



**THERE ARE MANY WAYS FOR A LENDER TO LOSE AN
AIRCRAFT**

AND ONE WAY TO PROTECT IT

AIRCRAFT TITLE INSURANCE

First American Transportation

Title Insurance Company

510 Bienville Street

New Orleans, LA 70130

Phone: 504.588.9252 or 800.247.4035

You're willing to spend millions to acquire an aircraft...

Shouldn't you spend a few thousand more to protect your investment?

You probably know that the Federal Aviation Administration System was set up to establish an exclusive national recording system covering title to and liens against aircraft.

But, did you know that:

- the FAA “system is not all-inclusive”?¹
- “one cannot determine ownership or complete freedom from third party claims” from reviewing the FAA records?²
- a certificate of registration of an aircraft is not the same thing as a certificate of title; and the Transportation Code states that a certificate of registration is “not evidence of ownership of an aircraft in a proceeding in which ownership is or may be in issue”?³
- a bankruptcy judge recently ruled that “registration with the FAA is not evidence of ownership nor proof of foreclosure of any secured interest in aircraft... Thus, documents submitted to the FAA merely record a purported transfer of interest, but do not transfer the interest, nor create or validate the title to the aircraft.”⁴
- as between the persons in a contract, the FAA record is “irrelevant”?⁵
- the Transportation Code does “not contain elaborate priority provisions”⁶; and that you must refer to applicable state law to determine the priority among competing claims against the aircraft ?
- even if you are the first to file documents at the FAA, a state or federal court may award title to, or a lien against, your aircraft to a person who filed after you, or a person who never filed at the FAA?⁷

A forgery, federal tax lien, mechanic's lien, mistake in searching the FAA records, or a bill of sale that is not enforceable due to fraud, duress, lack of capacity or authority and similar defects, are just a few of the reasons that could adversely affect title to your aircraft.

You don't want a problem—whether it occurred long ago or at the closing yesterday--to cause you to lose your aircraft. And even if you fight against a competing claim -- and win --, you don't want to pay expensive attorneys' fees to protect your aircraft against adverse claims.

¹ Sigman, The Wild Blue Yonder: Interests in Aircraft Under our Federal System, 46 So. Cal. Law Rev. 316 (1973)

² Id.

³ 49 U.S.C. §44103 (c)

⁴ Hamilton v Moore Flying Club, 197 B.R. 305 (Bktrcy.E.D. Ark 1996)

⁵ See Sigman, supra, at 377

⁶ Id, at 377; and Philko Aviation, Inc. v Shacket, 103 S.Ct. 2476 (1983)

⁷ See Philko; and Shacket v. Philko Aviation, Inc., 841 F 2d 166 (7th Cir. 1988)

An aircraft title insurance policy from First American is your best protection against a variety of defects and adverse claims that could remain hidden, despite a search of the public records at the Federal Aviation Administration.

For a one-time premium, First American will stand beside you to protect your aircraft; and if you suffer loss due to a covered risk in the policy, First American will reimburse you up to the amount of the policy. In almost all cases, First American will cover the reasonable fees and costs incurred in defending your title.

First American Transportation Title Insurance Company, Inc. is a subsidiary of, and fully reinsured by First American Title Insurance Company, one of the largest title insurance companies in the world and is highly rated by Moody's and A.M. Best.

If you have a problem with the title to--or liens against--your aircraft, you want the financial strength of a three billion dollar company on your side.

The parties who purchased the aircraft, or the lenders who financed the transactions in the following judicial decisions did not lose every case, although, they actually lost most of the cases. Even if they won the case at the trial level or on appeal, they spent thousands of dollars and countless hours in litigation at the trial level and on appeal. The worst possible example of wasted time and dollars is in the Philko case which went through a trial, two appeals (including one to the Supreme Court), a second trial proceeding on remand and two more appeals (including a second appeal to the Supreme Court where certiorari was denied). Imagine the attorneys' fees!

