

provide annual MIS testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken in regard to crew members and other safety-sensitive employees who have tested positive for drugs or alcohol, or have refused to submit to testing.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO-20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 13, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO-20.

[FR Doc. 06-9247 Filed 11-16-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Burlington International Airport, South Burlington VT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for Burlington International Airport, as submitted by the City of Burlington under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150, are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is November 6, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region

Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA funds that the noise exposure maps submitted for Burlington International Airport are in compliance with applicable requirements of Part 150, effective November 6, 2006.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Burlington. The specific maps under consideration were "Figure 1. 2006 Existing Condition Noise Exposure Map" and "Figure 2. 2011 Forecast Condition Noise Exposure Map" in the submission. The FAA has determined that these maps for Burlington International Airport are in compliance with applicable requirements. This determination is effective on November 6, 2006.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act,

it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps are available for examination at the following locations: Engineering Office, Room 295 Terminal Building, Burlington International Airport, 1200 Airport Drive, South Burlington VT, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on November 6, 2006.

LaVerne Reid,

Manager, Airports Division.

[FR Doc. 06-9249 Filed 11-16-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Transfer Statements Under UCC 9-616, for Recording in Aircraft Records

ACTION: Notice.

SUMMARY: This notice is issued by the Federal Aviation Administration (FAA) Chief Counsel to advise interested parties of the FAA's acceptance of transfer statements filed with the FAA Aircraft Registry that are executed under the Uniform Commercial Code, section 9-619, as adopted by the various states.

FOR FURTHER INFORMATION CONTACT:

Joseph R. Standell, Aeronautical Center Counsel, AMC-7, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125-4904, or call (405) 954-3296.

SUPPLEMENTARY INFORMATION: By Memorandum dated September 7, 2006, Mr. Dean Gerber, Vedder, Price, Kaufman & Kammholz, P.C., wrote to the FAA about a default on a secured transaction which resulted in foreclosure of the owner/lessor's interest in several aircraft. In addition to the secured transaction, the aircraft are subject to leases from the defaulting owner, as lessor to a third party certificated air carrier. The foreclosing party wants the FAA aircraft records to reflect its interest in the leases so that transfer of lessor's rights to a new owner/lessor can be accomplished. The defaulting party is unwilling to deliver an assignment of the leases to the foreclosing party. Absent an assignment of lessor's rights in the leases, the foreclosing party has been unable to cause FAA aircraft records to reflect its rights in the leases.

The Administrator of the FAA is charged in 49 U.S.C. 44107 with establishing a system for recording conveyances that affect an interest in a U.S. civil aircraft. Part 49 of the Federal Aviation Regulations—Recording of Aircraft Titles and Security Documents provides that leases are conveyances (see 49 U.S.C. 40101(a)(19), 14 CFR 49.17(a)(1)). Section 39.17(d) of the Regulations provides for recording of consensual assignments of conveyances such as security documents and leases. However, in default situations, the Regulations only provide for recording of a Certificate of Repossession, FAA Form 8050-4, or its equivalent, addressing ownership of an aircraft (14 CFR 47.11(b)). When the repossessed aircraft remains subject to a lease, there is no apparent way for a repossessing party to record its interest in the lease. To address this problem, Mr. Gerber's memorandum included a proposed transfer statement under the Uniform Commercial Code (UCC) section 9-619 as a mechanism by which a foreclosing secured party can cause the record to reflect its rights in leases.

Section 9-619 of the UCC provides that a properly presented transfer statement "entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, * * * system * * *" Further, section 9-619 provides that upon proper presentation, the official responsible for maintaining the system

shall accept the transfer statement and promptly amend its records to reflect the transfer. That "official" in the context of Mr. Gerber's request would be the FAA Aircraft Registry.

The FAA has determined that in appropriate circumstances, transfer statements may be recordable instruments. However, users are reminded that the validity of transfer statements is determined under the applicable state law, i.e., State adoptions of Section 9-619 of the UCC.

Accordingly, the FAA publishes, as an attachment, its response to Mr. Gerber.

Issued in Washington, DC, on November 13, 2006.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

Attachment

October 6, 2006.

