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## Notice: Aircraft Lien Law in Florida

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## Notice: Aircraft Lien Law in Florida

TIMOTHY M. RAVICH\*

*Establishing (e.g., perfecting) and enforcing a lien presents technical pitfalls and practical problems with which practitioners and courts are often unfamiliar or uncomfortable. After all, the law of liens requires an understanding of many different areas of the law, including the law of contract, bailment, unjust enrichment, and customary law. But among the most fraught with uncertainty are mechanic's liens, which establish a right in favor of persons—"artisans"—performing or furnishing labor, services, fuel, or material upon personal property. Florida's mechanic's lien statute raises particularly challenging legal issues as applied to aircraft.*

*In Florida, the perfection and enforcement of a mechanic's lien as against an aircraft is rarely plain or intuitive. To get from lien perfection to lien foreclosure, aviation and commercial law practitioners must travel from Florida's general mechanic's lien statute through a mosaic of other state statutes, including a standalone chapter related to aviation. Along the way, equitable considerations, like the need for injunctive relief and the law of replevin and tort (e.g., conversion), likely come into play. Finally, lienors must satisfy an exacting federal statutory recording scheme and navigate a corresponding body of decisional law that raises thorny issues of federalism, priority, and preemption.*

*The final tally: Perfection and enforcement of a mechanic's lien in Florida requires the command of a minimum of four different Florida statutory chapters that rarely (and*

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rarely clearly) cross-reference each other, several federal statutes that frequently have no obvious relationship to state lien law, and scattered decisional law rendered at every level of the judiciary. This is to say nothing of the international law regime governing the registration of airplanes and airplane parts or the likelihood that an aircraft may already be encumbered by the lien or priority mechanisms of another state or states.

But the most problematic aspect of Florida's statutory regime for mechanic's liens, which is at the center of this Article, is the role possession plays in perfecting aircraft liens. Possession typically plays a decisive role in the area of lien law, animating the common law tenet that "possession is nine points of the law." For more than a decade, however, Florida statutory law has presented an internally conflicted path toward lien perfection by also providing that possession is unnecessary. That is, under Florida law, a valid lien also could be created simply by recording a claim of lien. Recently, however, the Florida Legislature amended chapter 329, Florida Statutes, to clarify that possession is not required for lien perfection purposes; notice alone now suffices.

This Article discusses the possession versus notice problem inherent in the state's statutory scheme and then analyzes the recent change to the law. In doing so, this Article evaluates the advantages and disadvantages of Florida's "new" mechanism for the perfection and enforcement of mechanic's lien on aircraft, and argues in favor a statutory scheme that once and for all takes aircraft outside of Florida's general mechanic's lien statute, situating the subject of aircraft liens in a legal scheme that comprehensively provides for the perfection and enforcement of aircraft-specific artisan liens. Finally, this Article provides a comprehensive empirical review of the mechanic's lien laws of every state in order to broadly contextualize how legislatures and courts around the nation approach the issue of perfection and notice for lien perfection purposes. In all, this Article's relevance is greatest for aviation practitioners and courts adjudicating aviation liens in Florida and elsewhere, but it may

*also hold interest for a wider audience seeking to achieve efficiencies in the interpretation and application of commercial and secured transactions concerning personal property and mobile assets in analogous situations.*

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## INTRODUCTION

In substance and form, liens are not conceptually difficult to understand. Liens are claims against property that evidence a debt, obligation, or duty.<sup>1</sup> Liens arise either consensually, as by agreement, or non-consensually, as by judgment,<sup>2</sup> equity,<sup>3</sup> or statute.<sup>4</sup> They are usually effected by filing a verified itemized account of the demand due according to the relevant state or federal authority.<sup>5</sup> In application, however, the process of establishing (e.g., perfecting) and enforcing a lien presents technical pitfalls and practical problems with which practitioners and courts are often unfamiliar or uncomfortable. After all, the law of liens requires an understanding of many different areas of the law, including the law of contract, bailment, unjust enrichment, and customary law.<sup>6</sup> In addition, liens exist in favor of countless kinds of private and public creditors—from home mortgage lenders, to municipalities, to the Internal Revenue Service.<sup>7</sup> But among the most fraught with uncertainty are mechanic’s liens, which establish a right in favor of persons—“artisans”—performing or furnishing labor, services, fuel, or material upon personal property.<sup>8</sup>

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<sup>1</sup> 34 FLA. JUR. 2d *Liens* § 1 (2014).

<sup>2</sup> William W. Kannel & Ericm R. Blythe, *Statutor Liens vs. Consensual Liens: Why It Matters and When It May Not*, NAT’L L. REV. (Mar. 18, 2016), <https://www.natlawreview.com/article/statutory-liens-vs-consensual-liens-why-it-matters-and-when-it-may-not>.

<sup>3</sup> See Ralph E. Boyer & Barry Kutun, *The Equitable Lien in Florida*, 20 U. MIA. L. REV. 731, 731 (1966).

<sup>4</sup> FLA. JUR. 2d *Liens* §12 (2014).

<sup>5</sup> See Michael Scott, *Liens in Aircraft: Priorities*, 25 J. AIR L. & COM. 193, 196–97 (1959).

<sup>6</sup> See, e.g., *Lake River Corp. v. Carbordum Co.*, 769 F.2d 1284, 1287 (7th Cir. 1985) (“[A] lien is . . . a device for preventing unjust enrichment . . .”).

<sup>7</sup> See Justin Pritchard, *Liens: What They Are and How They Work*, BALANCE (July 29, 2020), <https://www.thebalance.com/liens-what-they-are-and-how-they-work-315611> (discussing different kinds of liens).

<sup>8</sup> See Mark Sauer, *Ohio’s New and Improved Mechanic’s Lien Statutes: In Pursuit of Legitimacy*, 22 OHIO N.U. L. REV. 895, 895–97 (1996) (describing mechanic’s liens and explaining why the law of mechanic’s liens have become “increasingly complicated”); 2 RAYMOND T. NIMMER & DAVID OLIVEIRI, NIMMER’S COMMERCIAL ASSET-BASED FINANCING § 16:45 (2020) (using the terms “artisan’s liens” and “mechanic’s liens” interchangeably).

Florida's mechanic's lien statute raises particularly challenging legal issues as applied to aircraft. In Florida, the perfection and enforcement of a mechanic's lien as against an aircraft is rarely plain or intuitive. This is unexpected given how seemingly clear the operative mechanic's lien statute appears on its face. Section 713.58, Florida Statutes, establishes a general lien "[i]n favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed."<sup>9</sup> Part of the confusion is that, so far as liens on aircraft are concerned, section 713.58 is a starting point rather than a destination.

Indeed, to get from lien perfection to lien foreclosure, aviation and commercial law practitioners must travel from Florida's general mechanic's lien statute through a mosaic of other state statutes, including a standalone chapter related to aviation.<sup>10</sup> Section 329.51 of that chapter provides that any lien claimed on an aircraft pursuant to Florida's general law mechanic's lien, section 713.58, "is enforceable when the lienor records a verified lien notice with the clerk of the circuit court where the aircraft was located at the time the labor, services, fuel, or material was last furnished."<sup>11</sup> Florida law then requires practitioners and courts to jump to section 85.011, Florida Statutes, which governs the enforcement of all statutory liens.<sup>12</sup> Along the way, equitable considerations, like the need for injunctive relief and the law of replevin and tort (e.g., conversion), likely come into play. Finally, lienors must satisfy an exacting federal statutory recording scheme and navigate a corresponding body of decisional law that raises thorny issues of federalism, priority, and preemption.<sup>13</sup>

The final tally: Perfection and enforcement of a mechanic's lien in Florida requires the command of a minimum of four different

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<sup>9</sup> FLA. STAT. § 713.58(1) (2020).

<sup>10</sup> See FLA. STAT. §§ 329.01–329.51 (2020).

<sup>11</sup> FLA. STAT. § 329.51 (2020); see also FLA. STAT. § 329.41 (2020) (providing that liens for fuel furnished to aircraft are "enforceable in the same manner as provided in [section] 329.51").

<sup>12</sup> FLA. STAT. § 85.011 (2020).

<sup>13</sup> See Robert C. Newark, III, 60 CONSUMER FIN. L.Q. REP. 708, 710–11 (2006) (discussing *Carolina Aircraft Corp. v. Commerce Tr. Co.*, 289 So. 2d 37, 38 (Fla. Dist. Ct. App. 1974), where both state laws and Federal Aviation Administration ("FAA") regulations were at issue).

Florida statutory chapters that rarely (and rarely clearly) cross-reference each other (Chapters 78, 85, 329, and 713), several federal statutes that frequently have no obvious relationship to state lien law, and scattered decisional law rendered at every level of the judiciary. This is to say nothing of the international law regime governing the registration of airplanes and airplane parts<sup>14</sup> or the likelihood that an aircraft may already be encumbered by the lien or priority mechanisms of another state or states.<sup>15</sup> In all, navigating through the maze of lien laws at the state, national, and international levels is challenging and leads to administrative and practical inefficiencies. To be sure, these challenges are surmountable. However, they serve as important background for an even larger substantive concern that has long troubled Florida practitioners and courts, and which is at the center of this Article: What role does possession play in perfecting aircraft liens under Florida law?

Ostensibly, the answer is that possession plays not only an important role, but also a decisive one. After all, the adage that “possession is nine points of the law” is a basic tenet of the common law, and its animating idea—that the exercise of rights frequently rises and falls with possession—is beyond doubt in common law legal systems around the world.<sup>16</sup> Every court to have considered Florida’s general mechanic’s lien law, in fact, has recognized that possession is the *sine qua non* of the lien<sup>17</sup>—an understanding that dates back at least to the times of medieval lawyers in whose eyes “[p]ossession largely usurped not only the substance but the name of Property.”<sup>18</sup> Florida’s general mechanic’s lien law has coincided with the

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<sup>14</sup> See Convention on International Interests in Mobile Equipment, art. 2, Nov. 16, 2001, S. TREATY DOC. NO. 108–10 (2003). This Article focuses on liens on aircraft as opposed to liens on aircraft subcomponents or ancillaries, such as avionics and engines. Perfection and enforcement of liens on such aircraft parts is an area of the law unto itself. See, e.g., *In re S. Air Transp., Inc.*, 255 B.R. 715, 718 (Bankr. S.D. Ohio 2000) (evaluating whether Florida’s statutory lien scheme applies to spare aircraft parts).

<sup>15</sup> See *infra* Appendix.

<sup>16</sup> See OXFORD DICTIONARY OF PROVERBS 245 (Jennifer Speake ed., 2015) (citing THOMAS DRAXE, BIBLIOTHECA SCHOLASTICA INSTRUCTISSIMA 163 (1616)); FREDERICK POLLOCK & ROBERT SAMUEL WRIGHT, AN ESSAY ON POSSESSION IN THE COMMON LAW 1 (1888).

<sup>17</sup> See, e.g., *In re Garland Corp.*, 6 B.R. 452, 454 (Bankr. D. Mass. 1980).

<sup>18</sup> POLLOCK & WRIGHT, *supra* note 16, at 5.

common law in this regard by virtue of being inseparably connected with possession and the view that “the right of the creditor to retain the possession of the article, created or enhanced in value by his labor, [endures] till the compensation due for his labor thereon was paid.”<sup>19</sup> This deeply engrained and universal concept—that perfection (and to a lesser extent, enforcement) of a lien go hand-in-hand with possession of the personal property upon which an artisan provides labor or services—applies almost automatically to just about every one of the more than two dozen mechanic’s liens recognized under Florida law.<sup>20</sup> But in the context of aircraft liens, turbulence best explains the relationship between possession and perfection.

The title and body of Chapter 329, Florida Statutes, reveals why this is so. Until recently, section 329.51 provided:

329.51 Liens for labor, services, fuel, or material expended upon aircraft; notice.

Any lien claimed on an aircraft under [section] 329.41<sup>21</sup> or [section] 713.58<sup>22</sup> is enforceable when the lienor records a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the labor, services, fuel, or material was last furnished. The lienor must record such lien notice within [ninety] days after the time the labor, services, fuel, or material was last furnished. The notice must state the name of the lienor; the name of the owner; a description of the aircraft upon which the lienor has expended labor, services, fuel, or material; the amount for which the lien is claimed; and the date the expenditure was completed. This section does not affect the priority of competing

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<sup>19</sup> N.C. Manson, Jr., Note, *Mechanics’ Liens*, 2 VA. L. REG. 489, 489 (1896).

<sup>20</sup> See generally FLA. STAT. §§ 713.001–.37 (2020) (construction liens).

<sup>21</sup> FLA. STAT. § 329.41 (2017) (lien for fuel furnished to aircraft) (“A person who has furnished fuel to an aircraft has a lien upon the aircraft for any unpaid fuel charges. The lien is enforceable in the same manner as provided in [section] 329.51.”).

<sup>22</sup> FLA. STAT. § 713.58 (2017) (liens for labor or services on personal property).



interests in any aircraft or the lienor's obligation to record the lien under [section] 329.01.<sup>23</sup>

In 2010, in *Commercial Jet, Inc. v. U.S. Bank, N.A.*,<sup>24</sup> Florida's Third District Court of Appeal rejected an argument that this statutory language amended section 713.58 by providing that a valid lien can be created simply by recording a claim of lien within ninety days.<sup>25</sup> "[S]ection 329.51 does not create any new lien rights," the court held; "[i]nstead, it is manifestly a notice statute, as is apparent by its title" and the fact that the statute specifically states that it applies to liens that are possessory in nature, for example, "[a]ny lien claimed on an aircraft *under* [section] 329.41 or [section] 713.58."<sup>26</sup>

This rationale effectively rendered section 329.51 of no effect whatever, creating genuine confusion among maintenance, repair, and overhaul ("MRO") providers and their counsel.<sup>27</sup> If possession was all that mattered under *Commercial Jet, Inc.*, then was notice under 329.51 still required? Stated otherwise, was possession alone sufficient to perfect a lien such that an MRO could perfect a mechanic's lien without also satisfying the notice and recordation provisions of section 329.51? If so, what purpose did section 329.51 serve, if any?

*Commercial Jet, Inc.* raised rather than resolved these and other elementary legal and practical questions, yet the case endured as precedent for almost a decade. In 2019, however, the Florida Legislature amended Chapter 329, Florida Statutes, to clarify that possession is *not* required for purposes of perfecting a mechanic's lien

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<sup>23</sup> FLA. STAT. § 329.51 (2017); *see also infra* Part III.

<sup>24</sup> *Com. Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887 (Fla. Dist. Ct. App. 2010).

<sup>25</sup> *Id.* at 888.

<sup>26</sup> *Id.* (emphasis added).

<sup>27</sup> This confusion was articulated by Judge Schwartz who issued a dissenting opinion. *Id.* at 889 (Scwartz, J., dissenting) ("The majority holding that [section 329.51] did not have the effect specifically provided by the legislature is in conflict with just about every canon of legislative interpretation there is . . . [A] statute dealing with a specific subject, such as aircraft, must be deemed to control over a general one such as section 713.58.").

under state law.<sup>28</sup> Notice alone suffices.<sup>29</sup> In doing so, the Legislature validated the dissenting opinion in *Commercial Jet, Inc.*, which rebutted the majority’s decision as producing “conflict with just about every cannon of legislative interpretation there is.”<sup>30</sup>

This Article evaluates the possession versus notice problem inherent in a statutory scheme that effectively required the near contemporaneous application of Florida’s possession-centric general mechanic’s lien law (section 713.58) alongside Florida’s aviation-specific and notice-only law (section 329.51) in favor of artisans who provide labor, service, fuel, or material upon aircraft. To frame this discussion, Part I explains why and how the possession versus notice problem is unusual when compared to other statutory lien schemes and yet unremarkable (albeit unique) when measured against the manner by which the law has historically treated an aircraft as an asset. Part II then describes the statutory and decisional law in Florida respecting aviation liens, tracking the universe of decisions on the matter.<sup>31</sup> Following a review of these court opinions, Part III analyzes the advantages and disadvantages of Florida’s “new” mechanism for the perfection and enforcement of mechanic’s lien on aircraft, arguing in favor of a statutory scheme that once and

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<sup>28</sup> H.B. 975, 2019 Leg., 88th Sess. (Fla. 2019) (“An act relating to aircraft liens; amending [sections] 329.41 and 329.51 specifying that a lienor is not required to possess an aircraft to perfect certain liens . . .”).

<sup>29</sup> FLA. STAT. § 329.51 (2020).

<sup>30</sup> *Com. Jet, Inc.*, 45 So. 3d at 889 (Schwartz, J., dissenting); see also CIV. JUST. COMM., FINAL BILL ANALYSIS, H.B. 975, 1st Sess., at 4 (Fla. 2019) <https://www.flsenate.gov/Session/Bill/2019/975/Analyses/h0975z1.CJS.PDF> (“The bill declares liens claimed under [sections] 329.41 and 713.58 for labor, services, fuel, or material furnished to an aircraft are not possessory liens. Thus, a person claiming such a lien does not need to keep the aircraft in his or her possession to enforce the lien.”).

<sup>31</sup> See *infra* Part II. A search of all Florida decisions arising under section 713.58 over a 133-year period produced a modest set of cases—between twenty and thirty cases in all. The first decision was rendered in 1901, *First National Bank v. Kirkby*, 32 So. 881 (Fla. 1901), and the most recent was decided in 2019, *J.V. Air Maintenance, Inc. v. Westward Leasing, Corp.*, 283 So. 3d 379 (Fla. Dist. Ct. App. 2019). Only seven of these decisions centered on section 329.51. See, e.g., *Glob. Xtreme, Inc. v. Advanced Aircraft Ctr., Inc.*, 122 So. 3d 487, 491 (Fla. Dist. Ct. App. 2013). Just four cases examined section 329.41 in a substantive way, for example, *Commercial Jet, Inc.*, and only four of the cases related to aircraft, see for example, *In re Tradewinds Airlines, Inc.*, 394 B.R. 614, 616–18 (Bankr. S.D. Fla. 2008).

for all takes aircraft outside of Florida's general mechanic's lien statute and situates the subject of aircraft liens in a legal scheme that comprehensively provides for the perfection and enforcement of aircraft-specific artisan liens. In all, this Article's relevance is greatest for aviation practitioners and courts adjudicating aviation liens, but it may also hold interest for a broader audience seeking to achieve efficiencies in the interpretation and application of commercial and secured transactions concerning mobile personal property in analogous situations.

