

Federal Aviation Administration

Legal Opinion as to the Recordability of Artisans' Liens and Identification of Those States From Which Such Liens Will Be Accepted

The Federal Aviation Administration Aircraft Registration Branch (Registry) has received many inquiries from the public as to the acceptance and the procedural requirements for artisans' liens submitted for recording against specific aircraft on which work has been provided, fuel and equipment added, or storage provided. A recent study indicates that the procedural requirements vary among the States, and since the Federal Aviation Administration is required by Section 508 of the Federal Aviation Act of 1958 (49 U.S.C. 1408) to recognize the validity of instruments submitted for recordation in accordance with State law, those procedural aspects critical to the submission for recordation must be given effect.

Because of the substantial interest to the aviation community and the modification to the Registry procedures, the Federal Aviation Administration has concluded that the information contained in a legal opinion given to one of those inquiring should receive broad dissemination.

Accordingly, the Federal Aviation Administration publishes its response to Attorney James N. Davis, of Daytona Beach, Florida, concerning the recordability of an aircraft artisan's lien submitted for recordation to the Registry.

FOR FURTHER INFORMATION CONTACT: Mr. R. Bruce Carter, Office of the Aeronautical Center Counsel, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma 73125, Telephone (405) 680-2290.

Issued in Oklahoma City, Oklahoma on December 8, 1981.

Joseph T. Brennan,
Aeronautical Center Counsel,
November 2, 1981.

Mr. James N. Davis,
Attorney at Law, 428 North Peninsula Drive,
Daytona Beach, Florida
Re: N5595L; Claim of Lien

Dear Mr. Davis: We appreciate very much the dialogue we have had with you on mechanic's liens (or more properly, artisan's liens), and welcome the information you have provided on such laws and cases in Florida. We recognize that historically attorneys in Florida, and elsewhere, have asserted, and recorded, both locally and with the FAA Registry, liens in favor of artisans, hangarkeepers, and fuelers for work, services, and supplies on aircraft, and we

have no quarrel with the existence of such liens, and the manner of foreclosing them, each aspect determined by applicable State law.

However, we are of the opinion that the right to assert such claims of lien by recording them with the Registry must be governed by State legislation in order to assure uniformity and nondiscriminatory standards. We also recognize that this involves a change in the Registry procedures. The Registry has previously accepted such liens, but has experienced some difficulty with liens which have not been released, claimants who can no longer be found, and some liens which are alleged to be spurious, but have nevertheless found their way into the recorded documents against certain aircraft. At the present time, the Registry is named a party in two suits to clear the title to aircraft encumbered by mechanics' liens, asking for either a purge of the records, or clear title to the record owner of the aircraft. Of course, we will abide by the judgment of the court in each case.

Our survey of the statutes of the laws of States, and three other jurisdictions for which the Registry provides aircraft recording and registration services under the Federal Aviation Act, shows 18 States or territories which have recording, or notice provisions for personal property liens:

Alaska	Nebraska
Arkansas	Oklahoma
Georgia	Oregon
Illinois	South Carolina
Indiana	South Dakota
Kansas	Virgin Islands
Kentucky	Washington
Maine	Wyoming

The common elements of the notice statute is the presence or absence of the following requirements:

- 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).

These elements are not available by statute in Florida. We recognize that by precedent and case law these liens have been recorded in various offices in Florida, and accorded judicial recognition, but not because required to be noted by any Florida statute.

Therefore, in the interest of consistency, and because the recordability of such documents must be governed by State law (Federal Aviation Act of 1958, Section 508 (49 U.S.C. 1408)), we have advised the FAA Registry effective immediately to accept for recordation only mechanic's (artisan's) liens from those States listed above. We recognize that the State statutes may change in this regard, and we have already been contacted for the purpose of suggesting appropriate State legislation, which we do by reference to

those State statutes that have the notice provisions. Where States do change their notice statutes to provide for recordation of personal property liens, specifically aircraft, we will modify our list to accommodate those States. Specifically, we have had inquiries to date from Florida, California, Texas, and Nevada.

We will continue to record judgment against aircraft owners for liens on the aircraft, where the aircraft is specifically identified in the judgment by make, model, serial number, and registration (N#). Additionally, where the State statute provides for lien foreclosure by selling the aircraft at public or private auction (the claimant being in possession), we will recognize the sale in support of an application for registration when the applicant sends a copy of the applicable law, his affidavit of compliance with that law, and copies of the public notice and notice sent to the registered owner.