Dean A. Gerber, Esq.

Vedder, Price, Kaufman & Kammholz, P.C., 222 North LaSalle Street, Chicago, IL 60601.

Dear Mr. Gerber:

Legal Opinion—Lease Assignments Through the Use of Transfer Statements

This responds to your request for an opinion whether the Federal Aviation Administration (FAA) will consider utilization of a transfer statement for purposes of assigning (on the record) the rights of the aircraft owner in existing leases to the Indenture Trustee; and whether a transfer statement under Uniform Commercial Code section 9-619 is eligible for recording as a stand-alone document.

As an attachment to your request, you provided a draft proposed Transfer Statement and its Attachment A. The proposed Transfer Statement appears to contain all of the provisions required by Uniform Commercial Code Section 9-619 including the statement "By reason of such past-default remedies, the Indenture Trustee has acquired the rights of the Owner Trustee as lessor under the Existing Lease and is now considered the 'Lessor' under the Existing Lease * * *."

Briefly, the facts underlying your request are as follows: The registered owner of the aircraft has defaulted under a recorded security agreement. The collateral under that security agreement is the aircraft and various leases of the aircraft to a certificated air carrier, as lessee. You acknowledge that ownership of the aircraft can be affected by repossession and foreclosure evidenced by the filing of a Certificate of Repossession under 14 CFR § 47.11. However, your client seeks a way to

evidence of record its accession to the rights of the registered owner (the Lessor) in the leases and subsequently be able to record an assignment of that interest from the Indenture Trustee to the new aircraft owner.

By way of background, the Administrator of the Federal Aviation Administration is charged with establishing a system for recording conveyances, including leases that affect an interest in a U.S. civil aircraft. (See 49 U.S.C. 40102(a)(19), 44107; 14 CFR 49.17(a)(1).)

Part 49 of the Federal Aviation Regulations contains provisions for recording assignments of those conveyances. However, where such assignment is not feasible as sometimes occurs in a default situation, there are no regulatory provisions to provide notice to system users of the transfer when the collateral involved is a lease. Although a transfer statement has definite structure and effect it is not the type of assignment contemplated by 14 CFR 49.17(d)(3).¹

Recognizing that dilemma, the drafters of the Uniform Commercial Code (UCC) introduced a mechanism by which a repossessing party can evidence its rights in collateral such as leases. UCC section 9-619 *Transfer of Record or Legal Title*,² introduces the transfer statement as follows:

(a) ["Transfer statement."] In this section, "transfer statement" means a record authenticated by a secured party stating:

- (1) That the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) That the secured party has exercised its post-default remedies with respect to the collateral;
- (3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; (emphasis added) and
- (4) The name and mailing address of the secured party, debtor, and transferee.

(b) [Effect of transfer statement.] A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to

¹ 14 CFR 49.17(d)(3)—The following rules apply to conveyances executed for security purposes and assignments thereof: An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the original agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

² The 2000 revisions to Article 9 have been adopted by all 50 states, the District of Columbia and the Virgin Islands (ULA UCC Refs & Annos, Westlaw).

the official or office responsible for maintaining the system, the official or office shall:

- (1) Accept the transfer statement;
- (2) Promptly amend its records to reflect the transfer; (emphasis added) and
- (3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) [Transfer not a disposition; no relief of secured party's duties.] A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

I have also considered the Official Comments of the UCC drafters wherein they explain the intent of UCC 9-916:

Transfer of Record or Legal Title. Potential buyers of collateral that is covered by a certificate of title (e.g., an automobile) or is subject to a registration system (e.g., a copyright) typically require as a condition of their purchase that the certificate or registry reflect their ownership. In many cases, this condition can be met only with the consent of the record owner. If the record owner is the debtor and, as may be the case after the default, the debtor refuses to cooperate, the secured party may have great difficulty disposing of the collateral. (emphasis added)

Subsection (b) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. (emphasis added) Of course, use of this mechanism will not be effective to clear title to the extent that subsection (b) is preempted by federal law. Subsection (b) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its disposition or acceptance remedies under this Part, as well as a transfer by a debtor to a secured party prior to the secured party's exercise of those remedies. Under subsection (c), a transfer of record or legal title (under subsection (b) or under other law) to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee at foreclosure. A secured party who has obtained record or legal title retains its duties with respect to enforcement of its security interest, and the debtor retains its rights as well.

