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**Aircraft Mechanic's Liens In**

**By Greg Reigel**

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**Aircraft Mechanic Liens In Minnesota**

By Gregory J. Reigel

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If you provide storage, repair, maintenance or other services to aircraft, you have the ability to assert a lien on that aircraft and retain possession until you have been paid. This is commonly referred to as a mechanic's lien.

What isn't as commonly known is that, in Minnesota, you don't necessarily lose your lien rights if you no longer have possession of the aircraft. The situation arises when an owner pays you with a check and leaves with the aircraft. Later, the bank dishonors the check. Now what?

Under Minnesota Statute § 514.221, you can re-assert your mechanic's lien against an aircraft by filing a verified statement and description of the aircraft and the work done or material furnished. The Statement must be filed with the "appropriate office under the Uniform Commercial Code." This would be the FAA's Aircraft Registry in Oklahoma City, OK.

The verified statement must include N-number, make and model of the aircraft, amount owed for the services and date of last work. The statement must be signed in ink, with title if on behalf of a corporation or limited liability company and must be accompanied by the \$5.00 filing fee.

Also, if the owner of the aircraft is located in Minnesota, you may want to file the statement with the Secretary of State. Although it is not necessary to perfect your lien, it will provide notice to anyone who doesn't know to check with the Aircraft Registry.

This is called "perfecting" your mechanic's lien and must be done within 90 days after you provide the work, materials or service. Once perfected, you now have a lien on the aircraft.

Perfection secures the amount you are owed with the aircraft. You then have several options. First, in order to sell the aircraft, the owner will need to pay you and obtain a release before the owner can give a buyer clear title to the aircraft.

Second, you also have the ability to repossess and foreclose on the aircraft. This means you can force a sale of the aircraft and then receive payment out of the proceeds of the sale. Any excess money is given to the owner.

Under the first option, you run the risk of having to wait until the owner attempts to sell the aircraft. The second option gives you more control, but is also more costly than simply waiting. However, under either option you are definitely in a better position to get paid than you would be without the lien.

## **When Bad Things Happen To Good Aircraft Buyers: Recognizing And Avoiding Aircraft Title**

### **Problems**

**By Greg Reigel**

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Whether you are purchasing your first aircraft or the latest in a succession of aircraft, as an aircraft buyer you need to proceed with caution. If you don't, after the seller has left with your money, you may have unanswered questions: Do I really own the aircraft? Have I missed any skeletons hiding in the closet that threaten my continued ownership and possession of my aircraft? What happens when someone else claims they own or have a prior interest in my aircraft?

To answer these questions, first we need to discuss what the FAA requires for an aircraft purchase transaction. Then we will talk about some of the problems/issues that an unwary buyer could face. Finally, we will address some of the steps an aircraft buyer can take to ensure that he or she will be the legitimate and undisputed owner of the aircraft being purchased.

**Recording Purchase Transactions With The FAA.** When you purchase an aircraft, you receive an FAA Form 8050-2, Aircraft Bill of Sale showing the transfer/sale of the aircraft from the seller to you, the aircraft buyer. The bill of sale must then be recorded with the FAA along with an FAA Form 8050-1, Aircraft Registration Application. (Unfortunately, Form 8050-1 is not available online, but must be obtained directly from the FAA or your local FSDO). Additionally, for the most part, all interests in aircraft, whether a security interest, lien, mortgage or judgment, must also be recorded with the FAA Registry in Oklahoma City in order to be valid and the first recorded interest usually has priority over interests recorded at a later date.

## Aircraft Mechanic's Liens In

Failure to timely and properly comply with these filing and recording requirements can result in problems for the aircraft buyer. What types of problems can happen? Although a variety of such problems exist, two specific ways in which an aircraft buyer can find himself or herself in trouble are when a seller fails to convey title to the buyer or when a seller fails to convey "clear" title to the buyer.

