



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

Mike Monroney
Aeronautical Center

AIN-458
P.O. Box 25082
Oklahoma City, Oklahoma 73125

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Robert H. Warren, Esq.
Robert H. Warren & Associates, P.C.
Box 867
Oklahoma City, OK 73101-0867

Dear Mr. Warren:

Your letter of September 17, 1991, suggests that there may be some statute or regulation we have overlooked in advising the Registry that an assignment of a security interest is not eligible for recording at the FAA Aircraft Registry if a release of that security instrument has been submitted and recorded prior to submission of the assignment. You cite 49 U.S.C. 1403(a) to the effect that all conveyances should be recorded (assuming appropriate form and substance), and also cite 14 CFR 49.17(c) which states that Registry recording is not a determination of the Registry that a recorded conveyance does, or does not affect an interest in aircraft.

It appears that you are suggesting that any instrument in proper form and substance should be recorded, regardless of the status of the record. We do not agree.

I am not aware there has been a refusal to record in this situation; rather, a document returned for correction prior to recording. There were many aircraft and engines on the assignment, as we recall, and because of the Registry's process of a single recording, but with multiple cross-references, their reasoning is that it should be right before recording. See Conveyance Examiners Guidelines 4.1.20. Return for correction is a routine matter in the Registry, and should not be construed as a refusal to record. A refusal to record would be a determination of the Administrator, subject to appeal to the Circuit Court. See Section 1006 of the Act (49 U.S.C. Appx. 1486).

In our opinion, the status of aircraft records would be chaotic should your suggestion be adopted. There would be no need for Conveyance Examiners, and the Registry could operate as a notice system, such as that at the county clerk's office, with all questions of document effectiveness or propriety resolved by aircraft title attorneys.

First, we are convinced that the Registry is a conveyance system, not a notice system. Feldman v. Philadelphia National Bank, 408 F. Supp. 24. Second, we agree with you that the Registry is obligated to process instruments in the order of their reception. 49 U.S.C. Appx. 1403(f). Third, because of the language of 47.35(a), which requires registrants to provide a straight line of ownership from the first to the last, a similar process appears to be automatically in place for documents submitted for recordation under Part 49. Anything else, would, of course, be chaos.

In the present situation, our recommendation to the Registry was on a clear statement of facts: The security agreement was of record. While negotiations were underway for a blanket assignment of many security agreements from the secured party to its assignee, one (or more) of the security agreements was paid off in the course of the sale of the aircraft. The assignment did not incorporate these late changes before submission to the Registry. The secured party, as it had a duty to do, provided the debtor with a release, which was duly filed by the aircraft purchaser (an innocent third party). (See U.C.C. 9-404) The Assignment did not reflect the release of the security instrument as to that (or those) aircraft, and it was returned for correction, not "refused for recordation".

We are of the opinion that it would be inappropriate for a new purchaser to find that with all the necessary documents in hand which were then recorded to show a clear title, to have a released assignment show up in his title search the following day. Our position is that the public has a right to rely on the record at the Registry, just as those parties with recordable rights have a right to place their instruments in the record. If the record won't support recordation in its submitted form, we are of the opinion that the Registry has the responsibility to return the document for correction before recordation.

You correctly state that the Registry's recording is not a determination that the instrument does affect an interest in the aircraft. Similarly, the Registry's declining to record is not a determination that the instrument does not affect an interest.

Accordingly, while we do not have a particular statute or regulation to point to, we are of the opinion that the Registry does have a duty to work with title search companies, the Registry Bar, and others to make every attempt to correct patently erroneous instruments before they are placed of record. They return bills of sale, trust documents, and any and all other conveyances for

correction, the record status shows, require it. We feel that any other process would be chaotic, and clearly contrary to the Congressional concept of the Registry as a clearinghouse.

Sincerely,

Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

By:



R. Bruce Carter
General Attorney