3. Title-Clearing Systems Under Other Law. Applicable non-UCC law (e.g., * * *, federal registry rules, or the like) (emphasis added) may provide a means by which the secured party may obtain or transfer record or legal title for the purpose of a disposition of the property under this Article. The mechanism provided by this section is in addition to any title-clearing provision under law other than this Article.

After due consideration of these facts, provisions and comments, it is my opinion that the FAA will consider utilization of a transfer statement as contemplated by Section 9-619 of the Uniform Commercial Code for purposes of transferring the rights of the aircraft owner, as Lessor, to the Indenture Trustee in existing leases.

Further, your proposed transfer statement is eligible for recording as a stand-alone document because it is a conveyance affecting an interest in a civil aircraft of the United States in that it affects an interest in a recorded lease between Wells Fargo Bank and Northwest Airlines concerning operational control of aircraft.

Be advised that for purposes of transferring ownership of an aircraft FAA will not consider a transfer statement a substitute for a Certificate of Repossession or its equivalent under 14 CFR 47.11

Sincerely,

Joseph R. Standell
Aeronautical Center Counsel
[FR Doc. 06-9250 Filed 11-16-06; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25886]

State Enforcement of Household Goods Consumer Protection

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) gives State household goods regulatory authorities and State attorneys general the right to enforce certain consumer protection provisions that apply to individual shippers and are related to interstate movement of the goods. This notice specifies the Federal statutory and regulatory provisions that States may enforce.

DATES: The policy in this notice is effective as of the enactment of SAFETEA-LU, August 10, 2005. State household goods regulatory authorities and State attorneys general may enforce the statutory provisions and FMCSA regulations identified in this notice for actions on or after that date.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, Household Goods Team, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW., Room 8310, Washington, DC 20590-0001. (202) 385-2400. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On August 10, 2005, the President signed the Safe, Accountable, Flexible, and Efficient

Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Public Law 109-59). Section 4206 of SAFETEA-LU amends Title 49 of the United States Code (U.S.C.) by adding two new sections, 14710 and 14711, to address the enforcement of the consumer protection provisions of Title 49 and related regulations applicable to the delivery and transportation of household goods in interstate or foreign commerce. Before the passage of SAFETEA-LU, the Federal government was responsible for enforcing these statutes and regulations. Section 14710 extends to State agencies that regulate the movement of intrastate household goods the authority to "enforce the consumer protection provisions of this title [Title 49] that apply to individual shippers, as determined by the Secretary [of the U.S. Department of Transportation], and are related to the delivery and transportation of household goods in interstate commerce." Section 14711 gives State attorneys general the authority to bring a civil action or impose civil penalties in the U.S. district courts to enforce the consumer protection provisions that apply to individual shippers and are related to the delivery and transportation of household goods in interstate or foreign commerce.

Section 4202 of SAFETEA-LU amended 49 U.S.C. 13102 to define "individual shipper" as follows:

The term "individual shipper" means any person who—

- (A) Is the shipper, consignor, or consignee of a household goods shipment;
- (B) Is identified as the shipper, consignor, or consignee on the face of the bill of lading;
- (C) Owns the goods being transported; and
- (D) Pays his or her own tariff transportation charges.

FMCSA has determined that the States, under sections 14710 and 14711, may enforce the following statutory provisions and FMCSA regulations¹ immediately:

Statutes

1. Tariff requirement for certain transportation, 49 U.S.C. 13702.
Household goods (HHG) carriers must have tariffs covering transportation and related services and must charge in accordance with their tariff. (Tariffs are the rates charged for services and the service terms.) The carrier must give notice of availability of the tariff to individual shippers and must make it available for inspection to shippers upon reasonable request.

¹ The brief description accompanying each item listed below is for informational purposes only and is not intended to be a definitive interpretation of legal requirements.