Sadly, many of the parties lost their aircraft! And the lender lost its collateral!

If you have to fight to protect your title or your lien, an aircraft title insurance policy from First American saves you time and money and should satisfy any diligence requirements of a board of directors, shareholders, oversight committees, rating agencies and the like.

If an owner or lender purchases an aircraft title insurance policy with First American, most possible disputes are identified and resolved as part of First American's normal level of diligence before a closing. Even if the matter is not resolved before closing, in almost all cases, you would be protected by coverage under the policy.¹ In either case, an aircraft title insurance policy from First American saves you time and money and gives you peace of mind.

¹ An insured is not covered if the claim or lien is created, assumed or agreed to by that insured.



First American Transportation Title Insurance Company

SIXTY-SOMETHING WAYS FOR A LENDER TO LOSE AN AIRCRAFT

A lender can lose an aircraft if the borrower does not have valid title, if the lender's lien is invalid or if the lender's lien is subordinate to another claimant. Here are some of the issues a lender might have to face:

1. Bill of Sale or Security Agreement is invalid or unenforceable under applicable state or foreign law for any of the reasons discussed below, even if it has been recorded by the FAA. 49 U.S.C. §44108(c); Northern Illinois Corp. v. Bishop Distributing Co., 284 F. Supp 121 (DC Mich. 1968); Texas Nat. Bank v. Aufderheide, 235 F. Supp. 599 (D.C. Ark. 1964); Lockheed v. G.A.C. Finance Corp., 434 P.2d 655 (Ariz. 1967); State Securities Co. v. Aviation Enterprises, Inc., 355 F.2d 225 (10th Cir. 1966); Aircraft Invest Corp. v. Pezzani & Reid Equipment Co., 205 F. Supp. 80 (Mich 1962); In re Hamilton, 197 B.R. 305 (Bkrtcy. E.D. Ark 1996); Faysound Limited v. Walter Fuller Aircraft Sales, 748 F. Supp. 1365 (E.D. Ark 1990); Faysound Limited v. Falcon Jet Corp., 940 F.2d. 339 (8th Cir. 1991)
2. The Security Agreement did not adequately describe the aircraft, engines or propellers. United States v. United Aircraft Corp., 80 F. Supp. 52 (D.C. Conn. 1948)
3. The aircraft in which you have a security interest is sold before you file a security agreement with the FAA. State Securities Co. v. Aviation Enterprises, Inc., 355 F.2d 225 (10th Cir. 1966)
4. The grant of a security agreement in the aircraft was a preference under relevant bankruptcy laws. In Re Bellanca Aircraft Corp., 850 F.2d 1275 (8th Cir. 1988); In Re La Mancha Aire, Inc., 41 B.R. 647 (Bkrtcy. S.D. Fla. 1984)
5. Relevant state priorities laws put you in second place, even though your recorded security agreement is first at the FAA. Koppie v. Busey, 832 F. Supp. 1245 (N.D. Ind. 1992); Cessna Finance Corp. v. Skyways Enterprises, Inc., 580 S.W.2d 491 (KY 1979); South Shore Bank v. International Jet Interiors, Inc., 721 F. Supp. 29 (E.D.N.Y. 1989); General Elec. Capital Corp. v. Advance Petroleum, Inc., 660 So.2d 1139 (Fla.App 3 Dist. 1995)
6. Your Security Agreement is attacked for failure of consideration. Bank of Lexington v. Jack Adams Aircraft Sales, Inc., 570 F.2d 1220 (C.A. Miss 1978)
7. The courts recharacterize your "lending" transaction as a sale, leaving you unperfected at the FAA. In re Bellanca Aircraft Corp., 850 F.2d 1275 (8th Cir. 1988)
8. The courts recharacterize your "true lease" transaction as a disguised security agreement. In re Airlift International, 70 B.R. 935 (Bkrtcy. S.D. FL 1987); In re Worcester Quality Foods, Inc., 140 B.R. 21 (Bkrtcy D. Mass 1992)
9. You relied only on a UCC filing to "perfect" your interest in an aircraft (you will lose to anyone who files at the FAA who does not have actual notice of your claim in the aircraft). Bank of Oklahoma City v. Martin, 744 P.2d 218 (Okl. App 1987); In Re Air Vermont, 45 B.R. 820 (DC VT 1984)

