

TITLE INSURANCE CLAIMS IN THE REAL WORLD

The claims summarized below represent real claims that were asserted against a party who purchased title insurance. The names have been changed, but the facts are based on information in the claims files of First American.

1. **Title Vested Other Than As Insured – Breach of Warranty of Title -**

Invalidity of transfer or conveyance of the title because it was derived through defective judicial or administrative proceeding.

- a. Insured bought a Cessna aircraft from Seller for \$63,000. We insured Insured as owner.
- b. Seller obtained title by foreclosing on a claimed artisan's lien service to the aircraft. Insured later sold the plane to Subsequent Purchaser.
- c. Meanwhile, without serving Insured, the Previous Owner (who had been foreclosed), pursued a state court action against Seller contending that Seller's mechanic's lien foreclosure proceeding failed to comply with Florida law because it did not give proper notice to the owner and mortgagee.
- d. Previous Owner won in state court and took its judgment to the FAA who registered the aircraft in back in the name of Previous Owner.
- e. Purchaser asserted claim against Insured who tendered defense to First American.
- f. The claim of Previous Owner was ultimately settled.
- g. First American paid defense costs and amount of money to settle the dispute.

2. **Defect, Lien or Encumbrance on Title – Error by Title Company -** Learjet

- a. Aircraft owned by XYZ Airways with a security agreement in favor of XYZ Construction Corp.
- b. Title Company/Closing Agent erroneously prepared and sent a request for payoff demand and a release of security interest to the owner/seller XYZ Airways instead of sending it to XYZ Construction Corp, the real secured party.

- c. The president of XYZ Airways wrongly signed the release with no requirement for a payoff of secured party. Having been signed by one other than the secured party, the release was ineffective.
- d. At closing, the title company/closing agent paid all purchase funds to seller XYZ Airways (the Seller) and nothing to the XYZ Construction, the secured party.
- e. Aircraft title insurance policy was issued to the Lear Jet purchaser ("Purchaser"), for the purchase amount of \$750,000.
- f. The secured party, XYZ Construction, notified Purchaser of its intent to repossess for a claimed outstanding debt of \$2,450,000. Litigation ensued.
- g. First American defended the insured's (Purchaser's) title against the repossession and claims by XYZ Construction.
- h. After litigation, the matter was settled.
- i. Insurance company paid for defense costs and settlement costs.

3. Unmarketability of the Title – Title to the Aircraft

- a. Secured Party repossessed an aircraft that was seized in the Cayman Islands for drug running.
- b. Secured Part sells to Purchaser.
- c. First American issues title insurance to Purchaser and specifically included insurance against loss by reason of a junior lien for an original \$6,000 in favor of a Lien Claimant, who should have been wiped out by Secured Party's foreclosure. Lien Claimant asserted that his security interest was alive and well, not wiped out and over the years had accumulated interest at 12% for 20 years yielding a grand total of around \$58,000.
- d. Lien Claimant contended, among other things, that Secured Party had breached agreement with Lien Claimant regarding repossession of aircraft.

- e. First American filed an action to quiet the aircraft's title in the name of the insured (Purchaser) and prevailed.
- f. First American paid for costs of the litigation.

4. Forgery, Fraud, Undue Influence, etc.; unauthorized transfers of title

- a. Charles and Smith were co-owners of a Beechcraft Twin Bonanza.
- b. Charles forges name of co-owner Swanson to a bill of sale by which the aircraft was sold to Flight Leasing Co. and leased back. The sale proceeds check from Flight Leasing was made payable to Charles alone. Charles failed to make a single payment under the lease (financing lease with option to repurchase the aircraft) and Flight Leasing terminates the lease.
- c. Flight Leasing sells the Aircraft to Purchaser who also, wisely purchases aircraft title insurance.
- d. In the meantime, Swanson searches the FAA records only to discover that his Aircraft has been sold to a third party (Flight Leasing) and that his signature has been forged on a bill of sale.
- e. He notifies the police and the insured Purchaser who tenders the claim to First American.
- f. First American investigates and ultimately purchases Swanson's one-half interest in the aircraft.
- g. As part of the settlement, Swanson signs a bill of sale conveying title to his ½ interests in the aircraft to the insured Purchaser, perfecting title in the entire aircraft in the insured.
- h. Charles was prosecuted.

5. Unauthorized Transfers...of the Title... by any person, corporation, partnership, etc.

- a. In 2001 Moe, Larry and Curly formed XYZ Flight Group, Inc., which purchased a \$150,000 Beechcraft Baron.