October 6, 2006

Dean A. Gerber, Esq.
Vedder, Price, Kaufman & Kammholz, P.C.
222 North LaSalle Street
Chicago, IL 60601

Dear Mr. Gerber:

Legal Opinion -
Lease Assignments Through the Use of
Transfer Statements

This responds to your request for an opinion whether the Federal Aviation Administration (FAA) will consider utilization of a transfer statement for purposes of assigning (on the record) the rights of the aircraft owner in existing leases to the Indenture Trustee; and whether a transfer statement under Uniform Commercial Code section 9-619 is eligible for recording as a stand-alone document.

As an attachment to your request, you provided a draft proposed Transfer Statement and its Attachment A. The proposed Transfer Statement appears to contain all of the provisions required by Uniform Commercial Code Section 9-619 including the statement "By reason of such past-default remedies, the Indenture Trustee has acquired the rights of the Owner Trustee as lessor under the Existing Lease and is now considered the "Lessor" under the Existing Lease"

Briefly, the facts underlying your request are as follows: The registered owner of the aircraft has defaulted under a recorded security agreement. The collateral under that security agreement is the aircraft and various leases of the aircraft to a certificated air carrier, as lessee. You acknowledge that ownership of the aircraft can be affected by repossession and foreclosure evidenced by the filing of a Certificate of Repossession under 14 CFR § 47.11. However, your client seeks a way to evidence of record its accession to the rights of the registered owner

(the Lessor) in the leases and subsequently be able to record an assignment of that interest from the Indenture Trustee to the new aircraft owner.

By way of background, the Administrator of the Federal Aviation Administration is charged with establishing a system for recording conveyances, including leases that affect an interest in a U.S. civil aircraft. (see 49 U.S.C. §§ 40102(a)(19), 44107; 14 CFR § 49.17(a)(1).)

Part 49 of the Federal Aviation Regulations contains provisions for recording assignments of those conveyances. However, where such assignment is not feasible as sometimes occurs in a default situation, there are no regulatory provisions to provide notice to system users of the transfer when the collateral involved is a lease. Although a transfer statement has definite structure and effect it is not the type of assignment contemplated by 14 CFR § 49.17(d)(3).¹

Recognizing that dilemma, the drafters of the Uniform Commercial Code (UCC) introduced a mechanism by which a repossessing party can evidence its rights in collateral such as leases. UCC section 9-619 *Transfer of Record or Legal Title*,² introduces the transfer statement as follows:

(a) [**"Transfer statement."**] In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; (emphasis added) and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) [**Effect of transfer statement.**] **A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording,**

¹ 14 CFR § 49.17(d)(3) -- The following rules apply to conveyances executed for security purposes and assignments thereof: An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the original agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

² The 2000 revisions to Article 9 have been adopted by all 50 states, the District of Columbia and the Virgin Islands (ULA UCC Refs & Annos, Westlaw)

registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;**
- (2) promptly amend its records to reflect the transfer;** (emphasis added) and
- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) [Transfer not a disposition; no relief of secured party's duties.]

A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

I have also considered the Official Comments of the UCC drafters wherein they explain the intent of UCC § 9-619:

Transfer of Record or Legal Title. Potential buyers of collateral that is covered by a certificate of title (e.g., an automobile) or is subject to a registration system (e.g., a copyright) typically require as a condition of their purchase that the certificate or registry reflect their ownership. In many cases, this condition can be met only with the consent of the record owner. If the record owner is the debtor and, as may be the case after the default, the debtor refuses to cooperate, the secured party may have great difficulty disposing of the collateral. (emphasis added)

Subsection (b) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. (emphasis added) Of course, use of this mechanism will not be effective to clear title to the extent that subsection (b) is preempted by federal law. Subsection (b) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its disposition or acceptance remedies under this Part, as well as a transfer by a debtor to a secured party prior to the secured party's exercise of those remedies. Under subsection (c), a transfer of record or legal title (under subsection (b) or under other law) to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee at foreclosure. A secured party who has obtained record or legal title retains its duties with respect to enforcement of its security interest, and the debtor retains its rights as well.

