

reports delineated in the proposal are reasonable, given the reliability and accessibility of the information.

Furthermore, Section 6(b)(5)¹⁶ requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Because the fees which Amex proposes to charge for the specified historical research and administrative reports will be assessed only to users of the service, the Commission finds that the proposal is both non-discriminatory and reasonable. The Commission also believes that the proposal may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities by providing beneficial information to subscribers on a non-discriminatory basis for a reasonable fee. In doing so, the proposal may boost investor confidence, while contributing to the integrity of the securities markets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval would afford investors the benefits to be realized under this proposal as soon as possible. Additionally, the Commission notes that the proposal is substantially similar to SR-NASD-99-70,¹⁷ which was noticed for the full 21-day comment period, and for which no comments were received. The Commission finds, therefore, that good cause exists, consistent with Section 19(b)¹⁸ and Section 6(b)¹⁹ of the Act, to grant accelerated approval of the proposed rule change.

It is therefore ordered, pursuant Section 19(b)(2) of the Act,²⁰ that the proposed rule change be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice and Opinion; Certificate of Repossession of Encumbered Aircraft (AC Form 8050-4)

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: This provides notice of a revised Certificate of Repossession of Encumbered Aircraft (AC Form 8050-4), and a legal opinion concerning certificates of repossession and their impact on aircraft registration.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel (AMC-7), Post Office Box 25082, Oklahoma City, OK 73125 or telephone (405) 954-3296.

SUPPLEMENTARY INFORMATION: This is to provide notice of a revised Certificate of Repossession of Encumbered Aircraft (AC Form 8050-4) incorporating various changes and revisions to versions of the form dated 6/99 and earlier. A copy of the new form follows this opinion and is available to the public at <http://registry.faa.gov/> or linked through <http://www.mmac.jcabi.gov/MMAC/>

The revised form dated 02-00, supersedes and replaces all previously dated versions of the form. Prior versions of the form will be accepted through the end of the regular business day on the 90th day after the date of publication of this Notice in the **Federal Register**.

The superseding form and the opinion contained herein are in response to general concerns about specific language contained in Certificate of Repossession of Encumbered Aircraft (AC Form 8050-4, 6/99 and earlier) and industry practices involving use of that form.

This opinion addresses the comments expressed by attorney John I. Karesh in a letter dated January 19, 1998, to Aeronautical Center Counsel.

This opinion also provides information concerning certificates of repossession and their impact on aircraft registration.

Although it is recognized that certain rights to repossess on default may exist in leases and other transactions, this opinion is limited to repossessions (whether physical or constructive to the extent permitted by applicable local law) and foreclosures which effect a change in ownership of an aircraft.

Opinion—Change of Ownership: An aircraft is eligible for registration only if, among other things, it is owned by a citizen of the United States (49 U.S.C. 44102(a)(1)(A)). Only the owner of an aircraft is eligible to make application

for registration of that aircraft (49 U.S.C. 44103(a)).

Each person who submits an Aircraft Registration Application (AC Form 8050-1) must also submit evidence of ownership as required by § 47.11 of the Federal Aviation Regulations (14 CFR Part 47) (the Regulations). Where the applicant relies upon repossession as evidence of ownership, § 47.11(b) provides:

The repossessor of an aircraft must submit—

(1) A certificate of repossession on FAA Form 8050-4, or its equivalent, signed by the applicant and stating that the aircraft was repossessed or otherwise seized under the security agreement involved and applicable local law;

(2) The security agreement (unless it is already recorded at the FAA Aircraft Registry), or a copy thereof certified as true under § 49.21 of this chapter; and

(3) When repossession was through foreclosure proceedings resulting in sale, a bill of sale signed by the sheriff, auctioneer, or other authorized person who conducted the sale, and stating that the sale was made under applicable local law.

Based on information provided by the office of the National Conference of Commissioners on Uniform State Laws, it appears that all 50 states have adopted Article 9 of the Uniform Commercial Code (U.C.C.), albeit with some variations. Therefore, for purposes of this discussion, U.C.C. Article 9, as adopted, is cited as the applicable local law.

In his letter of January 19, 1998, Mr. Karesh states that “it is standard practice for the repossessing Lender to file for recordation with the FAA the certificate of repossession at the time of repossession, in order to vest title to the aircraft in the name of the Lender.” This practice is referred to in the aviation legal practice as a “protective filing.”

