

An Illegitimate Trustee Means an Illegitimate FAA Aircraft Registration...

Don't Let it Happen to You!

Is your Corporate Trustee or the party you are considering to engage as Trustee to register your aircraft with the FAA REALLY a Legal Trustee?

The reader of this article needs to clearly understand the FAA does not “VET” those entities applying for registration as a Trustee - for any state governmental proof of corporate Trustee authority.

Therefore you also should not blindly assume someone offering Trustee service has Trustee authority to act as a Trustee. And because the FAA does not demand verifiable state government issued proof of Trustee authority, the issue of an FAA aircraft registration in the name of an Owner Trustee is absolutely no proof or reliable documentation that your chosen Trustee is in fact legally a Trustee.

FAA regulations require all US legal corporate entities or other forms of state authorized entities (limited liability companies, partnerships, trustees, etc.) except for one exception (qualified foreign owned “C” corporations {NOTE: foreign owned LLC’s do not qualify under this exception}) - to be classified as a US citizen under the US code in order to record the legal title they hold in an aircraft bearing US registration marks. And they have to record in order to receive a FAA registration certificate; which is a requirement to operate (fly) the aircraft.

Normally the default choice when a non-US citizen or non-US citizen classified entity needs to register an aircraft bearing US registration marks is to engage the services of a corporate entity, qualified as a US citizen under the code, to accept and record their legal title with the FAA in a capacity referred to as a “Trustee” or an “Owner Trustee.”

If one surveys the market, the choice of Trustee providers can be confusing, as the costs for Trustee service vary widely. *Unfortunately clients often default to the cost of service because they don’t have reliable information or have misinformation when making a decision on cost versus value of service received. Sadly when coupled with the FAA’s failure to VET Trustee applicants, this default is dangerous!*

Consider the following facts and fiction when considering the engagement of any Trustee provider:

FACT: “Corporate Trustees” must be granted Trustee authority from either the state banking commissioner’s office or from a court in their state of incorporation!

FICTION: The prior issue of an FAA aircraft registration in the name of the party representing themselves to be a Trustee confirms they have Trust power; *sorry, it does not!* The FAA does not currently “VET” (Require presentation of governmental or judicial proof of Trust Power) for trustee power of any corporate aircraft registration applicant claiming to be a trustee.

FACT: Routinely, state banking commissioners (Delaware included) require a corporate entity asking for Trust powers to either deposit with the state banking commissioner a specified amount of funds or show thru a certified audit that a fixed amount of capital is available in a specified

banking intuition as a reserve in order to received approval to exercise Trust Powers. These reserve capital requirements vary by state and run from a low of \$ 500,000 upward to more routine amounts of \$ 1,000,000.00 or more.

FICTION (or maybe a QUESTION): If the Trustee service provider tells you they will form a separate corporation to be the Trustee for your plane and asks you for a few hundred dollars a year for service; start calculating the amount of money required to be on deposit by the banking commissioner for each provisioned plane this provider claims to have? **“Does not compute” to steal a phrase from Mr. Spock.**

FICTION: The word “Trust” in the name of a company automatically certifies that the entity has Trustee powers; **No, it does not.** Certain states, notably Delaware, permit the formation of limited liability companies with the use of the word “Trust” in their name, but these companies so formed do not have automatic corporate Trustee powers.

FACT: No US state grants “Trustee Authority” to any corporation or limited liability company formed under their “General Corporation Laws.” **Don’t be fooled by someone showing you their state incorporation papers.** To be a Trustee they need to be specifically granted Trust powers in their articles of incorporation. And this authority has to be granted by the state banking commissioner authorizing the secretary of state to permit the publishing of certain language in their formation articles or they need a court order appointing or confirming the company has Trustee powers under the state law they are incorporated in.

FICTION: Operating a company providing Trustee service outside of the state of original incorporation exempts the company from having to comply with the laws of its state of incorporation. **Not anymore.** In prior times this could be done under the laws of certain states, again notably Delaware; however, Delaware law changed – **if you want proof, contact the Delaware state bank examiner’s office or the state bank examiner’s office in the state of formation of your corporate Trustee.**

DO THIS EXERCISE...

YOU MAY BE SHOCKED AT THE REPLY:

As a majority of those offering corporate trust services in the USA incorporate in Delaware; ask your vender where their proposed Trustee Company is incorporated. If the answer is “Delaware”:

Contact the Delaware state Bank Examiners office as follows – **make the call, send the fax or send an email** – and ask the Commissioner if the name of the corporate Trustee company you have or are thinking of engaging has “Corporate Trust Powers” under Delaware law.

Jonathan Smith

Deputy Bank Commissioner for Examinations

Phone: (302) 739-4235

Phone: (302) 577-6722 (from New Castle County)

Fax: (302) 739-3609

Licensing/Consumer Complaints Fax: (302) 739-2356

E-mail: Dawn.Hollinger@state.de.us

Website: <http://banking.delaware.gov/index.shtml>

Remember - it is the safety of your money & property at stake. Be informed – do not “assume.”

FACT: Failure to verify your Trustee has legitimate Trust powers can cause you **insurmountable grief & money** in any lawsuit where the legitimacy of your Trustee becomes an issue. And rest assured it will in any wrongful death suit involving an aircraft held in trust!

An illegitimate Trustee means an illegitimate FAA aircraft registration! Also read the fine print of your insurance contract, and determine the “domino effect” for yourself. As in the saying, **“There is no Free Lunch”; there is also “No Cheap Legitimate Trustee.”**

PROTECT YOURSELF: Ask for and demand written proof of “state court confirmation or state bank commissioner granted Trustee power” before you entrust your assets to another.

ABOUT THE AUTHOR

Dr. C. L. Wood, PhD, MBA, BSBA, Former FAA Pilot Examiner Europe, Africa & Middle East, is President of Aircraft Guaranty Corporation, a court certified Wyoming Private Trust Company with over 25 years of international registration experience and aircraft operating in 176 different countries of the world.



The World Standard

Aircraft Guaranty Corporation

State of Wyoming Court Certified Trustee

For Problem Free Solutions - call:

USA Tel: +1 307-200-7180 Fax: +1 307 222 1787

agc@agcorp.com • www.agcorp.com



NBAA

