

D R A F T

FOR DISCUSSION ONLY

## **CERTIFICATE OF TITLE ACT FOR VESSELS**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-NINETEENTH YEAR  
CHICAGO, ILLINOIS  
JULY 9 - JULY 16, 2010

## **CERTIFICATE OF TITLE ACT FOR VESSELS**

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# CERTIFICATE OF TITLE ACT FOR VESSELS

## *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 with a displacement volume of at least five net tons and owned by a U.S. citizen, partnership, or corporation – must be documented with the United States Coast Guard National Vessel Documentation Center. *See* 46 U.S.C. §§ 12012, 12103. Some other vessels 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. §§ 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 deter, discover, and impede theft. In order to share in certain federal funds, all fifty states have established boat numbering systems that are approved as complying with the federal requirements.

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 certificates 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 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 somewhat 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 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 not available to the public. As a result, VIS has not resolved difficulties occasionally experienced by vessel buyers and lenders in transactions involving both the federal and state systems or transactions involving vessels that have moved 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 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, as best as 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; and (viii) impose minimal or no new burdens or costs on state titling offices. Another goal is to protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty has caused significant damage to the vessel's hull integrity or propulsion system or the vessel was ever sunk.



1 record was created.

2 (5) "Cancel", with respect to a certificate of title, means to make the certificate  
3 ineffective.

4 (6) "Casualty" includes a collision, lightning strike, fire, explosion, or the running  
5 aground of a vessel.

6 (7) "Certificate of origin" means a record created by a manufacturer or importer  
7 as the manufacturer's or importer's proof of identity of a vessel. The term includes a  
8 manufacturer's certificate of origin, a manufacturer's statement of origin, an importer's  
9 certificate of origin, or an importer's statement of origin. The term does not include a builder's  
10 certificate.

11 (8) "Certificate of title" means a record, created by the office under this [act] or  
12 by a governmental agency of another jurisdiction under the law of that jurisdiction, that is  
13 designated as a certificate of title by the office or governmental agency, and that is evidence of  
14 ownership of a vessel.

15 (9) "Damaged", with respect to a vessel, means:

16 (i) not salvaged; and

17 (ii) sunk or a casualty has affected a propulsion system of the vessel or the  
18 integrity of the vessel's hull.

19 (10) "Dealer" means a person, including a manufacturer, in the business of selling  
20 vessels.

21 (11) "Documented vessel" means a vessel covered by a certificate of  
22 documentation issued pursuant to 46 U.S.C. section 12105.

23 (12) "Electronic certificate of title" means a certificate of title consisting of

1 information that is stored solely in an electronic or other medium and is retrievable in perceivable  
2 form.

3 (13) “Hull identification number”, means the number assigned to a vessel  
4 pursuant to 33 C.F.R. Part 181.

5 (14) “Lien creditor” means:

6 (A) a creditor that has acquired a lien on the property involved by  
7 attachment, levy, or the like;

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

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

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

11 (15) “Office” means [insert name of relevant department or agency that creates  
12 certificates of title in enacting state].

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

14 (17) “Owner of record” means the owner of a vessel as indicated in the files of  
15 the office or, if more than one owner is indicated in the files of the office, the one first indicated.

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

20 (19) “Principally used on the waters of this state” means used on the waters  
21 within the territorial limits of this state more than on the waters within the territorial limits of  
22 another state during a calendar year. For the purposes of this paragraph, “use” includes  
23 operation, navigation, and employment but does not include storage on land or mooring.



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

3 (21) "Purchaser" means a person that takes by purchase.

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

6 (23) "Salvaged" means that an insurer has paid or has agreed to pay, as a result of  
7 damage to a vessel, at least 65% of the insured value of the vessel.

8 (24) "Secured party" means:

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

11 (B) a person that is a consignor under [Uniform Commercial Code Article  
12 9];

13 (C) a trustee, indenture trustee, agent, collateral agent, or other  
14 representative in whose favor a security interest is created or provided for; or

15 (D) a person that holds a security interest arising under [Uniform  
16 Commercial Code Section 2-401, 2-505, 2-711(3), or 2A-508(5)].

17 (25) "Secured party of record" means the secured party whose name is provided  
18 as the name of the secured party or a representative of the secured party in an application for a  
19 certificate of title received by the office or, if more than one secured party is indicated, the one  
20 first indicated in the files of the office.

