

UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

at its

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

Prefatory Note

Background

Record ownership of vessels in the United States is governed by a composite of state and federal law. Some large commercial vessels – those that measure at least five net tons, owned by a U.S. entity, and used in coastwise trade or fisheries – must be documented with the United States Coast Guard National Vessel Documentation Center. *See* 46 U.S.C. §§ 12102, 12103. Some other vessels – those that measure at least five net tons, owned by a U.S. entity, and used solely for recreational purposes – may but need not be documented with the U.S. Coast Guard.

Documentation of a vessel with the Coast Guard is a way of identifying the owners of the vessel and is often required by marine lenders as a condition to financing. Only a documented vessel can be subject to a “preferred mortgage.” 46 U.S.C. §§ 31301(6), 31321, 31322. A preferred mortgage is a perfected lien, *see* 46 U.S.C. § 31321(a)(1), that has priority over certain (non-preferred) maritime liens and all non-maritime liens in an *in rem* admiralty foreclosure. *See* 46 U.S.C. §§ 31301(5), 31325, 31326. Federal law prohibits states from issuing a certificate of title for a documented vessel and requires that any certificate of title previously issued for a documented vessel be surrendered. 46 U.S.C. § 12106.

Fewer than one percent of vessels in the United States are documented; most of the remainder are pleasure boats operated as undocumented vessels. Federal law requires that most undocumented vessels equipped with propulsion machinery be issued a number by the state in which the vessel is principally operated. 46 U.S.C. § 12301. The numbering regulations are designed to help improve boating safety and to deter, discover, and impede theft. In order to share in certain federal funds, all fifty states and the territories have established boat numbering systems that are approved as complying with the federal requirements. *See* 33 C.F.R. Part 3.

Although all the states now comply with the federal regulations on the numbering of vessels, there is far less uniformity with respect to state certificate of title laws for undocumented vessels. Thirty-three states and the District of Columbia require certain undocumented vessels to be covered by a certificate of title. Sixteen states have no certificate of title law for vessels. And one state, Mississippi, gives the owners of undocumented vessels the option of getting a certificate of title. Even among the states that require a certificate of title for undocumented vessels, the variation in the scope of those laws is substantial. The laws vary with respect to the size and type of vessels covered, the location or use of the vessel subject to the law, and many other details. Moreover, many of the state titling laws do not clearly delineate how compliance or failure to comply affects the rights of the owner and others claiming an interest in the vessel. As a result, the principal objectives of a titling law – (i) to deter and impede theft; and (ii) to facilitate ownership transfers and financing – are undermined.

Congress enacted the Vessel Identification System (VIS) in 1988 to create a central database of information, maintained by the Coast Guard, about vessels and their owners. The database is designed to be used by the public for law enforcement and other purposes relating to

the ownership of vessels. 46 U.S.C. § 12501. States are not required to make their boat numbering and titling information available to VIS, but they are encouraged to do so. This encouragement comes in a grant of preferred mortgage status to a security interest in a vessel perfected under a state titling law that satisfies applicable federal requirements and is approved by the Coast Guard. 46 U.S.C. § 31322(d)(1). Currently, 31 states and territories are participating in the information exchange aspects of VIS. However, no state's certificate of title law for undocumented vessels has received the requisite Coast Guard approval. One of the main purposes of this act is to provide states with a model that the Coast Guard will approve.

It is worth noting that one of the purposes of VIS is to facilitate commerce in recreational vessels by permitting public access to basic information about vessels numbered and titled under state law, as well as about documented vessels. However, while transactional information about documented vessels was and remains publicly available, transactional information about state-titled vessels in the VIS database is generally not available to the public. As a result, VIS has not resolved difficulties occasionally experienced by vessel buyers and lenders in transactions involving vessels that have moved into or out of federal documentation or from one state to another. This act seeks to remedy this problem by providing uniform rules on what information states will make available to those seeking to determine the ownership of a vessel.

Purposes of the Act

This act is modeled somewhat on the Uniform Certificate of Title Act, but draws heavily from other sources as well. Chief among these other sources are: (i) Coast Guard regulations relating to the approval of state certificate of title laws for the purposes of the VIS; and (ii) a Model Act for Vessel Titling, proposed by the Vessel Identification Registration and Titling Committee of the National Association of State Boating Law Administrators.

The principal objectives of the act are to: (i) qualify as a state titling law that the Coast Guard will approve; (ii) facilitate transfers of ownership of a vessel; (iii) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (iv) accommodate existing financing arrangements for vessels; (v) work seamlessly with the Uniform Commercial Code, most notably Articles 2 and 9; (vi) manage, to the extent possible, the complications that can arise from a vessel's transition in or out of federal documentation; (vii) provide clear rules on the consequences of compliance or noncompliance; (viii) impose minimal or no new burdens or costs on state titling offices; and (ix) protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

The act's branding rules may be its greatest innovation. Few states currently brand the title of vessels, with the result that vessels with hidden hull damage can be resold after cosmetic repairs without disclosure of the damage. This problem can be quite significant after a major hurricane or other widespread casualty. By establishing a model vessel brand, this act provides a mechanism for consumers, insurers, and lenders to receive valuable information, which in turn can prompt further investigation, help ensure that necessary repairs are made, and aid in boating safety. The act creates two processes for branding titles, one for owners of record and a supervening

process for insurers. To maintain simplicity, however, the two processes each yield the same, single brand: “hull-damaged.” The act encourages compliance with its branding rules by imposing an administrative penalty on owners and insurers who fail to comply.

UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Certificate of Title for Vessels Act.

SECTION 2. DEFINITIONS.

(a) In this [act]:

(1) “Barge” means a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.

(2) “Builder’s certificate” means a certificate of the facts of build of a vessel described in 46 C.F.R. Section 67.99[, as amended].

(3) “Buyer” means a person that buys or contracts to buy a vessel.

(4) “Cancel”, with respect to a certificate of title, means to make the certificate ineffective.

(5) “Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a manufacturer’s certificate or statement of origin and an importer’s certificate or statement of origin. The term does not include a builder’s certificate.

(6) “Certificate of title” means a record, created by the office under this [act] or by a governmental agency of another jurisdiction under the law of that jurisdiction, that is designated as a certificate of title by the office or agency and is evidence of ownership of a vessel.

(7) “Dealer” means a person, including a manufacturer, in the business of selling vessels.

(8) “Documented vessel” means a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. Section 12105[, as amended]. The term does not

include a foreign-documented vessel.

(9) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) “Electronic certificate of title” means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.

(11) “Foreign-documented vessel” means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States which identifies each person that has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.

(12) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(13) “Hull damaged” means compromised with respect to the integrity of a vessel’s hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel’s hull.

(14) “Hull identification number” means the alphanumeric designation assigned to a vessel pursuant to 33 C.F.R. Part 181[, as amended].

(15) “Lien creditor”, with respect to a vessel, means:

(A) a creditor that has acquired a lien on the vessel by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(16) “Office” means [insert name of the department or agency that creates certificates of title in this state].

(17) “Owner” means a person that has legal title to a vessel.

(18) “Owner of record” means the owner indicated in the files of the office or, if the files indicate more than one owner, the one first indicated.

(19) “Person” means an individual, corporation, business trust, estate, trust, statutory trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) “Purchase” means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

(21) “Purchaser” means a person that takes by purchase.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Secured party”, with respect to a vessel, means a person:

(A) in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) that is a consignor under [UCC Article 9]; or

(C) that holds a security interest arising under [UCC Section 2-401, 2-505, 2-711(3), or 2A-508(5)].

(24) “Secured party of record” means the secured party whose name is indicated as the name of the secured party in the files of the office or, if the files indicate more than one secured party, the one first indicated.

(25) “Security interest” means an interest in a vessel which secures payment or performance of an obligation if the interest is created by contract or arises under [UCC Section 2-401, 2-505, 2-711(3), or 2A-508(5)]. The term includes any interest of a consignor in a vessel in a transaction that is subject to [UCC Article 9]. The term does not include the special property interest of a buyer of a vessel on identification of that vessel to a contract for sale under [UCC Section 2-401], but a buyer also may acquire a security interest by complying with [UCC Article 9]. Except as otherwise provided in [UCC Section 2-505], the right of a seller or lessor of a vessel under [UCC Article 2 or 2A] to retain or acquire possession of the vessel is not a security interest, but a seller or lessor also may acquire a security interest by complying with [UCC Article 9]. The retention or reservation of title by a seller of a vessel notwithstanding shipment or delivery to the buyer under [UCC Section 2-401] is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined by [UCC Section 1-203].

(26) “Sign” means, with present intent to authenticate or adopt a record, to:

(A) make or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) “State of principal use” means the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year.

(29) “Title brand” means a designation of previous damage, use, or condition that must be indicated on a certificate of title.

(30) “Transfer of ownership” means a voluntary or involuntary conveyance of an interest in a vessel.

(31) “Vessel” means any watercraft used or capable of being used as a means of transportation on water, except:

(A) a seaplane;

(B) an amphibious vehicle for which a certificate of title is issued pursuant to [state motor vehicle certificate of title act] or a similar statute of another state;

(C) watercraft less than 16 feet in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower;

(D) watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;

(E) a stationary floating structure that:

(i) does not have and is not designed to have a mode of propulsion of its own;

(ii) is dependent for utilities upon a continuous utility hookup to a source originating on shore; and

(iii) has a permanent, continuous hookup to a shoreside sewage system;

(F) watercraft owned by the United States, a state, or a foreign government or a political subdivision of any of them; and

(G) watercraft used solely as a lifeboat on another watercraft.

