



**THERE ARE MANY WAYS FOR AN OWNER TO LOSE
AN AIRCRAFT**

AND ONE WAY TO PROTECT IT

AIRCRAFT TITLE INSURANCE

First American Transportation

Title Insurance Company

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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 Shacklet, 103 S.Ct. 2476 (1983)

⁷ See Philko; and Shacklet 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

FORTY-FOUR WAYS FOR AN OWNER TO LOSE AN AIRCRAFT

It is clear from an analysis of cases based on property law, and scores of cases dealing directly with aircraft disputes, that there are many ways to lose title to an aircraft. In many cases, the seller's title has failed because it is subject to a prior lien or the Bill of Sale is invalid, ineffective or otherwise unenforceable due to any number of reasons, including the following:

1. The Bill of Sale is from a corporation or limited liability company and appears to be valid, but is unauthorized under relevant bylaws or operating agreement, or is given under falsified resolution.
2. The Bill of Sale is from a corporation or limited liability company and is signed by a person who did not have capacity or authority to execute the Bill of Sale on behalf of the corporation or limited liability company.
3. The Bill of Sale is from a partnership, unauthorized under partnership agreement.
4. The Bill of Sale is executed by a "corporation" before incorporation, or after loss of corporate charter.
5. The Bill of Sale is executed by a "limited liability company" before its legal formation or after it is no longer a legal entity.
6. The Bill of Sale 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. Shacket, 462 U.S. 406 (1983); Bitzer-Croft Motors, Inc. v. Pioneer Bank & Trust Co., 401 N.E. 2d 1340 (Ill Ct App 1980)
7. The Bill of Sale 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. Shacket, supra
8. The Bill of Sale appears to be valid but your aircraft was also sold to another person, even though your bill of sale was filed first at the FAA. Philko v. Shacket, supra; Philko v. Shacket, 841 F.2d 166 (7th Cir. 1988); McCausland v. Davis, 204 So 2d 334 (Fla App 1967)
9. The Bill of Sale 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)
10. The Bill of Sale appears to be valid but a competing secured party files its lien at the FAA before your bill of sale 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)
11. The Bill of Sale appears to be valid but is from a trustee or purported trustee, unauthorized under trust agreement.
12. The Bill of Sale is forged.

13. The Bill of Sale is attached for failure of consideration. Bank of Lexington v. Jack Adams Aircraft Sales, Inc., 570 F.2d. 1220 (C.A. Miss 1978)
14. The Bill of Sale is executed by person or corporation in a foreign country, but is challenged as being an invalid or otherwise unenforceable under foreign laws. 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)
15. The Bill of Sale is from a lessee who has an option to purchase the aircraft under the lease, but the lessor sues to rescind the contract to sell aircraft. Surillo v. Willard, 641 F. Supp. 555 (D. Puerto Rico 1990)
16. The Bill of Sale appears to be valid but is challenged as being given under fraud, undue influence or duress.
17. The Bill of Sale 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)
18. The Bill of Sale 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 (Bkrcty. E.D. Ark 1996)
19. The Bill of Sale 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.
20. The Bill of Sale conveys title to an aircraft subject to judicial proceedings (bankruptcy, receivership, probate, conservatorship, dissolution of marriage), and the sale has been authorized by a court order, but the order is subject to appeal or collateral attack.
21. The Bill of Sale 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).
22. The Bill of Sale was from a company not in the business of selling aircraft and the aircraft is subject to a prior security agreement—buyer may lose to prior security agreement. O’Neill v. Barnett Bank of Jacksonville, N.A., 360 So2d 150 (FL 1978)
23. The buyer fails to record Bill of Sale before aircraft sold to another party or pledged to a bank—buyer loses. South Shore Bank v. Tony Mat, Inc., 712 F2d 896 (3rd Cir 1983); South Shore Bank v. H&H Aircraft Sales, Inc., 452 N.E.2d 276 (Mass. App. Ct. 1983)
24. The Bill of Sale is apparently valid but actually delivered after death of grantor or grantee.
25. The Bill of Sale 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).
26. The Bill of Sale is apparently valid but is attacked because it affects an aircraft owned by a deceased person, without appropriate judicial proceedings and court order.
27. The Bill of Sale 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.

28. The Bill of Sale 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.
29. The Bill of Sale or conveyance void is void because it is 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)
30. The Bill of Sale is valid and it is filed at the FAA but it is lost or otherwise not properly recorded by the FAA.
31. The Bill of Sale 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 beyond that time period.
32. 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)
33. The Bill of Sale 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)
34. The Bill of Sale 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.
35. The Bill of Sale 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.
36. 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.
37. The Bill of Sale is valid on an imported aircraft but a foreign lien holder asserting its claim in the United States attacks your title.⁸
38. The Bill of Sale or other documentation pertaining to the acquisition of your aircraft (e.g., a release by a secured party) has been forged.
39. Ineffective release of prior satisfied mortgage due to bankruptcy of creditor prior to filing or recording of release (avoiding powers in bankruptcy).
40. Disputed or ineffective release of prior mortgage or lien, as given under fraud, mistake or misunderstanding.

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

41. 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.
42. 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.
43. You made a mistake in connection with the documentation or closing of the transaction.
44. The Bill of Sale is invalid or unenforceable under applicable state or foreign law, for any of the reasons discussed above, 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 (DC Ark 1964); Lockheed v. G.A.C. Finance Corp., 434 P. 2d 655 (AZ 1967); State Secur 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 (Bkrcty. E.D. Ark 1996); Philko Aviation, Inc. v. Shackel, 462 U.S. 406 (1983)