21 (26) "Security interest" means an interest in a vessel that secures payment or  
22 performance of an obligation if the interest is created by contract or arises under [Uniform  
23 Commercial Code Section 2-401, 2-505, 2-711(3) or 2A-508(5)]. The term includes any interest

1 of a consignor in a vessel in a transaction that is subject to [Uniform Commercial Code Article  
2 9]. The term does not include the special property interest of a buyer of a vessel on identification  
3 of that vessel to a contract for sale under [Uniform Commercial Code Section 2-401], but a buyer  
4 may acquire a security interest by complying with [Uniform Commercial Code Article 9].

5 Except as otherwise provided in [Uniform Commercial Code Section 2-505], the right of a seller  
6 or lessor of a vessel under [Uniform Commercial Code Article 2 or 2A] to retain or acquire  
7 possession of the vessel is not a security interest, but a seller or lessor may also acquire a security  
8 interest by complying with [Uniform Commercial Code Article 9]. The retention or reservation  
9 of title by a seller of a vessel notwithstanding shipment or delivery to the buyer under [Uniform  
10 Commercial Code Section 2-401] is limited in effect to a reservation of a security interest.

11 Whether a transaction in the form of a lease creates a security interest is determined by [UCC  
12 § 1-203].

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

14 (A) make or adopt a tangible symbol; or

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

17 (28) “State” means a state of the United States, the District of Columbia, Puerto  
18 Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or  
19 insular possession subject to the jurisdiction of the United States.

20 (29) “Title brand” means a designation of previous damage, use, or condition that  
21 [this [act] or] law other than this [act] requires to be indicated on a certificate of title created by a  
22 governmental agency of any jurisdiction.

23 (30) “Transfer of ownership” means a voluntary or involuntary conveyance of an

1 ownership interest in a vessel.

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

4 (A) a seaplane.

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

7 (C) watercraft less than 16 feet in length and powered solely by sail,  
8 paddles, oars or an engine of less than 10 horsepower.

9 (D) watercraft that operates only on a permanently fixed course and the  
10 movement of which is restricted to or guided on by means of a mechanical device to  
11 which the watercraft is attached or by which the watercraft is controlled.

12 (E) A stationary floating structure which:

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

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

17 (iii) has a permanent, continuous hookup to a shoreside sewage  
18 system.

19 (F) watercraft owned by United States, a state, or a foreign government, or  
20 a political subdivision of any of them.

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

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

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

- 2 (1) “Agreement”, [UCC Section 1-201(b)(3)].
- 3 (2) “Collateral”, [UCC Section 9-102(a)(12)].
- 4 (3) “Conspicuous”, [UCC Section 1-201(b)(10)].
- 5 (4) “Consumer goods”, [UCC § 9-102(a)(23)].
- 6 (5) “Debtor”, [UCC Section 9-102(a)(28)].
- 7 (6) “Good faith”, [UCC Section 1-201(b)(20)].
- 8 (7) “Lease”, [UCC Section 2A-103(a)(j)].
- 9 (8) “Lessee”, [UCC Section 2A-103(1)(n)].
- 10 (9) “Lessee in ordinary course of business”, [UCC Section 2A-103(1)(o)]
- 11 (10) “Lessor”, [UCC Section 2A-103(a)(p)].
- 12 (11) “Merchant”, [UCC Section 2-104(1)].
- 13 (12) “Notice; Knowledge”, [UCC Section 1-202].
- 14 (13) “Representative”, [UCC Section 1-201(b)(33)].
- 15 (14) “Sale”, [UCC Section 2-106(1)].
- 16 (15) “Security agreement”, [UCC Section 9-102(a)(73)].
- 17 (16) “Seller”, [UCC Section 2-103(1)(o)].
- 18 (17) “Send”, [UCC Section 1-201(b)(36)].
- 19 (18) “Value”, [UCC Section 1-204].

20 **Reporter’s Note**

21 The definition for “barge” in paragraph (a)(1) is new. It is intended to facilitate an  
22 exemption from this act. Under federal law, barges (non-powered vessels) of 100 tons or less are  
23 not documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301.  
24 *See also* 33 C.F.R. §§ 173.11, 173.12, 174.11. More important, many existing barges are quite  
25 old and records of prior transfers may be difficult to locate or resurrect. For this reason, the  
26 Committee provisionally decided that owners should not be required to obtain a certificate of title

1 for them.