(32) “Vessel number” means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. Section 12301[, as amended].

(33) “Written certificate of title” means a certificate of title consisting of information inscribed on a tangible medium.

(b) The following definitions and terms also apply to this [act]:

- (1) “Agreement”, [UCC Section 1-201(b)(3)].
- (2) “Buyer in ordinary course of business”, [UCC Section 1-201(b)(9)].
- (3) “Conspicuous”, [UCC Section 1-201(b)(10)].
- (4) “Consumer goods”, [UCC Section 9-102(a)(23)].
- (5) “Debtor”, [UCC Section 9-102(a)(28)].
- (6) “Knowledge”, [UCC Section 1-202].
- (7) “Lease”, [UCC Section 2A-103(1)(j)].
- (8) “Lessor”, [UCC Section 2A-103(1)(p)].
- (9) “Notice”, [UCC Section 1-202].
- (10) “Representative”, [UCC Section 1-201(b)(33)].
- (11) “Sale”, [UCC Section 2-106(1)].
- (12) “Security agreement”, [UCC Section 9-102(a)(73)].
- (13) “Seller”, [UCC Section 2-103(1)(o)].
- (14) “Send”, [UCC Section 1-201(b)(36)].
- (15) “Value”, [UCC Section 1-204].

(c) The definitions in subsections (a) and (b) do not apply to any state or federal law governing licensing, numbering, or registration if the same term is used in that law.

Legislative Note: *In states in which the constitution does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted from paragraphs (a)(2), (8), (14), and (32).*

Comment

1. The definition for “barge” in paragraph (a)(1) facilitates an exemption from this act. *See* Section 6(b)(3). Under federal law, barges (non-powered vessels) of 100 tons or less are not required to be documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301. *See also* 33 C.F.R. §§ 173.11, 173.13, 174.11. More important, many existing barges are quite old and records of prior transfers may be difficult to locate or resurrect. For this reason, an owner of a barge is not required to obtain a certificate of title for it.

A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this might include such things as sail boats and row boats, which are intended to be covered by this act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted from compliance with this act under Section 6(b)(3).

2. The definition of “certificate of origin” in paragraph (a)(5) is derived from 33 C.F.R. § 187.7 but does not include a builder’s certificate. The reason for excluding builder’s certificates is that many vessels are covered by both a certificate of origin and a builder’s certificate, and the purposes of this act could be frustrated if the owner could use both documents to title the vessel in two different jurisdictions. If, however, a single document qualifies as both a builder’s certificate and a manufacturer’s certificate or statement of origin, that rationale does not apply and thus that document does qualify as a certificate of origin.

3. The definition of “dealer” in paragraph (a)(7) is more broad than the comparable definition in 33 C.F.R. § 187.7. That is because there should be no need for the dealer to be engaged in the business of buying vessels or to have an established place of business. A shipyard or other manufacturer can qualify as a dealer.

4. The definition of “hull damaged” in paragraph (a)(13) deals with the obligation of an owner or insurer to brand the title. *See* Section 10(a), (c). Paragraph (a)(13) does not exhaustively list the types of casualties that can compromise the integrity of a vessel’s hull; it merely describes some of the events that can do so. A qualifying casualty need not be an event of nature; vandalism and terrorism can compromise the integrity of a vessel’s hull. However, damage resulting from routine operation is not something that makes a vessel hull damaged. Similarly, “the sinking of a vessel in a manner that creates a significant risk that the integrity of the vessel’s hull has been compromised” is not something that occurs merely because the vessel is swamped during its normal operation. The distinction between “sinking” and “swamping” is a matter of buoyancy. A vessel sinks when it loses sufficient buoyancy to settle below the surface of the water. A vessel is swamped when it is filled with water but retains sufficient buoyancy to remain on or at the surface.

Once a vessel is hull damaged, it remains hull damaged for branding purposes even though it is repaired. Thus, for example, if a vessel is sunk in a manner that creates a significant risk that the integrity of the vessel's hull has been compromised, the vessel remains damaged even after it is raised and repaired. As a result, the brand "hull damaged" is indelible. A branded vessel remains branded forever. *See* Section 7 comment 4.

5. Paragraph (a)(16) defines "office" to be the office that creates certificates of title for vessels. The office need not be the same authority in the state that issues numbers for vessels pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.

6. Paragraph (a)(29) defines "title brand" to include any designation of damage, use, or physical condition that must by law be indicated in a certificate of title. This act provides for only one title brand: "hull damaged." *See* Sections 2(a)(13) and 10. However, other brands created under the law of another state may need to be noted on a certificate issued under this act. *See* Sections 7(b)(9), 9(a)(7).

7. Paragraph (a)(30) should be read in conjunction with paragraph(a)(17). Only an owner has an ownership interest, and thus an ownership interest refers to the legal title of an owner. An ownership interest does not include an equitable or beneficial ownership interest. It also does not include a security interest or the interest of a lessee in a lease. There can, however be multiple owners, and a transfer of the interests of one, some, or all of them would be a transfer of ownership.

8. The definition of "vessel" in paragraph (a)(31) differs slightly from the similar definition in 33 C.F.R. Section 187.7, due principally to the exclusions in subparagraphs (a)(31)(B) through (G). These exclusions are based on the determination that the purposes of this act would not be served by requiring a certificate of title for the types of watercraft described. This determination has no relevance to the state laws and regulations regarding vessel numbering, and pursuant to subsection (c), these exclusions do not apply to such laws and regulations. The exclusions should not present a problem under 33 C.F.R. Section 187.304 because that regulation permits states to exempt classes of watercraft from its certificate of title statute.

Subparagraphs (A) and (B) of paragraph (a)(31) serve the same purpose: they exclude from the scope of this act vessels that are covered by some other titling law, such as the Federal Aviation Act or a state's motor vehicle certificate of title act.

Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft for which a certificate of title is required. Several states do not title watercraft less than a designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft. And some do not title non-motor-powered watercraft of less than a designated length. This act follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in length are covered and all vessels propelled by an engine of at least 10 horsepower are covered. Only those vessels that are both less than 16 feet in length and not mechanically powered by an engine of at least 10 horsepower are excluded from coverage under this act by virtue of subparagraph (C). For this purpose, it does not matter whether the engine is inboard or outboard.

Subparagraph (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry attached to a cable because, even with the cable, the ferry does not operate on a manufactured course. Subparagraph (E) excludes non-powered floating residences that are fixed to the shore. Most such residences would fail to satisfy the initial language in the definition, in that they are not “used or capable of being used as a means of transportation on water.” Nevertheless, to avoid any confusion they are expressly excluded.

9. Vessels are defined to consist solely of certain types of watercraft. Accordingly, nothing in this act deals with fishing licenses or other intangible rights or property appurtenant to a vessel. *See* Section 15 comment 7.

10. The statement in subsection (c) that the definitions that follow “do not apply to any state or federal law governing licensing, numbering, or registration if the same term is used in that law” makes clear that the definitions used here do not apply to other laws relating to vessels. This is due, in part, to the fact that the definition of “vessel” in paragraph (a)(31) differs from the definition in 33 C.F.R. § 187.7, one of the regulations relating to the Vessel Identification System. Accordingly, the limiting language in subsection (c) is intended to make it clear that the definition of “vessel” in this Section applies solely to this act, and is not relevant to a state’s participation in the VIS.

SECTION 3. APPLICABILITY. Subject to Section 28, this [act] applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before [the effective date of this [act]].

SECTION 4. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY. Unless displaced by a provision of this [act], the principles of law and equity supplement its provisions.

Comment

This section is consistent with UCC Section 1-103(b). In addition, like the UCC, this act should be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing certificates of title;
- (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) to make uniform the law among the various jurisdictions.

This act should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in

question, as well as with the act as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

SECTION 5. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF TITLE.

(a) The local law of the jurisdiction under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the jurisdiction and the vessel or its owner.

(b) A vessel becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the office in accordance with this [act] or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

Comment

Source: UCC Section 9-303.

1. This section provides which state's law governs a certificate of title. It is the law of the jurisdiction that created the certificate of title, from the moment the application is delivered to the titling office until such time as the vessel becomes covered by another certificate, which would typically occur when an application is delivered to the titling office of a different state or the vessel becomes a documented vessel.

2. There is no conflict between this section and Section 6, which requires the owner of a vessel to apply for a certificate of title in the state of principal use. Section 6 imposes a requirement on the owner. This section provides which state's law governs a certificate.

Example 1: Owner has a vessel for which this state is the state of principal use. Owner applies for and receives a certificate of title for the vessel from the titling office of another state. Owner has failed to comply with Section 6. Nevertheless, the law of the issuing state governs all issues relating to the certificate of title.

3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a security interest in non-inventory collateral covered by a certificate of title statute is through

compliance with the certificate of title act. *See* UCC Section 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9's choice of law rules. Under those rules, the law of the jurisdiction which created the certificate (or in which an application had been filed) is the law that governs, even if neither the debtor nor the goods are located there. *See* UCC Section 9-303. That law continues to control even if the debtor or the goods move, until the certificate expires by its own terms or a new certificate of title is applied for in a different state. *Id.*

These rules should work well with this act, which provides that the governing law is the law of the jurisdiction of principal use.

Example 2: Owner, who is not a dealer and who has granted a security interest in a vessel, applies in State A for a certificate of title for the vessel. Upon delivering that application to the titling office, the law of State A governs perfection and the effect of perfection, regardless of whether the debtor is located in State A. If the application includes the required information about the existing security interest, the security interest will be perfected.