### I. PRIORITY, POSSESSION, AND PRECEDENT

This section contextualizes the specific discussion of the possession versus notice problem for mechanic's lien purposes within the broader context of how courts have struggled to fit aircraft within traditional notions of property law. Understanding how and why the law regards airplanes as an exceptional asset may help to explain how the dilemma of possession versus notice emerged in the first place.

As an initial matter, little precedent exists so far as aircraft liens are concerned. Indeed, the history of security interests in aircraft is as brief as it is muddled. One obvious explanation for this is that, until relatively recently, aircraft were unimaginable or unknown—or at least unrecognized—as a category of chattel under the law.<sup>32</sup> Consequently, controversies about the perfection and enforcement of liens against aircraft simply did not arise under the common law until the last century.<sup>33</sup> In fact, airplane ownership and use presented no judiciable issue until the 1910s, and even then, practitioners and courts had to develop the subject matter of aviation lien law on a blank slate with, at best, reference to and reliance on imperfectly persuasive precedent established in other legal contexts.<sup>34</sup>

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<sup>32</sup> The earliest court opinions mentioning airplanes date back to approximately the early 1900s. *See, e.g.*, *Wright Co. v. Herrin-Curtiss Co.*, 204 F. 597, 597 (W.D.N.Y. 1913) (describing Orville and Wilbur Wright's 1906 patent for "improvements in flying machines, or in other words, for a structure commonly known as an aeroplane").

<sup>33</sup> *See id.*

<sup>34</sup> *See* Scott, *supra* note 5, at 193–96; Note, *Aeroplanes and Admiralty*, 28 HARV. L. REV. 200, 200 (1914).

In the 1914 case of *Crawford Bros. No. 2*, for example—possibly the earliest tort case involving aircraft—a federal court declined to impose a maritime lien for repairs to an airplane because the judge was at a loss as to whether and how to characterize an airplane as a maritime vessel for jurisdictional purposes.<sup>35</sup>

In view of the novelty and complexity of the questions that must necessarily arise out of this new engine of transportation and commerce, it appears to the court that, in the absence of legislation conferring jurisdiction, none would obtain in this court, and that questions such as those raised by the libelant must be relegated to the common-law courts, courts of general jurisdiction. [L]egislation is necessary for the regulation of air craft. *They are neither of the land nor sea, and, not being of the sea or restricted in their activities to navigable waters, they are not maritime.*<sup>36</sup>

The court's uncertainty about how to extend jurisdiction to an asset that is "neither of the land nor sea"<sup>37</sup> has become a hallmark of modern aviation law and aviation lien law specifically.<sup>38</sup> As such, and in the absence of binding law, practitioners and courts frequently draw from two legal frameworks, the common law and maritime law.<sup>39</sup>

First, under the common law, the maxim *qui prior est tempore potior est jure*—he who is first prior in time is prior in right (or equity)—applies to two liens of the same nature or class.<sup>40</sup> In addition

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<sup>35</sup> See *Crawford Bros. No. 2*, 215 F. 269, 270–71 (W.D. Wash. 1914).

<sup>36</sup> *Id.* at 271 (emphasis added); see also *Aeroplanes and Admiralty*, *supra* note 34, at 200 ("There are certain considerations which lend a measure of superficial plausibility to the contention that an aeroplane might be made subject to a maritime lien for repairs.").

<sup>37</sup> *Crawford Bros.*, 215 F. at 271.

<sup>38</sup> See, e.g., 14AA CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3679 (4th ed. Supp. 2020) ("The question of whether torts involving airplane crashes in navigable waters are cognizable in admiralty has plagued federal courts for almost as long as airplanes have been in existence.").

<sup>39</sup> See Scott, *supra* note 5, at 193.

<sup>40</sup> *Id.* at 194.

to this time-sequence for priority, courts recognize the generally superior position of the common law lien.<sup>41</sup>

Conversely, under maritime law, priority among liens is determined in the inverse order of their creation such that later liens take precedence over all earlier liens.<sup>42</sup> This ancient anomaly reflected two policy choices. First, “a maritime lien converts the vessel itself into the obligor and allows injured parties to proceed against it directly” in an *in rem* proceeding.<sup>43</sup> As such, each lienor performing services for a vessel acquired some proprietary value in the vessel; he “acquires a jus in re, and becomes a sort of coproprietor in the res and . . . subjects his claim to the next similar line which attaches.”<sup>44</sup> Second, maritime law ranks the last lienor to perform services on a vessel as the senior lienholder because “the last beneficial service is the one that continues the activity of the ship as long as possible”<sup>45</sup> and doing so inures to the benefit of all earlier lienors.<sup>46</sup>

In all, both the common law and maritime law are helpful for conceptualizing artisan’s liens applicable to aircraft, but neither translates precisely to aircraft liens, in large measure because the common law and maritime law offer divergent and “competing analogies” on important issues of lien priority, perfection, and enforcement.<sup>47</sup>

Aviation lien law thus confusingly reflects ideas from the two competing priority schemes posited by the common law and maritime traditions. Stated otherwise, aviation lien law falls somewhere between the maritime concept of proceeding *in rem* and the common law’s recognition of the superior position of the artisan who files his claim first in time. Notwithstanding that common law liens and

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<sup>41</sup> *See id.*

<sup>42</sup> *Id.* at 194–95.

<sup>43</sup> *Crimson Yachts v. Betty Lyn II Motor Yacht*, 603 F.3d 864, 868 (11th Cir. 2010).

<sup>44</sup> *The William Leishear*, 21 F.2d 862, 863 (D. Md. 1927).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* (“[B]eneficial additions subsequent to earlier liens add to the value of the ship, and that, therefore, to prefer such additions will not deprive the earlier lienors of any interest which they would have had, if no such services had been rendered.”); *see also* Roger G. Connor, *Maritime Lien Priorities: Cross-Currents of Theory*, 54 MICH. L. REV. 777, 779–83 (1956) (discussing “property” and “benefit” theories of liens).

<sup>47</sup> *See* Scott, *supra* note 5, at 193.

maritime lien concepts are theoretically (if not logically) impossible, the ideas from each are enduringly compelling given the resemblances between vessels and aircraft:

Obviously, the fact that most airplanes today are chattels of considerable value means that long-term financing by mortgage or conditional sale will be necessary, as in the case of land purchase. Thus the common law priority problems involving secured holders and the later lienors immediately become pertinent. On the other hand, a similarity between the aircraft and the ship as a mode of conveyance will often mean that the same transactions which traditionally are recognized as giving a maritime lien may also be the basis for a lien in aircraft.<sup>48</sup>

Indeed, both the common law and maritime law have merits as applied to aviation and each has retained relevance even in jurisdictions in which liens are purely statutory in nature.<sup>49</sup> This is particularly so where “priority legislation with respect to the aircraft is infrequent and incomplete, so that resort to these or other principles outside the statute may well be necessary.”<sup>50</sup> In all, while reflecting generally on how the common law and maritime law approach the issue of lien priority may not squarely resolve issues unique to airplanes, it helpfully illustrates and explains the paradoxical strands that inform modern aircraft lien laws.

So, too, does an understanding of the ways in which the common law and maritime law address the issue of possession provide important background about the policy decisions underlying contemporary aviation lien laws. After all, before a lienor can claim priority he must perfect his lien.<sup>51</sup> Possession is the traditional mechanism.<sup>52</sup> Yet, in this regard, too, the common law and maritime law diverge. Liens at common law conferred “the mere right to retain possession of some chattel until a debt or demand due the person thus retaining

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<sup>48</sup> *Id.* at 196.

<sup>49</sup> *Id.* at 193.

<sup>50</sup> *Id.* at 194.

<sup>51</sup> *See* 68A AM. JUR. 2D, *Secured Transactions* § 216 (2021).

<sup>52</sup> *See id.* § 336 (describing perfection by possession under Uniform Commercial Code).

it is satisfied; possession being such a necessary element that if it is voluntarily surrendered by the creditor the lien is at once extinguished.”<sup>53</sup> Maritime law advances a different rule: liens may exist *without* possession of the thing upon which it is asserted, either actually or constructively.<sup>54</sup> The aviation lien laws of every state fall within one or the other of these philosophies—and sometimes, somehow, both.<sup>55</sup>

The crucial importance of possession in the context of aviation liens is explicable—obvious, even—given the mobility of airplanes and the relatively easy transferability of airplane parts like engines and avionics on a global scale.<sup>56</sup> Airplanes often are flown to other states for repair, storage, and maintenance and the risk that a debtor might abscond with collateral is not merely hypothetical.<sup>57</sup> The chance that a debtor will fly an airplane beyond the jurisdiction of a court authorized to issue a judgment of foreclosure, or out of the reach of financiers, lessors, owners, and creditors seeking repossession, clouds nearly every aviation lien foreclosure case, moreover.<sup>58</sup> This perhaps explains the draw of shows like Discovery Channel’s *Airplane Repo*, which dramatized bank repossessions of high-end luxury assets from individuals behind on their payments.<sup>59</sup>

In any case, the flight risks inherent in aviation both mitigate for and against lien regimes that confer lienors with possessory rights.

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<sup>53</sup> *Jones v. Carpenter*, 106 So. 127, 129 (Fla. 1925).

<sup>54</sup> *The Rock Island Bridge*, 73 U.S. (6 Wall.) 213, 215 (1867); *see also* *The Lottawanna*, 88 U.S. (21 Wall.) 558, 598 (1874) (“[C]ommon-law liens are always connected with the possession of the thing and are lost when the possession is relinquished. On the other hand a maritime lien does not in any manner depend upon the possession, as it is a right affecting the thing itself, which gives a proprietary interest in it and a right to proceed against it to recover that interest.”).

<sup>55</sup> *See infra* Appendix.

<sup>56</sup> *See supra*, note 14.

<sup>57</sup> The flight risk of mobile aviation assets is significant enough that, in 2001, some seventy-seven nations as well as the European Union signed an international treaty and legal framework—the “Cape Town Convention”—to standardize transactions and registration of movable property. *See* Convention on International Interests in Mobile Equipment, *supra* note 14, at art. 3.

<sup>58</sup> Florida law does recognize the risk of unlawful removal of property upon which a lien has accrued in other contexts, including liens for hotels. *See, e.g.*, FLA. STAT. § 713.69 (2020).

<sup>59</sup> *Airplane Repo*, DISCOVERY, <https://www.discovery.com/shows/airplane-repo> (last visited May 15, 2021).

For example, normatively, the law should disallow any possessory rights in favor of a lienor whose claim is based on an inflated, fraudulent, or otherwise materially defective invoice.<sup>60</sup> Oppositely, by allowing a legitimately aggrieved lienor to retain possession of a debtor's airplane for some amount of time, the law creates appropriate leverage for an artisan and incentives for a debtor to resolve their dispute.<sup>61</sup> But, of course, knowing whether a creditor rightly contested or refused to pay an artisan for labor or services or whether a lienor was jilted by an unsavory airplane owner cannot be known ahead of time. All this said, allowing a creditor to take back possession of its aircraft may encourage the settlement of any debt by allowing the creditor to put its aircraft back into revenue-generating service.

In the foregoing context, Florida law has tried to achieve a balance by allowing a lienor under Florida's general mechanic's lien statute (section 713.58) to retain possession of an aircraft for three months "if the person was in possession at the time the lien attached."<sup>62</sup> At the same time, the enforceability of a mechanic's lien seems to turn not on possession but merely on whether a lienor has provided notice of his claim of lien.<sup>63</sup> Whether to perfect an aviation lien by way of possession, or notice, or both, has confounded courts and practitioners for at least a decade.<sup>64</sup> The following Part addresses the tortured way in which litigants and courts have addressed this question and how the Legislature resolved it (mostly).

## II. POSSESSORY LIEN + NOTICE = PERFECTION?

Perfecting and enforcing a lien on an aircraft under Florida law is sometimes a complicated mess. To do so, practitioners must harmonize at least four different statutory chapters that do not cohesively relate to the state's various mechanic's lien statutes.<sup>65</sup>

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<sup>60</sup> See, e.g., FLA. STAT. § 713.31 (2020) (remedies in case of fraud or collusion).

<sup>61</sup> See, e.g., FLA. STAT. § 85.011(1) (2020) (addressing retention of possession of property that has a lien attached).

<sup>62</sup> *Id.*

<sup>63</sup> See FLA. STAT. § 329.51 (2020).

<sup>64</sup> See *infra* Part II.

<sup>65</sup> See FLA. STAT. chs. 78, 85, 329, 713 (2020).



Additionally, federal law establishes notice and recording requirements for aircraft liens that are themselves rife with pitfalls.<sup>66</sup> And, even if all of the elements for perfection at the state and federal level are satisfied with absolute precision and coordination, Florida law provides no fewer than five methods for enforcement, including an action in chancery, an action at law, a special action at law, a summary action, and retention of possession.<sup>67</sup>

Be that as it may, Title XL of the Florida Statutes is the starting point for creditors prosecuting a lien.<sup>68</sup> Relating to real and personal property, it sets out the state's general statutory framework for liens.<sup>69</sup> It does so in four parts, each of which corresponds to a particular category of lien.<sup>70</sup> For example, Part I is known as Florida's Construction Lien Law.<sup>71</sup> While that law is not free from ambiguity or controversy, it nevertheless presents substantial guidance for lienors.<sup>72</sup> Set out across more than thirty discrete statutory sections, Florida's Construction Lien Law details nearly every aspect of how to perfect and enforce a construction lien—from how to commence and terminate a lien to how to assign, waive, or release a construction lien, and even how to seek attorneys' fees in an action to enforce a construction lien or to enforce a claim against a bond.<sup>73</sup>

In contrast, guidance for aviation liens is comparatively bare-boned, coming in the form of Part II of Title XL of the Florida Statutes—a catch-all statutory section entitled “Miscellaneous Liens.”<sup>74</sup> Under this heading are an unrelated assortment of liens, including

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<sup>66</sup> See 49 U.S.C. §§ 44107–08.

<sup>67</sup> FLA. STAT. § 85.011 (2020).

<sup>68</sup> See FLA. STAT. chs. 689–723 (2020).

<sup>69</sup> See, e.g., FLA. STAT. ch. 713 (2020) (entitled “Liens, generally”).

<sup>70</sup> See *id.* (including the following parts: Construction Liens, Miscellaneous Liens, Oil and Gas Liens, and the Florida Uniform Federal Lien Registration Act).

<sup>71</sup> FLA. STAT. §§ 713.001–.37 (2020).

<sup>72</sup> E.g., Leonard Klingen, *Florida's Unwieldy but Effective Construction Lien Law*, 93 FLA. BAR J. 27, 27 (2019) (“Construction liens are certainly among the most common. They are also among the most Byzantine, and the complexity of their governing statute, Part I of Chapter 713, is testament to the difficulty of balancing common law contract principles with the realities of the construction marketplace.”).

<sup>73</sup> See FLA. STAT. §§ 713.001–.37 (2020).

<sup>74</sup> FLA. STAT. §§ 713.50–.79.1 (2020).

molder's liens,<sup>75</sup> liens for labor or services in ginning cotton,<sup>76</sup> liens related to animal feed and veterinarians,<sup>77</sup> and liens for hotels<sup>78</sup> and interior decorators.<sup>79</sup> Part II does not address aviation liens specifically. Rather, aviation practitioners have prosecuted and defended mechanic's liens on the basis of the broad language of section 713.58, Florida Statutes, which affords a lien "[i]n favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed."<sup>80</sup>

Importantly, case law has universally construed liens created under section 713.58, Florida Statutes, as possessory in nature, existing only as long as the person entitled to the lien retains possession of the property upon which the lien was claimed.<sup>81</sup> As Florida's Third District Court of Appeal stated in an aviation lien foreclosure action, this statute explicitly provides that "the possessory right and lien of the person performing labor or services under this section is released, relinquished, and lost by the removal of such property."<sup>82</sup>

Florida statutory law also explicitly prescribes "retention of possession" as condition of enforcement of a section 713.58 mechanic's lien.<sup>83</sup> Specifically, section 85.011, Florida Statutes, allows a lienor who furnishes labor, services, fuel, or material upon aircraft to retain possession of an aircraft upon which a lien has accrued for three

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<sup>75</sup> FLA. STAT. § 713.596 (2020).

<sup>76</sup> FLA. STAT. § 713.595 (2020).

<sup>77</sup> FLA. STAT. §§ 713.655–.66 (2020).

<sup>78</sup> FLA. STAT. §§ 1713.67–68 (2020).

<sup>79</sup> FLA. STAT. § 713.79 (2020).

<sup>80</sup> FLA. STAT. § 713.58(1) (2020).

<sup>81</sup> Despite its obvious importance, "[p]ossessory lien" is defined only once in the Florida Statutes, under the state's adaption of the Uniform Commercial Code: Section 679.333 addresses the perfection of certain liens arising by operation of law and defines "possessory lien" to mean "an interest . . . [w]hich secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business[,] . . . [w]hich is created by statute or rule of law in favor of the person[,] and . . . [t]he effectiveness of which *depends on the person's possession of the goods.*" FLA. STAT. § 679.333 (2020) (emphasis added).

<sup>82</sup> *See* Com. Jet, Inc. v. U.S. Bank, N.A., 45 So. 3d 887, 888 (Fla. Dist. Ct. App. 2010) (quoting FLA. STAT. § 713.58(3) (2009)).

<sup>83</sup> FLA. STAT. § 85.011(1) (2020).

months.<sup>84</sup> Crucially, however, under the plain terms of this statute, a repairman's right to so retain possession exists only "if the [lienor] was in possession [of the aircraft] at the time the lien attached."<sup>85</sup>

Curiously, whereas the perfection and enforcement of Florida's general law concerning liens over personal property under sections 85.011 and 713.58, Florida Statutes, turn on possession (albeit only for three months), the statutory regime tailored explicitly to aviation liens (Title XXV of the Florida Statutes) identifies notice, not possession, as the *sine que non* of lien perfection.<sup>86</sup> In fact, section 329.51, Florida Statutes, titled "Liens for labor, services, fuel, or material expended upon aircraft; notice," provides that an aircraft lien is enforceable upon the recordation of a claim of lien within ninety days of the services rendered: "Any lien claimed on an aircraft under . . . [section] 713.58 is enforceable when the lienor records a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the labor, services, fuel, or material was last furnished."<sup>87</sup> Thus, apart from its reference to Florida's possessory mechanic's lien under section 713.58—a reference that has generated enormous confusion—the concept of possession is noticeably absent from section 329.51.