2  
3 A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this  
4 might include such things as sail boats and row boats, which are intended to be covered by this  
5 act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or  
6 fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted  
7 from compliance with this act under Section 5(b)(2).

8  
9 Paragraph (a)(7) is derived from 33 C.F.R. § 187.7 but does not include a builder’s  
10 certificate as a type of certificate of origin. *See* Reporter’s Note to Section 6.

11  
12 The definition of “casualty” in paragraph (a)(6) and of “damaged” in paragraph (a)(9)  
13 deal with the obligation of an owner to brand the title or be deemed to have warranted the vessel  
14 to a purchaser for value. *See* Section 9(a), (d). For this purpose, a vessel is damaged if it is not  
15 “salvaged” within the meaning of paragraph (a)(23) and either: (i) the vessel is or ever has been  
16 sunk; or (ii) a casualty has affected a propulsion system of the vessel or the integrity of the  
17 vessel’s hull. Paragraph (a)(6) does not exhaustively define the term “casualty”; it merely  
18 describes some of the events that qualify as a casualty. Damage resulting from routine operation  
19 is not a casualty.

20  
21 Once a vessel is damaged, it remains damaged even though it is repaired. Thus, for  
22 example, a vessel that was sunk is damaged and remains so even after it is raised and repaired.  
23 As a result, the brand “damaged” is indelible (unless superceded by the brand “salvaged”). A  
24 branded vessel remains branded forever.

25  
26 Paragraph (a)(10) is more broad than the comparable definition in 33 C.F.R. § 187.7.  
27 That is because there should be no need for the dealer to be engaged in the business of buying  
28 vessels or to have an established place of business. A manufacturer can qualify as a dealer.

29  
30 Paragraph (a)(15) defines “office” to be the office that creates certificates of title for  
31 vessels. The office need not be the same authority in the state that issues numbers for vessels  
32 pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.

33  
34 Paragraphs (a)(16), (18), (24) and (26) are derived from UCOTA Section 2(a)(18), (20),  
35 (24), and (26), respectively. Each differs from the comparably definition in 33 C.F.R § 187.7.

36  
37 Paragraph (a)(19) is derived from 33 C.F.R. § 173.3(h) and (i). The definition rejects, for  
38 the purposes of this act that mooring constitutes “use.” *Cf. New Hampshire Ins. Co. v. Dagoné*,  
39 475 F.3d 35 (1st Cir. 2007) (mooring constitutes “use” for the purpose of an insurance policy that  
40 excluded coverage for use from November 1 to April 15). Similarly, storage on land does not  
41 constitute “use.”

42  
43 The term “principally used” requires reference to a specified time period and the use of a  
44 “calendar year” for this purpose follows the time period specified for the purposes of vessel  
45 numbering in 46 U.S.C. § 12301(a) and 33 C.F.R. § 173.3(b).

1 Paragraph (a)(30) should be read in conjunction with paragraph(a)(16). Only an owner  
2 has an ownership interest, and thus an ownership interest refers to the legal title of an owner. An  
3 ownership interest does not include an equitable or beneficial ownership interest. It also does not  
4 include a security interest or the interest of a lessee in a lease. There can, however be multiple  
5 owners, and a transfer of the interests of one, some or all of them would be a transfer of  
6 ownership.

7  
8 Subparagraph (A) of paragraph (a)(31) is derived from most state vessel titling statutes.  
9 Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099. The purpose of both  
10 subparagraphs is the same: to exclude from the scope of this Act vessels that are covered by  
11 some other titling law, such as the Federal Aviation Act or a state’s motor vehicle certificate of  
12 title act.

13  
14 Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft  
15 for which a certificate of title is required. Several states do not title watercraft less than a  
16 designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft.  
17 And some do not title non-motor-powered watercraft of less than a designated length. This act  
18 follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in  
19 length are covered and all vessels propelled by an engine of at least 10 horsepower are covered.  
20 Only those vessels that are both less than 16 feet in length and not mechanically powered are  
21 excluded from coverage under this act by virtue of subparagraph (C).