Example 3: Same facts as Example 2 but State B later becomes the state of principal use. The law of State B requires the debtor to apply for a certificate of title from State B. If the debtor does not do so, then the law of State A will continue to govern the perfection of the security interest. As long as the law of State A does not invalidate its certificate of title when the principal use of the vessel changed to State B, the security interest will remain perfected.

4. Nothing in this section defers to the law of a foreign country. Thus, if a vessel titled in this state becomes a foreign-documented vessel, the law of this state continues to govern. This is true even though the office is required to and does cancel the certificate of title. *See* Section 8 comment 2.

Example 4: Owner, who is not a dealer and who has granted a security interest in a vessel, applies in State A for a certificate of title for the vessel. The application includes the required information about the existing security interest, with the result that the security interest thereby becomes perfected. The vessel subsequently becomes a foreign-documented vessel. The law of State A continues to govern, even if the office cancels the certificate of title. As a result, the security interest remains perfected.

SECTION 6. CERTIFICATE OF TITLE REQUIRED.

(a) Except as otherwise provided in subsections (b) and (c), the owner of a vessel for which this state is the state of principal use shall deliver to the office an application for a certificate of title for the vessel, with the applicable fee, not later than 20 days after the later of:

- (1) the date of a transfer of ownership; or
- (2) the date this state becomes the state of principal use.

(b) An application for a certificate of title is not required for:

- (1) a documented vessel;
- (2) a foreign-documented vessel;
- (3) a barge;
- (4) a vessel before delivery if the vessel is under construction or completed

pursuant to contract; or

- (5) a vessel held by a dealer for sale or lease.

(c) The office may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to the requirements of 46 U.S.C. Section 12301[, as amended,] unless the office has created a certificate of title for the vessel or an application for a certificate for the vessel and the applicable fee have been delivered to the office.

***Legislative Note:** The reference in subsection (c) to 46 U.S.C. Section 12301, “as amended” is intended to cover any future amendments to that provision that Congress may enact. That language appears in brackets because in some states this may be an unconstitutional delegation of state legislative power. Those states should not enact the bracketed language.*

This act deals only with titling; it does not cover registration, licensing, or numbering. States may wish to consider amending their registration, licensing, and numbering statutes, to condition registration, licensing, and numbering on compliance with Section 6 of this act.]

Comment

Paragraph (b)(3) provides that no application for a certificate of title is required for barges or for vessels under construction. This is because many old barges are not federally documented and the records necessary to title them may be unavailable or costly to obtain. *See* Section 2 comment 1. Accordingly, if no application for a certificate of title for such a vessel has been delivered to the office, the perfection of a security interest in the vessel is governed by UCC Article 9, not by this act. However, if an owner does apply for a certificate of title for the vessel, perfection must be through compliance with this act. *See* Section 15 comment 1.

Paragraph (b)(4) reflects the dual judgments that it is unnecessary for a certificate of title to be issued for a vessel under construction, even if the vessel is in the water for testing, and that requiring a certificate of title for such a vessel would undermine the efficacy of common financing arrangements. *See also* Section 15(g) (regarding perfection of a security interest in a vessel

described in paragraph (b)(3) or (4)). Because Paragraph (b)(5) exempts dealers from having to apply for a certificate of title, paragraph (b)(4) is most relevant when the owner of the vessel is the buyer for whom the vessel is being constructed.

Paragraph (b)(5) provides that no application for a certificate of title is required for a vessel held by a dealer for sale or lease. This language, which is found in many certificate of title statutes and which is consistent with UCC Section 9-311(d), covers a vessel that a dealer is holding for sale or lease, but does not cover a vessel that the dealer is no longer holding because it is actually leased. Thus, a vessel that is the subject of a lease, whether a long-term transaction that may resemble a sale or a short-term charter, must be titled. In contrast, Section 15(g)(1) excludes from the perfection requirements of this act not only those vessels held by a dealer for sale or lease, but also vessels actually leased by a dealer in the business of selling vessels.

SECTION 7. APPLICATION FOR CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Sections 10, 15, 19, 20, 21, and 22, only an owner may apply for a certificate of title.

(b) An application for a certificate of title must be signed by the applicant and contain:

(1) the applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;

(2) the name and mailing address of each other owner of the vessel;

(3) the social security number or taxpayer identification number of each owner;

(4) the hull identification number for the vessel or, if none, an application for the issuance of a hull identification number for the vessel;

(5) the vessel number for the vessel or, if none issued by the office, an application for a vessel number;

(6) a description of the vessel as required by the office, which must include:

(A) the official number for the vessel, if any, assigned by the United States Coast Guard;

(B) the name of the manufacturer, builder, or maker;

(C) the model year or the year in which the manufacture or build of the vessel was completed;

(D) the overall length of the vessel;

(E) the vessel type;

(F) the hull material;

(G) the propulsion type;

(H) the engine drive type, if any; and

(I) the fuel type, if any;

(7) an indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;

(8) a statement that the vessel is not a documented vessel or a foreign-documented vessel;

(9) any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;

(10) if the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;

(11) if the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price, if any, and the date of the transfer; and

(12) if the vessel previously was registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.

(c) In addition to the information required by subsection (b), an application for a

certificate of title may contain an electronic communication address of the owner, transferor, or secured party.

(d) Except as otherwise provided in Section 19, 20, 21, or 22, an application for a certificate of title must be accompanied by:

(1) a certificate of title signed by the owner shown on the certificate and which:

(A) identifies the applicant as the owner of the vessel; or

(B) is accompanied by a record that identifies the applicant as the owner;

or

(2) if there is no certificate of title:

(A) if the vessel was a documented vessel, a record issued by the United States Coast Guard which shows the vessel is no longer a documented vessel and identifies the applicant as the owner;

(B) if the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or

(C) in all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the office identifies the applicant as the owner.

(e) A record submitted in connection with an application is part of the application. The office shall maintain the record in its files.

(f) The office may require that an application for a certificate of title be accompanied by payment or evidence of payment of all fees and taxes payable by the applicant under law of this state other than this [act] in connection with the application or the acquisition or use of the vessel.

Comment

Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.103, 187.317.

1. Not all of the information submitted will appear on the certificate of title. For example, the principal residence of an owner and each owner's social security number or taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 9.

2. Paragraph (b)(5) implicitly requires that a hull identification number be issued for the vessel if the vessel does not already have one, as an imported antique might not. If the state agency that issues hull identification numbers is not the titling office, the applicant may, if the titling office permits, submit to the titling office a copy of the application for a hull identification number and evidence that the application has been submitted to the applicable state agency.

3. Federal regulations provide guidance on the terms to be used in describing the vessel type, hull material, propulsion type, engine drive type, and fuel type pursuant to Section 7(b)(6)(E)–(I). *See* 33 C.F.R. §§ 187.103, 187.317.

4. If the applicant knows that the vessel is hull damaged, paragraph (b)(10) requires the applicant to disclose the fact in the application. For this purpose, once a vessel is hull damaged, it remains hull damaged even though it is repaired. *See* Section 2 comment 4.

5. Subsection (e) imposes a duty on the office to maintain permanently any record submitted with an application. For example, if an applicant includes a certificate of origin in connection with the application, the office must maintain the certificate. This will facilitate a later decision by the owner to seek federal documentation of the vessel. Nothing in subsection (e) specifies the manner in which the office must maintain a record submitted with an application. Therefore, if the office is authorized to maintain records in electronic, photographic, or similar form, the office may maintain either the original or an image of the record. Section 11 imposes additional duties on the office.

6. Two versions of a sample application form follow. The first uses the terms currently authorized by the U.S. Coast Guard for the information required by subparagraphs (a)(6)(E)–(I). The second uses the revised terms that the Coast Guard has proposed. *See* 75 Fed. Reg. 25137, 25149 (May 7, 2010). Both versions contain a place for the applicant to list the state of principal use. Section 7 does not require that the state of principal use be identified on the application but a state may nevertheless wish to provide a place for it on the form as a means of alerting applicants that this is something to consider and affects in which state they should apply for a certificate. Both version of the application form also request the date of birth of the owner or owners. Section 7 does not require this information but a state may wish to request it on the application form for law enforcement purposes and as means – other than the social security number – of differentiating among people with the same name.

Parts 5, 6, 7, and 8 of the form are illustrative of things a state may or may not wish to include on its application form. Section 7 does not require that states verify the hull identification

number, request information about trade-in vessels, or include on the application anything relating to taxes or fees.

4. SECURED PARTY INFORMATION

Secured Party's Name	e-mail address		
Secured Party's Mailing Address	City	State	Zip Code
Additional Secured Party's Name (use separate sheet to list additional secured parties)	e-mail address		
Additional Secured Party's Mailing Address	City	State	Zip Code

5. HULL IDENTIFICATION NUMBER VERIFICATION

Inspection Location		
Recommended Action: Title should be <input type="checkbox"/> Issued <input type="checkbox"/> Corrected <input type="checkbox"/> Canceled <input type="checkbox"/> Not Issued		
Comments/Correction:		
Inspecting Officer (Print Name)	Inspecting Officer's Signature	Date

6. DEALER SALES TAX REPORT AND VESSEL TRADE-IN INFORMATION (IF APPLICABLE)

Sales Tax Registration Number	Date of Sale	Dealer License Number	Dealer/Agent Signature
Year of Trade In	Make of Trade-in	Title Number of Trade-in (if known)	Hull Identification Number of Trade-in

7. SALES/EXCISE TAX EXEMPTION CERTIFICATE

I hereby certify that transfer of the vessel described above to the applicant is exempt from sales/excise tax for the following reason:

Purchaser holds valid exemption certificate Gift Bequest or Inheritance
 Vessel will be exclusively for rental Divorce Decree Transfer between married couple
 Other (explain): _____

8. TAXES & FEES

[insert appropriate calculations]

9. APPLICATION ATTESTMENT AND SIGNATURES

I DECLARE, UNDER PENALTY OF PURJURY, THAT I HAVE PERSONALLY INSPECTED THE HULL IDENTIFICATION NUMBER AND THAT ALL FACTS STATED IN THIS APPLICATION ARE TRUE.

