



# LEGAL EASE

## AVIATION LAW MADE SIMPLE

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## Asserting an Aircraft Mechanic's Lien: One Way to (Finally) Get Paid

**S**o, you completed maintenance on an aircraft or provided aircraft storage services, but the aircraft owner hasn't paid you. Unfortunately, with companies increasingly strapped for cash because of the poor global economy, this situation might begin to occur with more frequency.

What legal actions can you take to

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recoup your losses when an aircraft owner doesn't pay for the work? In certain circumstances, if you have not been paid for the work, you might be able to assert a maintenance lien, or aircraft mechanic's lien, on the aircraft in question.

If you choose this route, it is vital to "perfect" your lien to protect your interest in the aircraft. The process you must go through to ensure your lien is "perfected" depends on what state you are in, and it is a question of both federal and state laws.

### Why Assert an Aircraft Mechanic's Lien?

An aircraft mechanic's lien is a great way to lock in payment when an aircraft owner fails to pay you for your services. If a lien is properly asserted, the lien claimant (the aircraft mechanic) has encumbered the aircraft in question, meaning the aircraft no longer has clear title.

Clear title is highly desirable to an aircraft purchaser, who can determine if an aircraft has any liens on its title through a simple title search. Once there is a lien on an aircraft, to sell the aircraft with clear title, the aircraft owner must obtain a release from the lien claimant. This means the owner must pay you for your services before they are able to sell the aircraft with clear title.

If the owner fails to pay the lien claimant to have the lien lifted, the aircraft will be sold subject to the lien. This means the aircraft does not have clear title, and although the aircraft will have a new owner, your lien will remain in effect.

Most buyers, however, will not purchase an aircraft subject to a lien, and thus, you usually will manage to receive the money owed to you when the owner decides to sell the aircraft.

### Foreclosing on an Aircraft Mechanic's Lien

What if you don't want to wait until the aircraft owner sells the aircraft to get paid? After all, the aircraft owner could be planning to hang on to the aircraft indefinitely.

If you do not want to wait for the aircraft to be sold to satisfy your lien, if the aircraft is not going to be sold in the near future, or if the aircraft is sold subject to the lien and you want to collect your money, you can bring a foreclosure proceeding, forcing the sale of the aircraft, usually at an auction.

The proceeds from this sale go to the lien claimant to extinguish the lien. If the proceeds are greater than the lien, any money exceeding the amount of the lien goes to the aircraft owner. Additionally, if there are no bidders at the sale (an unusual occurrence), the aircraft may be given to the lien claimant for the price of the lien.

If you are considering bringing a foreclosure action on your lien, it is important to refer to your state's laws. Depending on the state, a lien claimant may have from 90 days to 18 months from the last day of work to bring a foreclosure proceeding on an aircraft lien, and the precise

mechanism for enforcing the lien varies by state.

### **Perfecting an Aircraft Mechanic's Lien**

Before you can bring an action for foreclosure or expect a payment from the aircraft owner to extinguish a lien, you must first obtain and perfect a lien on the aircraft. Perfecting a lien can be tricky, but is important.

When you perfect a lien, the amount you are owed is secured by the aircraft, and your lien has first priority against others who later might claim an interest in the aircraft.

To perfect an aircraft mechanic's lien on an aircraft, you file your notice of lien with the FAA Registry. The FAA Registry maintains records on aircraft, which can be reviewed to determine who currently owns the aircraft, and these records show whether there are any liens outstanding against the aircraft.

An N-registered aircraft must be registered with the FAA Registry under the legal name of the owner — of course, this article's guidance does not apply to an aircraft with a foreign registry.

In certain states, such as Florida, the statute on aircraft liens specifically states you must file with the FAA Registry to perfect your lien. (Fl. Stat. Ch. 329.01) Additionally, Florida law makes the lien enforceable in a more limited sense — only against the owner of the aircraft or one with "actual notice" of the lien — when it is registered with the county clerk's office in the county in which the

work was performed within 90 days, but states this registration does not change the obligation to also register with the FAA Registry. (Fl. Stat. Ch. 329.01, 329.51)

The Florida law is a good example of why it is important to know your state's laws on liens. If you failed to read the Florida law carefully, you might not realize a lien not registered with the FAA Registry would not be good against a subsequent good faith purchaser of the aircraft who did not know of the lien, and you could lose the money you were owed for your services.

To create a lien, the lien request filed with the FAA registry must contain six pieces of information:

- 1) Make and model of the aircraft.
- 2) Aircraft's N-number or serial number.
- 3) Name of the aircraft's owner.
- 4) Type of the work performed on the aircraft resulting in the lien.
- 5) Amount of the lien.
- 6) Last day work was performed on the aircraft.

The date of the last time work was performed on the aircraft is especially important because the lien must be filed within the time period required by the law of the state where the work was done. This time period begins to run on the last day work was performed on the aircraft by the mechanic claiming the lien. This statutory period varies by state, generally ranging from 30 to 180 days. I recommend filing such liens as soon as reasonably possible.

Some states' laws require the air-

craft in question be in the possession of the lien claimant to make the lien effective. If this is the rule in your state, it means you must retain possession of the aircraft to protect your right to enforce the lien.

### **Non-FAA Registry Liens**

While filing with the FAA Registry is standard procedure to obtain an aircraft mechanic's lien in most states, the FAA Registry's rules apply to the procedure for filing but not to the rules governing enforceability of the lien, which are subject to state law. Therefore, the FAA Registry cannot help you enforce a maintenance lien unless the work leading up to the lien was done in a state permitting the filing of such a lien against an aircraft.

It is important to check your state's laws on maintenance liens to determine how to proceed in creating, perfecting and enforcing your lien.

Be aware of the fact many states use the term "mechanic's lien" to refer solely to liens for work done on a house — not on an aircraft. You should consult with an attorney to identify the laws applying to your business needs.

Some of the states that do not have laws permitting a lien as a consequence of aircraft maintenance include Alabama, Colorado, Delaware, Hawaii, North Carolina and Wisconsin.

If your state does not permit the filing of a maintenance lien against an aircraft, you might need to establish your right to a lien through some other mechanism by looking into the

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general lien laws in your state. The most likely alternative is to establish the right to a lien to secure payment through a contract (known as a security agreement) between you and your customer.

The importance of knowing your state's laws cannot be stressed enough. For example, in California, you may bring an aircraft mechanic's lien for repairs done on a general aviation aircraft only if you have complied with certain other aircraft repair statutes dealing with issues such as customer consent and cost estimates,

among various other California-specific requirements. (Cal. Bus. & Prof. Code § 9798.2.)

California is just one example of a state where knowing the applicable lien laws, before even beginning work on an aircraft, could ensure you have the option of obtaining a lien if payment doesn't come through as promised.

Liens are a good option when you find yourself trying to collect from a customer who has not paid you for your services. However, liens often require some research ahead of time to ensure you create the right basis for a lien. You will find the time you invest in establishing the right

basis to support a lien is well worth the effort the first time you need to enforce a lien to secure payment.

During the AEA International Convention & Trade Show in Dallas, Texas, I will be presenting the FastTrak session "How to Get Paid What You're Owned" on April 1. During this session, I will address issues such as liens and other strategies for securing payment.

For a complete schedule of AEA convention sessions and training, visit [www.aea.net/convention](http://www.aea.net/convention). □

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