

Risks to Aircraft Title When an Escrow Company Is Not Used in an Aircraft Sale Transaction

Abstract

Aircraft sale transactions involve complex legal, regulatory, and financial considerations. One of the most critical aspects of these transactions is the transfer of clear and marketable title. Escrow companies play a central role in mitigating risk by acting as neutral intermediaries that coordinate funds, documents, and regulatory filings. When parties elect to complete an aircraft sale without using an escrow company, they expose themselves to a range of potential title-related problems. This paper examines the principal issues that may arise with an aircraft title when an escrow company is not used, including ownership disputes, recording failures, undisclosed liens, fraud, regulatory noncompliance, and downstream impacts on financing, insurance, and resale.

1. Introduction

In aviation transactions, the concept of “title” extends beyond simple ownership. Aircraft title reflects legal ownership as recognized by applicable law and, in the United States, by the Federal Aviation Administration (FAA) Aircraft Registry. Unlike many consumer transactions, aircraft sales often involve large sums of money, multiple jurisdictions, prior security interests, and strict documentation requirements. Escrow companies specializing in aviation transactions exist to manage these complexities.

Despite this, some buyers and sellers choose to close transactions privately without escrow, often to reduce costs or expedite the process. While this approach may appear straightforward, it significantly increases the risk of title defects and legal exposure. Understanding these risks is essential for aircraft owners, buyers, lenders, and advisors.

2. The Role of an Escrow Company in Aircraft Transactions

Before examining the risks of not using escrow, it is useful to understand the typical functions an escrow company performs:

- Holding purchase funds until all closing conditions are satisfied
- Holding and reviewing executed conveyance documents
- Conducting or coordinating title searches
- Ensuring proper payoff and release of liens
- Recording bills of sale and security instruments with the FAA
- Confirming compliance with contractual closing instructions

When these functions are not centralized in a neutral escrow agent, responsibility shifts to the buyer and seller, increasing the likelihood of error or misconduct.

3. Failure to Properly Record the Transfer of Title

3.1 Unrecorded or Improperly Recorded Bills of Sale

One of the most common title issues arises when the bill of sale is not properly recorded with the FAA. Without escrow oversight, parties may:

- Fail to submit the bill of sale at all
- Submit incomplete or incorrectly executed documents
- Use an invalid or outdated form

An unrecorded bill of sale can result in the seller remaining the registered owner of record, even after payment has been made. This exposes the buyer to challenges in proving ownership and may allow third parties to assert competing claims.

3.2 Timing Gaps Between Payment and Recording

Without escrow, funds may be released to the seller before recording occurs. If recording is delayed or rejected, the buyer may have paid for an aircraft without having enforceable recorded title, creating a serious legal vulnerability.

4. Undisclosed or Unreleased Liens and Encumbrances

4.1 Incomplete Title Searches

Escrow companies typically coordinate comprehensive title searches. In a non-escrow transaction, buyers may rely on incomplete or informal searches, missing:

- Prior security agreements
- Mechanics' liens
- Tax liens
- Judgment liens

A buyer who acquires an aircraft subject to undisclosed liens may become responsible for satisfying those obligations or risk repossession by creditors.

4.2 Failure to Obtain Lien Releases

Even when liens are known, failing to properly document and record lien releases can cloud title. Creditors may remain of record at the FAA, making the title unmarketable and complicating future financing or resale.

5. Risk of Fraud and Misrepresentation

5.1 Seller Does Not Have Authority to Convey Title

Without escrow verification, a buyer may unknowingly transact with a party who lacks authority to sell the aircraft, such as:

- A co-owner acting without required consent
- A lessee or operator posing as the owner
- A seller subject to bankruptcy or court restrictions

In such cases, the buyer may not acquire valid title, even if payment is made in full.

5.2 Double Sales or Conflicting Claims

In rare but severe cases, a dishonest seller may attempt to sell the same aircraft to multiple buyers. Escrow coordination and recording discipline reduce this risk; private closings increase it.

6. Regulatory and Compliance Issues

6.1 FAA Registry Rejection or Delays

The FAA Aircraft Registry has strict requirements for document format, signatures, and supporting information. Without escrow expertise, documents may be rejected or delayed, leaving ownership status uncertain.

6.2 International and Cross-Border Complications

In cross-border transactions, failure to properly manage deregistration, export certificates, or foreign registry requirements can result in conflicting registrations and unclear title status.

7. Impact on Financing and Insurance

7.1 Lender Refusal or Default Risk

Lenders require clear, perfected title as a condition of financing. Title defects caused by non-escrow closings may:

- Prevent loan funding
- Trigger defaults under existing loan agreements
- Require costly corrective filings

7.2 Insurance Coverage Issues

Insurers may deny or limit coverage if ownership is unclear or inaccurately represented. In the event of a loss, unresolved title issues can lead to coverage disputes and delayed claims payments.

8. Downstream Effects on Resale and Marketability

A clouded title can significantly reduce an aircraft's marketability. Future buyers, escrow agents, and lenders may require corrective actions such as:

- Quiet title actions
- Corrective bills of sale
- Court orders or affidavits

These processes can be expensive, time-consuming, and uncertain.

9. Dispute Resolution and Litigation Risks

When transactions are conducted without escrow, disputes are more likely to escalate into litigation. Common disputes include:

- Claims of nonpayment or overpayment
- Allegations of breach of contract
- Competing ownership claims

Litigation involving aircraft title is often complex and costly, frequently exceeding the cost savings of avoiding escrow.

10. Conclusion

While it is legally possible to complete an aircraft sale without using an escrow company, doing so materially increases the risk of title defects and related legal problems. Escrow companies provide a structured framework that protects both buyers and sellers by ensuring proper handling of funds, documents, and regulatory filings. Failure to use escrow can result in unrecorded ownership transfers, undisclosed liens, fraud exposure, regulatory noncompliance, and long-term impacts on financing, insurance, and resale. For most aircraft transactions, the use of a qualified escrow company is a prudent risk management decision rather than an optional convenience.