22  
23 Subparagraphs (D) and (E) are derived from Cal. Vehicle Code § 9873. Subparagraph  
24 (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry  
25 attached to a cable because, even with the cable, the ferry does not operate on a fixed course.  
26 Subparagraph (E) excludes non-powered floating residences that are fixed to the shore. Most  
27 such residences would fail to satisfy the initial language in the definition, in that they are not  
28 “used or capable of being used as a means of transportation on water.” Nevertheless, to avoid  
29 any confusion they are expressly excluded.

30  
31 Subparagraph (F) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of  
32 title act do not seem apply to government-owned and operated vessels.

33  
34 Subparagraph (G) is derived from 33 C.F.R. § 173.11(d).

35  
36 Despite 33 C.F.R. § 187.303, there are no definitions for “issuing authority,” or “titling  
37 authority,” because those terms are not used in this act. is, however, a definition for “office.”  
38

39 **SECTION 3. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY.** Unless  
40 displaced by a provision this act, the principles of law and equity supplement its provisions.

41 **Comment**

42  
43 1. This section is consistent with [Uniform Commercial Code] Section 1-103(b). In

1 addition, like the [Uniform Commercial Code], this act should be liberally construed and applied  
2 to promote its underlying purposes and policies, which are:

- 3  
4 (1) to simplify, clarify, and modernize the law governing certificates of title;  
5  
6 (2) to permit the continued expansion of commercial practices through custom, usage,  
7 and agreement of the parties; and  
8  
9 (3) to make uniform the law among the various jurisdictions.

10  
11 This act should be construed in accordance with its underlying purposes and policies.  
12 The text of each section should be read in the light of the purpose and policy of the rule or  
13 principle in question, as well as with the act as a whole, and the application of the language  
14 should be construed narrowly or broadly, as the case may be, in conformity with the purposes and  
15 policies involved.  
16

17 **SECTION 4. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF**  
18 **TITLE.**

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

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

27 (c) A vessel ceases to be covered by a certificate of title at the earlier of the time the  
28 certificate of title ceases to be effective under the law of the jurisdiction under which it was  
29 created or the time the vessel subsequently becomes covered by another certificate of title.

30 **Comment**

31 Source: Uniform Commercial Code Section 9-303.

1           1. This section provides which state’s law governs a certificate of title. It is the law of  
2 the jurisdiction that created the certificate of title, from the moment the application is delivered to  
3 the titling office until such time as certificate of title ceases to be effective under the law of the  
4 issuing jurisdiction or an application id delivered to the titling office of a different state.  
5

6           2. There is no conflict between this section and Section 5, which requires the owner of a  
7 vessel principally used on the waters of this state to apply for a certificate of title in this state.  
8 Section 5 imposes a requirement on the owner. This section provides which state’s law governs  
9 a certificate.  
10

11           **Example 1:** Owner has a vessel principally used on the waters of this state. Owner  
12 applies for and receives a certificate of title for the vessel from the titling office of another state.  
13 Owner has failed to comply with Section 5. Nevertheless, the law of the issuing state governs the  
14 all issues relating to the certificate of title.  
15

16           3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a  
17 security interest in non-inventory collateral covered by a certificate of title statute is to have the  
18 security interest noted on the certificate of title. *See* Uniform Commercial Code Section  
19 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9’s choice of law rules.  
20 Under those rules, the law of the jurisdiction which created the certificate (or for which an  
21 application had been filed) is the law that governs, even if neither the debtor nor the goods are  
22 located there. *See* Uniform Commercial Code Section 9-303. That law continues to control even  
23 if the debtor or the goods move, until the certificate expires by its own terms or a new certificate  
24 of title is applied for in a different state. *Id.*  
25

26           These rules should work well with this act, which provides that the governing law is the  
27 law of the jurisdiction of principal use.  
28

29           **Example 2:** Owner, who has granted a security interest in a vessel, applies in State A for  
30 a certificate of title for the vessel. Upon delivering that application to the titling office, the law  
31 of State A governs perfection and the effective of perfection, regardless of whether the debtor is  
32 located in State A. If the application includes the required information about the existing  
33 security interest, the security interest will be perfected.  
34

35           **Example 3:** Same facts as Example 2 but the vessel later becomes principally used on  
36 the waters of State B. The law of State B requires the debtor to apply for a certificate of title  
37 from State B. If the debtor does not do so, then the law of State A will still govern the perfection  
38 of the security interest. As long as the law of State A does not invalidate its certificate of title  
39 when the principal use of the vessel changed to State B, the security interest will remain  
40 perfected.  
41

## 42           **SECTION 5. CERTIFICATE OF TITLE REQUIRED.**

43           (a) Except as provided in subsections (b) and (c), the owner of a vessel principally used



1 on the waters of this state shall deliver to the office an application for a certificate of title for the  
2 vessel, together with the applicable fee, within [20 days] of the later of:

3 (1) the date of any transfer of ownership; or

4 (2) the date the vessel first became principally used on the waters of this state.

