

by STANLEY I. MASON
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Making An

Partners Stanley I. Mason (left) and Donald R. Merriam (center) and Attorney Robert E. Guilford, who drew up the partnership contract, pose with their aircraft. Only the wing of the Bellanca shows. Attorney Guilford, the man with the jet pilot helmet, owns the P-51 shown in the right background

WANTED: Partner to share fun and costs on like-new 1948 Bellanca. New license, 150 h.p. Franklin, Ceconite, retractable gear, auto prop, Superhomer, full instrumentation, 825-mile range; 50-50 basis, buy half for \$2,000. Call HUNTINGTON BEACH 871-4735.

The above advertisement appeared recently in the Los Angeles Times. A single phone call was enough. An inspection of the airplane at the Santa Ana (Orange County, Calif.) airport confirmed the ad's honesty. It seemed like a good deal.

The only question was this: Can two men, unknown to each other, get to know one another quickly enough—and well enough—to go into partnership in an airplane? Certainly, more was involved than the \$2,000 initial investment; for the law might to some extent make either partner responsible for the other's acts. And this could extend beyond the value of the airplane. Obviously, future unknown trouble and costs in flying the airplane, maintaining it, and balancing the use of the airplane between two families were factors to consider. Then there were the larger problems involving partnership. If one partner goes in over his financial head, there is a possibility that the other man would be legally and financially responsible. Also, liability for the other's negligence in flying the airplane could perhaps become the responsibility of his partner. How should two men resolve such questions?

First, we arranged to have three meetings at each other's houses. Don Merriam (AOPA 67200), the man who had placed the ad and who proposed the arrangement, is an engineer at Hughes Aircraft. He has 300 hours, plus, as a private pilot. The writer (AOPA 256583) is an ex-Air Force pilot and an instructor with 1,500 hours in all types except light aircraft, and presently an ad man with Hunt Foods, Inc.

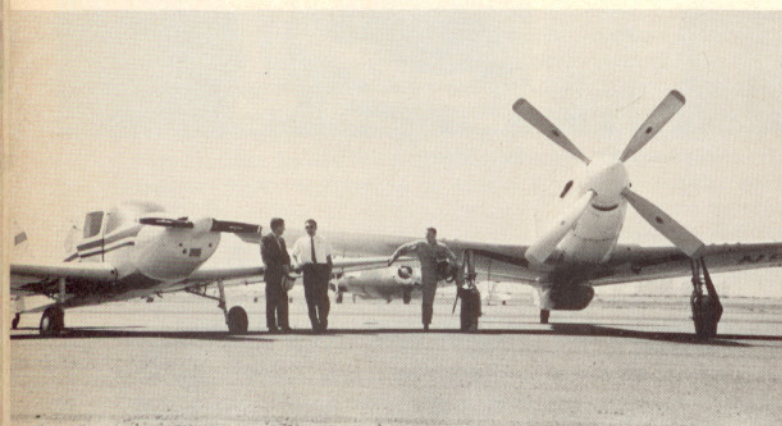
The two of us liked each other and each other's wives and kids. But we asked each other, "What if the partnership doesn't work out? How would we get out of the deal?"

Obviously, we needed an agreement—a written agreement. But where to find a precedent, a blueprint to follow in making the arrangement? We asked around the airport; we asked our flying friends. No one knew of any arrangement except verbal agreement. Other such partnerships were between long-time friends.

We agreed to find an attorney, but not just any attorney—he had to know flying. We called the Aircraft Owners and Pilots Association in Washington and asked for advice. The AOPA suggested three Los Angeles lawyers. We called all three and decided on Robert E. Guilford (AOPA 222138) because he had his own airplane and was interested in the assignment.

Guilford said he knew of no readily available form for an airplane partnership agreement, and that he would be happy to work with us.

One three-hour meeting later we had a draft of the agreement. It suited our immediate needs without trying to be so all-inclusive that we would have to give up a flying hobby for a career in contract administration. It provided



Mason-Merriam Bellanca and Attorney Guilford's P-51 pose for their photograph. That's the three owners in front of the planes



The Mason family had just completed their first long cross-country in the Bellanca when this photo was made. The 6,300-mile flight was from Los Angeles to Miami, Fla., to New York then back to California. Mrs. Mason acted as navigator on the flight

Two Californians retain an attorney, who also is a pilot, to draw up a formal agreement covering all phases of ownership and operations. They pass along test of agreement for benefit of other owners

Airplane Partnership Work

a workable framework, defining our rights and obligations in the important and usual problem areas, upon which our amicable dealings could build and grow. We present our partnership agreement as a starting point for discussion, recognizing that a contract for us might be only a beginning for others.