3. Title-Clearing Systems Under Other Law. Applicable non-UCC law (e.g., . . . , **federal registry rules**, or the like) (emphasis added) may provide a means by which the secured party may obtain or transfer record or legal title for the purpose of a disposition of the property under this Article. The mechanism provided by this section is in addition to any title-clearing provision under law other than this Article.

After due consideration of these facts, provisions and comments, it is my opinion that the FAA will consider utilization of a transfer statement as contemplated by Section 9-619 of the Uniform Commercial Code for purposes

of transferring the rights of the aircraft owner, as Lessor, to the Indenture Trustee in existing leases.

Further, your proposed transfer statement is eligible for recording as a stand-alone document because it is a conveyance affecting an interest in a civil aircraft of the United States in that it affects an interest in a recorded lease between Wells Fargo Bank and Northwest Airlines concerning operational control of aircraft.

Be advised that for purposes of transferring ownership of an aircraft FAA will not consider a transfer statement a substitute for a Certificate of Repossession or its equivalent under 14 CFR § 47.11.

Sincerely,

Joseph R. Standell
Aeronautical Center Counsel,

Memorandum

Dated October __, 2006

From: Aeronautical Center Counsel, AMC-7

DRAFT

To: Manager, Aircraft Registration Branch, AFS-750

Subject: Legal Opinion –
Transfer Statements – eligibility for recording

This office received a request from Dean N. Gerber, Vedder, Price, Kaufman & Kammholz, P.C., to opine whether a transfer statement given under UCC § 9-619 is eligible for recording as a stand-alone document; and if FAA will consider utilization of a transfer statement for purposes of assigning (on the record) the rights of the Owner Trustees to the Indenture Trustees in the Existing Leases.

Facts: Briefly, the facts underlying Mr. Gerber's request are as follows: The registered owner of the aircraft has defaulted under a recorded security agreement. The collateral under that security agreement is the aircraft. Mr. Gerber acknowledges that ownership of the aircraft can be affected by repossession and foreclosure evidenced by the filing of a Certificate of Repossession under 14 CFR § 47.11. However, lease(s) of the aircraft to an air carrier are also of record but are not in default. Mr. Gerber's client seeks a way to evidence of record its accession to the rights of the registered owner (the Lessor) in the leases as collateral and subsequently be able to record an assignment of that interest to the new aircraft owner. The factual situation behind the request is more fully explained in Mr. Gerber's attached memorandum.

Opinion: Based on the following discussion, it is my opinion that a transfer statement is eligible for recording in an aircraft record as a stand-alone document. As a stand-alone document, it is a conveyance affecting an interest in a civil aircraft of the United States and FAA may give it the effect intended under applicable state law. The transfer statement is not a substitute for a Certificate of Repossession or its equivalent under 14 CFR § 47.11. Rather it affects collateral such as leases and other security agreements of record.

Discussion: The Administrator of the Federal Aviation Administration was charged with establishing a system for recording conveyances, including leases and instruments executed for security purposes that affect an interest in a U.S. civil aircraft. (*see* 49 U.S.C. §§ 44107, 40102(a)(19).) Leases and instruments executed for security purposes affect are conveyances (*see* 14 CFR § 49.17(a)(1)). While assignment of those conveyances is provided for in the Federal Aviation Regulations, Part 49, there are no regulatory provisions for a secured party to exercise its default remedies and provide notice to users of the system of its exercise when the collateral involved is a lease.

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Recognizing that dilemma, the drafters of the Uniform Commercial Code introduced a mechanism by which a repossessing party can evidence its rights in collateral such as leases and instruments executed for security purposes. Section 9-619 *Transfer of Record or Legal Title*, introduces the transfer statement as follows:

(a) [**"Transfer statement."**] In this section, "transfer statement" means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
- (4) the name and mailing address of the secured party, debtor, and transferee.