5 (b) No application for a certificate of title is required for:

6 (1) a documented vessel;

7 (2) a barge;

8 (3) a vessel under construction pursuant to contract before delivery; or

9 (4) a vessel held by a dealer for sale.

10 (c) The [issuing authority in this State] shall not issue, transfer, or renew a certificate of  
11 number for a vessel unless the office has created a certificate of title for the vessel or an  
12 application for a certificate of title for the vessel and the applicable fee has been delivered to the  
13 office.

#### 14 **Reporter's Note**

15  
16 Sources: Loosely from Ill. Comp. Stat. ¶ 45/3A-1; NASBLA Model Act for Vessel  
17 Titling Sections 3, 4, 6.

18  
19 Former subsections (b) and (c) have been merged. Paragraphs (b)(2) and (3) are new and  
20 have been added at the Committee's request. The former responds to the concern that many old  
21 barges are not federally documented and the records necessary to title them may be unavailable  
22 or costly to obtain. *See* Reporter's Note to Section 2. The latter was added because the  
23 Committee believed it unnecessary for a certificate of title to be issued for a vessel under  
24 construction, even if it is in the water for testing, and that requiring a certificate of title for such a  
25 vessel would undermine the efficacy of common financing arrangements. *See also* Section 13(g)  
26 (regarding perfection of a security interest in a vessel described in paragraph (b)(2) or (3)).

27  
28 The Committee may wish to consider adding to the list in subsection (b) of vessels for  
29 which no application need be filed a vessel covered by a certificate issued by or on behalf of the  
30 government of a country other than the United States.

31  
32 Subsection (c) has been revised to account for the possibility that the state agency that  
33 issues numbers for vessels may not be the office that creates certificates of title.

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**SECTION 6. APPLICATION FOR CERTIFICATE OF TITLE.**

(a) Except as otherwise provided in Sections 14, 19 and 20, only the owner of a vessel may apply for a certificate of title covering the vessel.

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

- (1) the applicant’s name, street address, and, if different, address for receiving first class mail delivered by the United States Postal Service;
- (2) the names of all other owners of the vessel;
- (3) the principal residence of at least one owner;
- (4) the social security number or taxpayer identification number of each owner;
- (5) the hull identification number for the vessel or, if there is none, an application for the issuance of a hull identification number for the vessel;
- (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 vessel was manufactured or built;
  - (D) the overall length of the vessel;
  - (E) the vessel type;
  - (F) the hull material;
  - (G) the propulsion type; and
  - (H) the engine drive type.

1 (7) an indication of all security interests in the vessel known to the applicant,  
2 including for each security interest the name and mailing address of the secured party or a  
3 representative of the secured party;

4 (8) an affirmation that the vessel is not a documented vessel;

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

7 (10) if the vessel is damaged or salvaged, a statement indicating that the vessel is  
8 damaged or salvaged, whichever applies; and

9 (11) if the application is made in connection with a transfer of ownership, the  
10 transferor's name, street address and, if different, address for receiving first class mail delivered  
11 by the United States Postal Service, the sales price if any, and the date of the transfer.

12 (c) In addition to the information required in subsection (b), an application for a  
13 certificate of title may contain electronic communication addresses of the owner or the transferor.

14 (d) Except as otherwise provided in Section 18, 19, 20, or 21, the application must be  
15 accompanied by one of the following:

16 (1) a certificate of title covering the vessel which has been signed by the owner  
17 shown on the certificate and which:

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

19 (B) is accompanied by a record or records that identify the applicant as the  
20 owner of the vessel;

21 (2) [in the case of a vessel that has been documented, a record or records showing  
22 surrender of documentation]; or

23 (3) if there is not a certificate of title covering the vessel, all existing certificates

1 of origin and bills of sale or other documents of transfer covering the vessel which are known to  
2 the applicant and which collectively identify the applicant as the owner of the vessel.