Signature of Applicant (Owner)

Date

4. SECURED PARTY INFORMATION

Secured Party's Name	e-mail address		
Secured Party's Mailing Address	City	State	Zip Code
Additional Secured Party's Name (use separate sheet to list additional secured parties)	e-mail address		
Additional Secured Party's Mailing Address	City	State	Zip Code

5. HULL IDENTIFICATION NUMBER VERIFICATION

Inspection Location		
Recommended Action: Title should be <input type="checkbox"/> Issued <input type="checkbox"/> Corrected <input type="checkbox"/> Canceled <input type="checkbox"/> Not Issued		
Comments/Correction:		
Inspecting Officer (Print Name)	Inspecting Officer's Signature	Date

6. DEALER SALES TAX REPORT AND VESSEL TRADE-IN INFORMATION (IF APPLICABLE)

Sales Tax Registration Number	Date of Sale	Dealer License Number	Dealer/Agent Signature
Year of Trade In	Make of Trade-in	Title Number of Trade-in (if known)	Hull Identification Number of Trade-in

7. SALES/EXCISE TAX EXEMPTION CERTIFICATE

I hereby certify that transfer of the vessel described above to the applicant is exempt from sales/excise tax for the following reason:

Purchaser holds valid exemption certificate Gift Bequest or Inheritance
 Vessel will be exclusively for rental Divorce Decree Transfer between married couple
 Other (explain): _____

8. TAXES & FEES

[insert appropriate calculations]

9. APPLICATION ATTESTMENT AND SIGNATURES

I DECLARE, UNDER PENALTY OF PURJURY, THAT I HAVE PERSONALLY INSPECTED THE HULL IDENTIFICATION NUMBER AND THAT ALL FACTS STATED IN THIS APPLICATION ARE TRUE.

Signature of Applicant (Owner)

Date

SECTION 8. CREATION AND CANCELLATION OF CERTIFICATE OF TITLE.

(a) Unless an application for a certificate of title is rejected under subsection (c) or (d), the office shall create a certificate for the vessel in accordance with subsection (b) not later than 20 days after delivery to it of an application that complies with Section 7.

(b) If the office creates electronic certificates of title, the office shall create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the office create a written certificate.

(c) Except as otherwise provided in subsection (d), the office may reject an application for a certificate of title only if:

(1) the application does not comply with Section 7;

(2) the application does not contain documentation sufficient for the office to determine whether the applicant is entitled to a certificate;

(3) there is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or

(4) the application does not comply with the law of this state other than this [act].

(d) The office shall reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

(e) The office may cancel a certificate of title created by it only if the office:

(1) could have rejected the application for the certificate under subsection (c);

(2) is required to cancel the certificate under another provision of this [act]; or

(3) receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

[(f) The office shall provide an opportunity for a hearing at which the owner and any other interested party may present evidence in support of or opposition to cancellation of a certificate of title. The office shall serve all owners and secured parties indicated in the files of the office with notice of the opportunity for a hearing. Service must be made personally or by mail through the United States Postal Service, properly addressed, postage paid, return receipt requested. Service by mail is complete on deposit with the United States Postal Service. The office by rule may authorize service by electronic transmission if a copy is sent on the same day by first-class mail or by a commercial delivery company. If not later than 30 days after the notice was served, the office receives a request for a hearing from an interested party, the office shall hold the hearing not later than 20 days after receiving the request.]

Legislative Note: *Subsection (f) is optional. It provides a procedure for the office to follow before canceling a certificate of title. It is intended for those states whose public records or other law does not already provide a procedure that ensures all interested parties are notified in advance and given an opportunity to be heard.*

Comment

1. Paragraph (c)(3) permits the office to reject an application if there is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate of title would facilitate a fraudulent or illegal act. Such a basis may exist if, for example, the ownership disclosed and documented in the application is contradicted by information obtained by the office through use of the Vessel Identification System.

2. Cancellation of a certificate of title does not, by itself, change the law governing the certificate or render unperfected a security interest perfected pursuant to this act. *See* Section 5 comment 4; Section 15 comment 3.

3. Some states have laws that require the applicable office to cancel a motor vehicle certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or failure to maintain the vehicle in a mechanically fit manner. This Section does not permit cancellation for any of these reasons. Canceling the vessel's registration (*i.e.* license to use) for such failures would seem far more appropriate than canceling its certificate of title.

SECTION 9. CONTENT OF CERTIFICATE OF TITLE.

(a) A certificate of title must contain:

- (1) the date the certificate was created;
- (2) the name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the office;
- (3) the mailing address of the owner of record;
- (4) the hull identification number;
- (5) the information listed in Section 7(b)(6);
- (6) except as otherwise provided in Section 15(b), the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the office; and
- (7) all title brands indicated in the files of the office covering the vessel, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the office.

(b) This [act] does not preclude the office from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

(c) For each title brand indicated on a certificate of title, the certificate must identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: “Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand).”.

(d) If the files of the office indicate that a vessel previously was registered or titled in a foreign country, the office shall indicate on the certificate of title that the vessel was registered or titled in that country.

(e) A written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form must include a certification, signed under penalty of perjury, that the statements made are true and correct to the best of each owner's knowledge, information, and belief.

(f) A written certificate of title must contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

Legislative Note: *Enacting states will need to ensure that the perjury laws of the state include unsworn statements.*

Comment

A sample form certificate of title follows. It includes a place for all the required information and illustrates how a state may choose to arrange that information.

STATE OF [STATE NAME]
[DEPARTMENT]

CERTIFICATE OF TITLE FOR A VESSEL

Owner of Record (name and mailing address)

Additional Owner(s) (names)

There are additional owners indicated in the files of [Department]

If jointly owned, may record title be transferred by owner of record alone? Yes No

Title #	Date of Issue	Title Brand(s)	Branding State(s)	Jurisdiction(s) of Previous Title or Registration
Hull Identification #	Model Year/Year of Manufacture	Manufacturer/Builder	Model	ft. in. Length
Vessel Type	Hull Material	Propulsion Type	Engine Drive Type	Fuel Type

Secured Party of Record (name and mailing address)

Security Interest Released: _____
date

By: _____
authorized representative

There are additional secured parties indicated in the files of [Department]

TRANSFER OF OWNERSHIP

New Owner 1's Name			
New Owner 1's Mailing Address	City	State	Zip Code
New Owner 2's Name (use separate sheet to list additional new owners)			
New Owner 2's Mailing Address	City	State	Zip Code

Each of the undersigned declare, under penalty of perjury, that the information above is true and correct to the best of each signer's knowledge, information, and belief.

_____	_____
Owner of Record	Date
_____	_____
Additional Owner (listed on front)	Date
_____	_____
Additional Owner (listed on front)	Date

SECTION 10. TITLE BRAND.

(a) Unless subsection (c) applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, if the damage occurred while that person was an owner of the vessel and the person has notice of the damage at the time of the transfer, the owner shall:

(1) deliver to the office an application for a new certificate that complies with Section 7 and includes the title brand designation “Hull Damaged”; or

(2) indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

(b) Not later than 20 days after delivery to the office of the application under subsection (a)(1) or the certificate of title under subsection (a)(2), the office shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(c) Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, the insurer shall deliver to the office an application for a new certificate that complies with Section 6 and includes the title brand designation “Hull Damaged”. Not later than 20 days after delivery of the application to the office, the office shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(d) An owner of record that fails to comply with subsection (a), a person that solicits or colludes in a failure by an owner of record to comply with subsection (a), or an insurer that fails to comply with subsection (c) is subject to [an administrative] [a civil] penalty of \$[1,000].

Comment

1. Subsection (a) imposes only on the owner of record a duty to brand the title of a hull-damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore unlikely to apply to a dealer because a dealer typically will not have title transferred into the dealer’s name for the relatively short period that the dealer owns the vessel. *Cf.* Section 6(b)(5) (exempting

dealers from having to apply for a certificate of title). Subsection (a) is also unlikely to apply to a secured party. In contrast, subsection (d) applies to any person that “solicits or colludes in a failure to comply with subsection (a),” and thus might conceivably apply to dealer or secured party acting in collusion with the owner of record to avoid compliance with subsection (a).

2. Subsection (c) places the branding obligation on an insurer when the insurer is transferring an ownership interest in a hull-damaged vessel. The insurer need not be the owner of record for subsection (c) to apply. Moreover, it does not matter whether the ownership interest being transferred belongs to the insurer or the insured. Subsection (c) therefore applies when the insurer pays off on the insurance claim and takes ownership of the vessel for salvage purposes and also applies when the insurer facilitates a sale of the damaged vessel for the insured. However subsection (c) applies only to insurers acting in their capacity as insurers. It does not apply to an insurance company that acquires a vessel for unrelated business purposes only to later discover that the vessel is hull damaged.

3. An application for a new, branded certificate of title under subsection (a) or (c) must comply with Section 7. This in turn requires, among other things, that the existing, unbranded certificate be delivered to the office. *See* Section 7(d).

4. Following creation of a certificate of title under subsection (b) or (c), the office must deliver the new certificate pursuant to Section 12(a).

SECTION 11. MAINTENANCE OF AND ACCESS TO FILES.