For that matter, section 329.51 contemplates a two-step process to perfect a lien—neither of which requires possession.<sup>88</sup> First, the statute requires a lienor to file a verified notice of lien with the clerk of the circuit court in the county in which the aircraft was located at the time the labor, services, fuel, or material was last furnished in order for the lien to be enforceable against the owner of the

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*; see also *Ocala Foundry & Mach. Works v. Lester*, 38 So. 51, 54 (Fla. 1905) ("[The mechanic's right to retain possession] was not the rule of the common law, but it is the rule under the statute, which expressly limits the right of possession to a period not exceeding three months."). Therefore, "when possession has been held for a period of three months the mechanic or laborer has no right under the statute to longer retain the property as against the consent of the debtor." *Id.*; see also *Assocs. Com. Corp. v. Ross*, 465 So. 2d 663, 665 (Fla. Dist. Ct. App. 1985) (reiterating the language in *Ocala Foundry*); *E. Airlines Emps. Fed. Credit Union v. Lauderdale Yacht Basin, Inc.*, 334 So. 2d 175, 177 (Fla. Dist. Ct. App. 1976) (relying on language of section 713.58).

<sup>86</sup> See FLA. STAT. § 329.51 (2020).

<sup>87</sup> *Id.*

<sup>88</sup> See *id.*

aircraft.<sup>89</sup> Second, pursuant to section 329.01, Florida Statutes (“Recording instruments affecting civil aircraft”), a lienor is required to record notice of its lien in the office of the Federal Aviation Administrator of the United States:

No instrument which affects the title to or interest in any civil aircraft of the United States, or any portion thereof, is valid in respect to such aircraft, or portion thereof, against any person, other than the person by whom the instrument is made or given, the person’s heirs or devisee, and any person having actual notice thereof, until such instrument is recorded in the office of the Federal Aviation Administrator of the United States, or such other office as is designated by the laws of the United States as the one in which such instruments should be filed. Every such instrument so recorded in such office is valid as to all persons without further recordation in any office of this state. Any instrument required to be recorded by the provisions of this section takes effect from the date of its recordation and not from the date of its execution.<sup>90</sup>

Federal law thus works in tandem with Florida lien law. Pursuant to 49 U.S.C. § 44108, until an instrument executed for security purposes is filed for recording with the Federal Aviation Administration (“FAA”), the instrument is valid only against the person making the instrument and not against any other person or entity.<sup>91</sup> In this regard, the determination of enforceability of a mechanic’s lien under Florida law is distinct from the determination of validity

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<sup>89</sup> *Id.* The statute requires a lienor to record such lien notice within ninety days after the time labor, services, fuel, or material was last furnished. *Id.* In addition, the statute mandates that the notice of lien contains certain information: “the name of the lienor; the name of the owner; a description of the aircraft upon which the lienor had expended labor, services, fuel, or material; the amount for which the lien was claimed; and the date the expenditure was completed.” *Id.*

<sup>90</sup> FLA. STAT. § 329.01 (emphasis added); *see also* 49 U.S.C. §§ 44107–08.

<sup>91</sup> *See, e.g.,* Creston Aviation, Inc. v. Textron Fin. Corp., 900 So. 2d 727, 729, 731 (Fla. Dist. Ct. App. 2005) (finding that a statutory lien against an aircraft was unenforceable when mechanic filed notice of lien with the FAA but not in the county where labor or services were last performed on aircraft).

of the lien against third parties and the priority of the lien against competing lien interests:

Therefore, once a party asserting a mechanic's lien files a verified notice of lien in the county in which it last provided services upon an aircraft, the notice of lien must also be filed with the FAA in Oklahoma City to obtain a validly perfected security interest in the aircraft, enforceable not only against the owner but also against third parties.<sup>92</sup>

Implementation of section 329.51 is not complicated, but the operationalization of that law has been the subject of considerable uncertainty for aviation practitioners, particularly regarding its cross-reference to section 713.58.<sup>93</sup> Did the Florida Legislature codify section 329.51 as a modification of the general law concerning liens over personal property provided by section 713.58? If so, possession is unnecessary to perfect a lien, and all that a lienor must do to perfect a lien is to record a verified lien notice as prescribed by the statute.<sup>94</sup> Alternatively, insofar as section 329.51 refers to enforceability and not perfection, the statute does not seem to create a lien right so much as it provides the procedures for the enforcement of rights arising from liens that already exist under section 713.58.<sup>95</sup> Under this view, resorting to section 329.51 is unnecessary unless and until a repairman perfects under section 713.58 through possession.

In all, lining up sections 85.011, 713.58, and 329.51, Florida Statutes, side-by-side has generated more questions than answers for

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<sup>92</sup> *In re Tradewinds Airlines, Inc.*, 394 B.R. 614, 620 (Bankr. S.D. Fla. 2008).

<sup>93</sup> See FLA. STAT. § 329.51 (2020).

<sup>94</sup> See FLA. STAT. § 92.525 (2020) (verification of documents; perjury by false written declaration, penalty).

<sup>95</sup> Section 329.51 speaks in terms of enforceability only: "Any lien claimed on an aircraft under [section] 329.41 or [section] 713.58 *is enforceable* when the lienor records a verified notice . . ." FLA. STAT. § 329.51 (2020) (emphasis added). This language contrasts sharply with other Florida aviation laws that seem to affirmatively create lien rights. FLA. STAT. § 329.40(1) (2020) ("The governing body of a publicly owned and operated airport *has a lien upon all aircraft* landing upon any airport owned and operated by it for all fees and charges for the use of the facilities of such airport . . .") (emphasis added); FLA. STAT. § 329.41 (2020) ("A person who has furnished fuel to an aircraft *has a lien upon the aircraft* for any unpaid fuel charges . . .") (emphasis added)).

aviation and commercial lawyers as to the relationship between possession and notice for purposes of perfecting a lien interest in aircraft under Florida law. Parts III.A.–C. below identify and evaluate the seminal cases that tried to make sense of the possession-notice conundrum under Florida’s lien law with respect to aircraft.

A. In re Tradewinds Airlines, Inc.

One of the first cases to address the possession versus notice debate was a Chapter 11 proceeding captioned *In re Tradewinds Airlines, Inc.*,<sup>96</sup> decided by U.S. Bankruptcy Judge and former aviator A. Jay Cristol.<sup>97</sup> The case arose out of a dispute between a cargo airline seeking reorganization and the maintenance company it hired to conduct a ninety-six-month maintenance check on an A-300 airplane.<sup>98</sup> The parties disagreed about whether maintenance was actually performed and whether any amount was owed; as part of the dispute, the maintenance company refused to return the aircraft, asserting a statutory mechanic’s lien under section 713.58, Florida Statutes.<sup>99</sup> But the debtor-cargo airline moved to compel the turnover of the aircraft, arguing that the maintenance company failed to perfect its lien under Florida law insofar as it had failed to timely file its claim of lien prior to the bankruptcy petition date.<sup>100</sup> Judge Cristol agreed.<sup>101</sup>

According to the court, the maintenance company complied with only one of the requirements of section 329.01, Florida Statutes.<sup>102</sup> That is, it filed a verified notice of lien with the clerk of the circuit court in the Florida county in which the aircraft received labor or service, but it failed to record its lien with the FAA.<sup>103</sup> Thus, while the maintenance company recorded its lien in Florida *before* filing

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<sup>96</sup> *In re Tradewinds Airlines, Inc.*, 394 B.R. at 615.

<sup>97</sup> *See Hon. A. Jay Cristol*, UNIV. MIA. SCH. OF L., <https://www.law.miami.edu/faculty/hon-jay-cristol> (last visited May 15, 2021).

<sup>98</sup> *In re Tradewinds Airlines, Inc.*, 394 B.R. at 616–17.

<sup>99</sup> *Id.* at 617.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 621.

<sup>102</sup> *See id.*

<sup>103</sup> *Id.*; *see also* FLA. STAT. § 329.01 (2020) (“No instrument which affects the title to or interest in any civil aircraft of the United States . . . is valid in respect to such aircraft . . . until such instrument is recorded in the office of the Federal Aviation Administrator of the United States.”).

its bankruptcy petition, it had not filed its claim of lien with the FAA until *after* the bankruptcy proceeding commenced.<sup>104</sup> This proved fatal, according to Judge Cristol, because the post-petition lien with the FAA did not relate back to an earlier date pre-petition; consequently, the lien was avoidable by virtue of being unperfected.<sup>105</sup>

While the case did not address the concept of possession, *In re Tradewinds Airlines, Inc.* detailed the relationship between state and federal law respecting notice and recordation as it related to the issue of perfection. It confirmed that failure to both file a notice of lien in the proper state court and to record a notice of lien with the FAA doomed the rights of repairmen relying on sections 713.58 and 329.51.

In reaching its conclusion, however, the court sowed doubt about the importance of possession for lien perfection and enforcement purposes.<sup>106</sup> Judge Cristol wrote: “Possession of an aircraft is legally insufficient to perfect a mechanic’s lien against an aircraft under Florida law.”<sup>107</sup> This language in *In re Tradewinds Airlines, Inc.* arguably seemed to give equal or greater weight to recordation and notice than possession for perfection purposes. Moreover, this lent support, at least theoretically, to the possibility that notice of a lien under section 329.51, Florida Statutes (a statute specifically dealing with aircraft liens), was more important—determinative, in fact—of lien perfection than the state’s general mechanic’s lien established by section 713.58. This argument did not initially gain traction, but it certainly clouded matters.

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<sup>104</sup> *In re Tradewinds Airlines, Inc.*, 394 B.R. at 621.

<sup>105</sup> *Id.*

<sup>106</sup> *See id.* at 616–17, 621. The maintenance company had possession of the aircraft as of the bankruptcy petition date and later relinquished possession only because it was directed to do so—subject to certain enumerated conditions, including the preservation of whatever lien rights it had subject to further order of the court determining whether its asserted liens were valid, and the extent and priority of such liens. *Id.* at 616.

<sup>107</sup> *Id.* at 621. The maintenance company relied on *Carolina Aircraft Corp. v. Commerce Trust Co.*, 289 So. 2d 37, 38 (Fla. Dist. Ct. App. 1974), which allowed a possessory mechanic’s lien for repairs on an aircraft arising under section 713.58 to take priority over a properly filed chattel mortgage recorded with the FAA because a statutory lien against an aircraft could be perfected through possession. *Id.* at 620. Nevertheless, Judge Cristol was “not persuaded by [*Carolina*’s] reasoning or holding, given that *Carolina* was decided before the Florida Legislature enacted [section] 329.51 in 1984.” *Id.*

B. Commercial Jet, Inc. v. U.S. Bank, N.A.

Whereas *In re Tradewinds Airlines, Inc.* posited that some mechanism other than possession could perfect an artisan's lien, the majority in *Commercial Jet, Inc.* emphatically rejected this idea.<sup>108</sup> Specifically, at issue in *Commercial Jet, Inc.* was whether section 329.51 somehow modified section 713.58 by eliminating the requirement that an artisan must have possession of property over which he asserts a lien.<sup>109</sup> This issue arose when an aircraft maintenance and repair company sought to foreclose a mechanic's lien for more than \$57,000 in connection with services it rendered on a Boeing 767.<sup>110</sup> Critically—and, as it turned out, fatally—the maintenance company recorded a claim of lien for the unpaid balance months *after* it relinquished possession of the aircraft and supposed that notice of its lien under section 329.51 sufficed to achieve perfection of its interest in the aircraft.<sup>111</sup> One year later, it sued to foreclose on the lien.<sup>112</sup> On these facts, the aircraft owner argued that the maintenance company “did not have possession of the aircraft *when it attempted to claim a possessory lien* under section 713.58 [and therefore could not] proceed in its attempt to foreclose on the purported lien.”<sup>113</sup> The trial court agreed and granted summary judgment.<sup>114</sup>

The maintenance company appealed, but fared no better as the Third District Court of Appeal affirmed the trial court's order on the basis that section 329.51, Florida Statutes did “not create any new lien rights” and was “manifestly a notice statute, as is apparent by its title.”<sup>115</sup> Furthermore, the state appellate court held that “section

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<sup>108</sup> See *Com. Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887, 888 (Fla. Dist. Ct. App. 2010).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 887. The maintenance company sued only U.S. Bank to foreclose its purported mechanic's lien because the company that sought repairs, Silver Jet, was in bankruptcy dissolution proceedings in England and had reverted the aircraft back to U.S. Bank. See Appellant, *Commercial Jet, Inc.*'s Reply Brief at 2, *Com. Jet, Inc., v. U.S. Bank, N.A.*, 76 So. 3d 913 (2011) (No. SC10-2438).

<sup>111</sup> *Com. Jet, Inc.*, 45 So. 3d at 887–88.

<sup>112</sup> Answer Brief of Respondent U.S. Bank, N.A. at 2, *Com. Jet, Inc., v. U.S. Bank, N.A.*, 76 So. 3d 913 (2011) (No. SC10-2438).

<sup>113</sup> *Id.* at 2–3 (emphasis added).

<sup>114</sup> *Com. Jet, Inc.*, 45 So. 3d at 888.

<sup>115</sup> *Id.*



329.51 has no application here because Commercial Jet never acquired a valid lien under sections 713.58 or 329.41.”<sup>116</sup> Thus, in the appellate court’s view, the maintenance company should have recorded its lien *before* it relinquished possession because recordation otherwise was a futile exercise without possession.

Senior Judge Alan Schwartz dissented.<sup>117</sup> He wrote that section 329.51 “clearly provides that a lien for repairs on an aircraft such as the one in this case is perfected *simply by recording a claim of lien within ninety days of the services rendered.*”<sup>118</sup> Additionally, Judge Schwartz repudiated the majority’s conclusion that section 329.51 “did not have the effect specifically provided by the legislature.”<sup>119</sup> In this regard, Judge Schwartz characterized the majority’s opinion as follows:

The majority holding . . . is in conflict with just about every canon of legislative interpretation there is, including: that statutory words must be accorded their plain meaning; that every statute must be deemed to have some meaning and accomplish something (here, the court’s ruling renders the filing of the lien of no effect whatever); that a statute dealing with a specific subject, such as aircraft, must be deemed to control over a general one such as section 713.58, which applies to all personal property, and no doubt other general rules which no one has thought it necessary to devise—until now.<sup>120</sup>

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 889 (Schwartz, J., dissenting).

<sup>118</sup> *Id.* (emphasis added).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* The Supreme Court of Florida accepted jurisdiction to review the decision, but later discharged jurisdiction (as “improvidently granted”) and dismissed the review proceeding. *Com. Jet, Inc. v. U.S. Bank, N.A.*, 76 So. 3d 913, 913 (Fla. 2011) (mem.). In its jurisdictional brief, counsel for the lienor largely recycled the points raised by the dissent while counsel for the aircraft owner explained that the opinion neither conflicted with earlier appellate decisions nor involved facts substantially similar to those found in earlier decisions, and therefore, no basis for invoking conflict jurisdiction existed. Appellant, Commercial Jet Inc.’s, Jurisdictional Brief at 4, *Com. Jet, Inc. v. U.S. Bank, N.A.*, 76 So. 3d 913 (2011) (No.

Curiously indeed, in reaching its conclusion, the *Commercial Jet, Inc.* court relied on subsection (3) of section 713.58—and only this statutory subpart of Florida’s general mechanic’s lien statute—for the specific proposition that a repairman’s right to claim a mechanic’s lien over an aircraft is “extinguished when he relinquishes possession of the property on which the lien is asserted.”<sup>121</sup> Subsection (3) states:

In that the possessory right and lien of the person performing labor or services under this section is released, relinquished, and lost by the removal of such property upon which a lien has accrued, it shall be deemed prima facie evidence of intent to defraud if, upon the removal of such property, *the person removing such property* utters, delivers, or gives any check, draft, or written order for the payment of money in payment of the indebtedness secured by the lien and then stops payment on such check, draft, or written order.<sup>122</sup>

Although this statutory subsection is focused on misconduct that causes a lienor to *involuntarily* lose possession of the personal property over which a lien is asserted,<sup>123</sup> the aircraft owner in *Commercial Jet, Inc.* argued that “[b]y the plain terms of subpart (3) [a mechanic’s lien] is ‘released’ and ‘relinquished’ and ‘lost’ upon ‘the removal of such property.’”<sup>124</sup>

Thus, according to the aircraft owner, “[w]hen [the repairman in the case] released the aircraft, by *the plain language of section 713.58(3)*, it ‘released’ and ‘relinquished’ and ‘lost’ its possessory lien. No lien, no resort to section 329.51.”<sup>125</sup> The court’s

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SC10-2438); Respondent’s Brief on Jurisdiction at 5–6, 8, *Com. Jet, Inc. v. U.S. Bank, N.A.*, 76 So. 3d 913 (2011) (No. SC10-2438).

<sup>121</sup> See *Com. Jet, Inc.*, 45 So. 3d at 888 (majority opinion).

<sup>122</sup> FLA. STAT. § 713.58(3) (2020) (emphasis added).

<sup>123</sup> See *id.*; see also FLA. STAT. § 713.58(4) (“Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not more than \$500 or imprisonment in the county jail for not more than [three] months.”).

<sup>124</sup> Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 10 (quoting FLA. STAT. § 713.58(3) (2009)).

<sup>125</sup> *Id.* at 13 (emphasis added) (quoting FLA. STAT. § 713.58(3) (2009)).

acceptance of this reading of the first clause of 713.58(3), as establishing—not just confirming—the possessory nature of mechanic’s liens in Florida, is not altogether objectionable given the odd fact that no other part of Florida statutory law directly or clearly says “no possession, no lien.”