- b. XYZ Flight Group, Inc., did not elect officers, hold corporate meetings, adopt bylaws or issue stock.
- c. Six months after the purchase Moe contacted Acme Aero Lease to borrow \$65,000 on the aircraft.
- d. Acme Aero Lease prepared a bill of sale and leaseback with purchase agreement to be signed by XYZ Flight Group, Inc.
- e. Moe signed as president of XYZ Flight Group, Inc. He also directed Acme Aero Lease to send loan proceeds to his personal accounts and not to the XYZ Flight Group, Inc., corporate account.
- f. The fraud was discovered and litigation was initiated.
- g. The court found that the bill of sale signed by Moe as President of XYZ Flight Group, Inc., was without authority since he was not the president. Therefore, it was ineffective to pass title to the aircraft to Acme Aero Lease.
- h. This led to a settlement of the matter.
- i. First American paid for defense costs and also settlement money.

6. **Estate or Inheritance Tax Liens on the title.** These are very sneaky liens in that they do not need to be recorded to attach and they attach if the Title is passed by will or intestacy with the estate tax unpaid. There is no bona fide purchaser or lender exception to the IRS' tax lien. It remains a hidden lien until the tax is paid or 10 years expire from date tax was due (9 years after death). We have had many hidden estate tax lien claims in the land title insurance arena.

7. **Others having rights affecting the Title arising out of leases, contracts or options.**

- a. Our insured, Moe, suffered an accident with his Piper aircraft whereby his plane was completely wrecked.
- b. The casualty insurer received a conflicting claim to policy proceeds from a third party (Larry) who claimed he had an interest in the plane based on an off-record bill of sale that Larry claimed was given him by the same person who sold the Aircraft to the insured.

- c. Insured notifies First American of the claim and First American sues Larry to quiet title in the name of the Insured., arguing that Insured was a bona fide purchaser of the aircraft without knowledge of the claim who recorded his bill of sale first.
- d. First American and the insured prevail in the litigation and the Insured received the casualty insurance payment.

8. Invalidity or Unenforceability of the lien of the Insured Mortgage for any reason including (a) invalid execution...because of forgery, etc; and (b) unauthorized execution...by any person, corporation.....etc.

- a. Acme Corporation purchases aircraft and borrows money from Roadrunner Finance Group, giving it a \$950,000 purchase money mortgage signed by an individual as president.
- b. Roadrunner Finance Group wisely purchases title insurance to protect its interests.
- c. Acme defaults and Roadrunner provides notice of default.
- d. In response to notice of default, Acme says that the \$950,000 purchase money mortgage signed by a person as president was invalid because the signature was forged and the deal was never approved by the board of directors.
- e. Roadrunner Finance Group tenders notice of a claim to First American and First American acknowledges that the claim is covered under the policy.
- f. First American engages counsel to investigate and respond to the claim of Acme.
- g. Roadrunner Finance Group (insured lender) commences actions to repossess the aircraft.
- h. Still pending.

9. The priority of any lien or encumbrance over the lien of the insured mortgage; forgery.

- a. Acme Corp owns a Lockheed Electra L-188 and borrows money from Moe's Aircraft Loan and Bait Shop ("Moe's

Bank”). The loan is secured by a lien on the Lockheed in the amount of \$250,000 and insured as a first lien.

- b. At the time there was another mortgage on the record, a purchase money lien in favor of Superior Bank, in the amount of for \$650,000.
 - c. Acme Corp provided the closing agent with a fully executed subordination agreement whereby Superior Bank subordinated its lien to the newly created lien in favor of Moe’s Bank.
 - d. After several months the new loan went into default. Moe’s Bank informed Superior Bank of its intention to foreclose and sell the aircraft free of the subordinate lenders interest. At that time Superior Bank asked the question, “What makes you think we are junior to you, Moe?”
 - e. Superior Bank took the position that it did not sign any subordination agreement.
 - f. Superior Bank filed a lawsuit to foreclose their lien and establish their priority over our insured’s lien, at which time the claim was tendered to First American.
 - g. There was no value in the aircraft above what would pay off Superior Bank (i.e., without title insurance, Moe’s Bank would have lost everything).
 - h. First American bought out the Superior Bank loan.
 - i. First American paid costs of defense, paid off the Superior Bank lien and made Moe’s Bank whole.
 - j. The signature of the person who signed the subordination agreement for Superior Bank, was clearly not the same as her signature appeared on the other loan agreement and amendments attached as exhibits to the foreclosure complaint.
 - k. This points to the need to have board resolutions and incumbency certificates, etc.
10. **Another junior lienholder claim.**
- a. First American insured owner Acme Aircraft Sales for \$120,000.