10. The security assignment of a leasehold interest is not properly perfected. Feldman v. Chase Manhattan Bank, N.A., 368 F.Supp. 1327 (SD NY 1974), rev'd on other grounds, 511 F.2d 468 (2d Cir. 1975); Feldman v. Philadelphia National Bank, 408 F. Supp. 24 (ED Pa 1976)
11. Secured Party fails to file Security Agreement with FAA before debtor files bankruptcy. In Re Air Vermont, 45 B.R. 820 (DC VT 1984)
12. The FAA rejects the filing of your security agreement for any reason (in this case, there was confusion regarding the name of the debtor) and the debtor files bankruptcy. You might win the case, but spend thousands of dollars asserting your claim. In re Equipment Lessors of Pa., 235 B.R. 361 (ED Pa. 1999)
13. Ineffective subordination agreement, causing junior interest to be reinstated to priority.
14. "Mechanics" lien claims (securing payment of mechanics or repair facilities), which may attach without recorded notice. Carolina Aircraft Corp. v Commerce Trust Co., 289 So.2d 37 (Fla. Dist. Ct. 1974)—note: possessory liens are not covered under the Policy
15. Your interest is subject to federal or state inheritance tax liens (may attach without recorded notice).
16. Bill of Sale or Security Agreement is from a corporation or limited liability company and appears to be valid, but is unauthorized under relevant bylaws or operating agreement, or given under falsified resolution.
17. Bill of Sale or Security Agreement is from a corporation or limited liability company and is signed by a person who did not have capacity or authority execute the Bill of Sale or Security Agreement on behalf of the corporation or limited liability company.
18. Bill of Sale or Security Agreement is from a partnership, unauthorized under partnership agreement.
19. Bill of Sale or Security Agreement is executed by a "corporation" before incorporation, or after loss of corporate charter.
20. Bill of Sale or Security Agreement is executed by a "limited liability company" before its legal formation or after it is no longer a legal entity.
21. Bill of Sale or Security Agreement appears to be valid but the Aircraft has been sold to more than one party, resulting in competing claims to the aircraft. Philko Aviation, Inc. v. Shackel, 462 U.S. 406 (1983); Bitzer-Croft Motors, Inc. v. Pioneer Bank & Trust Co., 401 NE2d 1340 (Ill. Ct. App. 1980)
22. Bill of Sale or Security Agreement appears to be valid but you have actual notice of another claim to the aircraft, even if that claim is not recorded at the FAA. Philko v. Shackel, supra
23. Bill of Sale or Security Agreement appears to be valid but you also have implied or constructive notice of another claim to the aircraft, even if it is not recorded at the FAA. Philko v. Shackel, supra; Philko v. Shackel, 841 F.2d 166 (7th Cir. 1988); McCausland v. Davis, 204 So.2d 334 (Fla. App. 1967)
24. Bill of Sale or Security Agreement appears to be valid but you have actual, implied or constructive notice of another claim to the aircraft, because that claim is simply referred to in a document of record at the FAA. McCausland v. Davis, 204 So.2d 334 (Fla. App. 1967)
25. Bill of Sale or Security Agreement appears to be valid but a competing secured party files its lien at the FAA before your Bill of Sale or Security Agreement is filed at the FAA (even if you have no notice of that secured claim). Marsden v. Southern Flight Service, Inc., 227 F.Supp. 411 (M.D. N.C. 1964)
26. Bill of Sale or Security Agreement appears to be valid but is from a trustee or purported trustee, unauthorized under trust agreement.
27. Bill of Sale or Security Agreement is forged.

