

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P.O. BOX 25082
OKLAHOMA CITY, OKLAHOMA 73125



10 NOV 1975

Ms. Ann Lennon
AOPA
6501 Denning
Oklahoma City, Oklahoma

Dear Ms. Lennon:

It has been brought to the attention of this office that you object to the procedure of the Registry that permits inspection of unrecorded documents in aircraft folders. We fail to see any basis for your objection either in law or practicality. The present practice of the Registry is not only within the scope and spirit of the Federal Aviation Act and the regulations promulgated thereunder, but serves the public interest, the interest of the parties who are reviewing the folder, and may be required by law.

As you may know, one of the purposes of the Registry is to assist interested persons in learning the ownership interest in aircraft. Section 503 of the Act provides that each instrument recorded in accord with Section 503 shall, in most instances, from the time of its filing for recordation be valid as to all persons without further recordation. It would appear obvious that a party who is searching an aircraft folder would want to be aware of unrecorded documents that have been filed with the Registry. Additionally, unrecorded documents relating to title to or interest in aircraft would be made available if a request is made for them through the Freedom of Information Act. Therefore, it is consonant with the purpose for which the Registry was established to permit inspection of unrecorded documents that are in the possession of the Registry.

I trust that the above has been helpful. Your interest in the activities of the Registry is appreciated. Should you have any additional comments or questions; please feel free to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allen H. Barr".

ALLEN H. BARR
Aeronautical Center Counsel, AAC-7

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

251
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DATE: 10 NOV 1973
REPLY REFER TO: AAC-7

AERONAUTICAL CENTER
P.O. BOX 25082
OKLAHOMA CITY, OKLAHOMA 73125



SUBJECT: Procedures for public review of unrecorded conveyances

FROM: Aeronautical Center Counsel, AAC-7

TO: AAC-250

The questions that you raised in your communication of October 3 are answered as follows:

- a. Allowing public requesters to review unrecorded conveyances.

The Registry's practice of including in aircraft folders that are available for public inspection unrecorded documents that pertain to title to or interest in the aircraft is not only within the scope and spirit of the Federal Aviation Act and regulations promulgated thereunder, but serves the public interest, the interest of the parties who are reviewing the folders, and may be required by law.

AOPA's objection is without merit and has no basis in law or practicality. The objection to the procedure used by the Registry goes only to the public's right to inspect unrecorded documents submitted to the Registry. The right of the public (which AOPA enjoys) to inspect and copy recorded documents is obviously conceded. The purpose for which the Registry was created gives rise to this right. The courts have invariably held that recordation pursuant to recording statutes is notice to all parties of the contents of the recorded document. Therefore, no one can be charged with notice of the content of records without having had the right to inspect the records. However, this right may be limited to such records as the Registry, as a repository of records, is required to keep. Nonetheless, the Registry is not prohibited from permitting, on its own initiative, public inspection of unrecorded documents. This is compatible with the spirit and objective of Section 503, i.e., full disclosure of all documents which affect title or interest in aircraft.

The law relating to recording statutes is clear that a person's act of recording title or interest in property with actual knowledge of an existing but unrecorded title or interest therein will not defeat the earlier title or interest.

The failure of an interested party, who is examining documents in an aircraft folder, to be aware of the contents of unrecorded documents in the possession of the Registry that may have some effect on the title of the aircraft that is the subject of his examination would be a mockery of Section 503 of the Act. It does violence to the spirit of the Act for the Registry to withhold documents that may give a potential purchaser actual knowledge of either an unclear title or other interests in an aircraft, so as to give him the opportunity to reconsider his intentions.

To permit public inspection of all documents in the possession of the Registry which may have some bearing on the title to or interest in aircraft is not only desirable in keeping with the Act, but may be mandatory. By virtue of its existence and purpose, the Registry is likely to receive only those documents that may have an effect on title to or interest in aircraft. It is improbable that any of these documents would be protected by the exemptions of the FOIA or by the Privacy Act, in that these documents (except in rare instances) would only be submitted for purposes of recordation. It follows that a party who is reviewing an aircraft folder would have an interest in these unrecorded documents, and if time permitted could gain access to them through FOIA procedures. Therefore, it is only practicable to permit inspection of the unrecorded document without first requiring a formal request for them through FOIA procedures.