(b) [**Effect of transfer statement.**] A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;
- (2) promptly amend its records to reflect the transfer; and
- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) [**Transfer not a disposition; no relief of secured party's duties.**] A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

The UCC drafters explained the dilemma they recognized and the intent of UCC § 9-619 in their Official Comments:

Transfer of Record or Legal Title. Potential buyers of collateral that is covered by a certificate of title (e.g., an automobile) or is subject to a registration system (e.g., a copyright) typically require as a condition of their purchase that the certificate or registry reflect their ownership. In many cases, this condition can be met only with the consent of the record owner. If the record owner is the debtor and, as may be the case after the default, the debtor refuses to cooperate, the secured party may have great difficulty disposing of the collateral.

Subsection (b) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. (emphasis added) Of course, use of this mechanism will not be effective to clear title to the extent that subsection (b) is preempted by federal law. Subsection (b) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its disposition or acceptance remedies under this Part, as well as a transfer by a debtor to a

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secured party prior to the secured party's exercise of those remedies. Under subsection (c), a transfer of record or legal title (under subsection (b) or under other law) to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee at foreclosure. A secured party who has obtained record or legal title retains its duties with respect to enforcement of its security interest, and the debtor retains its rights as well.

3. Title-Clearing Systems Under Other Law. Applicable non-UCC law (e.g., a certificate-of-title statute, federal registry rules, or the like) may provide a means by which the secured party may obtain or transfer record or legal title for the purpose of a disposition of the property under this Article. **The mechanism provided by this section is in addition to any title-clearing provision under law other than this Article.** (emphasis added)

A transfer statement has definite structure and effect but is not an assignment subject to the requirements of 14 CFR § 49.17(d)(3).¹ The function of a transfer statement parallels that of a Certificate of Repossession however, each deals with a different type of collateral. Both are creatures of state law rather than federal law and facilitate transfer of rights in default situations.²

Summary: For these reasons, in my opinion, a transfer statement meeting the requirements of UCC § 9-619, is a conveyance and is eligible for recording as a stand-alone document. I also conclude that FAA may honor the official intended effect of the transfer statement and treat the secured party authenticating the transfer statement as the holder of the interest specified thereon.

Joseph R. Standell

DRAFT

¹ 14 CFR § 49.17(d)(3) -- The following rules apply to conveyances executed for security purposes and assignments thereof: An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the original agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

² 14 CFR 49.17(c) The validity of any instrument, eligible for recording under this part, is governed by the laws of the State, possession, Puerto Rico, or District of Columbia, as the case may be, in which the instrument was delivered, regardless of the location or place of delivery of the property affected by the instrument. If the place where an instrument is intended to be delivered is stated in the instrument, it is presumed that the instrument was delivered at that place. The recording of a conveyance is not a decision of the FAA that the instrument does, in fact, affect title to, or an interest in, the aircraft or other property it covers.

DEAN N. GERBER
312-609-7638
dgerber@vedderprice.com

OFFICES IN CHICAGO, NEW YORK CITY, WASHINGTON, D.C.
AND ROSELAND, NEW JERSEY

Memorandum

To: Joseph R. Standell
Aeronautical Center Counsel
Federal Aviation Administration

From: Dean N. Gerber
Vedder Price Kaufman & Kammholz, P.C.

Date: September 7, 2006

Re: Lease Assignments Through the Use of Transfer Statement

I am writing in connection with various discussions which I have had with Robin Jenson at Daugherty, Fowler, Peregrin, Haught and Jenson concerning an unusual situation in which we find ourselves on a matter involving our client, Bank of America ("BoFA"). The short summary of the transaction is as follows:

Northwest Airlines, Inc. ("NWA") had previously entered into several lease agreements (each, an "Existing Lease") involving various aircraft with separate owner trustees (each, an "Owner Trustee"), as lessor. Each Existing Lease and the related aircraft was pledged to an indenture trustee (each, an "Indenture Trustee") to secure debt issued to finance the acquisition of such aircraft. The debt was funded through a EETC financing commonly referred to as the "NWA 1996-1 EETC." As a result of NWA's bankruptcy filing, the controlling debt party on the NWA 1996-1 EETC authorized the applicable Indenture Trustee to foreclose the Owner Trustee's interest in the related aircraft and the related Existing Lease (subject to NWA's rights thereunder). As part of the exercise of remedies, each Indenture Trustee now wishes to transfer each of the aircraft and the Existing Leases to a new owner trust (each, a "New Trustee") established for the benefit of BoFA. Unfortunately, the beneficiaries of the each of the existing owner trusts refuse to permit the applicable Owner Trustee to sign any bill of sale or transfer document to assist in connection with the foregoing transfers.

