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FAA Proposes New Rule to Give Inspectors Unfettered Access to Aviation Company Property, Spaces

The new provision clarifies existing rules and expands certain other provisions. "The Fourth Amendment does not fly"; generally, there is no expectation of privacy for an aviation business.

By **J. Christopher Robbins, Esq.**
Florida Aviation Law Committee Member

The FAA has proposed a new rule to clarify the authority of aviation safety inspectors (ASIs) to access your company's facilities. The new rule is similar to the old rule: They can generally pay you a visit whatever they wish, with or without an appointment.

As any high school civics student can tell you, this would seem to be an exception to the traditional protection against searches and inspections by government agencies. The Fourth Amendment of the U.S. Constitution typically requires government inspectors to obtain a search warrant

and to have probable cause before they enter your property (at least without your consent).

Alas, this protection typically does not apply to the aviation industry. To coin a new phrase: "The Fourth Amendment Does Not Fly." The courts have consistently held that ASI searches are civil and administrative in nature. The government's compelling interest in public air safety trumps the aviation business owners' and employees' privacy interest.

To some extent, this is not an unreasonable. See *Inspections*, page 2.



Advertisement

Effective Business Contracts Prevent Financial Losses and Protect Companies

By **Hunter Chamberlin, Esq.**

"Get it in writing." It is a common refrain from lawyers and non-lawyers alike. There is good reason for this. You and your business act at your peril if you do not develop effective forms and contracts and have your customers sign them. Contracts, work orders, invoices, and many routine and non-routine documents serve critical purposes. They help you minimize disputes and confusion, they make it easier to collect unpaid accounts, they

Inspections, from page 1.

onable exception. TSA should not need a warrant to search every passenger and his baggage. But the same exception permits ASIs to conduct ramp checks and inspections of hangars, repair shops, cabins, cockpits, or any other space, (including your office in some cases) within the airport environment.

Incidentally, this broad discretion on the part of the FAA was not originally intended. Congress' first grant of power in 1958 was quite narrow. Even today, the statute is more limited than the FAA would lead us to believe. It states that ASIs may:

“Inspect aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture and when in use by an air carrier in air transportation...” 49 USC § 44713.

By contrast, the law says nothing about giving ASIs access to private airport spaces. It does not contemplate clandestine entry into hangars. It certainly does not authorize stakeout operations on private pilots, like a notorious one conducted in Billings, Montana in 2001. Barrie v. FAA, 16 Fed. Appx. 9 (10th Cir. 2001).

You may find it hard to believe, but the same law requires the FAA to only employ inspectors who “advise and cooperate with the air carrier during that inspection and maintenance.” In other words, Congress has mandated that ASIs work with the industry, not against them.

As with many matters relating to the FAA, the proposed rule is more a creature of custom than of law. The latitude of ASIs has never receded over time, only expanded. If they have a Form 110A, they can usually come in.

Consequently, we expect that this latest rule will be approved. And since most dealings with ASIs are cordial – if not friendly – we continue to recommend meeting every inspector with a smile and a cup of coffee.

Contracts, from page 1.

protect you from products liability, lawsuits, and claims. They almost always improve your bottom line.

Here are a few examples of aviation companies who did not take their lawyers' advice:

An aircraft broker who worked months to close a deal for a Hawker 700 lost his \$150,000 commission because he did not have a written contract with the buyer.¹ Not surprisingly, the buyer testified in court that the broker agreed to work for free. Since there was nothing in writing to contradict this, the court ruled in favor of the buyer.

A fuel provider lost \$432,000 after it sold that amount of Jet A to a bankrupt company. It did not have a written agreement with the company.¹ The fuel provider's lack of paperwork prevented it from collecting accumulated assets from the bankruptcy court trustee.

A court ruled that a Cessna dealer had no rights after Cessna suddenly terminated its distributorship after years of doing business.¹ That was because he never signed a multi-year contract. Cessna was free to cancel the arrangement at any time, the court said, as there was nothing in writing that said Cessna couldn't.

You should know that at any given time, our Firm is handling several aviation cases in court in which folks are battling over matters that *should have been pre-determined in written agreements*. No matter how hard we push the message, it seems that the victims are always betting the farm on the goodwill of others. That would be a good strategy if goodwill were a constant. But it isn't. As a lawyer, I have also learned that even some good people will behave badly when large sums of money are at issue, especially when they feel their livelihoods are at stake.

There is another risk of oral agreement and handshake deal-making: it is Florida's “statute of frauds.” Most states, including Florida, have legislation that prevents a court from enforcing certain types of oral agreements – even when you can prove that they existed. The biggest risk is when a deal will be in force for over one year. Such a transaction is at risk of being legally unenforceable.

To conclude, every company in the industry, small or large, needs to develop the standard forms and contract with which you transact business. This is wise to avoid disputes, to keep clear of the “statute of frauds,” to help collect on delinquent invoices, to protect you from negligence and product liability, and to increase your bottom line.

In some sub-sectors of our industry, like manufacturing and distribution of aviation-related goods, these documents are complicated, as they must address issues relating to products liability. Aircraft management and part 135 operators also have somewhat technical forms, as they set forth the complex array of payments and obligations. But for many of businesses, it is not rocket science and the forms are quite simple.

Our law firm offers a variety of retainer packages for aviation-industry clients. They start as low as \$300.00 per month, and will give you access to our team, our experience, our forms, and our resources. You may contact me by e-mail at hunter@floridalawyer.com or by phone (800.934.5999) if you have any questions.

¹ Omni Jet Trading v. Heerensperger, 1997 U.S. App. LEXIS 23523 (4th Cir. 1997).

² Butler Aviation Int'l v. Whyte, 6 F.3d 1119 (5th Cir. 1993).

³ General Aviation v. Cessna Aircraft Co., 915 F.2d 1038 (6th Cir. 1990).



Meet J. Christopher Robbins, Esq., director of the *Robbins Equitas* Aviation Law Department

J. Christopher Robbins is an aviation attorney and a member of the Florida Bar's Aviation Law Committee. He is a former federal judicial law clerk to the Honorable Tu M. Pham, United States Magistrate Judge. He is an instrument-rated pilot. He has written articles on aviation law for major publications, including the *Tampa Tribune*. This year, Chris was a panelist at the American Bar Association's aviation law symposium in New York. Chris' clients include aircraft parts manufacturers, part 135 and 121 operators, repair stations, aircraft brokers, and corporate flight departments. Chris is available to speak to you if your company needs corporate counsel or has a legal matter or project to discuss. E-mail Chris at chris@FloridaLawyer.com or call him, toll free, at (800) 934-5999.