- b. As part of the closing a prior lien in favor of Moe's Bank was supposed to have been terminated by reason of a foreclosure.
- c. Acme Aircraft Sales entered into a sale and retained the services of a title company in OKC. The title company/escrow agent sent a release of lien to Moe's Bank, since their lien had not been released at the FAA.
- d. Encouraged, Moe's Bank asserted its lien and demanded full payment.
- e. The matter was tendered to First American who filed suit and obtained a judgment against Moe's Bank, quieting title in favor of the insured.

11. Lack of Priority of the Lien of the Insured Mortgage over any non-possessory lien for services, labor, material or use of facilities.....provided to the aircraft...before or after policy date.

- a. First American issued an owner's policy for \$1.8 million to Acme Leasing, Inc.
- b. Moe's Repair Shop filed a lawsuit naming Acme and Acme's asserting a mechanic's lien against the aircraft and seeking an injunction prohibiting Acme from using the Aircraft (Moe claimed a \$480,000 mechanic's lien for unpaid services rendered to the aircraft at the behest of the prior owner of the aircraft.
- c. First American is involved in the defense of the matter and it is still pending as is the litigation.

12. Another mechanic's lien claim, the Acme Airlines claim:

- a. Acme Airlines purchased the Aircraft and closed the sale on October 12. They wisely purchased title insurance. The Bill of Sale and other documents were filed with the FAA on October 12.
- b. The lien claimant, Moe's Repair Shop, asserted a lien claim that was dated October 11 but not filed with the FAA until October 19.
- c. Moe's Repair Shop did not have possession of the aircraft at the time of the sale to Acme Airlines. Nevertheless Moe's pursued its claim against the aircraft by contending that its filing with the FAA predated the recording of Acme's Bill of Sale (filing vs. recording), so Acme took subject to Moe's lien.

- d. The claim was tendered to First American who took on the costs of defense and ultimately settled with Moe's.

13. **State tax liens which do not appear in the public record up to \$25,000.**

- a. Moe's Aviation sells the aircraft to Acme Aviation Enterprises for \$18,000,000 and the insured (Acme) wisely purchase aircraft title insurance.
- b. Bill of Sale filed with FAA on Day 1.
- c. The Potter County, Texas tax office files a \$370,000 personal property tax lien with the FAA after the Bill of Sale was filed but before it was recorded.
- d. So far, the tax collector is pursuing the seller of the aircraft, Moe's Aviation and not the buyer, Acme. Still pending
- e. Remember that the policy provides only \$25,000 of state tax lien coverage unless more is specifically requested. Such a request will require payment of a search fee and a risk premium.

14. **If the aircraft was at any time under foreign registry, any failure to remove the aircraft from the foreign registry.**

- a. Helicopter was registered in Colombia and supposedly deregistered with notice being sent to the US
- b. Parties requested title insurance
- c. First American agreed to insure but required attorneys search in Colombia to confirm deregistration and liens.
- d. Attorneys report was delayed and parties decided to close anyway
- e. After closing, attorneys report shows up, with the following information: Aircraft still registered in Colombia, subject to a lien in favor of a Colombian Bank and subject to litigation and a court order. The notice of deregistration was forged.

15. **Any right first appearing in the public records after the filing but before the recording of the Insured Mortgage.** This is part of our gap coverage. The other gap of course is the searching gap in time between a document being filed and its being retrievable. The **Acme Airlines** claim above is an example of a matter sneaking in between filing and recording of the lender's mortgage. Also, the **Acme Aviation Enterprises** claim involved the filing by the Potter County, Texas tax office of a tax lien with the FAA after the bill of sale was filed but before it was recorded.

16. Forgery, after date of policy, of any assignment, release, termination, or satisfaction of the Insured Mortgage. No claims to report but many examples in real life where this has happened. Also see the following web site for a description of a real estate scam that relates to releases and assignments of security agreements <http://www.hud.gov/offices/hsg/sfh/nsc/mtgscams.cfm>. (Basically, certain parties advertise how they can relieve a homeowner of debt because “real” money wasn’t used to fund their loans. For a fee they send a letter to the homeowner’s lender that says because you didn’t use real cash to fund the loan it isn’t any good and you have 15 days to execute a release. If you don’t we will execute a release for you as your attorney in fact. Your silence will be your appointment of us as your attorney in fact. They then sign a full reconveyance of the bank’s deed of trust. Next, they help the homeowner get a new loan on the property and split the new loan proceeds fifty-fifty. Meanwhile title insurers are insuring the new lenders. If existing lenders have Eagle loan coverage, we undertake to invalidate the forged or fraudulent reconveyance and validate their first mortgage. The same would be done for any insured aircraft lender should this scheme make its way into the aircraft world.

If you would like protection from these and other claims, call us at

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