I understand that moving title to the applicable aircraft on the FAA registry from the Owner Trustees to the applicable Indenture Trustee can be accomplished by virtue of the Certificate of Repossession (AC Form 8050-4) and the onward transfer of title from the Indenture Trustee to the applicable New Trustee would be accomplished via a traditional FAA bill of sale (AC Form 8050-2). The difficulty we face is getting the Existing Leases assigned to the applicable Indenture

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September 7, 2006

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Trustee so that it can then (via a traditional assignment and assumption agreement) further transfer the Existing Leases to the applicable New Trustee. We have been advised that there is currently no mechanism in place to accomplish this. The Certificate of Repossession is suitable for moving title to an aircraft but not for assigning rights in a lease. Without some mechanism to assign the Existing Leases, we are left with two choices: either leave the Existing Leases "of record" with the Owner Trustees shown as lessors or have the Existing Leases removed from the record. Neither of these choices is appealing as each leaves an incorrect impression on the registry.

We therefore request that the FAA consider utilization of a transfer statement ("Transfer Statement") as contemplated by Section 9-619 of the Uniform Commercial Code (the "Code") solely for purposes of assigning (on the record) the rights of the Owner Trustees to the Indenture Trustees in the Existing Leases. This Code section was designed to deal with situations where a purchaser seeks to acquire collateral that is subject to a registration system. This section specifically acknowledges that a registry might only permit the transfer with the consent of the record owner and as such this could create great difficulties for secured parties to dispose of their collateral (which is obviously the case here). Section 9-619 provides a simple mechanism for dealing with this situation. Specifically, it provides that if a Transfer Statement meets the necessary requirements (which include a writing, signed by the secured party and stating that, among other things, the secured party has exercised remedies with respect to the collateral and that, by reason of such exercise, a transferee has acquired the rights of the debtor in the collateral), it would entitle the transferee (the Indenture Trustees in our case) to the transfer of record of all rights of the debtor in the collateral specified. The Code section further instructs the official responsible for maintaining the system to accept the Transfer Statement and properly amend its records to reflect the transfer. It is important to note that the Transfer Statement is NOT of itself a disposition of collateral (nor does it relieve the secured party of its duties under the Code). In this regard, it acts very much like the Certificate of Repossession. As such, we would also assume that the Transfer Statement would serve as a stand alone document for FAA recordation purposes (like a Certificate of Repossession transferring title to an aircraft in prior transactions) and recorded as a separate instrument.

I have attached a draft Transfer Statement which we would propose to use for purposes of the subject transaction. We believe that this is a proper means of cleaning-up the FAA registry and is consistent with its prior practices in the context of the use of the Certificate of Repossession.

I would be happy to discuss this further with you at your convenience.

D.N.G.

FORM OF TRANSFER STATEMENT

TRANSFER STATEMENT (N__US)

The undersigned, U.S. Bank National Association, not in its individual capacity but solely as Indenture Trustee ("**Indenture Trustee**") under that certain Trust Indenture and Security Agreement [NW ____] dated as of _____ ("**Trust Indenture**") between Indenture Trustee and Wells Fargo Bank Northwest, National Association (as successor in interest to First Security Bank, National Association, as successor to First Security Bank of Utah, National Association) not in its individual capacity but solely as Owner Trustee ("**Owner Trustee**"), as more particularly described on Schedule A hereto and as amended or supplemented from time to time, hereby certifies as follows:

1. Owner Trustee and Northwest Airlines, Inc. ("**Northwest**") are party to that certain Lease Agreement as more particularly described on Schedule A hereto (as amended, supplemented or otherwise modified as provided therein, the "**Existing Lease**") with respect to one Boeing 747-451 aircraft with manufacturer's serial number _____ and United States nationality and registration mark N__US and the Pratt & Whitney model PW4056 aircraft engines with manufacturer's serial numbers _____, _____, _____ and _____ (collectively, the "**Aircraft**").

