

Drones and Other Aircraft: What Lenders Should Know

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Drones are quickly becoming a staple in agriculture – they are used for crop-dusting, surveying land, monitoring crop growth, among other things. Insurance adjusters are also becoming licensed to use drones to help assess damage from storms on cropland, which speeds up the claims process by showing the damage without the need to wait for the damaged areas to become accessible to people. Protecting a lender's security interest in drones and other aircraft can be tricky, but it is imperative for lenders to become familiar with the process, given their rise in prominence. Read on for a primer about aircraft registration and lien recordation.

Regarding registration: All aircraft that are to be operated must be registered with the Federal Aviation Administration (FAA). The Aircraft Registration Inquiry contains aircraft registration information that can be perused online, or in person in Oklahoma City. Most aircraft are identified by an "N-Number" which is issued by the FAA Civil Aviation Registry when the aircraft is registered with the FAA. The N-Number is most useful when searching for an aircraft that is already registered, but there are several other different search criteria that can be used, like a serial number, or make and model. Note, however, that some unmanned aircraft (also known as drones, to be distinguished from manned aircraft) do not need to obtain an N-Number. In the interim final rule titled "Registration and Marking Requirements for Small Unmanned Aircraft" (Registration IFR), the FAA provided a web-based aircraft registration process for the registration of small unmanned aircraft to facilitate compliance with the statutory requirement that all aircraft register prior to operation.

The online system is to be used to register drones, or "small unmanned aircraft" (sUA), that weigh less than 55 pounds. On the other hand, "traditional aircraft registration" under 14 CFR Part 47 (whereby an application is submitted and a certificate/N-Number issued) is required for unmanned aircraft that weigh 55 pounds or more, for sUA owned by a trustee under a trust agreement, or when the sUA owner uses a voting trust to meet U.S. Citizenship requirements. The traditional aircraft registration system is available for sUA that need N-Number registration to operate

outside the U.S., or when public recording is desired for a sUA's loan, lease, or ownership documents.

Regarding recordation of ownership interests: Aircraft^[1] are subject to separate, specific filing regimes independent of the Uniform Commercial Code (UCC), which preempt the UCC^[2]. The Federal Aviation Act provides for the establishment and maintenance of a system for the recording of any conveyance which affects title to, or any interest in, any specifically described aircraft, aircraft engine, aircraft propeller, or spare parts location.

The Aircraft Registration Branch maintains the records on individual aircraft. The aircraft record allows for title searches by prospective buyers and/or financiers of aircraft purchases. Such records can be requested via mail, fax, or online.

How to file a lien: Requirements for recordation of lien conveyances are contained in the Federal Aviation Regulations. The signed agreement of the parties (such as is contained in the security agreement) should be submitted to the FAA Aircraft Registry for recording. The FAA provides a sample form of an aircraft security agreement, AC Form 8050-98.

The FAA has published a fact sheet with information about recording of aircraft ownership and security documents, which describes the requirements for recording a security instrument in aircraft, engines and propellers, and spare parts:

- "AIRCRAFT. To be eligible for recording, an instrument granting a security interest in an aircraft must be signed in ink and describe the aircraft by manufacturer, model, serial number, and registration number. The debtor must be the registered owner of the aircraft; be the owner of record on the date the instrument is executed, as evidenced by documents on file with the FAA Aircraft Registry; or the lien document be accompanied by the debtor's evidence of ownership, application, and \$5 registration fee. The recording fee of \$5 for each aircraft must accompany the security instrument.
- ENGINES AND PROPELLERS. A lien instrument which affects interest in: 1) a specifically identified aircraft engine of 550 or more rated take-off horsepower (1,750lbs. thrust is equivalent to 550 horsepower), or 2) a specifically identified aircraft propeller capable of absorbing 750 or more take-off horsepower (1,875lbs. thrust is equivalent to 750 horsepower) may be recorded. A recording fee of \$5 is required for each engine or propeller described. The manufacturer, model, serial number, and horsepower (or its equivalent) of each engine and propeller must be shown.
- SPARE PARTS LOCATIONS. An instrument executed for security purposes which affects title to, or interest in, an aircraft engine, propeller, or appliance maintained by, or on behalf of, an air carrier for installation or use in aircraft, in aircraft engines or propellers, or any spare parts maintained at a designated location by, or on behalf of, such an air carrier, may be recorded. The air carrier must have been certificated under Title 49 United States Code 44705. The instrument must contain the statement that the spare parts are being maintained by, or for, an air carrier certificated under 49 USC 44705; the specific location or locations of the spare parts; and the name of the carrier."

The FAA will return AC Form 8050-41, Conveyance Recordation Notice, to the claimant, which describes the aircraft, lists the parties and the date of the claim document, and shows the FAA recording number and date of recordation. This document may be used as a release if the claimant signs it and returns it to the Aircraft Registration Branch. Alternatively, the claimant can write a letter with this information along with a statement releasing all rights and interest in the aircraft. Notably, unlike UCC-1s, a lien filed with the FAA does not lapse, and no subsequent filing is required to

continue the lien.

In sum, lenders need to be well acquainted with the FAA and its policies and procedures when perfecting their security interests in aircraft. An aircraft needs to be registered with the FAA, either through the traditional aircraft registration system or the online system for smaller drones, and liens need to be filed with the FAA. Lenders will need to know the size of the aircraft in question in order to complete these tasks. Lenders will also need to be cognizant of collateral details when recording a security instrument so that the aircraft, engines, propellers, and spare parts are all accounted for and the interest is protected.

If your borrower is offering aircraft as collateral and you need help checking the title records for said aircraft, or need help protecting your interest in the collateral, please reach out to the author.

[1] Along with vessels and railroad rolling stock.

[2] The federal law preempts state law only to the extent that the secured party's security interest is perfected. The creation of the security interest and priority issues are determined pursuant to applicable state law (the UCC) and applicable provisions of the Bankruptcy Code.