28. Bill of Sale or Security Agreement is executed by person or corporation in a foreign country but is vulnerable to challenge as being an invalid or unauthorized signature, or is otherwise defective or unenforceable under foreign laws. Faysound Limited v. Walter Fuller Aircraft Sales, Inc., 748 F. Supp 1365 (E.D. Ark 1990); Faysound Limited v. Falcon Jet Corp., 940 F.2d 339 (8th Cir. 1991)
29. Bill of Sale or Security Agreement is from a lessee who has an option to purchase the aircraft under the lease, but the lessor sues to rescind contract to sell aircraft. Surillo v Willard, 641 F. Supp. 555 (D. Puerto Rico 1990)
30. Bill of Sale or Security Agreement appears to be valid but is challenged as being given under fraud, undue influence or duress.
31. Bill of Sale or Security Agreement following non-judicial foreclosure appears to be valid but is challenged as not being from a “commercially reasonable sale”. Interfirst Bank Clifton v. Fernandez, 844 F.2d 279 (5th Cir. 1988), amended on denial of rehearing, 853 F.2d 292 (5th Cir 1988); Grumman Credit Corp. v Rivair Flying Service, Inc. 845 P.2d 182 (Okl. 1992)
32. Bill of Sale or Security Agreement following non-judicial foreclosure appears to be valid but is challenged as being void or invalid for (i) not following proper procedure (e.g., lack of notice), or (ii) the assertion of fraud. In re Hamilton, 197 B.R. 305 (Bkrtcy. E.D. Ark 1996).
33. Bill of Sale or Security Agreement appears to be valid but affects an aircraft subject to judicial proceedings (bankruptcy, receivership, probate, conservatorship, dissolution of marriage), and the court has not authorized the sale.
34. Bill of Sale or Security Agreement appears to be valid but affects an aircraft subject to judicial proceedings (bankruptcy, receivership, probate, conservatorship, dissolution of marriage), and the sale has been authorized by a valid court order, but the order is subject to appeal or collateral attack.
35. Bill of Sale or Security Agreement appears to be valid, but affects an aircraft subject to judicial proceedings (bankruptcy, receivership, probate, conservatorship, dissolution of marriage), and the sale has been authorized by a valid court order, but the order is invalid because the court did not have jurisdiction over persons or property in those judicial proceedings.
36. Bill of Sale or Security Agreement appears to be valid but is subject to attack because it was signed by a person who does not have appropriate capacity (minor, insane, or mentally incompetent).
37. Your Borrower’s Bill of Sale was from a company not in the business of selling aircraft and the aircraft is subject to a prior security agreement—borrower, and its secured party may lose to prior security agreement. O’Neill v. Barnett Bank of Jacksonville, N.A., 360 So.2d 150 (Fla. 1978)
38. Buyer fails to record Bill of Sale before the aircraft is sold to another party or pledged to another bank—buyer, and its lender, lose the fight. South Shore Bank v. Tony Mat, Inc., 712 F.2d 896 (3rd Cir 1983); South Shore Bank v. H&H Aircraft Sales, Inc., 452 NE2d 276 (Mass. App. Ct. 1983)
39. Bill of Sale or Security Agreement appears to be valid but is later attacked as having been signed by mistake (grantor did not know what was signed).
40. Bill of Sale or Security Agreement appears to be valid but is later attacked because it was executed under an invalid, falsified or expired (death, disability or insanity of the principal) power of attorney.
41. Bill of Sale or Security Agreement is apparently valid but actually delivered after death of grantor or grantee, or without consent of grantor.
42. Bill of Sale or Security Agreement is apparently valid because the aircraft was purported to be separate property of grantor, when, in fact, the aircraft was community or jointly owned property (even though the spouse had no interest of record at the FAA).