One can only speculate as to why AOPA objects to the present procedure of the Registry. It may be that AOPA certifies and insures the accuracy of its search and does not want to get involved in being exposed to unrecorded documents which may have some effect on the title of an aircraft that is being searched, so as to cause AOPA to have reluctance in certifying an accurate title search. It seems that AOPA could better serve its clients by being exposed to such documents.

The original of the enclosed letter was sent to Ms. Lennon.

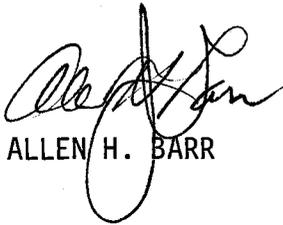
b. Reasonable delay in responding to a request to review an aircraft folder and all unrecorded conveyances pertaining to that particular aircraft.

A reasonable delay in responding to a request to inspect an aircraft folder should be measured by the time required to locate the folder and the unrecorded documents pertaining to that folder.

The present manner in which the Registry operates precludes any conclusion that generally an aircraft folder cannot be made available within a short time after a request is made for it. Delays in making a folder available within 1½ hours of the request (or at least during the same day that the request is made) should be minimum.

The delay occasioned by a request for unrecorded documents, while more problematical, should not be of such proportion so as to amount to an obstruction to the public in exercising its right to inspect the documents. Once the file clerks in the examination section have associated the unrecorded documents with the proper aircraft folder, then there should be a minimum of delay in responding to a request for an aircraft folder and all unrecorded documents pertaining to that folder. The task of locating unrecorded documents that have been indexed by the indexers but not associated by the file clerks with the proper folders causes some inconvenience in the Registry principally because of lack of manpower. This degree of inconvenience is relative to the number of requests made. Because there is

no way to determine the ebb and flow of the number of requests for unrecorded documents that have not been associated with the proper aircraft folder, a policy statement should be issued by the Registry to the effect that the Registry will only honor requests for unrecorded documents made 24 hours after said documents appear on the computer-generated indexes. This 24-hour delay will allow the file clerks sufficient time within which to associate the unrecorded documents appearing on the indexes with the proper aircraft folders.



ALLEN H. BARR

processing by the examiners or if indeed it is currently being processed by an examiner. If it turns out that the requested folder is merely staged for processing, the folder and the unrecorded conveyances are sent down the pneumatic tube to the Title Search room and the requester is allowed to review this folder along with the unrecorded conveyances under the watchful eye of one of our consultants while standing at the counter. If the requested folder is actually being processed by an examiner, no attempt is made to locate that folder until it finds its way back to the files through normal processing routes.

In your opinion, is the practice of allowing public requesters to review unrecorded conveyances legally proper even when done under the absolute supervision and control of an FAA employee? Secondly, is it legally defensible to refuse to search out those aircraft folders which are currently in process by an examiner when we have a request to see an aircraft folder and the unrecorded conveyances, even though this refusal might only delay the requester no more than one full day? To word this question in another way would be to ask for your opinion as to what would constitute a reasonable delay in responding to a request to review an aircraft folder and all unrecorded conveyances pertaining to that particular aircraft.

Original signed by:
Robert E. Jones

ROBERT E. JONES

AAC-250:PDYOST:db:10-2-75

This paper is addressed to the problem presently being experienced in the Aircraft Registration Branch concerning the public inspection of unrecorded documents submitted to the Registry for recordation. The problem is occasioned by the desire of aircraft title companies and individuals to make the fullest title search possible by examining all pertinent documents in the possession of the Registry and the concern of the Registry regarding the practicalities of making documents (including unrecorded documents) available. The problem presents the basic questions of the public's right to inspect public documents and reasonable delay by an administrative agency in responding to a request for documents.

I

A. QUESTION PRESENTED

Is the present practice of the Aircraft Registry in permitting members of the public to examine aircraft folders which contain unrecorded instruments within the scope and spirit of the Federal Aviation Act and the regulation promulgated thereunder?