What drew an objection, however, was a construction of subpart 713.58(3) that somehow relegated section 329.51—and the filing of a lien required under its terms—of no effect. The repairman in *Commercial Jet, Inc.*, acknowledged subsection (3) and the strict dependence between perfection and possession to which it alluded.<sup>126</sup> But, the lienor also argued that the court was still compelled to read the state’s general mechanic’s lien laws in conjunction with Florida’s standalone law that specifically discussed aircraft liens.<sup>127</sup> It argued, “the courts have caught upon the provision in §713.58(3) . . . [and] there is a line of cases providing that §713.58 . . . is a possessory lien. However, had the legislature been satisfied with the courts’ interpretation . . . there would have been no new need to create §329.51.”<sup>128</sup>

The *Commercial Jet, Inc.* court disagreed, however, drawing from the fact that 713.58(3) “expressly provides that ‘the possessory right and lien of the person performing labor or services under this section is released, relinquished, and lost by the removal of such property’” to conclude that “there is no question that the lien right afforded by section 713.58 is possessory in nature and that a repairman’s right to claim a lien under section 713.58 is extinguished when he relinquishes possession of the property on which the lien is asserted.”<sup>129</sup>

The court was seemingly reassured of its conclusion by the curious cross-reference in section 329.51 to “[a]ny lien claimed on an aircraft under . . . [section] 713.58.”<sup>130</sup> The court thus characterized the relationship between sections 713.58 and 329.51 in terms of timing: “Section 329.51 details how, *once a fuel or service provider*

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<sup>126</sup> See Appellant, *Commercial Jet Inc.’s Initial Brief* at 9, *Com. Jet, Inc., v. U.S. Bank, N.A.*, 76 So. 3d 913 (2011) (No. SC10-2438).

<sup>127</sup> See *id.* at 8–9.

<sup>128</sup> *Id.* at 9 (internal citations omitted).

<sup>129</sup> *Com. Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887, 888 (Fla. Dist. Ct. App. 2010) (quoting FLA. STAT. § 713.58(3) (2009)).

<sup>130</sup> *Id.* (quoting FLA. STAT. § 329.51 (2009)).

*acquires a lien on an aircraft pursuant to section . . . 713.58, he may perfect his lien and establish priority of enforcement as it relates to third parties.*<sup>131</sup> In doing so, the court did not bridge the concept that Florida law required possession for general mechanic's lien perfection purposes, on the one hand, with the state law's separate statutory provision for the manner and method for the perfection of mechanic's liens applicable to aircraft, on the other hand. Rather, the court held up one statute, section 713.58, over another, section 329.51. And, in emphasizing the possessory nature of mechanic's liens (which no party disputed), minimizing section 329.51 to nothing more than a notice statute (a proposition based only on the word "notice" in section 329.51's title and about which judges on the court and the parties disagreed), and conditioning the application of section 329.51 on physical possession and perfection under section 713.58 (a requirement established nowhere explicitly in the text of either statute), the court's judgment raised more questions than it answered.

What is more, the court's minimal case law analysis belied its certitude that "the statute expressly provides" that mechanic's liens on aircraft were categorically possessory in nature and that section 329.51 "does not create any new lien rights"<sup>132</sup> and "is manifestly a

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<sup>131</sup> *Id.* (emphasis added).

<sup>132</sup> *Id.* This conclusion apparently arose from argument that the then enacted version of section 329.51 did not grant a lien right but merely set forth the procedure by which persons claiming liens may perfect claims of lien. *See* Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 13. "By its plain language," the argument goes, "section 329.51 assumes a lien is in place." *Id.* at 12.

Indeed, whereas section 329.51 provides that "[a]ny lien claimed on an aircraft under [section] 329.41 or [section] 713.58 is enforceable when the lienor records a verified lien notice," section 329.41 provides that "[a] person who has furnished fuel to an aircraft has a lien upon the aircraft." FLA. STAT. §§ 329.51, 329.41 (2020) (emphasis added). Relatedly, great variation exists among the various statutes that purport to create liens in Part II of Chapter 713 ("Liens, Generally"). Section 713.50, Florida Statutes, begins Part II by providing that "[l]iens . . . shall exist in favor of the following persons," followed by approximately twenty-five statutory provisions in Part II, of which fifteen simply discuss liens "in favor of" particular kinds of artisans. FLA. STAT. §§ 713.56, 713.57, 713.58, 713.59, 713.60, 713.61, 713.62, 713.63, 713.64, 713.65, 713.655, 713.66, 713.67, 713.68, 713.70 (2020). Six more explicitly provide that "[a] lien . . . shall exist" or use words of similar import. FLA. STAT. §§ 713.595, 713.77, 713.596,

notice statute, as is apparent from its title.”<sup>133</sup> In fact, the court provided only a string citation of four cases—all of which confirmed what was already known and undisputed (e.g., that general mechanic’s liens are possessory in nature), and none of which analyzed the material issue of whether Florida lawmakers intended to allow lienors of aircraft an alternative mechanism for perfecting liens.<sup>134</sup>

Two of these decisions had nothing to do with airplanes, for example, and arose in factually inapposite circumstances. First, *State v. Miller* involved the claim of an automobile repairman who was arrested after failing to surrender possession of a car even after its owner posted a bond in compliance with a state statute that required repairmen to release the vehicle on the owner’s filing of a bond to recover repair costs.<sup>135</sup> The repairman in *Miller* challenged the statute as an unconstitutional deprivation of *his* property right without due process of the law.<sup>136</sup> The Supreme Court of Florida rejected this claim, holding that the statute struck a “constitutional balance between the interests of a person in the use and possession of his property and the interests of a laborer in the existence of secure collateral commensurate with the value of his services.”<sup>137</sup> While *Miller* aptly articulated the balance of interests that is always at issue in the context of liens, it provided no clarity about how sections 713.58 and 329.51 worked together (or not).

Another case cited by the *Commercial Jet, Inc.* court—*Archive America, Inc. v. Variety Children’s Hospital*<sup>138</sup>—likewise added no insight about how to reconcile Florida’s notice and possession statutes for aircraft lien purposes. The *Commercial Jet, Inc.* court did

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713.78, 713.785, 713.79 (2020). One states that “[t]he holder of a license . . . has and may enforce . . . a lien.” FLA. STAT. § 713.665 (2020); *see also* FLA. STAT. § 713.691 (2020). One provides “held to have given . . . a statutory lien of prior dignity to all other encumbrances.” FLA. STAT. § 713.71 (2020). Finally, one provides that “[a] person claiming a lien under [section] 713.58 for performing labor or services on a motor vehicle may enforce such lien by sale.” FLA. STAT. § 713.585 (2020).

<sup>133</sup> *See Com. Jet, Inc.*, 45 So. 3d at 888.

<sup>134</sup> *See id.*

<sup>135</sup> *State v. Miller*, 373 So. 2d 677, 678 (Fla. 1979).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 681.

<sup>138</sup> *Archive Am., Inc. v. Variety Children’s Hosp.*, 873 So. 2d 359 (Fla. Dist. Ct. App. 2004).

not suggest otherwise, citing the case only for the proposition that it “referenc[ed] ‘a possessory lien established by section 713.58.’”<sup>139</sup> That it did—in a context far removed from aviation. At issue in *Archive America, Inc.* was a dispute between a large warehouse that stored literally millions of tons of patients’ medical records and a hospital that sought to move the records to a competitor.<sup>140</sup> A trial court transferred the warehouseman’s lien to a bond even though Florida law did not explicitly provide such a mechanism.<sup>141</sup> Finding that this was an appropriate exercise of the trial judge’s equitable powers, the *Archive America, Inc.* court noted that the lienor’s reliance on *Miller*—and its discussion of section 713.58 as a possessory lien—was misplaced.<sup>142</sup> Again, other than, at best, establishing the possessory nature of Florida’s general mechanic’s lien statute, *Archive America, Inc.* did not shed light on the applicability of section 329.51 nor demonstrate how or why section 329.51 was expressly or indisputably inapplicable in light of section 713.58.

Third, the *Commercial Jet, Inc.* court cited *Eastern Airlines Employees Federal Credit Union*<sup>143</sup> for the proposition that “a mechanic’s possessory lien against personal property (under a provision such as section 713.58, Florida Statutes) . . . continued as long as [the lienor] continued in possession thereof.”<sup>144</sup> While this language certainly confirmed how critical it was for artisans to maintain possession under Florida law’s general mechanic’s lien, the case offered marginal value as to the issue of whether notice played an alternative role for lien perfection purposes with respect to aircraft as the maintenance company in *Commercial Jet, Inc.* argued was explicit in section 329.51.

Finally, the *Commercial Jet, Inc.* court cited *In re Tradewinds Airlines, Inc.*, but not for its statement that “[p]ossession of an aircraft is legally insufficient to perfect a mechanic’s lien against an

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<sup>139</sup> See *Com. Jet, Inc.*, 45 So. 3d at 888 (quoting *Archive Am., Inc.*, 873 So. 2d at 362).

<sup>140</sup> *Archive Am., Inc.*, 873 So. 2d at 360.

<sup>141</sup> *Id.* at 361.

<sup>142</sup> *Id.* at 362.

<sup>143</sup> *E. Airlines Emp. Fed. Credit Union v. Lauderdale Yacht Basin, Inc.*, 334 So. 2d 175 (Fla. Dist. Ct. App. 1976).

<sup>144</sup> *Com. Jet, Inc.*, 45 So. 3d at 888 (quoting *E. Airlines Empls. Fed. Credit Union*, 334 So. 2d at 177).

aircraft under Florida law.”<sup>145</sup> Rather, the court cited *In re Tradewinds Airlines, Inc.* for a parenthetical citation to a single sentence from a Massachusetts bankruptcy case: “Possession is the *sine qua non* of [a section 713.58] lien.”<sup>146</sup> Standing alone, this appeared to support the *Commercial Jet, Inc.* court’s rationale and holding; but it was not what the Massachusetts case, *In re Garland*,<sup>147</sup> decided—nor did this statement influence Judge Cristol’s decision in *In re Tradewinds Airlines, Inc.*

*In re Garland* involved the claim by a creditor to establish a mechanic’s lien on its debtor’s property under section 713.58.<sup>148</sup> The creditor had relinquished possession of the goods over which the lien was asserted, but only because it was “induced to surrender possession by a fraudulent promise of payment” (by check) by the debtor, “who knew it had no funds and was about to file a Chapter 11 bankruptcy proceeding.”<sup>149</sup> Given this, the bankruptcy court permitted the creditor to proceed with a claim for an equitable lien because of the debtor’s fraudulent use of a check returned for insufficient funds.<sup>150</sup> “Certainly in equity,” the court held, “the thief should not be allowed to hide behind the victim’s resulting lack of possession.”<sup>151</sup> Thus, in citing *In re Garland* for a rigid proposition—that lien perfection is achieved only through physical possession—the court oversimplified the case and its equitable dimension arising in a factually inapposite context.

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<sup>145</sup> *In re Tradewinds Airlines, Inc.*, 394 B.R. 614, 621 (Bankr. S.D. Fla. 2008).

<sup>146</sup> *Com. Jet, Inc.*, 45 So. 3d at 888 (citing *In re Tradewinds Airlines, Inc.*, 395 B.R. at 622).

<sup>147</sup> *In re Garland Corp.*, 6 B.R. 452 (Bankr. D. Mass. 1980).

<sup>148</sup> *Id.* at 453.

<sup>149</sup> *Id.* The creditor sought two statutory liens for two different amounts due. *Id.* Count I of its complaint concerned a debt of \$81,932 and the remaining counts centered on a debt of \$112,437.82. *Id.* The court dismissed Count I because the creditor had voluntarily relinquished possession of the goods at issue by stipulation and so could not satisfy the possessory requirement of the statutory lien allowed by section 713.58, Florida Statutes. *See id.* at 455. The second amount was tainted by the debtor’s fraud, however, and thus eligible for the imposition of an equitable lien in the court’s view. *Id.*

<sup>150</sup> *Id.* at 455.

<sup>151</sup> *Id.* at 456.

In the final analysis, possession equals perfection was the legacy of the decision in *Commercial Jet, Inc.*,<sup>152</sup> but it did not solve the possession versus notice problem as a practical matter. In fact, the resolve of aircraft maintenance and repair providers to retain possession of an aircraft upon which a lien was asserted as long as possible—even wrongfully—intensified in the wake of *Commercial Jet, Inc.*, among other reasons, to avoid impairing their interests in an inflexible “no possession, no lien” scheme.

C. J.V. Air Maintenance, Inc. v. Westwind Leasing Corp.

*Commercial Jet, Inc.* presented turbulence in *J.V. Air Maintenance, Inc. v. Westwind Leasing, Corp.*, in which an aircraft leasing company refused to pay a repair bill it deemed “grossly exaggerated.”<sup>153</sup> Consequently, the maintenance company sued to foreclose on the mechanic’s lien it filed against the aircraft while in possession of the aircraft.<sup>154</sup> Additionally, the lienor retained possession of the aircraft *beyond* the three-month period authorized by section 85.011, Florida Statutes during which it served the aircraft’s owner with a notice of non-judicial sale indicating its intent to sell the aircraft at public auction during that period.<sup>155</sup> The trial court cancelled the proposed non-judicial sale and directed the return of the aircraft, and the lienor appealed.<sup>156</sup>

In a unanimous decision, the Third District Court of Appeal recognized the repair company’s concern that the holding of *Commercial Jet, Inc.* “will cause the loss of its lien if the property is returned

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<sup>152</sup> See *Global Xtreme, Inc. v. Advanced Aircraft Ctr., Inc.*, 122 So. 3d 487, 491 (Fla. Dist. Ct. App. 2013) (“Section 329.51 is a notice statute that applies to liens claimed on an aircraft. Neither section 713.58 nor section 329.51 provides for attorney’s fees.” (internal citations omitted) (citing *Com. Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887 (Fla. Dist. Ct. App. 2010))); *US Acquisition, LLC v. Tabas, Freedman, Soloff, Miller & Brown, P.A.*, 87 So. 3d 1229, 1232–33 (Fla. Dist. Ct. App. 2012) (finding that a law firm’s charging lien for fees arising from an aircraft replevin action was possessory in nature and unperfected because it was not filed with the FAA); *Signia Jets, L.L.C. v. N75GA, Ltd.*, No. CACE 14–017628, 2017 WL 5201105 at \*2, (Fla. Cir. Ct. Aug. 7, 2017) (finding no possession and therefore no encumbrance against the aircraft).

<sup>153</sup> *J.V. Air Maint., Inc. v. Westwind Leasing, Corp.*, 283 So. 3d 379, 379 (Fla. Dist. Ct. App. 2019).

<sup>154</sup> *Id.* at 379–80.

<sup>155</sup> *Id.* at 380.

<sup>156</sup> *Id.*



under section 85.011,” but declined to read the case so broadly.<sup>157</sup> Rather, the court contrasted the circumstances in *Commercial Jet, Inc.*, where the lienor *voluntarily* relinquished possession *before* perfection, with the question before it: namely, whether a perfected lien lapses when a lienor is *required* to return the property at the end of the three months provided in section 85.011.<sup>158</sup> The court noted that “[t]he length of time the lien remains valid should not be confused with the length of time that a lienor has the right to possess the property.”<sup>159</sup>

The court also minimized as “obiter dicta” the language in several other cases to the effect that a mechanic’s lien expires when possession is lost.<sup>160</sup> In doing so, the court claimed to have avoided conflict with cases holding to the contrary, including long-standing precedent expressly stating that a person asserting a mechanic’s lien does not lose its lien when it is *forced* to surrender possession after three months statutory period.<sup>161</sup> And, although not crucial to its ruling, the court offered a somewhat linear and cohesive approach for artisans to follow in pursuing a mechanic’s lien under Florida law with respect to aircraft, stating:

- Under the 2017 version of section 329.51 [and *Commercial Jet, Inc.*], a lienor must have possession of the property at issue to perfect a lien.
- One of the five statutory methods to enforce the lien is to retain possession for three months.
- If by purported payment, the owner induces the lienor to surrender both possession and its lien, but then cancels payment, those circumstances are prima facie proof of fraudulent intent.

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<sup>157</sup> *Id.* at 381.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 382.

<sup>161</sup> *Id.* at 381 (citing *Ocala Foundry & Mach. Works v. Lester*, 38 So. 51, 54 (Fla. 1905)).

- If the owner fails to seek return of the property at the end of the three-month period, the lienor may sell the property.
- But if the owner demands possession at the end of the three months, the lienor is forced to return the property, although its lien continues. . . .
- Moreover, additional remedies are provided to “a person entitled to a lien under part II of chapter 713.” These include a lienor’s ability in certain circumstances to attach the property in aid of foreclosure. A lienor may do so if it “has reason to believe, and does believe, that . . . the property or part of it will be removed beyond the jurisdiction of the court,” subject to bonding and potential liability for a wrongful attachment.<sup>162</sup>

This provided a prospectively useful checklist for practitioners and courts to follow for aircraft mechanic’s liens, but it left open a number of issues. First, the court directly acknowledged that it did not address “the rights of the lienor against third parties who may acquire an interest in the property without actual or constructive notice of the lien [because] those issues . . . are not before us.”<sup>163</sup> Second, and perhaps most important, the *J.V. Air Maintenance, Inc.* decision applied the 2017 version of 329.51, which the Florida Legislature amended in 2019 to include the following sentence: “The lienor is not required to possess the aircraft to perfect such a lien.”<sup>164</sup>

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<sup>162</sup> *Id.* at 382–83 (citations omitted).

<sup>163</sup> *Id.* at 383.

<sup>164</sup> *Id.* at 380 n.2 (quoting FLA. STAT. § 329.51 (2019)) (noting that newly added statutory language did not impact its analysis). The Legislature also amended section 329.41 (“Lien for fuel furnished to aircraft”), which now provides: “A person who has furnished fuel to an aircraft has a lien upon the aircraft for any unpaid fuel charges, *and possession of the aircraft is not required in order to perfect such lien.* The lien is enforceable in the same manner as provided in [section] 329.51.” FLA. STAT. § 329.41 (2020) (emphasis added). The legislation effecting these changes “does not affect the possessory nature of liens for labor or services to other property claimed under [section 713.58] [for labor or services performed on motor vehicles], or liens for landing claimed under [section 329.40].”

