

## Managing airport property: leases, operating agreements, and minimum standards

*Editor's note: This is the second in a two-part series that discusses the elements of an airport's policy handbook. This issue of Briefings covers the guidelines for developing and leasing airport property and establishing minimum standards.*

*Much of the information in the following article draws on FAA Policy and Procedures Memorandum 5190.6 and FAA Advisory Circular 150/5190-5. See the resources section at the end of the article for more information on these and other related documents.*

### Leases

"The operation and development of airports generally involves the lease of dedicated airport property, the granting of access to the airport from off airport sites, and the sale of dedicated airport property for both aviation and non-aviation activities."

—FAA Policy and Procedures Memorandum 5190.6

Airport owners must control the use of their airport's property and facilities. For example, in exchange for federal development assistance, the owners or operators of public-use airports need to meet certain federal obligations. Airport lease agreements between an owner and potential users of an airport's property and facilities provide a way to exercise control, as well as a means of documenting rates and charges. In addition, leases can ensure that aviation businesses operating at an airport do so in a fair, equal, and non-discriminatory manner.

A lease is a contract for the use or occupation of property for a given period in exchange for rent. Since a lease is usually used for buildings or real estate, operating agreements were developed to manage services such as fixed base operators (FBOs) and airlines. Because the layout of each of the documents is similar, the terms *leases* and *operating agreements* are

used synonymously in this article.

Typical airport services for which leases and operating agreements are used include FBOs, airport use agreements with airlines, concessions, airport facilities, hangar/tie-down rates, agriculture, vending services, and off airport/navigational aids

Airport owners should draft leases that take into consideration the type of airport they are operating. Some common categories to consider when drafting a lease or operating agreement include:

- Property description
- Rent
- Lessee rights
- Hangar construction
- Non-exclusive use
- Insurance
- Maintenance of buildings
- Right to inspect
- Taxes
- Signs
- Title
- Snow removal
- Lease transfer
- Subordination clause
- Arbitration

All leases and operating agreements should be made for aviation activities only. Hangar leases should limit the use of the storage hangar to aeronautical activities and their storage; items such as cars, boats, and motor homes should not be stored in an airport hangar.

Additional rights should be included when writing leases and operating agreements. A complete list of these can be found in FAA Policy and Procedure Memorandum 5190.6. Following are a few excerpts:

- The non-exclusive right to use ... all public airport facilities and improvements of a public nature ... connected with, or appurtenant to the airport, including but not limited to landing, taxiing, parking areas, and other common-use facilities.
- The right to ingress and egress to and from the leased area or owned property.

- The right to approve or deny any lease or sublease of the premises, on the airport or owned in the airpark.
- The period of the lease and whether options for renewal are to be granted.
- A method for settling disputes as to whether breach has occurred.

Leases need to be updated every three to five years, due to price and service changes that can occur in that time period. The FAA does not permit long-term agreements (longer than five years) for "exclusive complementary aeronautical



activity" with either Disadvantaged Business Enterprise (DBE) or non-DBE firms unless approved by the responsible FAA regional civil rights officer. Leases with terms of more than five years should include provisions for periodically adjusting their rates. In addition, it is important to keep in mind that "no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities" (FAA memo 5190.6).

### Minimum Standards

Most airport personnel, whether at a large or small airport, will set minimum standards to protect and safeguard the public interest, which includes airport users.

Minimum standards are defined as the minimum requirements to be met as a condition for conducting aeronautical

activity at an airport. Minimum standards can “eliminate charges of discrimination, and encourage the orderly development of the airport’s commercial aeronautical services” (Draft, “Minimum Standards for Airport Aeronautical Services in Minnesota”). Among other reasons, airports adopt minimum standards to:

- promote safety in all airport activities
- maintain a higher quality of service for airport users
- protect airport users from unlicensed and unauthorized products and services
- enhance the availability of adequate services for all airport users
- promote the orderly development of airport land

Several issues should be addressed when drafting minimum standards for an airport. Differences among airports make it difficult to produce sample minimum standards that would apply to every airport. Because of that, the FAA does not endorse what it calls “fill-in-the-blank” minimum standards “because of the high probability that many airport sponsors would adopt the document without modifying it to the needs of their particular airport” (FAA AC 150/5190-5). Instead, the FAA and the Mn/DOT Office of Aeronautics provide airport personnel with guiding documents. In addition, Mn/DOT Aeronautics recommends that an airport owner receive comments from its office and also from the airport’s current lessees before adopting minimum standards.

The FAA suggests that airport personnel develop generic minimum standards before a specific business requests to operate on the airfield. From the generic standards, airport personnel can revise the information to pertain to that specific operation.

Communities can choose the best time to execute their minimum standards. According to the FAA, an airport operator can raise or lower minimum standards when new tenants

arrive or existing tenants leave, but revising standards too frequently might make it appear that certain operators are getting preferential treatment. Thus, the



FAA advises airport sponsors to exercise restraint when considering changing already-published standards. Changes that are made might be better accepted if the airport operator “demonstrat[es] to the business operators that the sole purpose for the change is to improve the quality of service to the public” (FAA AC 150/5190-5).

When deciding what to include in an airport’s minimum standards, you may want to consider and discuss whether a potential business operator will:

- Arrange suitable spaces, structures, or facilities
- Provide adequate fixtures and equipment
- Maintain adequate staff (including skills, licenses, and certificates)
- Operate during minimum hours
- Conform to safety, health, and sanitary codes
- Provide evidence of financial stability
- Meet indemnity and insurance minimums

The FAA also offers a series of questions to specifically address the various types of services provided on the airfield, such as:

- Fixed base operators
- Application and qualifications
- Action on application
- Aircraft sales
- Aircraft repair
- Aircraft lease and rental
- Flight training
- Aircraft fuel and oil
- Charter and air taxi
- Aircraft storage
- Aerial applicators
- Commercial skydiving

- Air ambulance
- Flying clubs
- Ultralights
- Operators subleasing from another
- Specialized commercial flying services
- Use of hangars

Whether large or small, every airport should have minimum standards on file. These standards are set for the safety of the public, and public safety is the number one concern for all airport personnel.

### Resources

The FAA recognizes that airport owners may need guidance in developing leases, use agreements, and land releases that meet their federal obligations. The best guide for writing leases and operating agreements is FAA Policy and Procedures Memorandum 5190.6, which can be obtained online at [http://www2.faa.gov/arp/agl/pub\\_ppms/5190-6.pdf](http://www2.faa.gov/arp/agl/pub_ppms/5190-6.pdf) or by contacting the FAA Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Sample leases are available from:

- Mn/DOT Office of Aeronautics, Regional Engineers, 800-657-3922
- Wis/DOT Bureau of Aeronautics: <http://www.dot.wisconsin.gov/travel/air/docs/apt-hgr-lease.pdf>
- Aircraft Owners and Pilots Association (AOPA) web site: [www.aopa.org](http://www.aopa.org)

The best starting point for setting minimum standards is FAA Advisory Circular 150/5190-5 “Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities.” Advisory Circulars can be found at <http://www2.faa.gov/arp/ACs/5190-5a1.pdf> or by mailing a request to the Federal Aviation Administration, 800 Independence Avenue S., Washington, D.C., 20591.

Another helpful resource is the Mn/DOT Office of Aeronautics Draft, “Minimum Standards for Airport Aeronautical

Services in Minnesota.” This document can be obtained from the Mn/DOT Office of Aeronautics, 222 East Plato Blvd., St. Paul, MN 55107-1618; 800-657-3922. ✈

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