

# Reversion Provision

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Reversion Provision:

*A lease provision that provides for the ownership of a tenant-constructed improvement to revert to the Boca Raton Airport Authority (“the Authority”) at some time during or after the lease period.*

Two Questions Have Been Raised:

- Is a Reversion Provision a Taking?
- Is a Reversion Provision Ethical/Appropriate Behavior by the Authority?



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Question One - Is a Reversion Provision a Taking?

Definition of a “Taking”:

When a governmental entity acquires private property, either through condemnation procedures, through physical occupation of the private property without the consent of the owner, or through the enactment or enforcement of regulation that deprives the owner of his/her use and enjoyment of the property, or substantially all of the property’s economic value.

*See generally Teitelbaum v. South Florida Water Management Dist., 176 So. 3d 998, 1002-03 (Fla. 3d DCA 2015).*

***Answer: No, takings law does not apply to the adoption or implementation of consensual contract provisions by a government acting in its proprietary capacity.***



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**Presentation on Reversion Provisions**  
**November 15, 2017**

The Authority's execution of a lease of airport property is proprietary in nature. *Santa Monica Airport Ass'n FAD* (FAA Docket No. 16-99-21).

Example of the Difference Between Proprietary and Regulatory Behavior

*DeFalco v. City of Hallandale Beach*, 18 So.3d 1126 (Fla. 4<sup>th</sup> DCA 2009).

City evicted residents of a mobile home park owned by the City. Residents claimed that state statute required the government to determine that adequate alternative facilities were available for the residents. The Court said that the state statutory provision did not apply when the City was acting in its proprietary capacity as land-owner, rather than in its regulatory capacity as a planning body.



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Question Two - Is a Reversion Claim Ethical/Appropriate?

BRAA has the authority to negotiate leases for property at the Airport, including the buildings and hangars thereon, and to grant concessions upon such terms and conditions as it shall deem proper.

Sec.(5)(1), Ch. 2004-468, Laws of Florida.



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Question Two - Is a Reversion Claim Ethical/Appropriate?

The Authority is also subject to FAA Grant Assurances. There are grant assurance limitations to ownership and leases on property at an airport.

- Grant Assurance 5, Preserving Rights and Powers, prohibits sponsor from taking any action that may deprive it of the right and power to direct and control airport development.
- Accordingly, the FAA counsels that “providing developers with an option to acquire a fee interest in federally obligated airport property is not acceptable to the FAA.”

FAA Guidance Handbook Page 6-2 (2017).



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FAA Guidance Limits Terms of a Lease Based on Concerns about Preserving Title and Authority:

- FAA states in its Grant Assurance Compliance Handbook:
  - Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant's initial financing and provide a reasonable return for the tenant's development of major facilities.
  - Leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA offices should not consent to proposed lease terms that exceed 50 years.

FAA Guidance Handbook Page 12-3 (2017).



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FAA Guidance Indicates that FAA Offices Should Look to Make Sure that Sponsors Retain Ownership Interests:

- FAA states in its Grant Assurance Compliance Handbook:
  - In reviewing [leases], the FAA office should concentrate on determining the nature of the rights granted and whether granting those rights may be in violation of the sponsor's federal obligations:

...

(5) Title. Does the title to tenant facilities vest in the sponsor at the expiration of the lease? Do any lease extension or option provisions provide for added facility rent once the title of facilities vests in the sponsor?

FAA Guidance Handbook Page 12-3 (2017).



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Grant Assurance 38. Hangar Construction - addresses the question even more directly, saying:

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a a long term lease that is subject to such terms and condition on the hangar as the airport owner or operator may impose.

Thus, the consideration for the aircraft owner for building the hangar is the right to negotiate a "long term lease" in order to recoup the investment costs. *De Vries et. al v. City of St. Clair, Mo.*, 2014 WL 12738001 \*1, \*33 (May 20, 2014).



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Thus, FAA expects that title to improvements constructed on Airport property will vest in the Sponsor at the end of the lease and has determined that a 30 year lease term generally compensates an investing tenant for the development of the property.

BRAA staff have incorporated FAA Guidance into lease term provision as a best practice.

Answer: Reversion Clauses are ethical and appropriate.



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Reported cases involving reversion clauses:

- *Spa Rental, LLC v. Somerset F Pulaski County Airport Board*, 2015 WL 5308076 \*1, \*2 (Sep. 1, 2015).
- *Appalachian Star Ventures, Inc.*, 1997 WL 1120735 FAA Docket No. 16-96-02.
- *The Aviation Center, Inc. v. City of Ann Arbor*, 2005 WL 3722716 \*1, \*21 FAA Docket 16-05-01(Dec. 16, 2005).

Airports routinely seek to initiate long-term leases to provide tenants with enough time to recover invested capital on the leasehold. Upon expiration of the lease, all facilities and improvements can become the property of the airport sponsor. [See, *Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, (8/30/01); upheld in *Wilson Air Center, LLC v FAA*, 372 F.3d 807(C.A. 6, June 23, 2004)]