(a) For each record relating to a certificate of title submitted to the office, the office shall:

(1) ascertain or assign the hull identification number for the vessel;

(2) maintain the hull identification number and all the information submitted with the application pursuant to Section 7(b) to which the record relates, including the date and time the record was delivered to the office;

(3) maintain the files for public inspection subject to subsection (e); and

(4) index the files of the office as required by subsection (b).

(b) The office shall maintain in its files the information contained in all certificates of title created under this [act]. The information in the files of the office must be searchable by the hull identification number of the vessel, the vessel number, the name of the owner of record, and any other method used by the office.

(c) The office shall maintain in its files, for each vessel for which it has created a certificate of title, all title brands known to the office, the name of each secured party known to the office, the name of each person known to the office to be claiming an ownership interest, and all stolen-property reports the office has received.

(d) Upon request, for safety, security, or law-enforcement purposes, the office shall provide to federal, state, or local government the information in its files relating to any vessel for which the office has issued a certificate of title.

(e) Except as otherwise provided by the law of this state other than this [act], the information required under Section 9 is a public record. The information provided under Section 7(b)(3) is not a public record.

Comment

Subsection (e) makes the information on the certificate of title a public record. It does not make the information in the application a public record. Therefore, nothing in this act requires that the social security or taxpayer identification number of the owner or owners, which under Section 7(b)(3) must be included in the application, be made public.

The duties imposed by this Section are in addition to those imposed by Section 7(e).

SECTION 12. ACTION REQUIRED ON CREATION OF CERTIFICATE OF TITLE.

(a) On creation of a written certificate of title, the office promptly shall send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the files of the office. On creation of an electronic certificate of title, the office promptly shall send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the files of the office. The office may send the record to the person's mailing address or, if indicated in the files of the office, an electronic address.

(b) If the office creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate. The office shall maintain in the files of the office the date and time of cancellation.

(c) Before the office creates an electronic certificate of title, any written certificate for the vessel must be surrendered to the office. If the office creates an electronic certificate, the office shall destroy or otherwise cancel the written certificate for the vessel which has been surrendered to the office and maintain in the files of the office the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the office shall indicate on the face of the certificate that it has been canceled.

SECTION 13. EFFECT OF CERTIFICATE OF TITLE. A certificate of title is prima facie evidence of the accuracy of the information in the record that constitutes the certificate.

Comment

Source: Uniform Motor Vehicle Certificate of Title and Anti-Theft Act Section 9(d).

This section does not make a certificate of title conclusive evidence of the ownership of a vessel. Instead, this section makes a certificate of title merely prima facie evidence of ownership. In litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is sufficient to prove ownership of a vessel unless someone comes forward with admissible evidence to the contrary. A certificate of title shifts both the burden of production and the burden of persuasion to anyone challenging the information on a written certificate or the information constituting an electronic certificate of title.

**SECTION 14. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE;
JUDICIAL PROCESS.** Possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel. This [act] does not prohibit enforcement under law of this state other than this [act] of a security interest in, levy

on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of a statutory or common-law lien on a certificate does not invalidate the lien.

SECTION 15. PERFECTION OF SECURITY INTEREST.

(a) Except as otherwise provided in this section or Section 28, a security interest in a vessel may be perfected only by delivery to the office of an application for a certificate of title that identifies the secured party and otherwise complies with Section 7. The security interest is perfected on the later of delivery to the office of the application and the applicable fee or attachment of the security interest under [UCC Section 9-203].

(b) If the interest of a person named as owner, lessor, consignee, or bailor in an application for a certificate of title delivered to the office is a security interest, the application sufficiently identifies the person as a secured party. Identification on the application for a certificate of a person as owner, lessor, consignee, or bailor is not by itself a factor in determining whether the person's interest is a security interest.

(c) If the office has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the office of an application, on a form the office may require, to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include:

- (1) the name of the owner of record;
- (2) the name and mailing address of the secured party;
- (3) the hull identification number for the vessel; and
- (4) if the office has created a written certificate of title for the vessel, the

certificate.

(d) A security interest perfected under subsection (c) is perfected on the later of delivery

to the office of the application and all applicable fees or attachment of the security interest under [UCC Section 9-203].

(e) On delivery of an application that complies with subsection (c) and payment of all applicable fees, the office shall create a new certificate of title pursuant to Section 8 and deliver the new certificate or a record evidencing an electronic certificate pursuant to Section 12(a). The office shall maintain in the files of the office the date and time of delivery of the application to the office.

(f) If a secured party assigns a perfected security interest in a vessel, the receipt by the office of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. A purchaser of a vessel subject to a security interest which obtains a release from the secured party indicated in the files of the office or on the certificate takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the files of the office or on the certificate.

(g) This section does not apply to a security interest:

(1) created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;

(2) in a barge for which no application for a certificate of title has been delivered to the office; or

(3) in a vessel before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to the office.

(h) This subsection applies if a certificate of documentation for a documented vessel is

deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with 46 U.S.C. Section 31321, the security interest is and remains perfected until the earlier of four months after cancellation of the certificate or the time the security interest becomes perfected under this [act].

(i) A security interest in a vessel arising under [UCC Section 2-401, 2-505, 2-711(3), or 2A-508(5)] is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before the debtor obtains possession the security interest is perfected pursuant to subsection (a) or (c).

(j) A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in [UCC Section 9-315].

(k) A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in [UCC Section 9-316(d)].

Comment

Source: UCOTA Section 26; UCC Sections 9-311(b), 9-505(a).

1. Section 6(b)(3) provides that no application for a certificate of title is required for barges or for vessels under construction. Paragraphs (g)(2) and (3) of this section are corollaries to Section 6(b). They provide that a security interest in such a vessel is to be perfected under other law if no application for a certificate of title for the vessel has been delivered to the office. However, if an owner does apply for a certificate of title for the vessel, perfection must be through compliance with this section.

2. Subsection (d) provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee. This rule operates in conjunction with UCC Section 9-311(b), which provides that compliance with this act is the equivalent of filing a financing statement. Collectively, they allow for a security interest to attain priority under such rules as Section 9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the security agreement is authenticated and a financing statement is filed), Section 9-317(e) (giving a perfected purchase-money security interest priority over a judicial lien if a financing statement is filed within 20 days of when the debtor receives possession), and Section 9-324(a) (giving a perfected purchase-money security interest priority over a conflicting security interest if a financing statement is filed to perfect the purchase-money security interest within 20 days of when the debtor

received possession).

3. Because a security interest in a vessel covered by a certificate of title issued by the office is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, cancellation of the certificate does not affect perfection under this act.

4. Because subsection (a) requires delivery of an application that complies with Section 7, an application that fails to so comply, and which the office rightfully rejects pursuant to Section 8(c) or (d), will not be effective to perfect. *See* UCC Section 9-516 & cmt. 3.

5. Subsection (h) provides a temporary period of automatic perfection for a security interest in a vessel coming out of federal documentation. The purpose of this subsection is to facilitate the decision by the owner of and creditors with a security interest in a vessel to surrender the certificate of documentation and apply for a certificate of title. Without at least a temporary period of perfection, secured parties might risk being unperfected for the interval between surrender of the certificate of documentation and delivery to the titling office of an application for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for perfection of a security interest in a documented vessel to continue – indefinitely – upon surrender of the document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be unnecessary. However, it remains unclear whether federal law truly does provide for continuous and indefinite perfection of what, in that situation, would be a secret lien. In the event it does not, subsection (h) provides a temporary period of perfection.

Subsection (h) provides a temporary period of automatic perfection for a security interest in a vessel coming out of federal documentation only if this state's law governs perfection of the security interest. *See* UCC Section 9-301.

6. Subsection (j) permits a security interest in a vessel to be perfected pursuant to UCC Section 9-315. Under UCC Section 9-315(a)(2), a security interest attaches to a vessel that is identifiable proceeds of other collateral. Pursuant to subsections (c) and (d) of UCC Section 9-315, if the security interest in the original collateral was perfected, the security interest in the vessel will also be perfected. However, in most cases, such perfection will lapse after 20 days unless before then the security interest is perfected pursuant Section 15(a) of this act. That is because, unless Section 15(g) applies, a security interest in a vessel cannot be perfected by filing a financing statement. *Cf.* UCC Section 9-315(d).

7. Nothing in this act deals with whether a security interest in a vessel also attaches to fishing licenses or other rights or property appurtenant to the vessel. Similarly, nothing in this act deals with perfection of a security interest in fishing licenses or other rights or property appurtenant to a vessel. *See* Section 2 comment 9.

SECTION 16. TERMINATION STATEMENT.

(a) A secured party indicated in the files of the office as having a security interest in a

vessel shall deliver a termination statement to the office and, on the debtor's request, to the debtor, by the earlier of:

(1) 20 days after the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(2) if the vessel is consumer goods, 30 days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or

(b) If a written certificate of title has been created and delivered to a secured party and a termination statement is required under subsection (a), the secured party, not later than the date required by subsection (a), shall deliver the certificate to the debtor or to the office with the statement. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party shall deliver with the statement, not later than the date required by subsection (a), an application for a replacement certificate meeting the requirements of Section 22.

(c) On delivery to the office of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. If the security interest to which the statement relates was indicated on the certificate of title, the office shall create a new certificate and deliver the new certificate or a record evidencing an electronic certificate. The office shall maintain in its files the date and time of delivery to the office of the statement.

(d) A secured party that fails to comply with this section is liable for any loss that the secured party had reason to know might result from its failure to comply and which could not reasonably have been prevented and for the cost of an application for a certificate of title under

Comment

Source: UCOTA Section 27; UCC Sections 2-715(2), 9-513.