We appreciate very much the material you have sent, and the opportunity to explain our advice to the Registry.

Sincerely,

Joseph T. Brennan,
Aeronautical Center Counsel.

[FR Doc. 81-25321 Filed 12-10-81; 8:45 am]
BILLING CODE 4810-13-M

[Summary Notice No. PE-81-32]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number.

American Depository Receipts (File No. 7-6921)
 Broken Hill Proprietary
 American Depository Receipts (File No. 7-6922)
 Canadian Occidental Petroleum
 American Depository Receipts (File No. 7-6923)
 Carmel Container Systems, Ltd.
 American Depository Receipts (File No. 7-6924)
 Chieftan International, Inc.
 American Depository Receipts (File No. 7-6925)
 Chile Fund
 Common Stock, \$.01 Par Value (File No. 7-6926)
 Clemente Global Growth Fund
 Common Stock, \$.01 Par Value (File No. 7-6927)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
 Secretary.

[FR Doc. 91-14406 Filed 6-17-91; 8:45 am]
 BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting

June 10, 1991.

ACTION: Notice of meeting and determination of closing of meeting.

SUMMARY: The meeting of the Investment Policy Advisory Committee (INPAC) to be held Tuesday, June 18, 1991 in Washington, DC, from 10 a.m. to 12 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section

2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

ADDRESSES: 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-14468 Filed 6-17-91; 8:45 am]

BILLING CODE 2190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the Federal Register of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Arizona to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC-7, P.O. Box 25082, Oklahoma City, OK 73125-4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680-3296; (FTS 747-3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, Federal Register Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, Federal Register, Vol. 49,

No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, Federal Register, Vol. 51, No. 111, page 21048, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988, Federal Register, Vol. 53, No. 121, page 23716, we advised that Missouri had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, Federal Register, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted.

In the October 17, 1989, Federal Register, Vol. 54, No. 242, page 51965, we advised that North Dakota was identified as a state from which artisan liens will be accepted.

In the August 6, 1990, Federal Register, Vol. 55, No. 151 page 31938, we advised that Michigan and Tennessee were identified as states from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states identified previously, Arizona is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska	Nevada
Arizona	New Jersey
Arkansas	New Mexico
Florida	North Dakota
Georgia	Oklahoma
Illinois	Oregon
Indiana	South Carolina
Kansas	South Dakota
Kentucky	Tennessee
Maine	Texas
Michigan	Virgin Islands
Minnesota	Washington
Missouri	Wyoming
Nebraska	

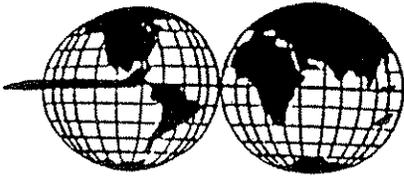
Issued in Oklahoma City, on June 2, 1991.

Joseph R. Standell,

Assistant Chief Counsel for the Aeronautical Center

[FR Doc. 91-14428 Filed 6-17-91; 8:45 am]

BILLING CODE 4910-13-M



DIXIE AIRE

P.O. Box 270838
Oklahoma City, OK 73137
(405) 789-0245
FAX: (405) 789-9274

States With Artisan's Lien Recording Statutes

State	Statute	Ver.*	Time*	Form*	BFP*
Alaska	34.35.185	Yes		Yes	
Arizona	33.1022	No	30		Bfp
Arkansas	51.409	Yes	120		Bfp
Florida	329.51	Yes	90		
Georgia	67.2003(c)	No	180	Yes	
Iowa	577.1	No	90		
Illinois	82:41	Yes	60	Yes	
Indiana	32-8-31-3	No	60	Yes	
Kansas	58-201	Yes	90		
Kentucky	376.270	Yes	180		
Maine	10:3801	Yes	30		Bfp
Michigan	570.302	Yes	60	Yes	
Minnesota	514.221	Yes	90		Bfp
Missouri	430.020	No	30		Bfp
Nebraska	52-202	Yes	60		Bfp
Nevada	108.310	Yes	120		
New Jersey	2A:44-2	Yes	90		
New Mexico	48-3-29	Yes	90	Yes	Bfp
North Dakota	35-13.02	Yes	90		
Oklahoma	42:98	Yes	60		Bfp
Oregon	87.242	Yes	60		
So. Carolina	29-15-100	Yes	90		
So. Dakota	44-11-3	Yes	120		Bfp
Tennessee	66-19-104	Yes	90	Yes	
Texas	70.303	Yes	120	Yes	Bfp
Virgin Is.	28:587	Yes	30		
Washington	60.08.020	No	90	Yes	Bfp
Wyoming	29-7-103(a)	Yes			

*Ver. - Must be notarized.