B. RESPONSE

Yes. The Registry's practice of including in aircraft folders that are available for public inspection unrecorded documents that pertain to title to or interest in the aircraft is not only within the scope and spirit of the Federal Aviation Act and regulations promulgated thereunder, but serves the public interest, the interest of the parties who are reviewing the folders, and may be required by law.

C. FACTUAL BASIS FOR QUESTION PRESENTED

The Aircraft Registration Branch of the Flight Standards Technical Division has an Aircraft Title Search room available for use by individuals and title search companies to review legal documents maintained by the Branch to determine inter alia legal ownership of an aircraft. These documents are maintained in individual folders which are retrievable by a designated number which is also assigned to the aircraft to which the documents in the folder pertain.

By letter of October 3, 1975, to AAC-7, AAC-250 set forth the present procedure used by the Registration Branch in processing a request to inspect an aircraft folder in the Aircraft Title Search room as follows:

At the present time the users of the Aircraft Title Search room make their requests for specific aircraft folders by completing the top portion of AC Form 8050-49. These requests are processed on an hourly basis and if the aircraft folder is in file, the folder is taken to the requester on the subsequent delivery run to the Title Search room. If the folder is not in file, the request is attached to the out-card and the requester given a disposition concerning the whereabouts of the folder. Then at such time as the aircraft folder is returned to the file, the request card is discovered and attached to the aircraft folder and taken to the requester.

If the aircraft folder is out of file for processing in the Examination Section, the requester is advised as to the date the documents were received. As a general rule, Title Search companies wait until after the documents have been recorded before they make their title search report, thus they do not have to speculate whether the documents will be recorded or not. On some occasions there are requests from individuals utilizing the Title Search room who review conveyances which have not yet been through the processing cycle. In these cases we determine if the aircraft folder containing the requested conveyances is merely staged for processing by the examiners or if indeed it is currently being processed by an examiner. If it turns out that the requested folder is merely staged for processing, the folder and the unrecorded conveyances are sent down the pneumatic tube to the Title Search room and the requester is allowed to review this folder along with the unrecorded conveyances under the watchful eye of one of our consultants while standing at the counter. If the requested folder is actually being processed by an examiner, no attempt is made to locate that folder until it finds its way back to the files through normal processing routes.

Ms. Ann Lennon, a representative of AOPA title search company has objected without stating her basis to the Registry's procedure of permitting public inspection of unrecorded documents contained in the aircraft folders.

D. ANALYSIS OF QUESTION PRESENTED AND RESPONSE

AOPA's objection is without merit and has no basis in law or practicality. The objection to the procedure used by the Registry goes only to the public's right to inspect unrecroded documents submitted to the Registry.¹ The right of the public (which AOPA enjoys) to inspect and copy recorded documents is obviously conceded. The purpose for which the Registry was created² gives rise to this right. The courts have invariably held that recordation pursuant to a recording statutes is notice to all parties of the contents of the recorded document. Therefore, no one can be charged with notice of the content of records without having had the right to inspect the records. However, this right may be limited to such records as the Registry, as a repository of records, is required to keep.³ Nonetheless, the Registry is not prohibited from permitting, on its own initiative, public inspection of unrecorded documents. This is compatible with the spirit and objective of Section 503, i.e., full disclosure of all documents which affect title or interest in aircraft.

The law relating to recording statutes is clear that a person's act of recording title or interest in property with actual knowledge of an existing but unrecorded title or interest therein will not defeat the earlier title or interest.⁴

The failure of an interested party, who is examining documents in an aircraft folder, to be aware of the contents of unrecorded documents in the possession of the Registry that may have some effect on the title of the aircraft that is the subject of his examination would be a mockery of

section 503 of the Act. It does violence to the spirit of the Act for the Registry to withhold documents that may give a potential purchaser actual knowledge of either an unclear title or other interests in an aircraft, so as to give him the opportunity to reconsider his intentions.