**Seller Fails To Convey Title.** In this situation, the aircraft buyer does not become the actual owner of the aircraft. The seller may not necessarily intend for the aircraft buyer not to take title to the aircraft. Rather, the seller's failure to convey title to the aircraft buyer is inadvertent or unknowing. One such situation occurs when the bill of sale contains errors. Potential errors can include when the person signing the bill of sale does not have authority to sign on behalf of the corporation or limited liability company that owns the aircraft, when the aircraft is incorrectly identified on the bill of sale or when the person signing the bill of sale does not have capacity (e.g. a person signing the bill of sale is a minor, mentally insane or incompetent).

Unfortunately, situations also arise in which the seller's actions are intentional and result in the aircraft buyer not receiving title to the aircraft. This can happen when a seller sells an aircraft twice and the second buyer actually records his or her bill of sale before the first buyer. A similar result occurs if the seller forges the bill of sale or if the aircraft is subject to judicial proceedings (such as bankruptcy, receivership, probate, conservatorship or dissolution of marriage), and the court has not authorized the sale.

**Seller Is Unable To Convey Clear Title.** In this situation, the bill of sale may be valid and convey title to the aircraft to the aircraft buyer, but that aircraft may be subject to the interests of some other third-party. Such prior interests can include judgment liens, tax liens, mechanic's liens and various other liens and security interests. These prior interests would likely be recorded before the buyer's bill of sale. It is also possible, in some limited circumstances, to have an unrecorded, possessory lien against an aircraft. (Unrecorded, possessory liens make a strong case against purchasing an aircraft sight unseen without confirming the location of the aircraft and lack of claims by the party in possession if other than the aircraft seller).

**What To Do?** With such potential problems lurking in the shadows, what can/should an aircraft buyer do? Well, one answer is to hire an aviation attorney to assist you with the transaction. An aviation attorney will be familiar with the filing and recording requirements of the FAA and will make sure that the bill of sale and aircraft registration application are completed accurately, properly and filed in a timely manner. An aviation attorney will also be able to perform due diligence on your behalf including a title search and name searches for the seller to discover any judgments, liens, bankruptcies or security interests. He or she can also help you resolve any title defects that may be discovered during due diligence.

An aviation attorney may further help you obtain an affidavit from the seller affirmatively stating that the seller is not aware of any judgments, liens or encumbrances affecting the title to the aircraft. This may assist you in pursuing or asserting a fraud claim against the seller if a title issue arises which you can show the seller was aware of when the affidavit was signed.

Another way to protect yourself is to buy title insurance for your aircraft. The aircraft title insurer will

ensure your documentation is accurate and filed in a timely manner and it will also perform the same types of title and name searches an aviation attorney would perform on your behalf. However, the title insurer may or may not be able to assist you in resolving any title defects and won't be able to provide you with any legal advice regarding the purchase transaction.

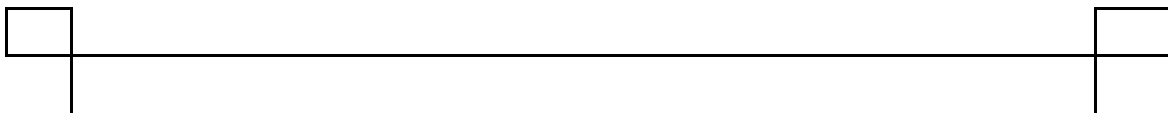
The bottom line is that you as an aircraft buyer need to proceed with caution and perform due diligence when purchasing an aircraft. Although this may seem like added cost in the short term, in the long run these steps can save you the large expense, and possible loss of your aircraft, that can result from title defects or third-party claims against your aircraft.

As always, fly safe and, when you are purchasing an aircraft, buy smart.

When Bad Things Happen To Good Aircraft Buyers: Recognizing And Avoiding Aircraft Title Problems  
How To Profit From Tax Defaulted Properties  
Aircraft Purchase Agreements  
How To Fly A Private Jet On Your Next Trip  
Flight Training – Get Up There



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