(Our contract was designed to fulfill specific needs, within the context of specific local laws. Because needs and laws differ, Attorney Guilford has advised that this form not be used without competent legal advice. To do otherwise, he said, might produce unintended results due to these differences. It should serve merely as a guide, to point out some of the possible problem areas and some suggested solutions.)

AIRCRAFT PARTNERSHIP

This partnership is entered into this day of, 19, by and between
(name and address of First Partner)
and
(name and address of Second Partner)

The undersigned desire to constitute themselves a partnership for the purposes of acquiring a
License No.
(make and model of aircraft)
and holding title thereto as tenants in common. Of the purchase price of \$....., \$..... shall be paid in cash equally by the partners, and \$..... shall be borrowed by the partnership from a financial institution, giving back a chattel mortgage on the aircraft.

Liability Insurance

Adequate insurance shall be carried by the partnership to insure against the reasonably anticipated risks of the operations intended. Because it is not expected that paying passengers will be carried within the next ninety (90) days from the date hereof, the parties will not obtain passenger coverage on insurance, and for such period agree that there shall be no carriage of passengers for hire or with more than a pro rata sharing of direct operating expenses. At the expiration of the 90 days, passenger coverage shall be obtained and no paying passenger shall be carried until adequate coverage is placed which will give passenger seat liability for the operations contemplated.

Basing

The aircraft shall be based at the Airport, and the costs of storage or tie-down at said base shall be borne equally by the partners. Costs attributable to storage, parking, tie-down, or landing fees while the aircraft is being operated away from the base, shall be borne by the person so operating.

Other Pilots

No other person than the partners shall be authorized to operate the aircraft except with the express consent of both the partners, and then only if that person has the

experience level required by the insurance policy or policies carried.

Fixed Expenses

One Hundred Dollars (\$100.00) shall be maintained in a fund, to be replenished monthly, equally by both partners. Out of this fund the fixed expenses shall be paid. The fixed expenses are defined as tie-down at the base, insurance, annual inspection and licensing, and taxes.

Gasoline Tax Refund

Gasoline shall be purchased with a central billing, so that the gas tax refund can be applied for in the name of the partnership. Tax refunds shall be paid into the Fixed Expense fund.

Operating Expenses

Operating Expenses shall include such items as twenty-five (25) hour inspections, oil changes, replacement of tires, brakes, battery, hydraulic fluid; radio, airframe, engine, propeller and accessory repair and maintenance. These operating expenses shall initially be paid for by the partners equally. There shall be a yearly adjustment upon the basis of total hours flown in the aircraft by each for the preceding year. Each partner shall fill and service all systems at the end of each flight, at his own expense. Each partner is responsible to the extent of the deductible amounts under the insurance policies, for any accident caused by his pilot error as determined by the FAA.

Additional Equipment

The partners may, by mutual agreement, add additional equipment to the aircraft. However, if the partners are unable to agree upon the addition of equipment, either partner may add such other equipment as he desires, and pay the total cost of such equipment and its installation. In this event, one half of the cost of the equipment, plus installation, shall be credited to the purchasing partner upon dissolution of the partnership, regardless of its then depreciation value. This shall not apply to materials or labor expended for maintenance, repair or replacement of equipment necessary to keep the aircraft in substantially the same condition as on its acquisition.

Rules and Regulations

The aircraft shall at all times be flown and maintained in accordance with all applicable Federal Air Regulations and requirements of duly constituted authority. Any deficiencies resulting therefrom which cause any civil penalties to be levied, shall be borne by the person responsible for the violation. In the event that the violation is not directly attributable to the responsibility of one partner, the cost shall be borne equally.

Unilateral Authority

Neither partner shall, without the consent of the other, contract or obligate the partnership to the payment of any sum of money in excess of \$100.00. Neither partner shall,

without the consent of the other, suffer any lien to be levied against the aircraft in excess of said \$100.00. If a lien is levied, it shall be grounds for dissolution of the partnership, at the option of the innocent partner, and the costs required to satisfy said lien shall come out of the share of the retiring partner.

Primary Responsibility

..... shall be responsible for the receipt and disbursement of all monies relating to partnership business; shall be responsible for the initiation and implementation of maintenance programs.

Delinquencies

Any delinquency in the payment of charges, costs or fees arising out of the terms of this agreement, whether for fixed, operating or finance expenses, or otherwise, which are delinquent for more than thirty (30) days, shall result in the deprivation of flight privileges of the delinquent partner. Any delinquency which continues thereafter for an additional sixty (60) days, shall be grounds for involuntary dissolution at the option of the non-delinquent party, pursuant to the terms hereinafter specified for involuntary dissolution.

