



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

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Robert D. Ehling, Esq.  
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Dear Mr. Ehling:

### California lien recording Statutes; FAA Examiner's Guidelines

Thank you for your letter in which you asked "[o]n what basis has the FAA concluded that California law does not permit lien filings against air carrier aircraft?" and "[d]oes the FAA have any other statutory or case authority for this position?" You also informed us that "to put it succinctly, the "Aircraft Repair" statute is not the only California statutory authority for a lien on an aircraft."

The Federal Aviation Administration's conclusion "that California law does not permit lien filings against air carrier aircraft" is based on the statutory language of § 9791, Chapter 19.5, California Business and Professions Code. Section 9791 provides "[t]his chapter applies only to work done on a general aviation aircraft with either an estimated cost or an actual cost of one hundred dollars (\$100) or more."

We do agree with your conclusion that "the 'Aircraft Repair' statute is not the only California statutory authority for a lien on an aircraft." However, our research indicates California recognizes 2 classes of lien that may affect an aircraft. Those classes of lien are general and special. (see § 2873, California Civil Code; § 1208.61, California Code of Civil Procedure.) The liens recognized by the Civil Code and the Code of Civil Procedure are general and dependent upon possession. We also note that Cal Code Civ Proc § 1208.70 explicitly excludes application of that chapter to air carrier aircraft.

The only special lien we are aware of that is applicable to aircraft is the special lien created by § 9798.1(a) of the California Business and Professions Code. Section 9798.1(a) creates a special lien "pursuant to Sections 2872 and 2875 of the Civil Code" that is not dependant upon possession. (§ 9798.1(c).) However, as discussed below, we continue to conclude that the other "California statutory authority for a lien on an aircraft" does not contain the necessary common elements.

By way of background, in 1981 the FAA published its *Legal Opinion as to the Recordability of Artisan's Liens and Identification of Those States From Which Such*

*Liens Will be Accepted.* (46 FR 61528, Dec. 17, 1981.) That Opinion set out 4 common elements the presence in a state statute of which will allow the FAA to accept and record notices of lien. Those 4 common elements are:

- The time within which the claim must be recorded;
- Whether the claim must be signed by the claimant, or may be signed by his agent or attorney;
- Whether the claim must be verified;
- Where the claim is to be filed (Of course, for aircraft, there is Federal preemption of place of filing: The FAA Aircraft Registry at Oklahoma City).

Prior to publishing that Legal Opinion, a review of all state lien statutes was conducted to determine which states' statutes contained all of the 4 common elements. The most commonly missing element was "where the claim is to be filed." The California lien statutes reviewed by FAA were dependent upon possession of the aircraft by the claimant and did not provide for filing of notice of claims of lien. Accordingly, FAA concluded that it could not accept and record notices of claims of lien under California laws.

After receipt of your letter, we again reviewed those sections of law and determined that, with the exception of section 9798, Chapter 19.5, California Business and Professions Code, all other lien statutes remain virtually unchanged insofar as "where the claim is to be filed."

After FAA's 1981 publication in the Federal Register, California enacted Chapter 19.5 of the California Business and Professions Code (Aircraft Repair). We reviewed Chapter 19.5 and found that it did provide "where the claim is to be filed." (see § 9798.1(d).) However, although § 9798.1(d) provided that the statutory lien created by subdivision (a) was dependent upon recordation at the FAA Aircraft Registry, § 9791 provides "[t]his chapter applies only to work done on a general aviation aircraft with either an estimated cost or an actual cost of one hundred dollars (\$100) or more." Section 9790 defined "general aviation" to exclude both air carrier and military aviation; however that section has since been deleted.

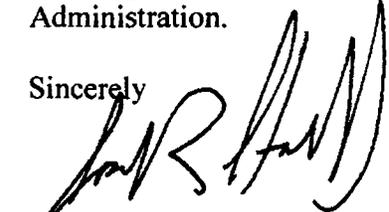
Based on the language of § 9791, the FAA's Aircraft Registry established a process to determine whether each aircraft that was the subject of a lien claimed under California law, was an "air carrier" aircraft. That process included cross-checking the aircraft by registration number with FAA records for certificated air carriers. That process was carefully developed and implemented in the FAA's internal Examination Guidelines.

We understand your opinion and interpretation to be that the "Aircraft Repair" statute is a "consumer protection measure". As such, "section 9791 applies those consumer protection restrictions *only* to general aviation aircraft." If your interpretation is correct, with the exception of claims of lien less than \$100 against "general aviation aircraft", FAA should accept and record all properly filed claims of lien permitted under Chapter 19.5 of the California Business and Professions Code (Aircraft Repair).

Despite our apparently differing interpretation of the scope of § 9791, California Business and Professions Code (Aircraft Repair), were the California Attorney General to advise FAA that artisan liens against air carrier aircraft should be recorded under Chapter 19.5, California Business and Professions Code (Aircraft Repair), we would give such advice due consideration.

This response has been concurred in by the Office of Chief Counsel, Federal Aviation Administration.

Sincerely

A handwritten signature in black ink, appearing to read 'Joseph R. Standell', written in a cursive style.

Joseph R. Standell,  
Aeronautical Center Counsel