Apparently this protective filing practice stems from reliance upon the following language contained in the earlier versions of the Certificate of Repossession of Encumbered Aircraft (AC Form 8050-4) which is typically submitted by a repossessor to the Civil Aviation Registry:

by virtue of such act of repossession he divested the said debtor, and any and all persons claiming by, through or under him, of any and all claims they hand or may have had, and now holds title to the aforesaid aircraft, free and clear * * *.

This language may be causing some confusion; therefore, FAA has revised the form. The revisions emphasize that it is repossession and foreclosure under the applicable local law not the filing of the Certificate of Repossession of Encumbered Aircraft and the Aircraft

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Securities Exchange Act Release No. 42341 (January 14, 2000), 65 FR 3513 (January 21, 2000).

¹⁸ 15 U.S.C. 78s(b).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

Registration Application which vests ownership of the aircraft for purposes of registration.

In that regard, U.C.C. 9-503 provides that "unless otherwise agreed a secured party has on default the right to take possession of the collateral * * *" This right of repossession refers to the taking back of an item, not displacement of all legal rights in and to the collateral (see Official Comment, U.C.C. 9-503).

Section 47.41(a)(4) of the Regulations provides that "each Certificate of Aircraft Registration * * * is effective * * * until the date upon which ownership of the aircraft is transferred * * *."

Repossession alone does not effect a change in or transfer of ownership of the aircraft for purposes of § 47.41(a)(4) of the Regulations. A creditor or secured party who has merely repossessed an aircraft without effecting foreclosure is not the owner and is not eligible to make application for registration of the aircraft (see 49 U.S.C. 44103(a)).

On the other hand, foreclosure for aircraft registration purposes effects a change of ownership.

Foreclosure, the process by which the ownership rights of a debtor in the

collateral are terminated, may generally be accomplished in two ways:

The first, sometimes referred to as strict foreclosure, U.C.C. 9-505(2), after due process as required by the applicable local law, allows retention of the collateral by the creditor as follows:

(i) in any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation.

The second, sometimes referred to as statutory foreclosure, U.C.C. 9-504(1), after due process as required by the applicable local law, allows foreclosure to be accomplished by sale of the collateral as follows:

A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing.

Either way, fully divesting the debtor's rights in collateral requires both repossession and foreclosure, either by retention of the collateral or by sale to a third party, thereby resulting in a change of ownership under § 47.41(a)(4) of the Regulations.

In both situations, the reposessor must certify that he or she "has

performed all obligations imposed upon him by the terms of the financing agreement and all local laws * * *." (AC Form 8050-4, 6/92)

Evidence of Change in Ownership: When foreclosure has been accomplished by the reposessor's retention of the collateral, submission of a completed certificate of repossession or its equivalent, and an Aircraft Registration Application by the reposessor will support registration in the reposessor. FAA presumes that repossession and retention are in accordance with local law (*i.e.*, foreclosure by retention process described in U.C.C. 9-505(2) *et seq.*).

When foreclosure has been accomplished by sale of the collateral, submission of a completed certificate of repossession or its equivalent, a bill of sale stating that "the sale was made under applicable local law" (14 CFR 47.11(b)(3)), and an Aircraft Registration Application will support registration in the name of the buyer.

Dated: March 7, 2000.

Joseph R. Standell,

Aeronautical Center Counsel.

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AGENCY DISPLAY OF ESTIMATED BURDEN

The Federal Aviation Administration estimates that the average burden for this report is .5 hour per response. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to the Office of Management and Budget (OMB). You may also send comments to the Federal Aviation Administration, Civil Aviation Registry, P.O. Box 25504, Oklahoma City, OK 73125-0504, Attention: OMB number 2120-0042.

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

Aircraft Registration Branch
PO Box 25504
Oklahoma City, Oklahoma 73125-0504

CERTIFICATE OF REPOSSESSION OF ENCUMBERED AIRCRAFT

The undersigned hereby certifies that they are the true and lawful holder of a note or other evidence of indebtedness secured by a
on the following described aircraft:

(Type of Security Agreement)

Aircraft Manufacturer and Model

Aircraft serial number FAA registration number

Said Security agreement on the above aircraft bears the date of and was executed by
to

and assigned to. This Security agreement was recorded under Title 49, United States Code, Section 44107, on the day of, and was entered in the Civil Aviation Registry as document no.