If there be any default in the payment of loans secured by the aircraft, the non-defaulting party may at his election, cure the default, and he shall be subrogated to that extent to the interest of the lien holder. Such default shall then be treated as a delinquency.

Buy-Out Insurance

It is the present intention of the partners to each apply for policies of term insurance upon the life of the other, in the face amount of \$ It is intended thereby to enable one partner to buy out the share of the other.

Voluntary Dissolution

If for any reason either of the partners wishes to dissolve the partnership, he shall send a written notice to that effect to the other partner by certified mail, return receipt requested, at the address set forth above. Within ten (10) days from receipt thereof, the remaining partner shall send written notice by certified mail, return receipt requested, to the retiring partner, at the address set forth above, of the election of the remaining partner to proceed in one of three ways:

(a) To purchase from the retiring partner his share of the partnership assets, at one-half of the appraised value.

(b) To allow the retiring partner to sell his share to whomsoever he chooses, for no less than one-half of the appraised value.

(c) To sell all of the assets of the partnership to whomsoever he wishes, for no less than the appraised value of the assets.

Upon the sending of the notice of dissolution, each partner shall nominate one qualified appraiser, and those two appraisers shall nominate a third, who, together, shall at their earliest convenience, determine the fair market value of the partnership assets, which value shall then become the appraised value. The costs of such appraisal shall be borne equally by the partners.

In the event that the remaining partner, in a voluntary dissolution, elects under subparagraph (a) or (c), the purchase or sale shall be completed within ninety (90) days from the receipt of the notice of dissolution. If at the end of the ninety (90) day period the remaining partner has not consummated the sale or purchase, then the retiring partner shall have the option to either (a) sell entirely and to whomsoever he pleases, all of the assets of the partnership for no less than the appraised value, or (b) sell his share of the partnership assets to whomsoever he pleases, for no less than one-half the appraised value.

If the remaining partner elects under subparagraph (a) and the purchase is consummated as provided, then the remaining partner may at any subsequent time sell all or any portion of his interest without accounting for the proceeds to the retiring partner.

Whenever the retiring partner has the right to sell his

share of the partnership assets, he may only sell his share to a single individual, to avoid dilution of ownership and the problems attendant upon an increase in the number of users. In the event a new partner is thus brought into the partnership, it shall expressly be stipulated that he must agree to and sign the partnership agreement.

Involuntary Dissolution

If either party shall be in default of any of the terms of this agreement, and fails for thirty (30) days after notice thereof to cure such default, then the partner who is not in default may initiate dissolution proceedings. In this event, the dissolution shall be considered involuntary, and the non-defaulting party shall be considered as the remaining partner, and the partner who is in default shall be considered the retiring partner, for purposes of the procedure set out above under voluntary dissolution; provided however, that such thirty (30) day default provision shall not apply to defaults in the payment of money, which defaults have been provided for elsewhere in this agreement with respect to involuntary dissolution.

Lien on Dissolution

Any just charges owed by one partner to the other shall become a lien upon the interest of the partner indebted, and shall be satisfied out of the proceeds of sale upon dissolution.

Death of a Partner

The demise of either of the partners shall be considered as a notice of dissolution, and the provisions relating to voluntary dissolution shall apply.

Sale Above Appraised Value

Upon the sale of either partner's share of the assets, or the entire assets of the partnership, whether by voluntary or involuntary dissolution, if the sale price exceeds the appraised value, or one-half thereof, as the case may be, the balance shall be divided equally between the partners.

Sale Below Appraised Value

No sale of one-half or all of the partnership assets shall be for less than the appraised value thereof, without the mutual consent of the partners.

Arbitration

If any dispute arises under or by virtue of any of the terms of this agreement, the partners shall submit the dispute to arbitration at, pursuant to the rules and regulations of the American Arbitration Association. Judgment may be entered in any Court of competent jurisdiction upon the rendition of any final decision by the arbitrators.

DATED:

.....
Partner
.....
Partner

The partnership agreement between Don Merriam and me went into effect in February 1964, and at this writing, seven months later, with over 150 hours on the airplane by both partners, the contract is functioning very satisfactorily. Only minor modifications have been made, those indicated as a result of actual practice. For example, each partner purchases fuel and oil on his own charge account (and will get his own tax refund); financial "settling-up" is now done whenever we get together—every two or three months—rather than on the first of every month as called for in the agreement.

Further, we both commend the idea of spelling out, in advance, the terms and conditions of the use of the airplane, and the assigning of costs. Several times we've gone back to the contract to clarify our positions on minor items, and each time have been happy to allow our own prior written agreement to settle our differences.