To permit public inspection of all documents in the possession of the Registry which may have some bearing on the title to or interest in aircraft is not only desirable in keeping with the Act, but may be mandatory. By virtue of its existence and purpose, the Registry is likely to receive only those documents that may have an effect on title to or interest in aircraft. It is improbable that any of these documents would be protected by the exemptions of the FOIA or by the Privacy Act, in that these documents (except in rare instances) would only be submitted for purposes of recordation. It follows that a party who is reviewing an aircraft folder would have an interest in these unrecorded documents, and if time permitted could gain access to them through FOIA procedures. Therefore, it is only practicable to permit inspection of the unrecorded document without first requiring a formal request for them through FOIA procedures.

One can only speculate as to why AOPA objects to the present procedure of the Registry. It may be that AOPA certifies and insures the accuracy of its search and does not want to get involved in being exposed to unrecorded documents which may have some effect on the title of an aircraft that is being searched, so as to cause AOPA to have reluctance in certifying an accurate title search. It seems that AOPA could better serve its clients by being exposed to such documents.

II

A. QUESTION PRESENTED

What constitutes a reasonable delay in responding to a request to inspect an aircraft folder and all unrecorded conveyances pertaining to that folder?

B. RESPONSE

A reasonable delay in responding to a request to inspect an aircraft folder should be measured by the time required to locate the folder and the unrecorded documents pertaining to that folder.

C. FACTUAL BASIS FOR QUESTION PRESENTED

An over view of how documents submitted to the Registry are processed to recordation is helpful in determining what delay is reasonable:

Activity of Registry's Mail Room

The Registry's mail room personnel consist of three indexers and three cashiers. The mail is delivered unopened to the Registry from the central mail room four times a day.⁵ After the indexers sort the mail for the Aircraft Registration Branch (Registry) and the Airman Certification Branch, they then open the Registry's mail and place a stamp on the back of the contents of each envelope *conveyance or document or piece of mail* with a stamp machine which shows the date and time. The description of every document *conveyance* stamped (except correspondence) is typed on index (see Exhibit A) with an OCR typewriter. The cashiers then record the monies received and are responsible for its proper routing. The mail is then taken hourly to the mail desk in the Aircraft Examination Section. At the close of day the index is sent to the Data Services Division (AAC-300) to be processed into computer generated indexes. The computer converts the OCR typed index into a party index and collateral index.⁶ These two indexes (called "hard copies") and eight microfiches of

these indexes are available for the Registry the morning of the following day.⁷ "Hard copies" of these indexes are also made available to the Public Documents Room for use by the members of the public in searching title for aircraft.⁸

Activity of Registry's Aircraft Examination Section

The mail desk receives hourly deliveries of mail that has been opened, stamped and indexed by the Registry's mail room. The mail clerk segregates all of the documents according to large blocks of identifying designation numbers (called "N numbers") of aircraft to which the documents relate. This segregating process continues all day. The following morning these blocks of documents are delivered to individual examiners responsible for specific blocks. These examiners check the documents in their respective blocks against the microfiched indexes of the documents for errors. The errors found are recorded on correction sheets which are sent to the indexers who make the corrections on the OCR typed index that is then presently being typed, but showing the date that the documents were originally indexed.

The documents are then placed in their proper places on shelves marked by N-numbers.⁹ The file clerks then associate the documents with the proper folders taken from where they are permanently maintained (the "up rights"). The folders are placed on the shelves in sequence of the dates that the documents were placed in the folders. The folders are assigned to examiners according to the earliest dates that documents were placed in them for examination and possible recordation of the documents. After the examiners have completed their work on the folders, the folders are forwarded to the microfilm section for microfilming of the new additional documents, and then returned to the "up rights".

There is presently a delay of more than ten work days in the examining and recording of documents that have been submitted for recordation. The examination section is presently working overtime to minimize this delay to five days.

D. ANALYSIS OF QUESTION PRESENTED AND RESPONSE

The foregoing account of the activities of the Registry precludes any conclusion generally that an aircraft folder cannot be made available within a short time after a request is made for it. Delays in making a folder available within 1½ hours of the request (or at least during the same day that the request is made) should be minimum.