*Time - Number of days allowed to file.

*Form - State provided form.

*BFP - Lien lost if filed after bona-fide purchaser.

Revised: July 22, 1991

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

(TD 8557)

RIN 1545-AM64

Place for Filing Lien on Personal Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the place for filing a notice of tax lien against personal property. Sections 1015(s)(1) (A) and (B) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), amended section 6323 of the Internal Revenue Code to provide that a state conforming to or reenacting a federal law establishing a national filing system is not considered to have designated a second office for filing a notice of tax lien. TAMRA also amended section 6323 to provide that the filing of a notice of federal tax lien is governed solely by the Internal Revenue Code and is not subject to any other federal law that establishes a national filing system.

EFFECTIVE DATE: These final regulations are effective April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, 202-622-3209 (not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6323 by sections 1015(s)(1) (A) and (B) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3573] (TAMRA).

The IRS published a notice of proposed rulemaking in the Federal Register on April 22, 1993, (58 FR 21550) providing proposed rules under section 6323 of the Code. No public comments were received and accordingly, the final regulations are substantially identical to the proposed regulations. Certain minor stylistic changes have been made.

Explanation of Provisions

Sections 1015(s)(1) (A) and (B) of TAMRA amended section 6323(f) of the Code by clarifying that a state's conformance to or reenactment of a federal law establishing a national filing

system for personal property does not constitute a second office for filing liens in that state. The existing regulations provide that if a state has designated more than one office for filing liens, the IRS must file the notice of tax lien with the clerk of the appropriate United States district court. TAMRA also clarified that the filing of notices of liens by the IRS is to be governed solely by the Code and is not subject to any other federal law establishing a national filing system.

TAMRA's amendments to the Code were in response to *United States v. Air Florida, Inc.*, 56 B.R. 732 (S.D. Fla. 1985). In that case, the IRS filed its Notice of Federal Tax Lien with the clerk of the county circuit court, but the court held that under section 6323(f)(1) the IRS was instead required to file its Notice of Federal Tax Lien in the office of the clerk of the United States district court. The court found that the State of Florida had designated not one, but two offices for the filing of Federal tax liens against personal property: The office of the clerk of the circuit court of the county in which the personal property was located and, because the state had adopted the U.S. government's national filing system for civil aircraft, the F.A.A.'s offices in Oklahoma City, Oklahoma. The final regulations revise § 301.6323(f)-1 by providing that state law that conforms to or reenacts a federal law establishing a national filing system does not constitute a second office for filing; by providing that the filing of liens is not subject to federal laws (other than the Code) establishing a national filing system for liens; and by adding two examples, one of which resembles the fact pattern of the *Air Florida* case.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these proposed regulations is Robert A.

Walker, Office of the Assistant Chief Counsel (General Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.6323(f)-1 is amended as follows:

1. Two sentences are added at the end of paragraph (a)(2).

2. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

3. A new paragraph (c) is added.

4. Newly designated paragraph (e) is amended by adding *Example 5* and *Example 6*.

5. The additions and revisions read as follows:

§ 301.6323(f)-1 Place for filing notice:

(a)

(2)

A state law that conforms to or reenacts a federal law establishing a national filing system does not constitute a designation by state law of an office for filing liens against personal property. Thus, if state law provides that a notice of lien affecting personal property must be filed in the office of the county clerk for the county in which the taxpayer resides and also adopts a federal law that requires a notice of lien to be filed in another location in order to attach to a specific type of property, the state is considered to have designated only one office for the filing of the notice of lien, and to protect its lien the Internal Revenue Service need only file its notice in the office of the county clerk for the county in which the taxpayer resides.

