

October 16, 1987

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Dear Mr. Gaddis:

Successor Trustees; N60CZ, N51CZ, N53CZ

You have asked for our review of a situation, characterized by these aircraft, which are registered to corporate and individual trustees, but the individual trustee must now be replaced. You ask for our opinion as to whether or not the aircraft may be registered to the successor individual trustee upon his (and the corporate trustee's) application, in accordance with the terms of the trust, or whether the application must be supported by a conveyance from the old trustee to the new successor trustee. For the reasons given below, we are of the opinion that because of the language in the trust, a separate conveyance is unnecessary, and the aircraft can be registered to the successor trustees upon their application.

The Federal Aviation Act, 49 U.S.C. 1401, requires registration to an applicant for aircraft registration upon a certification of eligibility supported by evidence of ownership. In the case of these three aircraft, and many hundreds similarly situated, registration has been issued to trustees based upon an application supported by a conveyance, and also supported by a trust instrument which provides the authority for the trustees to act in their fiduciary capacity. The trust is also supported by the trustee's affidavit of citizenship of the beneficiaries as required by Federal Aviation Regulation 47.7(c)(2).

In other situations, when there is a change in the registered owner, that change must be supported by appropriate evidence of ownership, usually a bill of sale or its equivalent. However, in the case of successor trustee, the question is presented as to whether or not the appointment of a successor trustee, according to the trust, transfers the requisite ownership in the absence of a conveyance, or whether a conveyance is required.

In this particular case, the trust instrument provides:

"Section 6.2 Acceptance of Appointment. Any successor Owner Trustee whether appointed by a court or by the Beneficiary or the Corporate Trustee, shall execute and deliver to its or his predecessor Owner Trustee an instrument reasonably satisfactory to such predecessor Owner Trustee accepting such appointment, and thereupon such successor Owner Trustee, without further act, shall with respect to such Trust become vested with all the estates, properties, rights, powers, duties and trust of the predecessor Owner Trustee in the trusts hereunder and with like effect as if originally named as an Owner Trustee herein;..." (Underscore added)

In our opinion, this effectively allows the named trustee to step into the fiduciary capacity with full rights of ownership and powers granted by the trust, and no further action or conveyance of any party is required.

In making this determination, we have considered what appears to be a generally accepted statement of law from the case of Wing v. McCallum, D.C. Mass., 1927, 16 F.2d 645, aff'd., C.C.A. 30 F.2d 505, reh'g. den., 31 F.2d 940, where the court stated: "It seems to be well settled that, if the instrument of trust provides for the vesting of the estate in the new trustee, upon the resignation and appointment of the succeeding trustee, the trust estate will vest according to the provision of the instrument 'as the creator of the trust may mould it at his pleasure.'" And in affirming the case, the Circuit Court (30 F.2d, at 510) stated: "Where, by the terms of the trust agreement itself, the filling of a vacancy in the office of trustee is provided for, and a trustee is appointed in accordance therewith, he succeeds to the property held in trust without any formal transfer to him." And these courts are cited as stating the settled authority in Bogart, Trusts and Trustees, 2nd Ed., West Publishing, 1983, Section 532: "Upon appointment, it is usually held that the successor trustee succeeds to the title of the trust property without the necessity of a conveyance from his predecessor."

Accordingly, we are of the opinion that where a successor trustee is appointed in accordance with the terms of the trust, and the trust provides for the succession by the new trustee to all rights, powers and estates (or other appropriate language) of the office, that the new trustee may have the aircraft registered in his name as trustee without other conveyance, by submitting the application for registration and the affidavit with the documents appointing the successor.

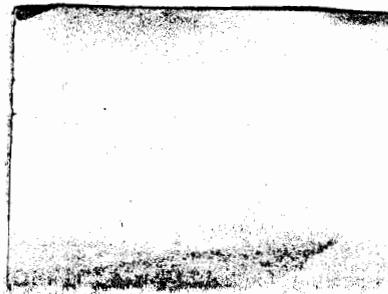
Sincerely,

Joseph R. Standell
Aeronautical Center, Counsel

R. BRUCE CARTER

By:

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Attorney Adviser



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