



PHILADELPHIA 2026

AIRPORTS COUNCIL INTERNATIONAL – NORTH AMERICA
ANNUAL CONFERENCE AND EXHIBITION
SEPTEMBER 14 – 17, 2026



Proprietor's Rights IRL

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The Law Behind Proprietor's Rights

City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973)

- Footnote 14 serves as the foundation for the “proprietor’s exception” to federal aviation preemption:

The letter from the Secretary of Transportation also expressed the view that "the proposed legislation will not affect the rights of a State or local public agency, as the proprietor of an airport, from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport. Airport owners, *acting as proprietors*, can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.”

- Supreme Court “[did] not consider . . . what limits, if any, apply to a municipality as a proprietor.”



Airline Deregulation Act (1978)

- Section 41713(B)(1) of Title 49 preempts a government from enacting or enforcing a law, regulation, or other restriction “related to a price, route, or service of an air carrier,” except as provided in that subsection.
- Section 41713(B)(3) expressly allows a government to “carry[] out its proprietary powers and rights.”



Grant Assurance 5

- **Preserving Rights and Powers.**
 - a) It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.



Grant Assurance 5

- Grant Assurance 5 is also connected to an integrated cluster including Grant Assurances 19, 22, 24 and 38.
- Each of these Grant Assurances requires the airport operator to retain certain control of the airport.



FAA Compliance Manual, Order 5190.6C

- Chapter 4 Federal Grant Obligations and Responsibilities at p. 4-7
- Chapter 6 Rights and Powers and Good Title at pp. 6-1.6-2
- Chapter 12 Review of Aeronautical Lease Agreements at pp. 12-4, 12-9

Delux Public Charter (JSX Air)
v.
County of Westchester (2025)

2025 U.S. App. LEXIS 21853 (2d Cir. Aug. 26, 2025)

Southwest Airlines Co.
v.
City of San Antonio (2026)

797 F. Supp. 3d 709 (W.D. Tex. 2025)



Q & A

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