Having examined the body of Florida case law respecting mechanic's liens over aircraft, this Article now focuses on the current state of mechanic's liens in Florida as applied to aircraft and orients the laws of Florida with respect to similar laws across the United States.

### III. DISCUSSION

The Florida Legislature's amendment of section 329.51 in 2019 by and large brought to an end the challenge of divining whether, when, if, and how Florida's possessory mechanic's lien statute under section 713.58 operates alongside the state's aviation-specific statutory framework that requires only notice for purposes of lien perfection. Effective July 1, 2019,<sup>165</sup> and prospective in its application,<sup>166</sup> aviation law practitioners now have a clearer path toward perfecting an aircraft lien. Stated otherwise, Judge Schwartz was right; too bad for the maintenance company in *Commercial Jet, Inc.*—it would have prevailed a decade ago under the same facts had the current statutory scheme existed. That said, the fact that the outcome in *Commercial Jet, Inc.* could change so drastically on the mere basis of a sentence eliminating possession as a condition of perfection contextualizes the interpretative difficulties that section 329.51 has presented.

But a more useful question to evaluate than merely whether existing Florida law does or does not favor possession or notice for lien perfection purposes as a matter of law (there is no question that notice alone is now sufficient) is perhaps how to best balance the rights of artisans and aircraft owners and users in a scheme that makes allowances on both sides of the debate rather tilts the legal landscape toward one side over another. In this context, this Part:

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These liens remain possessory liens unless categorized otherwise in statute." CIV. JUST. COMM., FINAL BILL ANALYSIS, *supra* note 30, at 4.

<sup>165</sup> CIV. JUST. COMM., FINAL BILL ANALYSIS, *supra* note 30, at 4.

<sup>166</sup> *E.g.*, Fla. Ins. Guar. Ass'n v. Devon Neighborhood Ass'n, 67 So. 3d 187, 195 (Fla. 2011) ("We again set forth the two-prong test for retroactivity: 'First, the Court must ascertain whether the Legislature intended for the statute to apply retroactively. Second, if such an intent is clearly expressed, the Court must determine whether retroactive application would violate any constitutional principles.'" (internal citations omitted) (quoting *Menendez v. Progressive Express Ins.*, 35 So. 3d 873, 877 (Fla. 2010))).

(1) situates Florida’s “new” aircraft mechanic’s lien statute within the national landscape of aircraft liens; (2) evaluates the incentives and disincentives that a notice-only lien scheme creates; and (3) argues in favor of an omnibus statute that both decouples Florida’s stand-alone aviation statutory laws from the state’s general statutory scheme for mechanic’s liens, and addresses comprehensively several core issues that arise again and again in aircraft mechanic’s lien matters.

#### A. *Possession in Perspective*

No court in Florida that has considered the subject of aircraft mechanic’s liens under sections 329.51 and 713.58 has relied on the lien laws of other states. This is curious given the lack of clear and controlling precedent in the realm of aircraft lien law. What is more, litigants have taken different and unexpectedly inflexible positions about the appropriateness of looking to the lien laws of other jurisdictions as persuasive authority.

For example, in the course of opposing a restrictive, possession-only reading of Florida law, the aircraft service facility in *Commercial Jet, Inc.* argued *against* consideration of the requirements of other states with regard to perfection and enforcement of their mechanic’s liens: “What other states do is irrelevant when construing a Florida statute.”<sup>167</sup> Yet, in the same breath, it warned (incorrectly and without data) that Florida would be unique among other states and out-of-step when it comes to other states and aircraft services if it declined to accept its “notice is sufficient” interpretation of section 329.51.<sup>168</sup> Oppositely, the aircraft owner in *Commercial Jet, Inc.* argued that whether Florida law fell within or without national trends was “easily verifiable” and that, in fact, other states required possession to perfect similar liens.<sup>169</sup>

In this context, the Appendix to this Article comprehensively evaluates the mechanic’s lien laws of every state (including the

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<sup>167</sup> Appellant, *Commercial Jet, Inc.*’s Reply Brief, *supra* note 110, at 4 (“Policy considerations are properly argued to the legislative branch to seek to create a new statute or modify an existing one. This Court is limited to enforcing the statutes a legislature has passed.”).

<sup>168</sup> *See id.* at 4–6; Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 16.

<sup>169</sup> *Id.* at 16.

District of Columbia), including citation of the relevant laws, how possession is perfected, and the operative statutory language. Doing so yields a number of quantitative and qualitative insights from a policy perspective, including that the lienor's argument in *Commercial Jet, Inc.*—that only Florida law mattered—was against its own interest given that the vast majority of jurisdictions (now including Florida) do *not* condition perfection on possession.

To begin with, fewer than ten states expressly adapt or adhere to the bright-line common law rule that perfection of a mechanic's lien is strictly dependent upon possession.<sup>170</sup> Arguably, Florida is (or was) among these states insofar as the first clause of section 713.58(3) articulates that a lien is “released, relinquished, or lost” without possession.<sup>171</sup> In any case, whereas the possessory nature of Florida's mechanic's lien law has been a function of statutory interpretation, seven states (including the District of Columbia) are unambiguously explicit and express about the cruciality of possession for perfection purposes. These states are: California (“every person has a lien dependent upon possession”);<sup>172</sup> the District of Columbia (“if possession is parted with by his consent such lien shall cease”);<sup>173</sup> Iowa (“shall have a lien . . . while such property is lawfully in the person's possession”);<sup>174</sup> Montana (“[t]he lien is dependent on possession”);<sup>175</sup> New Hampshire (“so long as the same shall remain in his possession”);<sup>176</sup> Pennsylvania (“is known as a ‘common law lien’ . . . while such property is in the hand of the said person”);<sup>177</sup> and West Virginia (“while in possession thereof”).<sup>178</sup> The indispensability of possession in states like Colorado, Hawaii, and Vermont are expressed otherwise, for example in court opinions.<sup>179</sup>

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<sup>170</sup> See *infra* Appendix.

<sup>171</sup> FLA. STAT. § 713.58(3) (2020).

<sup>172</sup> CAL. CIV. PROC. CODE § 1208.61 (Deering 2021).

<sup>173</sup> D.C. CODE § 40-307.01 (2021).

<sup>174</sup> IOWA CODE § 577.1 (2021).

<sup>175</sup> MONT. CODE ANN. § 71-3-1201 (2019).

<sup>176</sup> N.H. REV. STAT. ANN. § 450:2 (2020).

<sup>177</sup> 6 PA. CONS. STAT. AND CONS. STAT. ANN. § 11 (West 2021).

<sup>178</sup> W. VA. CODE § 38-11-3 (2020).

<sup>179</sup> See, e.g., *Wenz v. McBride*, 36 P. 1105, 1106 (Colo. 1894) (“There must be a possession of the thing; otherwise there cannot, without special agreement to that effect, be any lien.”).

Three other states—Delaware, New York and North Carolina—do not necessarily require possession for perfection, but the consequences of relinquishing possession are unforgiving if not followed-up by some other action. For example, in North Carolina, a lien survives “even if the possession of the aircraft is surrendered by the lienor,” *provided* that the lienor files a notice of lien with the appropriate court clerk within 120 days after voluntarily surrendering possession of the aircraft.<sup>180</sup> Comparatively, New York law provides that “if the lienor, subsequent to thirty days from the accrual of such lien, allows the . . . aircraft out of his actual possession the lien provided for in this section shall thereupon become void as against all security interests, whether or not perfected.”<sup>181</sup> Likewise, Delaware requires a lienholder, “within 10 days from the time of the loss of possession” to “file[] an application for the issuance of an authorization to conduct a lien sale or file[] a counterclaim for the sale of the encumbered property pursuant to this chapter in a replevin action.”<sup>182</sup>

Relatedly, three states (Alaska, Connecticut, and Wyoming) require an artisan to file a lien statement *before* relinquishing possession—akin to the reading of section 329.51 recognized in *Commercial Jet, Inc.*<sup>183</sup> Six other states are less rigid in that they require artisans to file or record a claim of lien but allow them to do so if and *after* they relinquish possession. This is the case in Arizona,<sup>184</sup> Arkansas,<sup>185</sup> Georgia,<sup>186</sup> Kansas,<sup>187</sup> Kentucky,<sup>188</sup> and Missouri.<sup>189</sup> Whether to include these nine states under the heading of “no possession, no lien”—along with states that do not require possession for perfection, but which void a lien once possession is relinquished (e.g., Delaware, New York, and North Carolina)—is more art than

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<sup>180</sup> N.C. GEN. STAT. § 44A-55 to -60 (2020).

<sup>181</sup> N.Y. LIEN LAW § 184 (McKinney 2021).

<sup>182</sup> DEL. CODE ANN. tit. 25, §§ 3901–3902 (2020).

<sup>183</sup> See ALASKA STAT. ANN. § 34.35.185 (West 2020); CONN. GEN. STAT. § 49-92g (2019); WYO. STAT. ANN. § 29-7-102 (West 2020).

<sup>184</sup> ARIZ. REV. STAT. ANN. § 33-1022 (2021).

<sup>185</sup> ARK. CODE ANN. § 18-45-206 (2020).

<sup>186</sup> GA. CODE ANN. § 44-14-363 (2020).

<sup>187</sup> KAN. STAT. ANN. § 23-3122 (2020).

<sup>188</sup> KY. REV. STAT. ANN. § 376.270 (LexisNexis 2020).

<sup>189</sup> MO. REV. STAT. § 430.020 (2020).

science. For that matter, three states (Alabama,<sup>190</sup> Idaho,<sup>191</sup> and Oregon<sup>192</sup>) ostensibly recognize *both* possessory and non-possessory mechanic's liens.

Suffice it to say that tabulating the number of “no possession, no lien” states lacks total precision, but one trend is clear: maintaining possession for as long as legally possible is a wise if not imperative strategy in nineteen states (including the District of Columbia), which as a unit constitute a minority position. The vast majority of states, on the other hand, require only the recordation or filing of a claim to perfect a lien. To be clear, each of these “notice-only” states allows lienholders to retain possession (often until the debt is fully paid), but seem indifferent to whether a lienor voluntarily loses or relinquishes possession.<sup>193</sup> For that matter, “notice-only” jurisdictions seem not to care if the lienor ever had and then lost possession for perfection purposes. Pursuant to the recent amendment to section 329.51, Florida now falls within this “notice-only” rubric where a lienor has the option of maintaining possession for up to ninety days *and* the obligation to file a notice in order to perfect a lien.<sup>194</sup> Florida joins twenty-five other states in so providing.

Altogether, possession is an explicit feature (but not a requirement) of nearly every general mechanic's lien and specific aircraft lien law in the country.<sup>195</sup> As mentioned, some state laws, like those of California, strictly mandate possession to perfect a lien.<sup>196</sup> The only imperative for perfection in other states, however, is the filing of claim of lien without which no lien exists (e.g., Massachusetts (“Unless the person entitled to such lien shall file such statement

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<sup>190</sup> ALA. CODE § 35-11-110 (2021); *see also* Peavy's Serv. Ctr., Inc. v. Assocs. Fin. Servs. Co., 335 So. 2d 169, 170–71 (Ala. Civ. App. 1976) (“Alabama is one of the states which provides two mechanic's liens . . . . [T]he statutory mechanic's lien . . . merely supplements, not supplants, the common law mechanic's lien. The common law lien is a possessory lien and is lost by release of the property. The statutory lien is not dependent upon maintaining possession, but may be perfected after release of the property.” (internal citations omitted)).

<sup>191</sup> IDAHO CODE § 45-1101 (2020).

<sup>192</sup> OR. REV. STAT. § 87.152 (2020) (possessory); *id.* § 87.216 (non-possessory).

<sup>193</sup> *See infra* Appendix.

<sup>194</sup> FLA. STAT. § 329.51 (2020).

<sup>195</sup> *See infra* Appendix.

<sup>196</sup> CAL. CIV. PROC. CODE § 1208.61 (Deering 2021).

within the time aforesaid, he shall be deemed to have waive his rights thereto . . . .”<sup>197</sup> and South Carolina (“[Aircraft liens] shall be dissolved unless the person claiming it shall file . . . .”<sup>198</sup>). Between these two poles—perfection strictly dependent upon possession and perfection by notice or filing only—are a number of alternative approaches, summarized as follows:

- **No Possession. No Lien.** Nine states, plus the District of Columbia, provide that perfection is strictly dependent upon possession and they all do so explicitly: California, Colorado, District of Columbia, Hawaii, Iowa, Montana, New Hampshire, Pennsylvania, Vermont, and West Virginia. Section 713.58(3) does this in Florida, too.
- **Filing *While in Possession*:** Three states (Alaska, Connecticut, and Wyoming) require that lienholders file a lien statement with the relevant authorities *before* relinquishing possession. This was Florida’s approach according to the *Commercial Jet, Inc.* court.
- **Filing *After Relinquishing Possession*.** Six states mandate that lienors record and file a claim of lien within a set number of days (x) after relinquishing possession, with one month being the least amount of time and six months being the most: Arizona (30), Arkansas (120), Georgia (90), Kansas (90), Kentucky (180), and Missouri (180). Delaware, New York, and North Carolina do not explicitly condition perfection on possession, but they provide that a mechanic’s lien will be void if possession is relinquished (thirty days in the case of New York and 120 days in the case of North Carolina). Delaware law, meanwhile, states that a lien will continue in full force and effect “provided that within 10 days from the time of the loss of possession the lienholder . . . files an application for the issuance of an authorization to conduct a lien sale or files a counterclaim for the sale of the

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<sup>197</sup> MASS. GEN. LAWS ch. 255, §31E (2019).

<sup>198</sup> S.C. CODE ANN. § 29-15-100 (2020).



encumbered property . . . in a replevin action.” This approach was rejected in *Commercial Jet, Inc.*

- **Notice (or Filing) Only.** Twenty-six states allow lienors to retain possession (albeit for a limited amount of time, usually 60, 90, 120, or 180 days), but condition perfection on the filing or recording of a claim of lien only: Florida, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. One state, Nebraska, provides that liens are perfected as provided in Article 9 of the Uniform Commercial Code.
- **Possession and/or Non-possession.** Three states provide both a possessory and non-possessory lien. Alabama, for example, recognizes *both* a common law lien dependent upon possession and a statutory lien that may be perfected after release of the property. Idaho and Oregon, meanwhile, recognize two types of statutory mechanics’ liens—one requiring possession and the other not.<sup>199</sup>

By amending section 329.51 to explicitly and unambiguously disconnect the concepts of possession and perfection for purposes of a mechanic’s lien applicable to aircraft, Florida has joined the majority of jurisdictions where “[p]ossession of an aircraft,” in the language of *In re Tradewinds Airlines, Inc.*, “is legally insufficient to perfect a mechanic’s lien against an aircraft under Florida law.”<sup>200</sup>

Therefore, notice alone suffices, but should it? And, as a normative matter, should the Legislature have abrogated the common law and changed Florida’s aircraft lien laws to such a degree? The following sections evaluate these questions.

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<sup>199</sup> See *infra* Appendix; *Com. Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887, 888 (Fla. Dist. Ct. App. 2010).

<sup>200</sup> *In re Tradewinds Airlines, Inc.*, 394 B.R., 614, 621 (Bankr. S.D. Fla. 2008).

### B. *No Possession, No Incentive?*

The Florida Legislature amended section 329.51 to “make it easier for a lienor to recover money owed to him without keeping a commercial aircraft out of service and potentially disrupting commercial air travel.”<sup>201</sup> The statutory amendment also was designed to “allow the owner or operator of an aircraft on which a lien is claimed to keep using the aircraft while he works to satisfy the lien.”<sup>202</sup> To be sure, these are laudable policy goals, but they leave unresolved a number of normative and practical questions, including whether the new statutory regime, by removing the leverage gained through a possessory lien, will disincentivize payment up front or promote surprise clouds on airplane title, as the aircraft owner in *Commercial Jet, Inc.* forecast.<sup>203</sup>

Indeed, several factors mitigate in favor of a “no possession, no lien” regime and against a notice-only rule, as argued by the aircraft owner in *Commercial Jet, Inc.* First, the history of section 329.51 lends credence to the argument that, apparently until now, the Legislature did not intend to displace a possession-based scheme for possession:

Here is the actual history. Before the enactment in 1983 of section 329.51, the Florida Statutes did not set forth any procedures by which one could record a mechanic’s lien on an aircraft in Florida. The Federal Aviation Act, however, required the FAA to look to state law in determining the validity of claims of lien on aircraft that were recorded with the FAA. Because Florida did not have an aircraft lien recording statute, the FAA determined that it could no longer record claims of lien for labor, services, or material furnished to aircraft in Florida. As a result, the Florida legislature enacted section 329.51 to correct that situation by providing specific requirements for recording aircraft liens. The Legislature was not creating

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<sup>201</sup> CIV. JUST. COMM., FINAL BILL ANALYSIS, *supra* note 30, at 4. The reason that only “commercial aircraft” and not general aviation aircraft are mentioned as part of the analysis is unstated. *See id.*

<sup>202</sup> *Id.*

<sup>203</sup> *See* Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 17.

any new lien rights. It was simply aligning Florida law so that existing rights under Florida law—such as possessory liens under section 713.58—could be recorded and recognized by the FAA.<sup>204</sup>

This historical account went uncontested in *Commercial Jet, Inc.*,<sup>205</sup> a concession that no doubt strengthened the aircraft owner's argument:

Filing a piece of paper in Miami-Dade County recording a purported lien does not get it back. And that is how it should be. Possessory liens require possession, and the leverage of possession resolves disputes over payment. Commercial Jet would have this Court create a new category of non-possessory "possessory liens" and permit clouds on title up to 90 days after services are provided. Nothing in the text or history of the statute supports that interpretation, and there is no reasonable policy justification in favor of it. [Such a] proposition will not help resolve disputes; it will instead create headaches for purchasers downstream. [An artisan] absolutely has rights against [its debtor]. But it has no right to spring a lien on the aircraft's owner merely by attempting to record a lien for [the debtor's] unpaid bills. . . .<sup>206</sup>

. . . .