On the day of, the aforesaid breached the obligations and promises contained in the Security agreement. The undersigned certifies that the secured party has performed all obligations imposed on the security agreement and applicable local laws; that in accordance with the terms of said security agreement, and pursuant to the pertinent laws of the state of, the undersigned repossessed the aircraft described above and foreclosed on the day of, and that pursuant to local law, divested the said debtor, and any and all persons claiming by, through or under them, of any and all title they had or may have had, and the secured party now owns the aforesaid aircraft, or the aircraft has been sold.

NOTE: If the agreement involved was not recorded with the Aircraft Registration Branch, the original or certified true copy should accompany this certificate of repossession

NAME OF HOLDER OF SECURITY AGREEMENT

SIGNATURE (IN INK)

Title

ACKNOWLEDGMENT (Not required for purposes of FAA recording; however, may be required by local law for validity of the instrument.)

CERTIFICATE OF REPOSSESSION INFORMATION

PRIVACY ACT OF 1974(PL 93-579) requires that users of this form be informed of the authority which allows the solicitation of the information and whether disclosure of such information is mandatory or voluntary, the principal purpose of which the information is intended to be used; the routine uses which may be made of the information gathered; and the effects, if any, of not providing all or any part of the requested information.

This form is to be completed by the holder of an encumbrance and submitted with an application for aircraft registration and required fee and/or a bill of sale as appropriate. This form meets the recording requirements of 49 USC Chap. 441 and the Federal Aviation Regulations. In addition to meeting these requirements, the form, the repossession and foreclosure must comply with local law. This form may be reproduced.

The following routine uses are made of the information gathered:

- (1) To support investigative efforts of investigation and law enforcement agencies of Federal, state, and foreign governments.
- (2) To serve as a repository of legal documents used by individuals and title search companies to determine the legal ownership of an aircraft.
- (3) To provide aircraft owners and operators information about potential mechanical defects or unsafe conditions of their aircraft in the form of airworthiness directives.
- (4) To provide supportive information in court cases concerning liability of individual in law suits.
- (5) To serve as a data source for management information for production of summary descriptive statistics and analytical studies in support of agency functions for which the records are collected and maintained.
- (6) To respond to general requests from the aviation community or the public for statistical information under the Freedom of Information Act or to locate specific individuals or specific aircraft for accident investigation, violation, or other safety related requirements.
- (7) To provide data for the automated aircraft registration master file.
- (8) To provide documents for microfiche backup record.
- (9) To provide data for development of the aircraft registration statistical system.
- (10) To prepare an aircraft register in magnetic tape and publication form required by ICAO agreement containing information on aircraft owners by name, address, N-number, and type aircraft, used for internal FAA safety program purposes and also available to the public (individuals, aviation organizations, direct mail advertisers, state and local governments, etc.) upon payment of user charges reimbursing the Federal Government for its costs.

AVAILABILITY OF RECORDS

The aircraft records maintained by the Civil Aviation Registry are public records and are open for inspection in room 122 of the Registry Building, Mike Monroney Aeronautical Center, 6425 S Denning, Oklahoma City, Oklahoma. Individuals interested in such information may make a personal search of the records or may avail themselves of the services of a company or attorney.

The records are filed by aircraft N-number, but may and are quite frequently retrieved by name of the individual aircraft owners or operators.

PREPARATION

This is not a mandatory form. Therefore, an equivalent form meeting local law and the recording requirements of the Federal Aviation Regulations may be used. This form may be reproduced. See Section 47.11 of the Federal Aviation Regulations (14 CFR 47.11) for guidance.

Except for signatures, all data should be typewritten or printed. Signatures must be in ink. If the agreement involved was not recorded with the Civil Aviation Registry, the original or certified true copy should accompany this form.

When aircraft registration requirements are met by retention of the collateral by foreclosing party (sometimes referred to as strict foreclosure), an Application for Aircraft Registration (AC Form 8050-1) in the name of the foreclosing party should accompany this form.

When aircraft registration requirements are met by sale of the collateral (sometimes referred to as statutory foreclosure), a Bill of Sale and an Application For Aircraft Registration in the name of the buyer should accompany this form.

FEE: A \$5 fee is required to issue a certificate of aircraft registration.