(c) *National filing system.* The filing of federal tax liens is to be governed solely by the Internal Revenue Code and is not subject to any other federal law that may establish a national system for filing liens and encumbrances against a particular type of personal property. Thus, for example, the Service is not subject to the requirements established by the Federal Aviation Agency for



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

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17AC-

Subject: INFORMATION: Lien Claims on Engines, Propellers
and Spare Parts

Date: February 13, 1986

From: Aeronautical Center Counsel, AAC-7

Reply to
Attn. of.

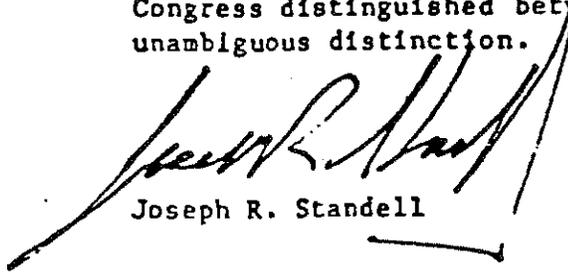
To: Manager, Aircraft Registration Branch, AAC-250

We get several questions a year on whether or not the Registry should accept artisan (mechanic) liens on engines, propellers and spare parts. For the reasons given below, we continue to be of the opinion that the Federal Aviation Act of 1958 does not authorize the Registry to accept these liens.

Section 503(a)(1) of the Act (49 U.S.C. 1403(a)(1)) deals with aircraft only, and authorizes the Registry to record "Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States." In our opinion, this is broad enough to allow the recordation of mechanic liens asserted under state law, and which are authorized by state law to be recorded.

On the other hand, subparagraphs (2) and (3) of Section 503(a) authorize the Registry to record "Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes,..." (underscore added). It is this latter clause which controls the determination that claims, or unilateral liens, are not authorized for recording since they are not "executed for security purposes." This difference between how aircraft are treated and how engines, propellers and spare parts are treated, is clear from the Act, and must have reflected the intent of Congress to treat them differently.

We are mindful of the arguments that Congress may have intended a central location to record all outstanding interests in all phases of aviation commerce, but it is clear that Congress, by its plain language, could have used the same criteria for engines, etc., as it did for aircraft. Instead, Congress distinguished between them, and we are bound to follow that unambiguous distinction.


Joseph R. Standell



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: ACTION: Revised/Updated Table of
States With Lien Recording Statutes

Date: APR 28 1995

From: Manager, Aircraft Registration
Branch

Reply to
Attn. of:

To: All Examination Sections

The Aeronautical Center Counsels Office (Legal) has completed their review of current State Artisan/Mechanic lien statutes and have compiled a States with Recording Statutes table to replace the current one found at the end of Chapter 4, Section 5 of the Examination Guidelines. The attached table should be used in the examination of claims of lien beginning May 1, 1995.

Upon review, you will see there are some changes with which you will need to become familiar. The most dramatic changes are in the information regarding recording time frames. Previously, only a specific number of days were provided and those days were assumed to commence to run from the date services, etc. were furnished. Careful examination of the State statutes by Legal revealed that, while many commence to run from the date of furnishing of parts, services, etc., many of the time frames are contingent in one way or another upon possession of the aircraft by the lien claimant. For example, Arizona only allows recording of notice within 30 days of relinquishment of possession. This means that in order to determine whether an Arizona claim of lien is recordable, the date of relinquishment of possession must be known.

Past experience tells us that many questions arise regarding the appropriateness of recording claims of lien for various items such as storage, pilot services, attorney fees, etc. Therefore, Legal has provided the statutory scope of each State's lien law (see "Scope of Lien"). This may allow examiners to expeditiously resolve most such questions by reference to that information.

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In the interest of simplification and accuracy, references to "BFP" statutes will no longer be furnished. Legal advises that determination of "BFP" status is generally made by answering questions of fact - facts unavailable to FAA. Further, in the majority of states, "BFP" status is determinative of order of enforceability (priority), not recordability of liens. Therefore, Legal has advised that examiners should no longer make decisions as to recordability of liens based on the appearance of a "BFP".

Regarding usage of a specific form, none of the statutes reviewed required the claimant to use a specific form; therefore, a column for this information has not been included.

Legal intends to periodically furnish updates and revisions, if necessary, to the Table as other States enact legislation providing for recording of claims of lien.


Julie Stanford

Attachment
Table of States With Lien Recording Statutes