

UP IN THE AIR

On December 17, 1903, Orville and Wilbur (i.e. the Wright Brothers) undoubtedly had their seat backs and tray tables in their upright and locked positions when they set off for their first successful flight.

On September 17, 1908, Orville crash landed the Wright Military Flyer, but survived with injuries. His passenger, 1st Lt. Thomas Selfridge (as in Selfridge ANG Base), was killed. No lawsuit ensued.



The forerunner of the Federal Aviation Administration (FAA), which regulates flight transportation, was formed in 1926. Since then, these agencies have promulgated complex Federal Aviation Regulations (FARs) which are divided into tens of thousands separate sections.

Most of the FARs deal with safety and ownership issues. Violation of a FAR can lead to criminal, disciplinary and/or civil liability.

Unlike in the Wright Brothers' age, a passenger killed by a crash is likely going to result in a lawsuit against the owner and operator of the aircraft. We, of course, want to help our aircraft-owning clients to minimize liability and maximize ease of ownership and transition.

Liability

The person primarily responsible for the safe operation of an aircraft is the Pilot in Command.

Corporations, Limited Partnerships and Limited Liability Companies (LLCs) generally provide that the owner of the company is not liable for the company's obligations.

An aircraft owned by one individual is usually operated by the owner and he/she is responsible regardless of whether the aircraft is owned by the individual or an entity. Entity ownership may be helpful if the aircraft is lent or leased to another pilot.

An aircraft owned by more than one party is often owned by an entity so that the other owners are not liable for the actions of the Pilot in Command at the time of the incident. For tax reasons and flexibility, the LLC is usually the entity of choice.

Transfer of Ownership

Many of our clients have created Living Trusts to serve as the primary instrument of their Estate Plans. The assets in a Living Trust pass to the designated beneficiary without necessity of the probate process. Living Trusts do not isolate the client from liability resulting from the operation of trust assets.

A client's interest in an LLC can be owned by the client's Living Trust.

An aircraft owned by one individual can be owned by a Living Trust so that it need not be involved in a probate process upon the owner's death. The Trustee of the Living Trust must submit the following to the FAA:

- An affidavit showing that each beneficiary under the trust is either a U.S. citizen or a resident alien. If the trust has a beneficiary(ies) who is not a U.S. citizen or resident alien, each Trustee must submit an affidavit that those beneficiaries acting together have no more than 25% of the aggregate power to influence or limit the exercise of the Trustee's authority.
- A copy of the trust;
- A bill of sale from the present registered owner to the Trustee;
- An Aircraft Registration Application showing the Trustee as the applicant; and
- The registration fee.

The laws regarding aviation and aircraft ownership are complex. Please contact attorney [Alan C. Roeder](#) for any aircraft ownership or estate planning questions.