Allowing service providers to wait [ninety] days and then seek liens on aircraft that are routinely bought and sold and moved on and off leases is a recipe for clouded title and aggrieved bona fide purchasers. This case is a good illustration. Silver Jet may know full well that it has not paid its bill, but there was no way—and, quite frankly, recording in Miami-Dade County does not assist much—for the owner of the aircraft to know that title has been clouded. If the

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<sup>204</sup> *Id.* at 14–15 (internal citations omitted).

<sup>205</sup> See Appellant, *Commercial Jet, Inc.*'s Reply Brief, *supra* note 110, at 4.

<sup>206</sup> Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 1–2.

aircraft is then moved to a new owner, the new owner likewise has no warning. Indeed, given the [ninety]-day window that Commercial Jet thinks ought to apply, a sale could occur and then months after the transaction a lien could appear on the recently purchased aircraft.<sup>207</sup>

Alternatively, as asserted by the lienor in *Commercial Jet, Inc.*, the common law paradigm of possession-for-perfection may just not work well for airplanes given that aircraft labor, service, and material providers oftentimes do not and cannot exercise possession over personal property in ways that other artisans might as to other kinds of assets:

Unlike [section] 713.58, which grants a general lien right against miscellaneous personal property, [section 329.51] is specific to aircraft. Chapter 329 [] addresses the very different nature of aircraft as opposed to other personal property. First, unlike other personal property, when aircraft require repair, they often cannot be flown or towed down the street to a repair facility. Repairs occur wherever the aircraft may be located . . . . [Section 329.51] applies equally to large aircraft maintenance performed at a maintenance facility as well as to smaller entities, often consisting of only licensed mechanics who perform maintenance and repairs on aircraft wherever the aircraft may be located, such as the owner's private hangar or on the airport tarmac where the aircraft is normally parked. In the latter case, those *mechanics are no more in possession of the aircraft than a roofer is in possession of the house whose roof he has repaired*. [Section 329.51] applies in all of these situations.<sup>208</sup>

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<sup>207</sup> *Id.* at 8–9.

<sup>208</sup> Appellant, Commercial Jet Inc.'s Initial Brief, *supra* note 126, at 8–9 (emphasis added). Aspects of the maintenance company's argument invoked notes of maritime law:

Framed in this way, section 713.58 and its possessory requirement seem out of place as applied to airplanes, as does the concept that the recording imperative in section 329.51 is somehow an exercise with no real benefit to lienors:

A careful review of [Chapter 329] discloses the difference in the legislature's treatment of the various lien rights. [Section 329.40], providing for a lien in favor of a government owned airport provides for a

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When Silver Jet hired Commercial Jet to perform maintenance and improvements upon the aircraft owned by U.S. Bank, Commercial Jet improved the aircraft via its labor and materials and thereby increased the value of U.S. Bank's aircraft. The aircraft was redelivered to Silver Jet by Commercial Jet on April 20, 2008 and then shortly thereafter U.S. Bank cancelled the lease with Silver Jet and retook possession of its aircraft, *an aircraft worth more than it would have been but for Commercial Jet's work and services. That made the aircraft more valuable and should have assisted U.S. Bank in leasing or selling the aircraft thereafter. Therefore, it is clear that U.S. Bank was benefited as a result of the labors, services and materials rendered by Commercial Jet to the aircraft. It is this benefit to the owner of a chattel that gives rise to artisan liens.* Simply put, U.S. Bank was benefited by the work performed by Commercial Jet and it is both fair and reasonable that U.S. Bank should pay for same. This is the result required by [section 329.51].

Appellant, Commercial Jet, Inc.'s Reply Brief, *supra* note 110, at 2–3 (emphasis added). The maintenance company went on to say that

This Court must keep in mind that this statute applies not only to large maintenance facilities such as Commercial Jet, but also to aircraft mechanics throughout the state who go to an aircraft owner or operator's hangar or aircraft parking space and perform services on the aircraft at such locations. Those persons are never in possession of the aircraft. [Section 329.51] nonetheless provides them a remedy to ensure that they are paid for the value of their labor and *the increased value in the aircraft*, the benefits of which flow to the aircraft owner. If U.S. Bank wishes to argue fairness, nothing can be more fair than to allow persons and entities who perform services on these highly mobile assets which may or may not ever be in the possession of the mechanic to have a remedy to ensure that the mechanic is paid for the materials and services provided which ultimately benefits no one other than the owner of the aircraft.

*Id.* at 5–6 (emphasis added); *see also supra* Part I.

possessory enforcement. However, [section 329.41] simply provides a lien right for persons providing fuel to aircraft upon recording a claim of lien per [section 329.51] [which] then provides that persons claiming liens under [section 329.41] and persons claiming lien against an aircraft pursuant to [section 713.58] shall have an enforceable lien if they record a Claim of Lien within [ninety] days. The legislature clearly intended that [section 329.51] provided lien rights without retention of possession. Had the legislature intended to create a simple recording statute it would have said that persons claiming a lien under [section 329.41] or [section 713.58] must record a Claim of Lien within [ninety] days after the provision of the services. But the legislature went much farther than that. The legislature stated that persons claiming liens under those two sections have enforceable liens if a verified lien notice is filed with the Clerk of Court within [ninety] days. Any other interpretation would render this language a nullity and in violation of the tenets of statutory construction.<sup>209</sup>

What is more:

If the legislature wanted liens under [section 713.58] to exist and be enforced solely by possession, it could have omitted the reference to [section 713.58] here and left the current body of law interpreting that statute as it is. In the alternative, the legislature could have reinforced the existing possessory enforcement procedure by stating that liens under [section 713.58] should be enforced as provided for enforcement of warehouse liens, as it mentioned only two sections previously.

Finally, the last sentence of [section 329.51] states that the section does not affect the lienor's obligation to record the lien under [section 329.01]. It is clear

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<sup>209</sup> See Appellant, Commercial Jet Inc.'s Initial Brief, *supra* note 126, at 17–18 (internal citations omitted).

from this last sentence that the legislature did not intend for [section 329.51] to be a mere recording statute. The recording statute is contained in [section 329.01] clearly describes what is required to have an enforceable lien for either fuel furnished to an aircraft under [section 329.41] or for materials and labor provided under [section 713.58].

. . . [T]he legislature obviously recognized the expediency with which commercial aircraft must be returned to revenue generating service. This intent is supported by the different treatment the legislature gave to those who provide fuel and services to aircraft. Large commercial aircraft generate huge amounts of revenue while in service. This revenue stream cannot be delayed while waiting to pay the fuel bill or waiting to find out the cost of the last minute service or overhaul of a critical component of the aircraft. Following the express language of [section 329.51] allows these suppliers (fuel or maintenance) to safely and immediately release the aircraft to revenue service without concern their lien rights will be lost.<sup>210</sup>

In the final analysis, advocates and opponents of the “no possession, no lien” and “notice-only” camps both raised compelling points, invoking the phrase “half a dozen of one, six of the other.” Neither position is obviously superior. Moreover, though both claim to be informed by the “plain meaning” of the statutes in question,<sup>211</sup> neither challenges the main objective of Florida lien law—to move parties toward resolution of their dispute. In this vein, the law of contract and further statutory revision may offer a more productive path forward than requiring courts to choose between one position or the other as a reaction to confusingly crafted laws.

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<sup>210</sup> *Id.* at 13–14 (internal citations omitted).

<sup>211</sup> *See id.* at 5; Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 1.

### C. *A Better Approach*

Florida's "new" aviation lien laws effectively put the possession versus notice problem to rest relative to the issue of perfection, but they also unintentionally generate a number of important questions. First, the law's impact on the rights of lienors against third parties who may acquire an interest in the property without actual or constructive notice of the lien is unclear.<sup>212</sup> Also ambiguous is the role (if any) and scope of possession in a notice-only scheme. Finally, the need for a comprehensive and streamlined statutory regime for aircraft mechanic's liens remains. This Part addresses these issues by highlighting the importance of contract law in the context of disputes arising from aircraft maintenance and repair services and then recommending a legislative (and potentially judicial) fix.

As an initial matter, Florida's aviation mechanic's lien statutes are silent as to the issue of privity. The *Commercial Jet, Inc.* litigation demonstrated as much. That is, *who* the maintenance company sued was a contentious point that was briefed<sup>213</sup> (though unmentioned in the published decision). Specifically, the lienor there sued the owner (U.S. Bank) of the aircraft on which it did work instead of the entity that hired it to perform maintenance and repair services, namely U.S. Bank's lessee (Silver Jet).<sup>214</sup> The lienor apparently did so because Silver Jet was engaged in bankruptcy dissolution proceedings in England, and U.S. Bank had retaken possession of its leased aircraft.<sup>215</sup> U.S. Bank argued that it was not aware of the repairs made on the aircraft or of Silver Jet's default and that the lienor had failed to give it notice before filing its claim.<sup>216</sup> It also noted that in jurisdictions like Texas, *owner*-consent is required to have a valid mechanic's lien on an aircraft.<sup>217</sup> In this context, for the bank, in its role as aircraft lessor, holding an aircraft owner responsible for work it did not commission or know about represented an

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<sup>212</sup> See *J.V. Air Maint., Inc. v. Westwind Leasing, Corp.*, 283 So. 3d 379, 383 (Fla. Dist. Ct. App. 2019).

<sup>213</sup> See Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 3.

<sup>214</sup> *Id.* at 5.

<sup>215</sup> Appellant, *Commercial Jet Inc.'s Initial Brief*, *supra* note 126, at 2.

<sup>216</sup> See Answer Brief of Respondent U.S. Bank, N.A., *supra* note 112, at 5.

<sup>217</sup> *Id.* at 16 (citing *Astraea Aviation Servs., Inc. v. Nations Air Inc.*, 172 F.3d 390, 393–95 (5th Cir. 1999)).



implausible reading of the applicable statutes [that] achieves no useful public policy. The far better norm is that a possessory lien requires possession, which is supported by both the plain language of section 713.58 and existing precedent. Commercial Jet should have held the aircraft and insisted upon payment or required a deposit that could have been forfeited. Imposing lax rules on seeking liens against aircraft owners is not a reasonable solution. *It is unfair to parties who had nothing to do with the non-payment for services, and it does not foster efficient dispute resolution.* There is no reason to bend the rules of possessory liens in Florida from what appears on the face of section 713.58 and what cases have recognized for decades: no possession, no possessory lien.<sup>218</sup>

What this argument brought into focus was the uncertainty created by Florida's aviation mechanic's lien and how helpful it would be to have, as other states do, a statute identifying the parties falling within its ambit. It also highlighted an underappreciated mechanism that MROs and their clients can and should deploy to avoid protracted litigation that turns on statutory construction: contracts.

In fact, the best strategy for a person who has furnished labor, services, fuel, or materials for an aircraft to collect a debt owed to it may well be to avoid Florida's lien statutes altogether. It is true that, under the amended version of section 329.51, debtors may be less incentivized to pay up front, or even pursuant to a written agreement, because they might expect return of their property as a matter of law. By committing their relationship to a written contract, however, artisans and their clients will be spared the task of navigating through a maze of imperfectly worded laws, and they will have the power to proactively secure both payment and possession on terms acceptable to each.

In *Commercial Jet, Inc.*, for example, the maintenance company and its client, Silver Jet, had an agreement in place that expressly

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<sup>218</sup> *Id.* at 17 (emphasis added).

limited the lien that the artisan could seek to a mechanic's lien requiring possession.<sup>219</sup> It provided that the maintenance company

shall not suffer or permit any lien or encumbrance to be created or exist against the Aircraft by reason of the Services performed hereunder, other than [its] mechanics lien, if any, and [the maintenance company] agrees to immediately release the Aircraft to Customer upon completion of the Services and payment of all charges in accordance with this Agreement.<sup>220</sup>

The agreement thus expressly recognized Commercial Jet's right to hold the aircraft under a mechanic's lien, insist on full payment, and sue for breach of contract.<sup>221</sup> As such, U.S. Bank argued that:

Aircraft service providers like Commercial Jet do not require any special lien rights. They already have the same contractual rights that any other service provider has. As other courts have recognized, the most efficient way to ensure payment is for the service provider to demand payment before release of the aircraft. In the alternative, deposits can be sought and then forfeited if payment is not made.<sup>222</sup>

"Hold the aircraft. Demand payment. If Commercial Jet had done that, *as its own services agreement set forth*, there would have been no dispute here,"<sup>223</sup> U.S. Bank asserted.

Invariably, parties will fail to enter into an agreement and assert control over their future dealings and avert legal controversies, or they will draft ineffective agreements, or they will fail to act upon their agreement as apparently was the case in *Commercial Jet, Inc.* In those cases, Florida's statutory law will remain the default, much the same way the state's intestacy scheme is triggered in the absence

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<sup>219</sup> *See id.* at 4.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 8.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 7.

of a decedent's will or testamentary trust. As it stands, however, the law in Florida with respect to aircraft liens is still indefinite.

The 2019 amendments certainly clarify a key issue—namely, that possession is unnecessary for perfection. Yet, that may not necessarily discourage lienors from asserting a possessory interest and, in fact, possession may continue to be of significant strategic importance for a lienor. So, even if notice is now *the* mechanism for achieving perfection of a mechanic's lien in Florida, section 329.51 appears to have retained its possessory nature by virtue of its reference to section 713.58, putting Florida in the company of Alabama, Idaho, and Oregon—states that appear to have both possessory and non-possessory mechanic's liens.<sup>224</sup> If this is not the case, then reference to section 713.58 in section 329.51 does not make sense and should be deleted.

In any case, even if the amendments to Chapter 329 are interpreted as unambiguously recognizing notice over possession for purposes of perfection, enforcement-related questions remain. For example, given the new statutory language that “possession of the aircraft is not required in order to perfect such lien,”<sup>225</sup> do aviation mechanic's liens still fall within Part II of Chapter 713, which applies to *possessory* liens? If not, then application of Chapter 85, governing enforcement of statutory liens “provided for by . . . part II of Chapter 713”<sup>226</sup> to aviation mechanic's liens no longer matters, and it would seem the three-month limitation on a lienor's possessory right under section 85.011<sup>227</sup> no longer applies to aircraft. If all this is correct, lienors could conceivably assert a possessory interest on an aircraft indefinitely and potentially at little cost other than perhaps a replevin action. After all, possession may not be required for perfection, but it certainly could be effective in creating enormous leverage in favor of a lienor. This would bring Florida law closer to the common law rule allowing a lienor (who has otherwise perfected his lien via notice under section 329.51) to retain possession of an aircraft for as long as a debt remained outstanding.<sup>228</sup> Finally, does the updated language in section 329.51 eviscerate the coherent plan

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<sup>224</sup> See *supra* notes 190–92.

<sup>225</sup> FLA. STAT. § 329.41 (2020).

<sup>226</sup> FLA. STAT. § 85.011 (2020).

<sup>227</sup> FLA. STAT. § 85.011(1) (2020).

<sup>228</sup> See *supra* Part III.A.

envisioned in *J.V. Air Maintenance, Inc.*, which was predicated on the 2017 version of the statute?<sup>229</sup>

What all of these questions recommend is that the Legislature further and substantially revamp Florida law, once and for all, to achieve a cohesive standalone statutory regime for aircraft liens that is independent of Chapter 713. To do so, a comprehensive view of mechanic's liens around the nation is helpful. The Appendix to this Article provides such a wide-ranging study and reveals that certain core issues arise again and again in the context of aircraft liens. Florida lawmakers would do well to borrow aspects of these laws to fashion its own statutory regime consistent with its policy goals of balancing the objectives of securing payment for artisans without exacting an unnecessarily heavy toll on aircraft owners and operators.

Certain trends are discernable from a review of the aviation mechanic's lien laws of every state. For instance, seven issues seem to be core to the subject matter of mechanic's liens around the nation: (1) how to perfect the lien (possession and/or notice and/or filing); (2) how to perfect the lien if possession is lost, either voluntarily or by fraud; (3) lien duration; (4) bonding;<sup>230</sup> (5) attorneys' fees; (6) foreclosure or sale of aircraft; and (7) priority.<sup>231</sup>

This Article recommends creation of an omnibus mechanic's lien law in Florida that addresses each of these matters. Doing so will ease the burden on practitioners and courts who must (still) wade through numerous statutory provisions that lack an over-arching coherence. Florida's aviation mechanic's liens could be amended further, as follows:

- The Legislature should blend sections 329.41 and 329.51 to avoid duplication, as both cover the issue of liens for fuel furnished to aircraft. In this regard, the reference to section 329.41 in section 329.51 should be deleted.
- Reference in section 329.51 to section 713.58 should be deleted. If possession is no longer a predicate of perfection, as section 329.51 now explicitly says, the reference

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<sup>229</sup> See *supra* Part II.

<sup>230</sup> See ARK. CODE ANN. § 18-45-205 (2020); FLA. STAT. § 713.76 (2020).

<sup>231</sup> See *infra* Appendix.

to Florida's possessory general mechanic's lien law no longer makes sense and may simply promote further confusion. Indeed, if the law allows the lienor to secure his interest simply by recording his claim of lien, fairness requires that he also relinquish possession.

- Section 329.51 should incorporate the language of section 713.58(3) or otherwise expressly criminalize conduct that improperly induces a lienholder to relinquish possession.
- Section 329.51 nowhere references Chapter 85, which relates to enforcement of statutory liens. It should do so. Better yet, section 329.51 should explicitly detail the enforcement mechanisms for aircraft mechanic's liens, borrowing language from sections 85.011 to 85.051 as appropriate.
- The Legislature should specify whether the lien has an expiration date. Relatedly, to the extent section 85.011 no longer applies to section 329.51, lawmakers should specify the length of time a lienor can maintain possession. Wyoming law, for example, provides that the right of possession terminates six months after the date upon which the charges become due and payable *unless* the claimant commences proceedings to foreclose the lien.<sup>232</sup>
- An attorneys' fee provision should be added in favor of the prevailing party, or perhaps even to the extent allowed in Indiana whereby the plaintiff may "recover

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<sup>232</sup> See WYO. STAT. ANN. § 29-7-102 (West 2020); see also 770 ILL. COMP. STAT. ANN. §§ 45/1, 45/2 (LexisNexis 2020) (stating that any person firm, or corporation who has a lien under the statute has a lien "for a period of one year from and after the completion of such expenditure . . . notwithstanding the fact that the possession of such chattel has been surrendered to the owner, or lawful possessor thereof.").

reasonable attorneys' fees" in a suit in which the plaintiff "recovers judgment in *any* sum."<sup>233</sup>

By adding some or all of these (and other) features, the Legislature can establish reasonable tradeoffs that properly acknowledge the practical and legal vulnerabilities of artisans who improve personal property, while incentivizing debtors to resolve their debts quickly.