3 (e) A record submitted in connection with an application is part of the application and the  
4 office shall maintain the record, or an electronic version of the record, in its files.

5 (f) The office may require that an application for a certificate of title be accompanied by:

6 (1) payment of all taxes and fees payable by the applicant under the law of this  
7 state in connection with the application or with the acquisition or use of the vessel; or

8 (2) evidence of payment of any taxes and fees not paid as provided in paragraph  
9 (1).

### 10 **Reporter's Note**

11 Paragraph (d)(2) will, when drafted, deal with vessels that are coming out of federal  
12 documentation and into the state certificate of title system. Further research is needed to ensure  
13 that the process and documents required by this act will be consistent with federal law and with  
14 the operation of the National Vessel Documentation Center.  
15  
16

### 17 **Comment**

18 Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.317.  
19

20 1. Unlike motor vehicles, which have only one title source document prior to titling (a  
21 manufacturer's statement of origin), a vessel can have two: a manufacturer's statement or  
22 certificate of origin and a builder's certificate. Because there is no ready way for the titling office  
23 to know – unless informed by the applicant – if there is both a manufacturer's certificate and a  
24 builder's certificate for the same vessel, and because a manufacturer's certificate should exist  
25 even if there is a builder's certificate, this act generally ignores builder's certificates. *See* Section  
26 2(a)(7).  
27  
28

29 2. Not all of the information submitted will appear on the certificate of title. For  
30 example, the principal residence of an owner and each owner's social security number or  
31 taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear  
32 on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 8.  
33  
34

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

1  
2           **SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF**  
3 **TITLE.**

4           (a) Unless an application for a certificate of title is rejected under subsection (c), the  
5 office shall create a certificate of title for the vessel in accordance with subsection (b) within [15]  
6 business days after delivery to it of an application that complies with Section 6.

7           (b) If the office is authorized to create electronic certificates of title, the office shall  
8 create an electronic certificate of title unless in the application the secured party of record or, if  
9 there is no secured party of record, the owner of record, requests that the office create a written  
10 certificate of title.

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

13                   (1) the application does not comply with Section 6;

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

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

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

19           (d) The office shall reject an application for a certificate of title for a vessel that is a  
20 documented vessel.

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

22                   (1) the office could have rejected the application for the certificate of title under  
23 subsection (c);

1 (2) it is required to cancel the certificate of title under another provision of this  
2 act; or

3 (3) the office receives satisfactory evidence that the vessel has become a  
4 documented vessel.

5 [(f) The office shall provide an opportunity for a hearing at which the applicant and any  
6 other interested party may present evidence in support of or opposition to the cancellation. The  
7 office shall serve the notice of the opportunity for a hearing in person or send it by first class  
8 mail, return receipt requested, through the United States Postal Service to the applicant, the  
9 owner of record, and all secured parties indicated in the files of the office. If within [30] days  
10 after the notice was sent, the office receives a request for a hearing from the applicant or any  
11 other interested party, the office shall hold the hearing no later than [20] days after receiving the  
12 request].

### 13 **Reporter's Note**

14 Sources: UCOTA Section 10; Ind. Code § 9-31-2-9.

15 Subsection (c) is derived in part from Indiana law and is intended to permit the office to  
16 reject an application if the applicant does not provide sufficient proof of ownership.  
17

18 Subsection (d) is new. It supplements the rule of Section 5 by requiring that the office  
19 not create a certificate of title for a documented vessel.  
20

21 Subsection (e) includes a provision allowing the office to cancel a certificate of title for a  
22 vessel that becomes federally documented.  
23

24 Some states have laws that require the applicable office to cancel a motor vehicle  
25 certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or  
26 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws  
27 apply to vessels but in any event this section does not permit cancellation for any of these  
28 reasons. Cancelling the vessel's registration (*i.e.* license to use) for such failures would seem far  
29 more appropriate than cancelling its certificate of title. Moreover, nothing in federal regulations  
30 authorizes cancellation for any of these reasons, and therefore authorizing cancellation for any of  
31 these reasons in this act might jeopardize the goal of having this act approved pursuant to 33  
32 C.F.R. part 187, so that a security interest perfected pursuant to this act would qualify as a  
33  
34

1 “preferred mortgage” under 46 U.S.C. § 31322(d).

