

The Anatomy of Aviation Insurance

Subrogation and the Non-Owner Pilot ©

By Jim Gardner

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Subrogation is the right that every insurance company reserves in all insurance policies to recover losses from a third party deemed to have contributed to the loss. In many cases that third party could be the non-owner pilot whether the pilot is named, renting or borrowing the aircraft.

In a Chartis publication, the question was posed “Will the (insurance) company subrogate against a named pilot?” The answer was, “Maybe.” Just because a pilot is named in the policy, does not negate the insurance company’s “Rights of Recovery.” They stated further that they reserve this right “in the event someone other than the *named insured* damages the aircraft.”

Aircraft insurance is carried by the party that normally has care, custody, and control of the aircraft, is responsible for maintaining the airworthiness of the aircraft, and has dispatch authority whether that be an owner or a lessor. A non-owner pilot is the pilot named on the insurance policy other than the owner, a pilot using the aircraft under the open pilot warranty (permissive pilot), or a renter.

When an aircraft is rented from an FBO or Flight School is the renter pilot covered by insurance? The short answer is “probably, but don’t bet the house on it.” Some flight schools and FBO’s offer their renters some protection through a non-owned aircraft liability clause in their insurance agreement. This coverage is part of their liability limit and does not increase to maximum per occurrence limit. In addition it provides only partial coverage for the renter. For instance, if the school was covered for liability for \$1 million, the renter might be covered for \$100,000, leaving \$900,000 of coverage for the flight school. This still does not protect the renter pilot from liability damages beyond \$100,000, nor does it afford the renter pilot protection for damages to the aircraft being flown.

The non-owner pilot that is often overlooked is the named pilot. Unless the pilot is an employee of the aircraft owner, he or she is still subject to the insurance company’s rights of recovery. Remember, the insurance company’s contract is with the purchaser of the insurance policy, or named insured. So, whether you are using an airplane with permission or a professional pilot working under contract, you may be subject to subrogation.

What protection options does a non-owner pilot have? The good news is that there are two remedies.

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For the renter or permissive pilot of light aircraft and helicopters “Personal Non-owned Aircraft and Hull Liability” insurance is readily available. It is like purchasing aircraft insurance without the aircraft. Just like aircraft insurance, it comes in two parts: liability and physical damage. Liability coverage of \$1Million dollars limited to \$100,000 per person bodily injury can be purchased for a yearly premium of a little as \$190. This covers any damage to a third party excluding damage to the aircraft being flown. Hull coverage is available by adding physical damage liability to the policy at an additional premium with value limits from \$2500 to \$200,000.

Contract pilots companies usually demand as part of their compensation agreement that the aircraft owner or named insured obtain “*Additional Insured*” status for the contract pilot with a “*Waiver of Subrogation*” from the insurance company.

Non-Owned Aircraft and Hull liability policies are also available for the professional pilots or pilot services company who contract their services to turbine aircraft operators. Limits of liability are negotiable and available for much higher limits than the personal non-owned policies.

Why should a non owner pilot have his own insurance policy? For the contract pilot, your policy protects and defends YOU and is over and above any protection afforded by the owner’s aircraft policy. The aircraft owner’s insurance policy protects the owner (and his employees) from his or her mistakes. One small but important caveat -- Even if you own an aircraft, depending on your policy, you still may not be insured when flying someone else’s aircraft. This goes for corporations as well as individuals.

This is a general overview of a very complex subject. Everyone’s situation is different. Don’t be in doubt about your aviation insurance coverage. Whether you’re an aircraft owner or non-owner pilot, consult with your professional aviation insurance agent about your specific circumstances. Getting the protection you need may be a simple phone call away and may be more affordable than you think... just in case your next flight doesn’t go as planned.

About the author.

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