43. Bill of Sale or Security Agreement is apparently valid but is attacked because it affects an aircraft owned by a deceased person, without appropriate judicial proceedings and court order.
44. Bill of Sale or Security Agreement is valid but your aircraft is subject to prior liens under Section 1368(a) of Title 29 of the United States Code (liens relating to ERISA laws), even if they are not filed at the FAA and you have no notice of such liens.
45. Bill of Sale or Security Agreement is valid but your aircraft is subject to prior liens arising under 49 U.S.C. §46304, et seq (liens relating to civil penalties assessed against the aircraft), even if they are not filed at the FAA and you have no notice of such liens.
46. Bill of Sale or Security Agreement and conveyances void as in violation of public policy (payment of gambling debt, payment for contract to commit crime), or is otherwise found to be an illegal transfer. Faysound Limited v. Walter Fuller Aircraft Sales, Inc., 748 F.Supp. 1365 (E.D. Ark 1990); Faysound Limited v. Falcon Jet Corp., 940 F.2d. 339 (8th Cir. 1991)
47. Bill of Sale or Security Agreement is valid and it is filed at the FAA, but it is lost or otherwise not properly recorded by the FAA.
48. Bill of Sale or Security Agreement is valid, but it is lost or otherwise not filed at the FAA by your title company or attorney.
49. Bill of Sale or Security Agreement from grantor who is claimed to have acquired title through fraud upon creditors of a prior owner.
50. Bill of Sale or Security Agreement is valid but the aircraft is subject to a federal tax lien, which is not recorded at the FAA—the owner loses to the US government. Note that federal tax liens are valid for up to 10 years and can be extended by the government for years beyond that time.
51. The aircraft has been imported from a foreign country and foreign deregistration was illegal, invalid or improper, and the aircraft is subject to liens in the foreign country. Faysound Limited v. Walter Fuller Aircraft Sales, Inc., 748 F.Supp. 1365 (E.D. Ark 1990); Faysound Limited v. Falcon Jet Corp., 940 F.2d 339 (8th Cir. 1991)
52. Bill of Sale or Security Agreement appears to be valid but is attacked because the aircraft has been imported from a foreign country, and the deregistration notice has been forged. Your seller does not own the aircraft and the aircraft is subject to liens in the foreign country. Alsen Arrendamiento, S.A. v. Southwest Jet, Inc., In the Sixteenth Judicial Circuit of Missouri, Case No. 96-13176, Civil F (1996); also see the records of the Federal Aviation Administration with regard to a 1974 Sabreliner aircraft, model 40A. serial number 282-126, United States Registration No. N40GT (as of the year 2001)
53. Bill of Sale or Security Agreement appears to be valid but is attacked by a claimant with an undisclosed but recorded option, or right of first refusal, to purchase aircraft, not reported in the FAA lien search.
54. Bill of Sale or Security Agreement appears to be valid but is attacked by a party asserting a claim based on documents of record at the FAA with clear or ambiguous language creating a leasehold, title or security interest in the aircraft, but not reported in the FAA lien search.
55. Misinterpretation of documents of record at the FAA by the person or company performing the lien search giving you an incorrect or misleading report on the status of title, liens, claims or encumbrances against the aircraft.
56. Bill of Sale or Security Agreement is valid on an imported aircraft but a foreign lien holder asserting its claim in the United States attacks your title.⁸

⁸ Coverage in this area under the policy is important, but limited. Please discuss the extent of coverage with your agent.

57. Bill of Sale or Security Agreement or other documentation pertaining to the acquisition of your aircraft (e.g., a release by a secured party) has been forged.
58. Ineffective release of prior satisfied mortgage due to bankruptcy of creditor prior to filing or recording of release (avoiding powers in bankruptcy).
59. Disputed or ineffective release of prior mortgage or lien as given under fraud, mistake or misunderstanding.
60. The title and escrow company you hired to handle the transaction made a mistake in searching the FAA records rendering its FAA report, drafting documents, filing documents, releasing documents out of escrow without authorization, etc.
61. The attorney you hired to handle the transaction made a mistake in drafting documents, interpreting reports pertaining to the FAA records, releasing documents without authority of all parties, etc.
62. You made a mistake in connection with the documentation or closing of the transaction.