

SHOULD AN AIRCRAFT BE OWNED INDIVIDUALLY OR THROUGH A CORPORATION?  
LIABILITY AND INSURANCE CONSIDERATIONS

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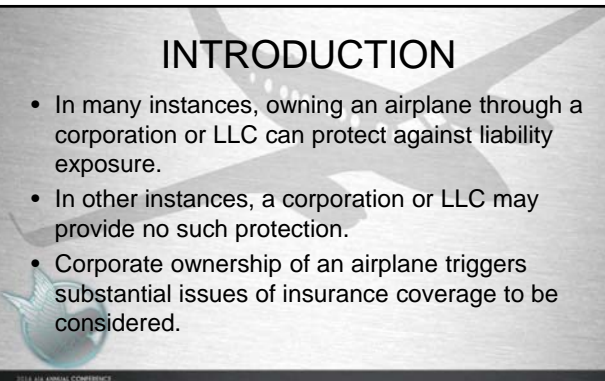
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INTRODUCTION

- In many instances, owning an airplane through a corporation or LLC can protect against liability exposure.
- In other instances, a corporation or LLC may provide no such protection.
- Corporate ownership of an airplane triggers substantial issues of insurance coverage to be considered.



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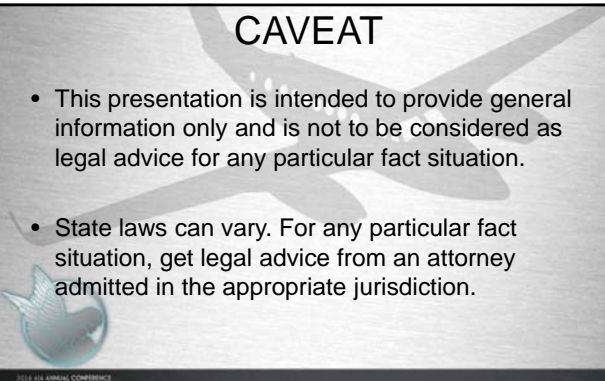
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CAVEAT

- This presentation is intended to provide general information only and is not to be considered as legal advice for any particular fact situation.
- State laws can vary. For any particular fact situation, get legal advice from an attorney admitted in the appropriate jurisdiction.



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## CORPORATE LAW PRINCIPLES

- Corporation or LLC is a separate entity.
- Corporation or LLC can protect against liability for acts or omissions of others.
- Corporation or LLC will not provide protection for one's own acts or omissions.



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## AIRCRAFT OWNERSHIP ISSUES

- Aircraft owners can be exposed to liabilities without any negligence on their part.
  - CALIFORNIA
    - Damage to ground claimants--\$5K, \$15K, 30K
    - Non Delegable Duty to Maintain Aircraft (unclear)
  - MINNESOTA
    - Permissive pilot is agent of the owner.
    - Owner is strictly liable for ground damage.
    - No upper limit on liability of owner.



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## DISADVANTAGES OF CORPORATE OWNERSHIP

- Extra Expense
  - Incorporation costs
  - Filing Fees
  - Accounting
  - CA--\$800 per year
- Capitalization requirements
- Extra Paperwork
  - Separate Bank Account
  - Tax Documentation
  - Corporate Records



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## INSURANCE PRINCIPLES

- Insurance Policy is a Contract.
- Provisions are interpreted by Average Man Test. Provisions are binding as written.
- Ambiguities are construed against the insurer, but only if there is another reasonable interpretation. Courts will not strain to create an ambiguity.
- Burden of proof is on the person claiming coverage to establish that he or she is covered.
- Duty to defend is broader than the duty to indemnify.
- No duty to defend someone who is not an INSURED.

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## THIS ACCIDENT



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## PLAYERS

- OWNER—Retired airline pilot living in Florida  
Gave type rating to pilot
- PILOT—Boeing engineer, homeowner
- PASSENGER—Aircraft Mechanic on test flight
- INSURANCE POLICY
  - Liability limit of \$1M, \$100K per passenger
  - Owner and Pilot were Insureds
  - Duty to defend insureds
    - No limit on defense costs
    - Each insured entitled to separate counsel

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## LAWSUIT AND ALLEGATIONS

- Mechanic-Passenger Damages
  - Paraplegic
  - Badly burned
  - Medicals—more than \$10 million
- Pilot-alleged to be negligent in failing to remove rudder gust lock
- Owner—alleged to be negligent in instructing the pilot for type rating

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## ASSUME AIRCRAFT OWNED BY OWNER'S CORPORATION

NAS BASIC POLICY LANGUAGE  
Subject to all terms and conditions, the Company agrees...

I. LIABILITY  
...to pay on behalf of the **Insured** all sums which the **Insured** shall become obligated to pay as damages for [bodily injury, property damage, passenger bodily injury] caused by an **occurrence** arising out of the ownership, or use of the **aircraft** set out in the Policy.