2  
3 **Comment**  
4

5 Subsection (f) is optional. It provides a procedure for the office to follow before  
6 cancelling a certificate of title. It is intended for those states whose public records or other law  
7 does not already provide a procedure that ensures all interested parties are notified in advance  
8 and given an opportunity to be heard.  
9

10 **SECTION 8. CONTENTS OF CERTIFICATE OF TITLE.**

11 (a) A certificate of title must contain:

12 (1) the date the certificate of title was created;

13 (2) the name of at least the owner of record and, if not all owners are listed, an  
14 indication that there are additional owners;

15 (3) the address of the owner of record;

16 (4) the hull identification number;

17 (5) the information listed in Section 6(b)(6);

18 (6) except as otherwise provided in Section 14(b), the name and address of the  
19 secured party of record, if any, and if not all secured parties are listed, an indication that there are  
20 other security interests indicated in the files of the office or on a record created by a  
21 governmental agency of another jurisdiction and submitted to the office; and

22 (7) all title brands covering the vessel, including brands indicated on a certificate  
23 of title created by a governmental agency of another jurisdiction and delivered to the office.

24 (b) Nothing in this act precludes the office from noting on a certificate of title the name  
25 and address of a secured party that is not a secured party of record.

26 (c) An indication of a title brand on a certificate of title may consist of an abbreviation,  
27 but not a symbol, and must identify the jurisdiction that under whose law the title brand was

1 created or the jurisdiction that created a certificate of title on which the title brand was indicated.  
2 If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the  
3 certificate of title, the certificate of title may state: “Previously branded in [insert the particular  
4 jurisdiction under whose law the title brand was created or whose certificate of title previously  
5 indicated the title brand].”

6 (d) If a vessel was previously registered in a jurisdiction other than a state, the office  
7 shall indicate on the certificate of title that the vessel was registered in that jurisdiction.

8 (e) A certificate of title must contain a form that all owners shown on the certificate may  
9 sign in order to evidence consent to a transfer of ownership to another person.

#### 10 **Reporter’s Note**

11 Sources: UCOTA Section 11; 33 C.F.R. § 187.317.  
12

13  
14 Subsection (d) is derived from UCOTA Section 11(d), where it is designed to respond to  
15 the concern that vehicles may come from a jurisdiction (such as a foreign country) that does not  
16 have a mechanism for noting liens on a certificate of or that does not recognize title brands. The  
17 risk is that such a vehicle could be subject to a prior lien not indicated in the title documentation,  
18 or should be but is not branded, and that the vehicle’s title could be “laundered” through such a  
19 jurisdiction. Subsection (d) is intended to alert a buyer or secured party to this risk.  
20

21 At its last meeting, the Drafting Committee asked that subsection (d) be deleted, pending  
22 an explanation of its purpose in UCOTA and an analysis of whether that purpose applies to  
23 vessels and to this act. Given the current state of the law, in which several states do not title  
24 vessels and few brand them, and uncertainty about how other countries deal with liens and title  
25 branding, it seems worthwhile to alert purchasers to the fact that the title to a vessel may be  
26 laundered. Accordingly, subsection (d) has been retained for further discussion.  
27

#### 28 **SECTION 9. TITLE BRAND.**

29 (a) Prior to transferring an ownership interest in a vessel that is or was damaged and  
30 which is covered by a certificate of title created by the office, the owner of record shall deliver to  
31 the office an application to have the certificate amended by adding the title brand designation  
32 “Damaged.” Within [15] business days after delivery of the application to the office, the office



1 shall create a new certificate of title that conspicuously indicates that the vessel is branded  
2 “Damaged.” The office shall deliver the new certificate pursuant to Section 11.

3 (b) Not later than [x] days after a vessel covered by a certificate of title created by the  
4 office becomes salvaged, the insurer shall deliver to the office:

5 (1) if the insurer has become the owner of the vessel, an application for a new  
6 certificate of title pursuant to Section 6; or

7 (2) an application to have the certificate amended by adding the title brand  
8 designation “Salvaged.”

