

## Aircraft and watercraft liability

By Steven T. O'Hara

Alaska has many interesting laws, especially in the area of asset protection. One of these laws is an Alaska Statute that can limit the liability of owners and operators of personal-use aircraft and watercraft.

The statute is entitled "Civil Liability For Aircraft and Watercraft Guest Passengers"(AS 09.65.112). This statute deals with at least four possible scenarios. Common to each are three requirements that must be satisfied before the statute may be considered as a possible source of liability protection, namely:

**Requirement 1:** *The act or omission by the owner or operator was not gross negligence, reckless misconduct, or intentional misconduct.* The statute provides no protection from liability exposure for gross negligence or reckless or intentional misconduct.

**Requirement 2:** *The aircraft or watercraft was not being operated as a common carrier or used for commercial purposes.* The statute provides no protection from liability exposure for an act or omission arising from a craft being operated as a common carrier or used for commercial purposes.

**Requirement 3:** *The aircraft or watercraft was not being demonstrated to a prospective buyer.* The statute provides no protection from liability exposure for an act or omission arising from a craft being demonstrated to a prospective buyer.

Each scenario is further based on whether or not the owner or operator has insurance. For purposes of this Article, "insurance" means insurance that would compensate a passenger for civil damages awarded against the owner or operator (AS 09.65.112(b)(2)).

By identifying both the owner and the operator, the statute recognizes that an aircraft or watercraft may be operated by someone other than the owner and that both have liability exposure.

**Scenario 1:** *Both the Owner and the Operator Have Insurance.* Under this scenario, with the above requirements satisfied, the statute would limit liability exposure to the amount of the insurance. In the words of the statute, the "owner or operator who is insured. . . is not liable for civil damages. . . that exceed the applicable insurance. . ." (AS 09.65.112(b)(2)(A)).

**Scenario 2:** *The Owner Has Insurance But the Operator Does Not.* Under this scenario, with the above requirements satisfied, the statute would limit the Owner's liability exposure to the amount of the insurance (*Id.*).

On the other hand, the statute would provide no protection to the uninsured Operator unless the passenger was informed by the Operator before the passenger entered the craft that the Operator was uninsured. If the passenger was given this notice, and the above requirements are satisfied, the statute provides that the Operator would have no liability exposure (AS 09.65.112(b)(2)(B)).

**Scenario 3:** *The Operator Has Insurance But the Owner Does Not.* Here the statute would limit the Operator's liability exposure to the amount of the insurance as long as the above requirements are satisfied (AS 09.65.112(b)(2)(A)). By the same token, the statute would provide no protection to the uninsured Owner unless the passenger was informed



"Alaska has many interesting laws, especially in the area of asset protection."

by the Owner before the passenger entered the craft that the Owner was uninsured. If the passenger was given this notice, and the above requirements are satisfied, the statute provides that the Owner would have no liability exposure (AS 09.65.112(b)(2)(B)).

**Scenario 4:** *Neither The Owner Nor the Operator Has Insurance.* Here both the Owner and the Operator would be exposed to unlimited liability unless, according to the statute, the

passenger was informed before he or she entered the craft that the Owner and the Operator were uninsured (*Id.*). If the passenger was given notice by the Owner and the Operator that they were uninsured, and the above requirements are satisfied, the statute provides that both the Owner and the Operator would have no liability exposure (*Id.*).

Thus the statute encourages the purchase of insurance, no matter the amount, because it limits liability to the amount of insurance without any requirement of notice to passengers. If an owner or operator does not purchase insurance, the statute requires notice of the lack of insurance before the passengers board; otherwise, the statute provides no protection.

The statute does not mention any requirement of written notice. Nevertheless, this writer recommends that owners and operators of personal-use aircraft and watercraft ask their passengers to sign a statement evidencing the receipt of notice and that the statement be kept in a safe place outside the craft. This step may

*Continued on next page*

# Aircraft and watercraft liability

*Continued from previous page*

eliminate any after-the-fact denial by the passenger or his or her heirs about the notice given. An instrument like the "No Insurance Notice to Passengers" below might be a starting point, but this writer assumes no responsibility in connection with any use of any such instrument.

The statute requires notice only

where no insurance exists. Where the owner or operator has insurance he or she may still want to have passengers sign a notice. Here an instrument like the "Insufficient Insurance Notice to Passengers" below might be a starting point, but again this writer assumes no responsibility in connection with any use of any such instrument.

●

**NO INSURANCE  
NOTICE TO PASSENGERS  
(Alaska Statute 09.65.112)**

- Neither the owner nor the operator of the aircraft in which I am about to fly has insurance to compensate a passenger for injuries the passenger may suffer or for civil damages awarded against the owner or operator.
- I am not flying as a prospective buyer of the aircraft.
- In this flight the aircraft will not be operated as a common carrier or used for commercial purposes.
- I sign this Notice before I enter the aircraft.

\_\_\_\_\_

Date

\_\_\_\_\_

Passenger Name [print]

\_\_\_\_\_

Signature of Passenger

\*\*\*\*\*

**INSUFFICIENT INSURANCE  
(UNDERINSURED)  
NOTICE TO PASSENGERS  
(Alaska Statute 09.65.112)**

- Neither the owner nor the operator of the aircraft in which I am about to fly has sufficient insurance to compensate a passenger for injuries the passenger may suffer or for civil damages awarded against the owner or operator.
- I am not flying as a prospective buyer of the aircraft.
- In this flight the aircraft will not be operated as a common carrier or used for commercial purposes.
- I sign this Notice before I enter the aircraft.

\_\_\_\_\_

Date

\_\_\_\_\_

Passenger Name [print]

\_\_\_\_\_

Signature of Passenger