record keeping. Keep a running account of the time spent by each party. Keep a list of equipment purchased and tools involved, noting those that are

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owned solely by one party. Retain copies of receipts and purchase orders. This record must be accessible to each party at all times and should be reviewed with your partner(s) on a periodic basis. The agreement should also contain provisions for a periodic settlement of expenses, at least on a monthly basis. It would not be a bad idea for each participant to keep a duplicate of this record.

■ Consider an exit strategy. If one participant has a change of circumstance or even a change of heart, how will it be handled? Since building an aircraft together is very much like a marriage, it should be spelled out that one party cannot sell out the interest to an outsider without consent of all and that consent can be withheld for any reason, stated or unstated. The remaining co-owners should have the right to buy out the

departing participant at an agreed upon fair market value. In the event of such contingencies, a provision for periodically updating an agreed value is a good idea. An agreed time period to come up with the money after written notice should also be stated. If all parties desire to sell, how will the proceeds be split? These matters should be worked out beforehand and included in the written agreement.

■ Anticipate that changes in the agreement may be appropriate as the project progresses. Experience may show that a more equitable arrangement or different terms than those originally agreed to may be called for. Listen to one another's needs and concerns and reduce to writing any changes in the terms and conditions of the original agreement.

Co-ownership of a homebuilt

project may work out just fine for you. Open lines of communication in the beginning and throughout the project are essential to success. Remember, like raising a child successfully, there will be some frustrating and disappointing times, but it's all worth it in the end. A real benefit of co-building and co-ownership is the personal support and encouragement you can provide to one another in the times of frustration and setbacks. That's the real substance of any legal document and the heart of a successful project. 

*A member of EAA's Legal Advisory Council, Mike Pangia, based in Washington, D.C., is a lawyer specializing in aviation law. The former head trial lawyer for the FAA, he has ATP and A&P certificates, owns and maintains an SNJ-5, and is rebuilding his Waco-UPF-7, which he has owned since 1971.*