Subsection (c) requires the office, upon delivery of a termination statement, to create a new certificate of title if the security interest to which the termination statement applies was indicated on the existing certificate of title. This will be the situation whenever the secured party was the secured party of record. It will also be the case if the security interest was otherwise listed on the certificate of title or the certificate indicated the existence of other unlisted security interests and the termination statement relates to the only unlisted security interest. *See* Section 9(a)(6). In creating a new certificate of title, the office shall comply with section 8(a) with respect to timing and with Section 8(b) in determining whether to create a written certificate of title or an electronic certificate of title.

If a termination statement delivered to the office relates to the security interest of the secured party of record, and one or more other security interests in the vessel are indicated in the files of the office, there will now be a new secured party of record. The new secured party of record will be the secured party whose security interest was first communicated to the office and for which no termination statement has been filed.

The limitation on damages in subsection (d) to those of which the secured party had reason to know is derived from UCC Section 2-715(2), and is a principle long applicable to claims arising in contract. *See Hadley v. Baxendale*, 156 Eng. Rep. 145 (Ex. Ct. 1854). However, it is a limitation not expressed in Article 9, *see* U.C.C. § 9-625, perhaps because a secured party's failure to comply with Article 9 duties is regarded as something closer to a tort than to a breach of contract. *Cf.* U.C.C. § 9-625 cmt. 3 (indicating that principles of tort law would supplement the claim with respect to a secured party's breach of the peace during repossession). Indeed, a secured party's failure to comply with this Section would give rise to a claim very like one for slander of title, a tort. Of course, tort remedies are also subject to various limitations, including the requirement of proximate cause and the economic loss doctrine (the latter of which may not be applicable to defamation actions). However, the limitation expressed in subsection (d) is not consistent with the traditional tort limits.

SECTION 17. TRANSFER OF OWNERSHIP.

(a) On voluntary transfer of an ownership interest in a vessel covered by a certificate of title, the following rules apply:

(1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the transferor promptly shall sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of

the certificate has a duty to facilitate the transferor's compliance with this paragraph. A secured party does not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement.

(2) If the certificate of title is an electronic certificate of title, the transferor promptly shall sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.

(3) The transferee has a right enforceable by specific performance to require the transferor comply with paragraph (1) or (2).

(b) The creation of a certificate of title identifying the transferee as owner of record satisfies subsection (a).

(c) A failure to comply with subsection (a) or to apply for a new certificate of title does not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise provided in Section 18, 19, 23(a), or 24, a transfer of ownership without compliance with subsection (a) is not effective against another person claiming an interest in the vessel.

(d) A transferor that complies with subsection (a) is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

Comment

Source: UCOTA Section 16.

1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers of ownership of a vessel covered by a certificate of title.

Subsection (a) requires the transferor to facilitate the creation of a new certificate of title by either signing and delivering the existing written certificate of title or authenticating and delivering a record evidencing the transfer of ownership with respect to a vessel covered by an electronic certificate of title. By referring to a "transfer of ownership," subsection (a) applies to gifts as well as sales. It also covers a transfer of ownership by fewer than all of the owners, such as when only

one of several joint owners sells or gifts its interest. Subsection (a) does not apply to the creation of a lease or security interest because neither of those transactions involves a “transfer of ownership.”

If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor’s compliance with subsection (a). However, if the person in possession is a secured party, this duty may be limited by the terms of the security agreement. For example, a secured party could refuse to surrender the certificate pending payment of the secured obligation, if the security agreement so provides.

2. Subsection (a) requires the signature on the certificate of title of only the owner whose ownership interest is being transferred. A state that wishes to require the signature of all owners indicated in the files of the office may do so by regulation.

3. This act is supplemented by otherwise applicable law, for example the law of agency. *See* Section 4. Therefore the obligations and rights recognized in this section can be exercised by authorized representatives of the transferor and transferee.

4. Subsection (c) makes clear that a transfer of ownership is effective between the parties thereto even if the transferor does not fulfill its duty to facilitate the creation of a new certificate of title identifying the transferee as an owner and even if no application for a new certificate of title is delivered to the office. This is consistent with the fact that a certificate of title is *prima facie* evidence, but not conclusive evidence, of ownership. *See* Section 13. A transfer effective between the parties would also be effective between and binding on their successors.

Subsection (c) also clarifies that a transfer of ownership of a vessel, even though effective between the parties, may not be effective against third parties claiming an interest in the vessel if the certificate of title continues to identify the transferor as owner. *See* Sections 23 or 24, *e.g.*, with respect to the rights of a good faith purchaser for value or a buyer in ordinary course of business.

5. Subsection (d) deals with any rule of law that assesses damages or imposes a fee or penalty on an owner of a vessel solely because of the person’s ownership interest. Thus, for example, if applicable law makes the owner of a vessel liable for property taxes, environmental contamination caused by the vessel, or for damages caused when the vessel escapes its mooring, an owner who complies with subsection (a) will not be liable for any such taxes assessed, contamination occurring, or damages caused after that compliance.

SECTION 18. EFFECT OF MISSING OR INCORRECT INFORMATION.

Except as otherwise provided in [UCC Section 9-337], a certificate of title or other record required or authorized by this [act] is effective even if it contains incorrect information or does not contain required information.

Comment

Sources: UCOTA Section 20, UCC Sections 9-338, 9-506.

1. This section states the general rule that a certificate of title remains effective even if it contains errors or omissions. As a result, the certificate remains prima facie evidence of the information in record that constitutes the certificate of title. See Section 13.

Example 1: The office creates a certificate of title that transposes two of the digits in the hull identification number for the vessel. The certificate remains effective regardless whether the applicant or the office made the error and regardless whether the files of the office contain the same error.

Example 2: The office creates a certificate of title that misspells the name of the owner of record. The certificate remains effective regardless whether the applicant or the office made the error and regardless whether the files of the office contain the same error.

2. Because this section applies not only to a certificate of title, but also to any “other record required or authorized by this act,” the section applies to an application for a certificate of title. This rule must be read in conjunction with Section 15(d), which provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, and UCC Section 9-311(b), which provides that compliance with this act is the equivalent of filing a financing statement. Thus, delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, even if the application contains an error or omission, constitutes compliance with this act and is the equivalent of filing a financing statement.

Collectively, these rules ensure that a security interest noted in an application for a certificate of title delivered to the office pursuant to Section 7 or 15 is perfected despite any error in the *certificate*. To determine whether the security interest is perfected if the *application* has an error or omission, one must refer to the rules of Article 9 regarding the efficacy of financing statements. See UCC Sections 9-506, 9-516, 9-520.

For example, a filed financing statement is effective to perfect even if it contains a minor error that is not seriously misleading. See UCC Section 9-506. For this purpose, a failure to describe some collateral would be seriously misleading as to omitted collateral. An error in the debtor’s name on a financing statement could also be seriously misleading because searches are based on the debtor’s name and an error in that name may cause the filed financing statement not to be disclosed. However, an error in the secured party’s name or address cannot be seriously misleading. Section 9-506 cmt. 2.

The same rule applies under this act. Thus, an error in the secured party’s name or address imposes no burden on someone seeking to identify who has an ownership interest or security in a titled vessel. As a result, such an error does not render the security interest unperfected. See *In re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name for secured parties on

certificates of title was not seriously misleading and did not render security interests unperfected).

Example 3: Secured Party's name is misspelled in the application for a certificate of title delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of title. The security interest is perfected.

However, application of the seriously misleading standard in UCC Section 9-506 to applications for a certificate of title must take into account the different manner in which searches for perfected security interests are conducted. In particular, whereas searches for financing statements are based on the debtor's name, searches relating to vessels covered by a certificate of title are ordinarily based on the hull identification number. *See* Section 25(d). Accordingly, whereas an error in a debtor's name on a filed financing statement may prevent the financing statement from being disclosed in response to a proper search request, an error in the name of the owner of record is unlikely to prevent a searcher from discovering the existence of a perfected security interest in a vessel covered by a certificate of title. *See In re Laursen*, 391 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor's first name on certificate of title for vehicle did not render security interest unperfected because certificates of title are indexed by vehicle identification number, not by name).

Example 4: Owner's name is misspelled in the application for a certificate of title delivered to the office. As a result, Owner's name is also misspelled on the certificate of title. The application identifies Bank as a secured party. The security interest is perfected.

Even an error in the description of the vessel will not render a security interest unperfected. Although search requests can be processed using the hull identification number, *see* Section 25(d), an error in the hull identification number on the certificate of title cannot really deceive the searcher. If the error existed solely on a written certificate of title but not in the files of the office, a search under the correct number would yield all the relevant information. If the error existed both on the certificate of title and in the files of the office, then a search using the correct hull identification number would yield nothing. Anyone seeking to acquire an interest in such a seemingly untitled vessel after such search should conduct further investigation.

The same method of analysis applies to applications that the office rejects. If rejection was authorized under Section 7, then a security interest noted in the application will not be perfected by delivery of the application to the office. *See* UCC Section 9-516(b). If, however, rejection was not authorized under Section 7, then delivery of the application, together with payment of the applicable fee, will perfect a security interest identified in the application. *See* UCC Section 9-516(a), (c). The priority of that security interest may, however, be affected by the office's rejection of the application. *See* Section 24(a); UCC Section 9-516(c). Similarly, errors in the application might affect the priority of a security interest. *See* UCC Sections 9-338, 9-520(c).

3. This section makes UCC Section 9-337 applicable to certificates of title created under this act. Thus, if the office creates a certificate of title that fails to indicate a security interest that was identified in the application for the certificate, a buyer or secured party who relies on the clean certificate may take free or obtain priority.