IV. DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS  
If and in so far as coverage is provided by this Policy under Section I of this Policy, the Company shall... defend in the name of and on behalf of the **Insured** any suit or other proceeding, even if false, groundless or fraudulent, brought against the **Insured** alleging such injury, disease or destruction and seeking damages on account thereof;

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## NAS DEFINITION OF INSURED

- **INSURED** means the **Insured** named in the Policy and in addition for such coverage as is provided under Section I, those pilots who are set out in the Policy or who meet the requirements of the Additional Pilot Clause, if applicable, provided they are operating the **aircraft** with the permission of the **Insured** named in the Policy.
- The inclusion of an Additional Insured under the policy shall be limited to liability which arises out of the operation of the **aircraft** by the **Insured** (as defined above) and nothing contained in this extension shall be construed to provide coverage for the negligence, whether sole or proportional, of an Additional Insured for their own acts or the acts of their agents.

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### NAS ADDITIONAL INSURED ENDORSEMENT

In consideration of the premium charged, it is hereby agreed that with respect to the Liability Coverages provided hereunder, the following are named as Additional Insureds, but only as respects the operations of the Named Insured

[NAME AND ADDRESS]

Excluding any loss, damage, injury or liability which arises from the above named Additional Insured's negligence, whether sole or proportional, or the willful misconduct of the above named Additional Insured(s) or their servants.

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### NAS DIRECTLY RELATED INSURED ENDORSEMENT

In consideration of the premium charged, the definition of Insured, for such coverage as provided under Section I, is amended to include those individuals or Business Entities who use the aircraft covered hereunder but only if they are a Directly Related Insured.

The following are hereby included in the policy under Definitions:

- 1. Directly Related Insured means:
  - a) The executive officers, members, general partners, or trustees of the Insured named in the Policy, OR

Payment for the use of the aircraft from a Directly Related insured to the Insured named in the Policy will not invalidate coverage hereunder, subject however to all other policy terms, conditions and exclusions.

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### QBE POLICY DEFINITION

"Insured" the unqualified word "insured" whenever used in this policy with respect to Coverages A, B, C and D, includes not only the named insured but also any person while using or riding in the aircraft and any person or organization legally responsible for its use, provided the actual use is with the express permission of the named insured. Except with respect to the named insured the provision of this paragraph do not apply:

- (b) to any person or organization or to any agent or employee thereof (other than any employee of the **named insured** while acting in the course of his employment by the **named insured**):

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... engaged in the activity of instruction, evaluation, examination

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### NATIONAL UNION POLICY DEFINITION

- " **Insured**" means, with respect to Liability Coverages:
- 1. **you**; and
- 2. persons or organizations while using, riding in or legally responsible for the use of the **aircraft** if with **your** permission.
- But excluded as an **insured** is any:
  - a) student pilots; unless listed by name as pilot in Item 5 on Page One;
  - b) person or organization renting **your aircraft**;
  - c) person or organization other than **you**, or **your** employees or agents while at work for **you** who design, make, modify, repair, service, maintain, rent, sell, finance, lease or charter aircraft, aircraft engines, parts or accessories, own or operate a flying school, provide **flight** instruction, own or operate an airport, hangar or aircraft tiedowns, if the claim arises out of such activity by such person or organization;

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### OLD REPUBLIC POLICY DEFINITION

"Insured" The unqualified word "Insured" wherever used in this Policy with respect to Coverages A, B, C and D, includes not only the Named Insured but also any person while using or riding in the aircraft and any person or organization legally responsible for its use, provided the actual use is with the express permission of the Named Insured. Except with respect to the Named Insured the provisions of this paragraph do not apply:

- (a) ...
- (b) ...
- (c) to any person (other than any employee of the Named Insured while acting in the scope and course of his employment by the Named Insured) engaged in providing flight instruction for hire or reward;

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### STARR POLICY DEFINITION

**Insured** the unqualified word **insured** wherever used in this policy with respect to Coverages A, B, C and D, includes not only the **named insured** but also any person while using or riding in the **aircraft** and any person or organization legally responsible for its use, provided the actual use is with the express permission of the **named insured**. Except with respect to the **named insured** the provisions of this paragraph do not apply:

- (b) to any person or organization or to any agent or employee thereof (other than any employee of the **named insured** while acting in the course of his employment by the **named insured**):
- ...
- (3) who is engaged in the activity of instruction, evaluation, examination or certification of any pilot or **crew** member or prospective pilot or **crew**

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## SUGGESTED LANGUAGE FOR CORPORATE INSURED

- For any aircraft policy where the aircraft owner is a corporation or an LLC, the Named Insured should be

[Name of Corporation or LLC] and all of its officers, directors, shareholders, members and employees, past and present.

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## CONCLUSION

- Owning an aircraft through a corporation or an LLC may be a good idea.
- If an aircraft is owned by a corporation or LLC, it is important that the owners and others be named specifically as insureds.
- Everyone (insureds, brokers and insurers) will be better off having proper coverage at the outset.

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