Additionally, a number of other laws contain provisions that Florida lawmakers might find useful. The Aeronautics Code of the State of Michigan is a useful template, for example. Not only does Michigan's aeronautics code include most of the core components identified above, but it also does so in one place.<sup>234</sup> It makes clear statements like "the common law garage keeper's lien as to an aircraft is abolished."<sup>235</sup> Texas law similarly communicates clear standards that allow courts and litigants to focus on the merits of a lien rather than procedural aspects of the lien. That is, Texas law provides that an artisan is entitled to the amount due under a contract, or where no amount is specific, the reasonable and usual compensation for such work.<sup>236</sup> Texas law also requires that a lienholder who retains possession of an aircraft must notify the owner.<sup>237</sup> Modeling the form and substance of these laws would be a breath of fresh air compared to Florida's current scheme that wanders across multiple statutes often without citation or reference points.

Finally, lawmakers should also consider fortifying the equitable powers of courts with respect to aircraft liens. Ideally, the legacy of the now-overturned *Commercial Jet, Inc.* is that nobody will claim that lien laws are plain to apply or that application of Florida's mechanic's lien laws are rigid. To the extent parties have a written contract that indicates an intention to charge a particular property with a debt or obligation, courts should strive to serve the equities of particular situations or cases. To be sure, parties should be spending their time resolving the substantive merits of their dispute, and courts are generally inherently well equipped to eliminate or punish

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<sup>233</sup> IND. CODE § 32-33-10-9 (2020) (emphasis added).

<sup>234</sup> See MICH. COMP. LAWS ANN. §§ 259.205–.205b (West 2020).

<sup>235</sup> MICH. COMP. LAWS ANN. § 259.205a(3) (West 2020).

<sup>236</sup> TEX. PROP. CODE ANN. § 70.301 (West 2019).

<sup>237</sup> TEX. PROP. CODE ANN. § 70.304 (West 2019).

plaintiffs who would wrongfully assert liens and debtors who game statutory ambiguities to avoid legitimate obligations.

#### CONCLUSION

In the final analysis, the Florida Legislature's amendments to sections 329.41 and 329.51, clarifying that possession is no longer a precondition to perfection of an aviation mechanic's lien, resolves decades of confusion for Florida aviation and commercial lawyers. But, reduced to its essence, the legislative changes reflect that lawmakers have merely swapped out a possession-for-perfection scheme for a notice-is-all-that-is-required-for-perfection regime. Apparently the lienor's bar had the better lobbyists this time around. But is that how a lasting and principled body of law should be developed?

This Article has argued that it is not. Both artisans and the owners and operators of the aircraft to which they provide labor, services, fuel, and materials have compelling reasons for preferring one statutory scheme over another in terms of lien perfection. As such, the Florida Legislature should substantially amend Chapter 329 and produce a cohesive set of aviation laws that reflects the competing objectives and vulnerabilities of all parties involved in aviation lien cases. Lawmakers have all the tools they need to accomplish this, beginning and perhaps ending with the mechanic's lien laws of every state. While lawmakers need not—and should not—put the policy decisions of other jurisdictions ahead of issues of particular importance to Floridians and the state of Florida (which is itself a uniquely important platform for aviation and aerospace), this Article has shown that certain recurring issues arise in every aviation mechanic's lien case and those issues should be packaged together in a single standalone law, providing predictability and stability for creditors and debtors of aircraft.

APPENDIX

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Alabama	Ala. Code § 35-11-110 (2021) and Common Law	Notice for Statutory Lien Possession for Common Law Lien	<p>“Any . . . mechanic who contributes his labor and material . . . to the production, manufacture, or repair of any vehicle [or] machine . . . shall have a lien thereon . . . with notice of such lien . . .” Ala. Code § 35-11-110 (2021). “Alabama is one of the states which provides two mechanic’s liens . . . [T]he statutory mechanic’s lien . . . merely supplements, not supplants, the common law mechanic’s lien. The common law lien is a possessory lien and is lost by release of the property. The statutory lien is not dependent upon maintaining possession, but may be perfected after release of the property.” Peavy’s Serv. Ctr., Inc. v. Assocs. Fin. Servs. Co., 335 So. 2d 169, 170–71 (Ala. Civ. App. 1976) (internal citations omitted).</p>



STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Alaska	Alaska Stat. Ann. § 34.35.185 (West 2020).	Possession with Recording	“The lien claimant shall, before delivery of the chattel to the owner or the authorized agent of the owner, record a lien notice in the office of the recorder of the recording district where the chattel is situated and in which the labor, skill, and materials are expended on the chattel.” Alaska Stat. Ann. § 34.35.185(a) (West 2020).
Arizona	Ariz. Rev. Stat. Ann. § 33-1022(C) (2021).	Recording after Possession	“If a proprietor has a lien on an aircraft . . . the proprietor who provides labor, materials, supplies and storage for aircraft may relinquish possession of the aircraft and retain the lien by recording the lien with the county recorder of the county in which the labor, materials, supplies or storage were provided. The lien shall be filed with the county recorder within thirty days after possession is relinquished.” Ariz. Rev. Stat. Ann. § 33-1022(C) (2021) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Arkansas	ARK. CODE ANN. § 18-45-206 (2020).	Possession or Notice (with Bond)	“If the lienholder has voluntarily parted with possession of any property upon which he or she has a lien under the provisions of this subchapter, he or she may still avail himself or herself of the lien within one hundred twenty (120) days after the work or labor is done or performed or materials furnished . . . by filing with the clerk of the circuit court . . . a just and true itemized account for the demand due . . . .” ARK. CODE ANN. § 18-45-206 (a)(1)–(2) (2020).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>California</b>	CAL. CIV. PROC. CODE §§ 1208.61, 1208.64 (Deering 2021).	Possession	<p>“[E]very person has a lien dependent upon possession for the compensation to which is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for . . . any aircraft . . . .” CAL. CIV. PROC. CODE § 1208.61 (Deering 2021).</p> <p>“Whenever the lien upon any aircraft is lost by reason of the loss of possession through trick, fraud, or device, the repossession of such aircraft by the lienholder revives the lien, but the lien so revived is subordinate to any right, title, or interest of any person under any sale, transfer, encumbrance, lien, or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.” CAL. CIV. PROC. CODE § 1208.64 (Deering 2021).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Colorado	COLO. REV. STAT. § 38-20-106 (2020).	Possession	“Any mechanic or other person who makes, alters, repairs, or bestows labor upon any article of personal property, at the request of the owner of such personal property or his agent shall have a lien upon such property for the amount due for such labor done or material furnished and for all costs incurred in enforcing such lien.” COLO. REV. STAT. § 38-20-106 (2020); <i>see also</i> Wenz v. McBride, 36 P. 1105, 1106 (Colo. 1894) (“There must be a possession of the thing; otherwise there cannot, without special agreement to that effect, be any lien.”).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Connecticut	CONN. GEN. STAT. § 49-92g to -92k (2019).	Possession <i>and</i> Notice	<p>“Any person who stores, cares for, maintains, repairs, or furnishes any services, gasoline, accessories, materials, or other supplies at the request of or with the consent of the owner, his agent or legal possessor of an aircraft . . . has a lien upon the aircraft until the sum due for any fees, expenses, or charges . . . has been paid. The lienor shall be entitled to retain possession of the aircraft until the amount . . . has been paid or the lien has been dissolved.”</p> <p>CONN. GEN. STAT. § 49-92g (2019).</p> <p>“<i>Upon the possession</i> of the aircraft by a lienor, he shall cause a notice of an aircraft lien, in duplicate, to be filed on a form provided by the Secretary of the State with the office of the secretary . . . .”</p> <p>CONN. GEN. STAT. § 49-92h(a) (2019) (emphasis added).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Delaware	DEL. CODE ANN. tit. 25, §3902 (2020).	Lienor must file application for lien sale or file replevin action within ten days of loss of possession	“In case, either before or after the price or reward become due and payable, the lienholder . . . loses possession of the encumbered property, except by court order pursuant to this chapter, the lienholder’s lien shall continue in full force and effect, provided that within [ten] days from the time of the loss of possession the lienholder pursuant to § 3903 of this title <i>files an application for the issuance of an authorization to conduct a lien sale or files a counterclaim for the sale of the encumbered property pursuant to this chapter in a replevin action brought pursuant to Chapter 95 of Title 10 by the owners or other persons claiming an interest in the property.</i> ” DEL. CODE ANN. tit. 25, § 3902 (2020) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>District of Columbia</b>	D.C. CODE § 40-307.01 (2021).	Possession	“Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; <i>but if possession is parted with by his consent such lien shall cease.</i> ” D.C. CODE § 40-307.01 (2021) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Florida</b>	FLA. STAT. §§ 329.41, 329.51, 713.58 (2020).	Recording (within ninety days of service)	“Any lien claimed on an aircraft under [section] 329.41 or [section] 713.58 is enforceable when the lienor records a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the labor, services, fuel, or material was last furnished. The lienor is not required to possess the aircraft to perfect such lien. The lienor must record such lien notice within [ninety] days after the time the labor, services, fuel, or material was last furnished.” FLA. STAT. § 329.51 (2020)



STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Georgia	GA. CODE ANN. §§ 44-14-363, 44-14-518 (2020).	Possession or Notice	<p>“Such lien <i>may be asserted by the retention of the aircraft or aircraft engines</i>, and if such lien is asserted by retention of the aircraft or aircraft engines, the lienor shall not be required to surrender the aircraft or the aircraft engine to the holder of a subordinate security interest or lien. When possession of the aircraft or aircraft engine is surrendered by the person claiming the lien, the person claiming the lien shall, within [ninety] days after such repair, storage, service, supplies, accessories, or contracts of indemnity are furnished [provide written notice of the details of the debt and airplane at issue, including its owners].”</p> <p>GA. CODE ANN. § 44-14-518(b) (2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Hawaii</b>	HAW. REV. STAT. ANN. § 507-18 (LexisNexis 2020).	Possession	“A person who makes, alters, or repairs any article of personal property at the request of the owner of the property, shall have a lien on the property for the reasonable charges for the work done and materials furnished, excluding storage charges, <i>and may retain possession of the property until the charges are paid . . .</i> ” HAW. REV. STAT. ANN. § 507-18 (LexisNexis 2020) (emphasis added).
<b>Idaho</b>	IDAHO CODE § 45-1101 to -1102 (2020).	Possessory (if written estimate provided <i>before</i> Labor) <i>and</i> Non-Possessory (with written contract and notice)	“Any person . . . who expends labor, skill, or material upon an aircraft . . . has a special lien, dependent upon possession, on the aircraft for the just and reasonable charges for the labor performed and material furnished up to the amount of the written estimate or subsequent oral written modifications thereto.” IDAHO CODE § 45-1101(1) (2020). The lien “[i]s not dependent upon possession by the repairperson” provided the lien is recorded with the FAA aircraft registry and is a created by written contract between the parties. IDAHO CODE § 45-1102 (2020).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Illinois</b>	770 ILL. COMP. STAT. ANN. §§ 45/1, 45/2 (LexisNexis 2020).	Recording (within sixty days of relinquishment of possession)	<p>“Every person . . . who has expended labor, skill or materials upon any chattel, or has furnished storage for said chattel, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor thereof, shall have a lien upon such chattel beginning on the date of the commencement of such expenditure . . . for a period of one year from and after the completion of such expenditure . . . notwithstanding the fact that the possession of such chattel has been surrendered to the owner, or lawful possessor thereof.” 770 ILL. COMP. STAT. ANN. § 45/1(LexisNexis 2020).</p> <p>“Such lien shall cease at the expiration of [sixty] days from the date of the delivery of such chattel to the owner thereof, or his duly authorized agent, unless the lien claimant shall within 60 days, file in the office of the recorder of the county in which the labor, skill and materials were expended on such chattel, or storage furnished for such chattel, a lien notice . . . .” 770 ILL. COMP. STAT. ANN. § 45/2 (LexisNexis 2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Indiana</b>	IND. CODE § 32-33-10-6 (2020).	Recording	“A person seeking to acquire a lien upon . . . an airplane . . . whether the claim to be secured by the lien is then due or not, <i>must file</i> in the recorder’s office the county where [the repair service was performed] . . . a notice in writing of the intention to hold the lien upon the . . . airplane.” IND. CODE § 32-33-10-6(a)(1)–(2) (2020) (emphasis added).
<b>Iowa</b>	IOWA CODE § 577.1 (2021).	Possession	“Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material <i>while such property is lawfully in the person’s possession</i> , which possession the person may retain until such compensation is paid . . . .” IOWA CODE § 577.1 (2021) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Kansas	KAN. STAT. ANN. § 58-201 (2020).	Possession <i>or</i> Recording	<p>“If such property shall come into the lien claimant’s possession for the purpose of having the work, repairs or improvements made or the equipment replaced, added or installed thereon, <i>such lien shall be valid as long as the lien claimant retains possession of the property</i>, and the claimant of the lien may retain the same after parting with the possession of the property by filing within [ninety] days in the office of the register of deeds, under oath, a statement of the items of the account and a description of the property on which the lien is claimed . . . .”</p> <p>KAN. STAT. ANN. § 58-201 (2020) (emphasis added).</p> <p>“If the lien claimant was never in possession of the property, the lien claimant may retain the lien by filing, within [ninety] days after the date upon which work was last performed . . . .” <i>Id.</i></p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Kentucky	KY. REV. STAT. ANN. § 376.270 (LexisNexis 2020).	Possession or Recording following Possession	“Any person engaged in the business of selling, repairing or furnishing accessories or supplies for motor vehicles shall have a lien on the motor vehicle for the reasonable or agreed charges . . . and <i>may detain any motor vehicle in his possession</i> on which work has been done by him until the reasonable or agreed charge therefor has been paid. <i>The lien shall not be lost by the removal of the motor vehicle from the garage or premises of the person performing labor, repairing or furnishing accessories or supplies therefor, if the lien shall be asserted within six (6) months by filing in the office of the county clerk a statement showing the amount and cost of materials furnished or labor performed on the vehicle.</i> ” KY. REV. STAT. ANN. § 376.270 (LexisNexis 2020) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Louisiana</b>	LA. STAT. ANN. § 9:4512 (2020).	Possession <i>or</i> Recording	<p>“Any person claiming a privilege on an aircraft . . . may record the privilege on the aircraft by filing a notice or a claim with the Federal Aviation Administration – Aircraft Registry not later than the ninetieth day after the labor, services, fuel, and materials were furnished.” LA. STAT. ANN. § 9:4512(A)(1) (2020).</p> <p>“[W]hen the aircraft remains in the possession of the privilege holder, and the debt due thereon remains unpaid for more than ninety days from the date on which the last labor was performed . . . the holder of such privilege may sell such property at private sale and without appraisal, after advertising such property for ten days as provided by law in case of judicial sale of movables.” LA. STAT. ANN. § 9:4512(B) (2020).</p> <p>“The privilege holder may retain possession of the aircraft subject to the privilege until the amount due is paid in full.” LA. STAT. ANN. § 9:4512(C) (2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Maine</b>	ME. REV. STAT. ANN. tit. 10, §§ 3801–02 (2019).	Notice	A lien is dissolved unless the claimant files a financing statement with the Secretary of State within 90 days after such labor is performed or such materials are furnished. ME. REV. STAT. ANN. tit. 10, § 3801 (2019).“Said lien shall be dissolved if said property has actually changed ownership prior to such filing.” <i>Id.</i>
<b>Maryland</b>	MD. CODE ANN., COM. LAW §§ 16-203, -204 (West 2021).	Notice	“The lienor may retain possession of the property until: (1) The charges which give rise to the lien are paid; or (2) The lien is otherwise discharged . . . . [T]he lienor shall send notice of the lien by registered or certified mail to all holders of perfected security interests in the property . . . .” MD. CODE ANN., COM. LAW § 16-203(a)–(b) (West 2021). “Surrender or delivery of the property subject to the lien discharges that lien against a third person who is without notice of the lien, but does not discharge the lien against the owner or against a third party who has notice of the lien.” MD. CODE ANN., COM. LAW § 16-204 (West 2021).



STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Massachusetts	MASS. GEN. LAWS ch. 255, § 31E (2019).	Recording Dispositive	“Any person entitled to a lien under this section, shall within sixty days after last furnishing of labor, money, material or supplies for the production of, altering or repairing of said personal property, file in the office of the federal aviation administration aircraft registry, a statement in writing verified by oath, showing the amount of labor, money, material or supplies furnished for the producing, storage, parking, servicing, altering or repairing of said personal property, the name of the person for, and by whom labor, money, material or supplies, was furnished, and specifying the registration number of said aircraft. Unless the person entitled to such lien shall file such statement within the time aforesaid, he shall be deemed to have waived his rights thereto . . . .” MASS. GEN. LAWS ch. 255, § 31E (2019).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Michigan</b>	MICH. COMP. LAWS ANN. §§ 259.205-.205b (West 2020).	Possession (up to ninety days) or else File Claim of Lien with FAA within 60 days of last work	<p>“The garage keeper may detain the aircraft at any time it is his or her possession within [ninety] days after performing the last labor or furnishing the last supplies for which the lien is claimed.” MICH. COMP. LAWS ANN. § 259.205 (West 2020).</p> <p>“If charges . . . for an aircraft are not paid within [sixty] days after a claim of lien together with an itemized statement of the account is delivered to the registered owner of the aircraft by personal service or service by registered or certified mail addressed [and recorded with the Federal Aviation Administration] . . . the garage keeper may sell the aircraft at public auction.” MICH. COMP. LAWS ANN § 259.205b(1) (West 2020).</p> <p>“The garage keeper’s lien established in this act is the sole lien available to a garage keeper as to an aircraft, and the common law garage keeper’s lien as to aircraft is abolished.” MICH. COMP. LAWS ANN §259.205a(3) (West 2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Mississippi</b>	MISS. CODE ANN. §§ 85-7-101, 85-7-105, 85-7-107 (2020).	Notice	“If the lienholders . . . part with possession of the property, they shall retain their liens while the property remains in the hands of the owner, or one deriving title or possession through him, <i>with notice</i> that the price of the labor and materials . . . was unpaid, and may enforce the same in like manner as is provided in Sections 85-7-31 and 85-7-53.” MISS. CODE ANN. § 85-7-105 (2020) (emphasis added).
<b>Missouri</b>	MO. REV. STAT. § 430.020 (2020).	Filing a statement <i>after</i> relinquishing possession	“[T]he person furnishing the labor or material on the aircraft or part or equipment thereof <i>may retain the lien after surrendering possession of the aircraft or part or equipment thereof by filing a statement</i> in the office of the county recorder of the county where the owner of the aircraft or part or equipment thereof resides, if known to the claimant, and in the office of the county recorder of the county where the labor or material was furnished.” MO. REV. STAT. § 430.020 (2020) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Montana</b>	MONT. CODE ANN. § 71-3-1201 (2019).	Possession	“A person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, [or] improvement . . . of the article . . . has a special lien on the article. <i>The lien is dependent on possession . . .</i> ” MONT. CODE ANN. § 71-3-1201(2)(a) (2019). (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Nebraska</b>	NEB. REV. STAT. § 52-202 (2020).	Perfection under Uniform Commercial Code	<p>“Any person who makes, alters, repairs, or in any way enhances the value of any vehicle, automobile, machinery, or farm implement or tool or shoes any horse or mule, at the request of or with the consent of the owner or owners thereof, has a lien upon such property, <i>in cases when he or she has parted with the possession of such property, for his or her reasonable or agreed charges for the work performed or material furnished.</i> A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. <i>Any financing statement filed to perfect such lien shall be filed within sixty days after performing such work . . . .</i>” (emphasis added). NEB. REV. STAT. § 52-202 (2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Nevada</b>	NEV. REV. STAT. §§ 108.272, .280 (2020)	Notice	<p>“Any person who acquires a lien under the provisions of [section] 108.270 <i>does not lose the lien by allowing the . . . aircraft . . . or aircraft equipment . . . or parts thereof to be removed from control of the person having the lien.</i>” NEV. REV. STAT. § 108.280 (2020).</p> <p>Lienor must “(a) within 120 days after the person furnishes supplies or services; or (b) within [seven] days after the person receives an order to release the property, whichever time is less, serve the legal owner by mailing a copy of the notice of the lien to the owner’s last known address, or if no address is known, by leaving a copy with the clerk of the court in the county where the notice is filed.” NEV. REV. STAT. § 108.272 (2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
New Hampshire	N.H. REV. STAT. ANN. § 450:2 (2020).	Possession	“Any person who shall, by himself or others, perform labor, furnish materials, or expend money, in repairing, refitting or equipping any motor vehicle or aircraft, under a contract expressed or implied with the legal or equitable owner, shall have a lien upon such motor vehicle or aircraft, <i>so long as the same shall remain in his possession</i> , until the charges for such repairs, materials, or accessories, or money so used or expended have been paid.” N.H. REV. STAT. ANN. § 450:2 (2020) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
New Jersey	N.J. STAT. ANN. § 2A:44-2, 44-3 (West 2020).	Filing Statement	<p>“Any person, engaged in the business of . . . maintenance, keeping or repairing of aircraft . . . shall have a lien upon such aircraft . . . and may, without process of law, detain such aircraft at any time it is lawfully in his possession until such sum is paid.” N.J. STAT. ANN. § 2A:44-2(a) (West 2020).</p> <p>“Any person entitled to a lien pursuant to subsection a. [of § 2A:44-2] shall, within [ninety] days after the date upon which work was last performed or material last furnished in performing such work or making such repairs or improvements, or fees were last incurred for landings or take-offs, file in the office of the county recording officer of the county in which the aircraft is based, or where the work was performed or material supplied, or landing and take-off fees incurred, a statement verified by oath.” N.J. STAT. ANN. § 2A:44-2(b) (West 2020).</p> <p>“A person acquiring a lien under section 2A:44-2 of this title <i>shall not lose the same by reason of allowing the aircraft, or part thereof, to be removed from his control</i>, and if so removed, he may, after demand of payment of claim either personally or by registered mail if the owner’s address is known, and without further process of law, seize without force and in a peaceable manner, the aircraft or part thereof, wherever found in this state.” N.J. STAT. ANN. § 2A:44-3 (West 2020) (emphasis added).</p>



STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
New Mexico	N.M. STAT. ANN. § 48-3-29 (West 2021).	Filing Statement (with or without possession, but possessory lien has priority)	<p>“<i>The possessory lien</i> shall have priority over all other liens, including recorded liens on the aircraft, except liens for taxes . . . .” N.M. STAT. ANN. § 48-3-29(A) (West 2021) (emphasis added).</p> <p>“Any person entitled to a lien . . . shall, within ninety days after the date on which labor was last performed or materials, supplies or services were last furnished, file in the office of the county clerk of the county in which the aircraft is based, or where the labor was performed or materials, supplies or services [were] furnished, a statement verified by oath.” N.M. STAT. ANN. § 48-3-29(D) (West 2021).</p> <p>“The lien perfected pursuant to Subsection D of this section may be enforced against the aircraft, whether or not in the possession of the lienholder, by judgment of the court having jurisdiction in the county where the lien is filed and a writ of execution pursuant to that judgment. The court may, in its discretion, award reasonable attorney’s fees to the prevailing party.” N.M. STAT. ANN. § 48-3-29(E) (West 2021).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
New York	N.Y. LIEN LAW § 184 (McKinney 2021).	No, but lien is void if possession is relinquished after thirty days from accrual	“A person . . . [who] maintains, keeps or repairs . . . aircraft or furnishes gasoline or other supplies therefor . . . has a lien . . . for the sum due . . . and <i>may detain such . . . aircraft</i> at any time it may be lawfully in his possession until such sum is paid, <i>except that if the lienor, subsequent to thirty days from the accrual of such lien, allows the aircraft out of his actual possession the lien provided for in this section shall thereupon become void as against all security interests, whether or not perfected</i> , in such . . . aircraft and executed prior to the accrual of such lien, notwithstanding possession of such . . . aircraft is thereafter acquired by such lienor.” N.Y. LIEN LAW § 184(1) (McKinney 2021) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>North Carolina</b>	N.C. GEN. STAT. §§ 44A-55, -60 (2020).	No, but lien is void if possession is relinquished 120 days from surrender of property unless notice of lien is filed	<p>“The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.” N.C. GEN. STAT. § 44A-55 (2020).</p> <p><i>“The lien . . . expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.”</i> N.C. GEN. STAT. § 44A-60 (2020) (emphasis added).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>North Dakota</b>	N.D. CENT. CODE § 35-13-02 (2019).	Possession or, absent possession file a statement of claim	“A person entitled to a lien . . . who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property made, altered, or repaired is relinquished, the person shall file electronically, within ninety days . . . after the materials are furnished or the labor is completed, in the central indexing system, a statement showing: (a) the labor performed[,] (b) the materials furnished[,] (c) the price agreed . . . .” N.D. CENT. CODE § 35-13-02(1) (2019).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Ohio	OHIO REV. CODE ANN. §§ 1311.72–.73 (LexisNexis 2020).	Filing Affidavit	“[A]ny person who performs labor upon or furnishes materials for an aircraft has a lien upon the aircraft to secure payment for the labor and materials. [However,] no person shall have a lien . . . if the person has possession of the aircraft or if the cost of the labor performed or materials furnished for the aircraft is greater than or equal to one thousand dollars and the owner of the aircraft has not requested or consented to the performance of the labor or furnishing of the materials.” OHIO REV. CODE ANN. § 1311.72(A)–(B) (LexisNexis 2020). “To perfect a lien that arises under section 1311.72 of the Revised Code, the person claiming the lien shall make and file for record with the United States federal aviation administration an affidavit verified under oath that includes the amount owed to the lien claimant for the labor or materials, a description of the aircraft that reasonably identifies it including the manufacturer, model, serial number, and registration number of the aircraft, the name of the person for whom the labor was performed or the materials were furnished, the name of the owner of the aircraft, if known, the name and address of the lien claimant, the date that the lien claimant or his employee last performed any labor upon or furnished any materials for the aircraft, the date that the lien claimant surrendered possession of the aircraft, <i>if he surrendered it</i> , and the name and address of the person who prepared the affidavit.” OHIO REV. CODE ANN. § 1311.73(A) (LexisNexis 2020) (emphasis added).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Oklahoma</b>	OKLA. STAT. tit. 42 §§ 97–98 (2021).	Filing	<p>“[A]ny person entitled to a lien pursuant to this chapter shall within one hundred twenty (120) days after last furnishing of labor, money, material or supplies for the production of, altering or repairing of said personal property, file in the office of the county clerk of the county in which the property is situated a statement in writing verified by oath, showing the amount of labor, money, material or supplies furnished for the producing of, altering or repairing of said personal property, the name of the person for, and by whom labor, money, material or supplies, was furnished.” OKLA. STAT. tit. 42 § 98(A)(1) (2021).</p> <p>“If the person entitled to such lien does not file such statement within the time required by this chapter, such person shall be deemed to have waived his rights thereto.” OKLA. STAT. tit. 42 § 98(A)(1) (2021).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Oregon</b>	OR. REV. STAT. § 87.152 (2020) (possessory) OR. REV. STAT. §§ 87.216, .242, .252 (2020) (non-possessory)	Notice	Non-possessory liens: file written notice of claim of lien not later than 60 days after the close of the furnishing of the labor, services, or materials. OR. REV. STAT. § 87.242(1). Lienor must also send “forthwith” a copy of the notice to the owner of the chattel. <i>Id.</i> § 87.252.

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<p><b>Pennsylvania</b></p>	<p>6 PA. CONS. STAT. AND CONS. STAT. ANN. § 11 (West 2021).</p>	<p>Notice while in Possession</p>	<p>“Hereafter where any person, corporation, firm, or copartnership may have what is known as a ‘common law lien’ for work done or material furnished about the repair of any personal property belonging to another person, corporation, firm, or copartnership, it shall be lawful for such person, corporation, firm, or copartnership having said common law lien, <i>while such property is in the hands of the said person, corporation, firm, or copartnership</i> contributing such work and material, to give notice in writing to the owner of the amount of indebtedness for which said common law lien is claimed.” 6 PA. CONS. STAT. AND CONS. STAT. ANN. § 11 (West 2021) (emphasis added).</p>



STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Rhode Island	R.I. GEN. LAWS § 34-47-3 (2020).	Filing	<p>“Any person entitled to a lien under this section shall, within sixty (60) days after last furnishing of labor, money, material, or supplies for the production of, altering, or repairing of the personal property, file in the office of the federal aviation administration aircraft registry a statement in writing verified by oath showing the amount of labor, money, material, or supplies furnished for the producing, storage, parking, servicing, altering, or repairing of the personal property, the name of the person for, and by whom labor, money, material, or supplies, was furnished, and specifying the registration number of the aircraft. <i>Unless the person entitled to the lien files the statement within the time provided in this section, he or she is deemed to have waived his or her rights to the lien.</i>” R.I. GEN. LAWS § 34-47-3 (2020) (emphasis added).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
South Carolina	S.C. CODE ANN. § 29-15-100 (2020).	Filing Dispositive	“Such lien shall be dissolved unless the person claiming it shall file, within ninety days after such service, supplies, accessories or contracts of indemnity are furnished, in the office of the register of deeds or clerk of court of the county within which the aircraft was located at the time such service, supplies, accessories or contracts of indemnity were furnished, a statement, subscribed and sworn to by himself or by some person in his behalf, giving a just and true account of the demands claimed . . . .” S.C. CODE ANN. § 29-15-100(a) (2020).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<p><b>South Dakota</b></p>	<p>S.D. CODIFIED LAWS § 44-11-3 (2021).</p>	<p>Notice</p>	<p><i>“Notwithstanding the voluntary surrender or other loss of possession of the property on which such lien is claimed, the person entitled thereto may preserve such lien, if at any time within one hundred twenty days after such surrender or loss of possession he gives notice of his lien by proper filing thereof in the office of the register of deeds in accordance with §§ 44-2-3 to 44-2-9, inclusive, and such liens shall be valid against everyone except a purchaser or encumbrancer in good faith, without notice, and for value whose rights were acquired prior to the filing of such statement.”</i> S.D. CODIFIED LAWS § 44-11-3 (2021) (emphasis added).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Tennessee	TENN. CODE ANN. § 66-19-301 (2020).	Filing	<p>“A lien against any type of conveyance used in the transportation of persons or merchandise through the air, propelled by any sort of power, asserted pursuant to § 66-19-101, shall be filed with the register for the county in which the actions giving rise to the lien occurred, within ninety (90) days after the work is finished or repairs made or materials furnished.”</p> <p>TENN. CODE ANN. § 66-19-301(a) (2020).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
Texas	TEX. PROP. CODE ANN. §§ 70.301–303 (West 2019).	Recording	<p>“A holder of a lien under this subchapter may retain possession of the aircraft subject to the lien until the amount due is paid.” TEX. PROP. CODE ANN. § 70.302(a) (West 2019).</p> <p>“[I]f the holder of a lien under this subchapter relinquishes possession of the aircraft before the amount due is paid, the person may retake possession of the aircraft as provided by Section 9.609, Business &amp; Commerce Code. The holder of a lien under this subchapter may not retake possession of the aircraft from a bona fide purchaser for value who purchases the aircraft without knowledge of the lien before the date of the lien is recorded . . . .” TEX. PROP. CODE ANN. § 70.302(b)–(c) (West 2019).</p> <p>“A holder of a lien under this subchapter may record the lien on the aircraft by filing with the Federal Aviation Administration Aircraft Registry not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations . . . .” TEX. PROP. CODE ANN. § 70.303 (West 2019).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Utah</b>	UTAH CODE ANN. § 38-13-201 (LexisNexis 2021).	Notice	<p>“A repairman may retain possession of the aircraft until the amount due under Subsection (1) is paid, subject to the rights and interests of any secured party in the aircraft that has priority in accordance with Section 38-13-205 over the lien imposed under this chapter unless the secured party requested that the repairman make, alter, repair, or perform labor on the aircraft.” UTAH CODE ANN. § 38-13-201(2) (LexisNexis 2021).</p> <p>“For a lien to be valid, a repairman shall file the lien with the Federal Aviation Administration within [ninety] days of the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft.” UTAH CODE ANN. § 38-13-201(3)(a) (LexisNexis 2021).</p>

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Vermont</b>	VT. STAT. ANN. tit. 9, § 1951 (2020).	Possession	“A person who makes, alters . . . or repairs an article of personal property, at the request of the owner, shall have a lien thereon for his or her reasonable charges and may retain possession of the property until the same are paid.” VT. STAT. ANN. tit. 9, § 1951 (2020).
<b>Virginia</b>	VA. CODE ANN. § 43-34.1 (2020).	Filing	“The claim of lien shall be signed, under oath, by the claimant, his agent or attorney[.] The claim of lien shall also be filed within 120 days after completion of alterations or repair . . . with the State Corporation Commission . . . . The claim of lien shall also be filed within such 120-day period with the Aircraft Registration Branch of the Federal Aviation Administration.” VA. CODE ANN. § 43-34.1 (2020).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Washington</b>	WASH. REV. CODE ANN. § 60.08.020 (West 2021).	Filing Dispositive	“In order to make such lien effectual, the lien claimant shall, within ninety days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice . . . .” WASH. REV. CODE § 60.08.020 (2020).
<b>West Virginia</b>	W. VA. CODE § 38-11-3 (2020).	Possession	“A person who, <i>while in possession thereof</i> , makes, alters, repairs, stores, transports or in any way enhances the value of an article of personal property . . . shall have a lien upon such article . . . <i>while lawfully in the possession thereof</i> , for the charges agreed upon, or, if no charges be agreed upon, then for his just and reasonable charges for the work done . . . to the extent and in the manner provided for in section fourteen of this article, and may retain possession thereof until such charges are paid.” W. VA. CODE § 38-11-3 (2020) (emphasis added).



STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Wisconsin</b>	WIS. STAT. § 779.413(3) (2020).	Possession or Notice <i>and</i> Filing	“A lien under this section may be asserted by the retention of the aircraft or the aircraft engine, and if the lien is asserted by retention of the aircraft or aircraft engine, the lienor may not be required to surrender the aircraft or aircraft engine to the holder of a subordinate security interest or lien. If possession of the aircraft or aircraft engine is surrendered by the person claiming the lien, the person claiming the lien may do all of the following within 180 days after the repairs, storage, services, supplies, accessories, or contracts of indemnity are furnished: [ ] Provide written notice . . . giving an accurate account of the demands claimed to be due . . .” WIS. STAT. § 779.413(3) (2020).

STATE	AUTHORITY FOR LIEN	POSSESSION FOR PERFECTION?	HOW PERFECTED
<b>Wyoming</b>	WYO. STAT. ANN. § 29-7-102 (West 2020).	Possession (up to 6 months) or else filing <i>before</i> Releasing Possession	<p>“A lien claimant may retain possession of the property to which the lien pertains until paid for the labor, services, materials and feed which entitle the lien claimant to assert the lien. However, the right of possession terminates six (6) months after the date upon which the charges become due and payable unless the lien claimant has commenced proceedings to foreclose the lien . . . .” WYO. STAT. ANN. § 29-7-102(a) (West 2020).</p> <p>“If a lien claimant desires to continue a lien without retaining possession, he may <i>before voluntarily releasing possession file a lien statement</i> in the office of the county clerk of the county where the property is located . . . .” WYO. STAT. ANN. § 29-7-102(c) (West 2020).</p> <p>“If possession is terminated without the lien claimant’s consent, he may perfect the lien by filing a lien statement on or before thirty (30) days after possession is terminated.” WYO. STAT. ANN. § 29-7-102(d) (West 2020).</p>