Example 5: Lender's security interest is identified in the application for a certificate of title delivered to the office. The office creates a certificate of title that fails to indicate Lender's security interest. Lender's security interest is perfected. *See* Section 15. However, a buyer, other than buyer in the business of selling goods of that kind, who gives value and receives delivery of the vessel without knowledge of Lender's security interest takes free of the security interest. Similarly, a security interest perfected after creation of the certificate of title and without knowledge of Lender's security has priority over Lender's security interest.

Example 6: Owner delivers to the office an application for a certificate of title for a vessel. The application identifies Lender as a secured party but misstates the hull identification number for the vessel. Lender's security interest is perfected. Owner later offers to sell the vessel to Buyer. Buyer requests a search using the vessel's correct hull identification number. The office responds that it has no record relating to that hull identification number. Buyer insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner delivers to the office a new application for a certificate of title. The new application does not disclose Lender's security interest. Office issues a certificate of title for the vessel that does not indicate Lender's security interest. Lender's security interest remains perfected. However, Buyer may take free of Lender's security interest pursuant to UCC Section 9-337(1).

SECTION 19. TRANSFER OF OWNERSHIP BY SECURED PARTY'S

TRANSFER STATEMENT.

(a) In this section, "secured party's transfer statement" means a record signed by the secured party of record stating:

- (1) that there has been a default on an obligation secured by the vessel;
- (2) the secured party of record is exercising or has exercised post-default remedies with respect to the vessel;
- (3) by reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;
- (4) the name and last-known mailing address of the owner of record and the secured party of record;
- (5) the name of the transferee;
- (6) other information required by Section 7(b); and
- (7) one of the following:

(A) the certificate of title is an electronic certificate;

(B) the secured party does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the secured party is delivering the written certificate of title to the office with the secured party's transfer statement.

(b) Unless the office rejects a secured party's transfer statement for a reason stated in Section 8(c), not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under the law of this state other than this [act] in connection with the statement or the acquisition or use of the vessel, the office shall:

(1) accept the statement;

(2) amend the files of the office to reflect the transfer; and

(3) if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:

(A) cancel the certificate even if the certificate has not been delivered to the office;

(B) create a new certificate indicating the transferee as owner; and

(C) deliver the new certificate or a record evidencing an electronic certificate.

(c) An application under subsection (a) or the creation of a certificate of title under subsection (b) is not by itself a disposition of the vessel and does not by itself relieve the secured party of its duties under [UCC Article 9].

Comment

Source: UCOTA Section 21.

A secured party could be “the transferee” within the meaning of paragraph (a)(5) if the secured party either purchases the vessel at a disposition pursuant to UCC Section 9-610 or accepts the vessel in full or partial satisfaction of the debt pursuant to UCC Section 9-620.

SECTION 20. TRANSFER BY OPERATION OF LAW.

(a) In this section:

(1) “By operation of law” means pursuant to a law or judicial order affecting ownership of a vessel:

(A) because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(B) through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or

(C) through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a vessel.

(b) A transfer-by-law statement must contain:

(1) the name and last known mailing address of the owner of record and the transferee and the other information required by Section 7(b);

(2) documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest;

(3) a statement that:

(A) the certificate of title is an electronic certificate of title;

(B) the transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the transferee is delivering the written certificate to the office with the transfer-by-law statement; and

(4) except for a transfer described in subsection (a)(1)(A), evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the files of the office as having an interest, including a security interest, in the vessel.

(c) Unless the office rejects a transfer-by-law statement for a reason stated in Section 8(c) or because the statement does not include documentation satisfactory to the office as to the transferee's ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under the law of this state other than this [act] in connection with the statement or with the acquisition or use of the vessel, the office shall:

(1) accept the statement;

(2) amend the files of the office to reflect the transfer; and

(3) if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:

(A) cancel the certificate even if the certificate has not been delivered to the office;

(B) create a new certificate indicating the transferee as owner;

(C) indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and

(D) deliver the new certificate or a record evidencing an electronic certificate.

(d) This section does not apply to a transfer of an interest in a vessel by a secured party under [UCC Article 9, Part 6].

Comment

Source: UCOTA Section 22.

Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted pursuant to judicial order. It includes a sale following governmental seizure of a vessel and a sale under 46 U.S.C. Section 31326.

SECTION 21. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Section 19 or 20, if the office receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a transfer of ownership or a termination statement, the office may create a new certificate under this section only if:

- (1) all other requirements under Sections 7 and 8 are met;
- (2) the applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;
- (3) the applicant provides the office with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the files of the office as having an interest, including a security interest, in the vessel, at least 45 days have passed since the notification was sent, and the office has not received an objection from any of those persons; and
- (4) the applicant submits any other information required by the office as evidence of the applicant's ownership or right to terminate the security interest, and the office has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien,

or other claim to an interest in the vessel.

(b) The office may indicate in a certificate of title created under subsection (a) that the certificate was created without submission of a signed certificate or termination statement. Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel is delivered to the office not later than one year after creation of the certificate, on request in a form and manner required by the office, the office shall remove the indication from the certificate.

[(c) Unless the office determines that the value of a vessel is less than \$[5,000], before the office creates a certificate of title under subsection (a), the office may require the applicant to post a bond or provide an equivalent source of indemnity or security. The bond, indemnity, or other security may not exceed twice the value of the vessel as determined by the office. The bond, indemnity, or other security must be in a form required by the office and provide for indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or damage, including reasonable attorney's fees and costs, but not including incidental or consequential damages, resulting from creation or amendment of the certificate.]

[(d) Unless the office receives a claim for indemnity not later than one year after creation of a certificate of title under subsection (a), on request in a form and manner required by the office, the office shall release any bond, indemnity, or other security.]

SECTION 22. REPLACEMENT CERTIFICATE OF TITLE.

(a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if no secured party is indicated in the files of the office, the owner of record may apply for and, by furnishing information satisfactory to the office, obtain a replacement certificate in the name of the owner of record.

(b) An applicant for a replacement certificate of title must sign the application, and, except as otherwise permitted by the office, the application must comply with Section 7. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

(c) A replacement certificate of title created by the office must comply with Section 9 and indicate on the face of the certificate that it is a replacement certificate.

(d) If a person receiving a replacement certificate of title subsequently obtains possession of the original written certificate, the person promptly shall destroy the original certificate of title.

Comment

When creating a replacement certificate of title, the office must comply with subsection (c) regardless of whether it creates a written certificate of title or an electronic certificate of title. No matter the format, the replacement certificate of title must be designated on its face as a replacement.

SECTION 23. RIGHTS OF PURCHASER OTHER THAN SECURED PARTY.

(a) A buyer in ordinary course of business has the protections afforded by [UCC Sections 2-403(2) and 9-320(a)] even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

(b) Except as otherwise provided in Sections 17 and 24, the rights of a purchaser of a vessel which is not a buyer in ordinary course of business or a lien creditor are governed by [the UCC].

Comment

1. Subsection (a) is a specific application of the general rule principle stated in subsection (b) and is designed to overrule the line of cases ruling that the buyer must obtain or apply for a new certificate of title identifying the buyer as the owner.

2. Subsection (b) incorporates the provisions of UCC Sections 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value” is defined in UCC Section 1-204.

Example 1: Scoundrel buys a vessel from Owner and a new certificate of title is created identifying Scoundrel as owner of record. In connection with the transaction, Scoundrel deceived Owner as to Scoundrel's identity, with the result that the transaction is voidable by Owner. *See* UCC Section 2-403(1). Before Owner takes any action, Scoundrel sells the vessel for value to Buyer, who applies for a new certificate of title. If Buyer purchased the vessel in good faith, Buyer acquires good title to the vessel. *See* UCC Section 2-403(1).

4. Compliance with this act is generally not relevant to an owner's rights against a grantor or someone else up the chain of title; it is relevant only to the owner's rights against someone down the chain of title (*e.g.*, someone else who subsequently acquired rights from the grantor).

However, in some circumstances, the failure of a purchaser to ensure that an application is delivered to the office for a certificate of title that indicates purchaser's interest in the vessel may prevent the purchaser from qualifying as a good faith purchaser. "Good faith" is defined in Section 2(b)(11) to include observance of reasonable commercial standards of fair dealing. While it may be customary for a buyer in ordinary course of business – that is, a person buying from a dealer – to buy a vessel without seeing or obtaining the existing certificate of title, this is not customary for a purchase from a non-dealer. Thus a buyer who buys a vessel outside the ordinary course of business and without execution of the certificate of title may not be observing reasonable commercial standards of fair dealing and may not qualify as a good faith purchaser.

Example 2: Same facts as Example 1, except that through inadvertence no application is delivered to the office for a certificate of title indicating Buyer's ownership of the vessel. Buyer's failure to have a new certificate of title created means that Buyer may lose ownership of the vessel to a subsequent transferee from Scoundrel. *See* Section 17(c). However, Buyer's failure to have a new certificate of title created does not suggest a lack of fair dealing toward Owner, and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.

Example 3: Same facts as Example 2, except that Buyer suspects that Scoundrel may have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an effort to make it more difficult for any prior owner to identify Buyer and Buyer's interest in the vessel. Buyer does not qualify as a good faith purchaser and therefore does not obtain good title to the vessel under UCC Section 2-403(1).

5. Subsection (a) applies the "entrustment" rule of UCC Section 2-403(2) to vessels, even if no application to have the buyer's interest noted on the certificate of title is ever delivered with the office.