The delay occasioned by a request for unrecorded documents, while more problematical, should not be of such proportion so as to amount to an obstruction to the public in exercising its right to inspect the documents. Once the file clerks in the examination section have associated the unrecorded documents with the proper aircraft folder, then there should be a minimum of delay in responding to a request for an aircraft folder and all unrecorded documents pertaining to that folder. The task of locating unrecorded documents that have been indexed by the indexers but not associated by the file clerks with the proper folders causes some inconvenience in the Registry principally because of lack of manpower. This degree of inconvenience is relative to the number of requests made. Because there is no way to determine the ebb and flow of the number of requests for unrecorded documents that have not been associated with the proper aircraft folder, a policy statement should be issued by the Registry to the effect that the Registry will only honor requests for unrecorded documents made 24 hours after said documents appear on the computer-generated indexes. This 24-hour delay will allow the file clerks sufficient

time within which to associate the unrecorded documents appearing on the indexes with the proper aircraft folders.

II

RECOMMENDATION

1. A letter should be sent to Ms. Lennon of AOPA stating that the present procedure of the Registry is proper and will be continued. (A copy of a proposed letter is attached.)
2. Prepare a response to the Registry using the appropriate contents of this paper and recommending the issuance of a policy statement as afore discussed.

¹Section 503(f) of the Act provides:

The Secretary of Transportation shall keep a record of the time and date of the filing of conveyances and other instruments with him and of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose, and indexed according to--

- (1) the identifying description of the aircraft, aircraft engine, or propeller, or in the case of an instrument referred to in section 503(a)(3), the location or locations specified therein; and
- (2) the names of the parties to the conveyance or other instrument.

The meaning of "filing" and "filed" should be distinguished from the meaning of "files"; "filing" and "filed" conveys the meaning of mailed, sent, or submitted, while "files" is used to mean that the documents submitted for filing have been filed. This distinction must be kept in mind when analyzing the question presented.

²Section 503 being a "recording statute" affords protection against fraudulent, secret and unknown instruments that may affect interest in or title to aircraft.

³The records required to be maintained by the Registry include records of documents submitted for filing. See footnote ¹ supra.

⁴Blaalock v. Brown, 78 Ga. App. 537, 51 SE 2d 610, 9 ALR 2d 479 (1949).

⁵The delivery times are 8:30 and 10:30 in the mornings and 12:30 and 3:00 in the afternoons. These are the approximate times that the Center's mail is delivered to the Central Mail Room.

⁶Illustrative pages from these indexes are Exhibit B (Party index) and Exhibit C (Collateral index).

⁷The microfiches of the indexes are made through contract with the Center, by Antec Corp., of Oklahoma City.

⁸A copy of the most current OCR index is also made available on an hourly basis to the Public Documents Room.

⁹At this point, these folders are "staged for processing." See excerpt from Robert Jones' letter supra p.

OCT 5 1975
AAC-250

Procedures for public review of unrecorded conveyances

AAC-250

Acting Chief, Flight Standards Technical Division, AAC-200

AAC-7

On September 22, 1975, Mrs. Ann Lennon, AOPA representative here in Oklahoma City, telephoned Paul D. Yost, Chief, Aircraft Registration Branch, and questioned the Registry's procedure for public review of unrecorded conveyances. She stated that she did not believe we should allow anyone to review unrecorded conveyances and that procedures should be altered so that only recorded documents permanently affixed to the appropriate aircraft folder be sent to the public documents room for inspection and/or copying.

Mrs. Lennon also stated that if we did not amend our procedures, she would write the AOPA counsel in Washington and ask for pressure to be applied at the Washington level.

In view of this, it appears that we should review our own procedures to determine if we are following the proper course of action. In order to prepare you for some specific questions, we think it best to restate precisely what the Registry procedures are.

At the present time the users of the Aircraft Title Search room make their requests for specific aircraft folders by completing the top portion of AC Form 8050-49. These requests are processed on an hourly basis and if the aircraft folder is in file, the folder is taken to the requester on the subsequent delivery run to the Title Search room. If the folder is not in file, the request is attached to the out-card and the requester given a disposition concerning the whereabouts of the folder. Then at such time as the aircraft folder is returned to the file, the request card is discovered and attached to the aircraft folder and taken to the requester.

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Original signed by:

Robert E. Jones

ROBERT E. JONES

AAC-250:PDYOST:db:10-2-75