2. Pursuant to the Trust Indenture, the Owner Trustee has, among other things, granted to the Indenture Trustee a security interest in Owner Trustee's right, title and interest in and to the Aircraft and has assigned the Existing Lease to the Indenture Trustee in order to secure certain indebtedness referred to in the Trust Indenture.

3. An Event of Default has occurred and is continuing under the Trust Indenture.

4. The Indenture Trustee, as secured party, has exercised its post-default remedies with respect to the collateral described in the Trust Indenture, including, without limitation, the Aircraft and the Existing Lease.

5. By reason of the exercise of such past-default remedies, the Indenture Trustee has acquired the rights of the Owner Trustee as lessor under the Existing Lease and is now considered the "Lessor" under the Existing Lease effective as of _____.

6. The mailing address of the Owner Trustee and the Indenture Trustee is as follows:

Owner Trustee:

Attn: _____

Telecopy: _____

Indenture Trustee:

Attn: _____

Telecopy: _____

This Transfer Statement is delivered pursuant to and in accordance with the terms of Section 9-619 of the Uniform Commercial Code as in effect in any applicable jurisdiction.

U.S. BANK NATIONAL ASSOCIATION,
not in its individual capacity but solely as
Indenture Trustee

By: _____

Name:

Title:

Schedule A to Transfer Statement

Existing Lease

Lease Agreement [NW_____] dated as of _____ between Wells Fargo Bank Northwest, National Association (as successor in interest to First Security Bank, National Association, as successor to First Security Bank of Utah, National Association) not in its individual capacity but solely as Owner Trustee, as lessor, and Northwest Airlines, Inc., as lessee, which was recorded by the Federal Aviation Administration on _____ and assigned Conveyance No. _____, as supplemented, amended and assigned by the following described instruments:

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Lease Supplement No. 1			

Trust Indenture

Trust Indenture and Security Agreement [NW_____] dated as of _____ between Wells Fargo Bank Northwest, National Association (as successor in interest to First Security Bank, National Association, as successor to First Security Bank of Utah, National Association) not in its individual capacity but solely as Owner Trustee, as lessor, and Northwest Airlines, Inc., as lessee, which was recorded by the Federal Aviation Administration on _____ and assigned Conveyance No. _____, as supplemented and amended by the following described instruments:

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I understand that moving title to the applicable aircraft on the FAA registry from the Owner Trustees to the applicable Indenture Trustee can be accomplished by virtue of the Certificate of Repossession (AC Form 8050-4) and the onward transfer of title from the Indenture Trustee to the applicable New Trustee would be accomplished via a traditional FAA bill of sale (AC Form 8050-2). The difficulty we face is getting the Existing Leases assigned to the applicable Indenture

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The undersigned, U.S. Bank National Association, not in its individual capacity but solely as Indenture Trustee ("**Indenture Trustee**") under that certain Trust Indenture and Security Agreement [NW ____] dated as of _____ ("**Trust Indenture**") between Indenture Trustee and Wells Fargo Bank Northwest, National Association (as successor in interest to First Security Bank, National Association, as successor to First Security Bank of Utah, National Association) not in its individual capacity but solely as Owner Trustee ("**Owner Trustee**"), as more particularly described on Schedule A hereto and as amended or supplemented from time to time, hereby certifies as follows:

1. Owner Trustee and Northwest Airlines, Inc. ("**Northwest**") are party to that certain Lease Agreement as more particularly described on Schedule A hereto (as amended, supplemented or otherwise modified as provided therein, the "**Existing Lease**") with respect to one Boeing 747-451 aircraft with manufacturer's serial number _____ and United States nationality and registration mark N__US and the Pratt & Whitney model PW4056 aircraft engines with manufacturer's serial numbers _____, _____, _____ and _____ (collectively, the "**Aircraft**").

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5. By reason of the exercise of such past-default remedies, the Indenture Trustee has acquired the rights of the Owner Trustee as lessor under the Existing Lease and is now considered the "Lessor" under the Existing Lease effective as of _____.

Schedule A to Transfer Statement

Existing Lease

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