Example 4: Owner, whose interest in a vessel is indicated on the certificate of title, brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary course of business. Buyer acquires Owner's rights to the vessel. This result follows even though Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title, and no application for a new certificate of title is delivered to the office.

Example 5: Same facts as Example 4, except that subsequently Owner purports to sell

the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title and delivers it to Purchaser. Even though there was no compliance with Section 17(a) in connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to the vessel. See Section 17(c), which is made expressly subject to Section 23(a). The result would be the same if Owner purported to grant Purchaser a security interest in the vessel.

SECTION 24. RIGHTS OF SECURED PARTY.

(a) Subject to subsection (b), the effect of perfection and nonperfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by [the UCC].

(b) If, while a security interest in a vessel is perfected by any method under this [act], the office creates a certificate of title that does not indicate that the vessel is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate:

(1) a buyer of the vessel, other than a person in the business of selling or leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel; and

(2) the security interest is subordinate to a conflicting security interest in the vessel that is perfected under Section 15 after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

Comment

Because perfection of a security interest in a vessel held as inventory for sale or lease by a person engaged in the business of selling goods of that kind is not governed by this Act, *see* Section 15(g)(1), subsection (b) of this Section has no application to such a security interest. Therefore, if a security interest in a vessel is perfected by filing and the office creates a certificate of title that neither indicates the security interest nor notes that the vessel may be subject to security interests not so noted, a buyer of the vessel cannot take free of the security interest under this Section. If such a buyer qualifies as a buyer in ordinary course of business, the buyer will take free of the security interest under Section 23(a) and U.C.C. Section 9-320(a). If the buyer does not qualify as buyer in ordinary course of business, say perhaps because the buyer acquired the vessel in total or partial satisfaction of a preexisting money debt, the buyer will take subject to

the perfected security interest. *See* U.C.C. Section 9-201(a).

SECTION 25. DUTIES AND OPERATION OF OFFICE.

(a) The office shall retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title.

(b) The office shall retain in its files all information regarding a security interest in a vessel for at least 10 years after the office receives a termination statement regarding the security interest. The information must be accessible by the hull identification number for the vessel and any other methods provided by the office.

(c) If a person submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, the office shall send to the person an acknowledgment showing the hull identification number of the vessel to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the hull identification number and be delivered by means authorized by the office.

(d) The office shall send or otherwise make available in a record the following information to any person that requests it and pays the applicable fee:

(1) whether the files of the office indicate, as of a date and time specified by the office, but not a date earlier than three days before the office received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel:

(A) identified by a hull identification number designated in the request;

(B) identified by a vessel number designated in the request; or

(C) owned by a person designated in the request;

(2) with respect to the vessel:

(A) the name and address of any owner as indicated in the files of the office or on the certificate of title;

(B) the name and address of any secured party as indicated in the files of the office or on the certificate, and the effective date of the information; and

(C) a copy of any termination statement indicated in the files of the office and the effective date of the termination statement; and

(3) with respect to the vessel, a copy of any certificate of origin, secured party transfer statement, transfer-by-law statement under Section 20, and other evidence of previous or current transfers of ownership.

(e) In responding to a request under this section, the office may provide the requested information in any medium. On request, the office shall send the requested information in a record that is [self-authenticating] under [insert applicable rule of evidence].

Comment

Subsection (a) requires the office to maintain the evidence used to establish certain information but does not dictate how the office must maintain that evidence. Therefore the office may, if permissible under applicable law and its own rules and regulations, maintain the evidence in electronic or digitized form.

Except as provided in subsection (a) or (b), the office should retain information about previous owners of a vessel or information on a previous certificate of title for a vessel pursuant to the state's records retention law or the office's record retention policy.

An existing or new owner of a vessel covered by a certificate of title may wish to have the vessel become a documented vessel. To accomplish this, the owner will need a certified copy of the a certificate of origin or other documents previously submitted to the office with an application for a certificate of title. Subsection (e) facilitates this by requiring the office to provide those documents in a form that the owner needs. *Cf.* Section 7(e) (requiring the office to maintain either the original or the image of documents submitted with an application for a certificate of title).

SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

SECTION 27. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 28. SAVINGS CLAUSE.

(a) The rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before [the effective date of this [act]] and would be subject to this [act] if it had been entered into or created on or after [the effective date of this [act]], remain valid on and after [the effective date of this [act]].

(b) This [act] does not affect an action or proceeding commenced before [the effective date of this [act]].

(c) Except as otherwise provided in subsection (d), a security interest that is enforceable immediately before [the effective date of this [act]] and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this [act].

(d) A security interest perfected immediately before [the effective date of this [act]] remains perfected until the earlier of:

(1) the time perfection would have ceased under the law under which the security interest was perfected; or

(2) three years after [the effective date of this [act]].

(e) This [act] does not affect the priority of a security interest in a vessel if immediately

before [the effective date of this [act]] the security interest is enforceable and perfected, and that priority is established.

Comment

Sources: ULC Drafting Rule 603; UCOTA Section 31; UCC Section 9-703.

1. Subsection (d) limits the duration of perfection for security interests perfected by possession or filing. The effect of subsections (c) and (d) is summarized by the following chart.

**Effect on Security Interest in Vessel
For Which State Enacting UCOTA-V Is the State of Principal Use**

		Effect on Security Interest of Enactment
Governing Law Was Law of State Enacting UCOTA-V	Had a COT law that applied	None. If perfected under old law, remains perfected. If unperfected under old law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under old law (presumably by filing or possession), remains perfected until earlier of three years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	
Governing Law Was Law of State Different from State Enacting UCOTA-V	Had a COT law that applied	None immediately. If perfected under other state's COT law, remains perfected until perfection would have ceased. If unperfected under other state's law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under other state's law (presumably by filing or possession), remains perfected until earlier of three years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	

The analysis of perfection must begin with U.C.C. § 9-303. If a COT covering the collateral has been issued or applied for, the law of that jurisdiction governs. U.C.C. § 9-303(b), (c). The next step is to go to that jurisdiction's U.C.C. § 9-311. That jurisdiction's version U.C.C. of § 9-311(a)(2) will indicate that perfection is governed by the COT statute.

If no application has been filed or COT issued, then the law where the debtor is located governs (or the law where the collateral is located if a security interest is perfected by possession). The next step is to go to that jurisdiction's U.C.C. § 9-311. If that jurisdiction has a COT statute that applies, then U.C.C. § 9-311(a)(2) will require compliance with that COT statute. If the vessel is subject to the certificate of title statute in another jurisdiction, then U.C.C. § 9-311(a)(3) will require compliance with that other jurisdiction's COT statute. *Compare* U.C.C. § 9-311(a) (referring to property "subject to" a certificate-of-title statute) *with* U.C.C. § 9-303(a)-(c) (indicating that the governing law is the law of the jurisdiction issuing a certificate of title that "cover[s]" the goods).

Through this multi-step process, the choice-of-law rules in Article 9 always point to the law of the same jurisdiction.

Scenario 1: Perfected by filing in State A (where debtor is located). Now governed by UCOTA-V in State A. Under law of State A, the security interest remains perfected until the earlier of three years after effective date of State A's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State A. This is true even if, during that time, the owner applies for a certificate of title under this act and fails to list the security interest in the application. As a result, the secured party has, in general, three years to make sure that its interest is noted on the certificate of title in order to maintain perfection. Of course, if during this time, a certificate of title is issued that fails to identify the security interest, a purchaser may take priority over or take free of the security interest pursuant to U.C.C. § 9-337.

Scenario 2: Perfected by filing in State A (where debtor is located). Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 28, the security interest remains perfected until the earlier of three years after effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State B. This is true even if the application for a certificate of title in State B and fails to list the security interest in the application. However, a purchaser may benefit from U.C.C. § 9-337.

If no application for a certificate of title is applied for in State B, then the law of State A continues to govern. State A's U.C.C. § 9-311(a)(3) will now look to State B. Because of the operation of Section 28 of State B's UCOTA-V, perfection will continue until the earlier of three years after the effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State B.

Scenario 3: Perfected by compliance with certificate of title statute in State A. Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 28, the security interest remains perfected until the earlier of three years after effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, the secured party will have three years to have the security interest noted on a certificate of title issued by State B. However, because State A's certificate of title statute will no longer govern, perfection will have lapsed under the law of State A, and thus the secured party has no grace period for perfection. If the security interest is noted on the application for the certificate of title filed in State B, which is likely if it was noted on the surrendered State A certificate, the security interest will be perfected under Section 15. If the security interest is not noted on the application filed in or certificate issued by State B, the security interest will be unperfected.

If no application for a certificate of title is applied for in State B, then pursuant to U.C.C. § 9-303 the law of State A continues to govern. State A's U.C.C. § 9-311(a)(2) will continue to look to the certificate of title law of State A. Consequently, the security interest remains perfected as long as State A's certificate of title law continues to apply.

2. Pursuant to subsection (d), a secured party whose security interest is perfected by a filed financing statement will generally have three years to perfect pursuant to this act. Perfection under this act requires that the owner apply for a certificate of title and that the application note the security interest. *See* Sections 7 and 15. If the owner fails to make such an application, the secured party may face the prospect of becoming unperfected. However, a well-drafted security agreement will require the debtor to assist the secured party in perfecting the security interest or in maintaining perfection. Moreover, in the security agreement the debtor may have appointed the secured party to act as the debtor's agent or attorney in fact for this purpose. In such a case, the secured party would be authorized to apply for a certificate of title.

SECTION 29. REPEALS. The following acts and parts of acts are repealed:

[add legislative note]

SECTION 30. EFFECTIVE DATE. This [act] takes effect