9 (c) Not later than [15] business days after delivery to the office of an application pursuant  
10 to subsection (b), the office shall create a new or amended certificate of title that conspicuously  
11 indicates that the vessel is branded “Salvaged.” The office shall deliver the new or amended  
12 certificate pursuant to Section 11.

13 (d) A person that transfers an ownership interest in a damaged or salvaged vessel to a  
14 good-faith purchaser for value warrants to the purchaser and to all subsequent transferees that the  
15 vessel is merchantable within the meaning of [Uniform Commercial Code Section 2-314] [and  
16 seaworthy] unless, before the purchaser gives value:

17 (1) a certificate of title covering the vessel and indicating the applicable title  
18 brand has been provided to the purchaser; or

19 (2) a record signed by the person and indicating that the vessel is damaged or  
20 salvaged is provided to the purchaser.

21 (e) An insurer that fails to comply with subsection (b) warrants to a good-faith purchaser  
22 of the vessel for value and to all subsequent transferees that the vessel is merchantable within the  
23 meaning of [Uniform Commercial Code Section 2-314] and seaworthy unless, before the

1 purchaser gives value:

2 (1) a certificate of title covering the vessel and indicating that the vessel is  
3 salvaged has been provided to the purchaser; or

4 (2) a record signed by the person and indicating that the vessel is salvaged is  
5 provided to the purchaser.

6 (f) A warranty made under subsection (c) or (e) cannot be modified or disclaimed by  
7 agreement.

### 8 **Reporter's Note**

9 Source: New.

10  
11 As presently drafted, subsection (d) applies to anyone transferring an ownership interest  
12 in a vessel. Accordingly, while it does not apply to a secured party that assigns its security  
13 interest, because a security interest is not an ownership interest, it does apply to a secured party  
14 that conducts a disposition and thereby transfers the debtor's ownership interest. The Committee  
15 at its next meeting may wish to consider whether this is appropriate, given that the secured party  
16 may have no way of knowing that the vessel was damaged, particularly if the vessel has since  
17 been repaired.

18  
19 One way to limit the scope subsection (d) would be to make it applicable to "an owner"  
20 that transfers an ownership interest, rather than "a person" that transfers an ownership interest. A  
21 second possible approach would be to make the debtor the one who makes the warranty when the  
22 secured party disposes of the debtor's ownership interest. This may not be appropriate if the  
23 vessel became damaged during of after repossession. A third possible approach would be to  
24 have the debtor make the warranty if the vessel became damaged before repossession and to have  
25 the secured party make the warranty if the vessel became damaged during or after repossession.

### 26 27 **Comment**

28  
29 Subsection (a) imposes only on the owner of record a duty to obtain a new certificate of  
30 title for a damaged vessel. Other owners do not have such a duty. In contrast, subsection (d)  
31 provides that any person that transfers an ownership interest in a damaged vessel makes a  
32 warranty if prior to giving value the purchaser was not provided with a branded title or provided  
33 with a record indicating that the vessel is damaged. Accordingly, an owner other than the owner  
34 of record who transfers its ownership interest can be deemed to have warranted the vessel under  
35 subsection (c). So too can a secured party conducting a disposition under Uniform Commercial  
36 Code Section 9-610, because such a disposition transfers the debtor's ownership interest. *See*  
37 Uniform Commercial Code Section 9-617(a)(1).  
38

1 A warranty made under this section is a statutory warranty, not an implied warranty.  
2 Even though the nature and scope of a warranty made under subsection (c) or (e) is co-extensive  
3 with the implied warranty of merchantability that arises under Uniform Commercial Code  
4 Section 2-314, subsection (f) makes clear that a warranty made under this section cannot be  
5 disclaimed through compliance with Uniform Commercial Code Section 2-316, Section  
6 9-610(e), or otherwise. For the same reason, other conditions to the creation of an implied  
7 warranty of merchantability under Article 2 are immaterial to the existence of a warranty under  
8 this section. A transferor or insurer makes a warranty under this section regardless of whether  
9 the transferor or insurer is a merchant with respect to vessels of that kind or even a merchant at  
10 all.  
11

12 **SECTION 10. MAINTENANCE OF AND ACCESS TO FILES.**

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

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

15 (2) maintain in its files the hull identification number and all the information  
16 submitted with the application pursuant to Section 6(b) to which the record relates, including the  
17 date [and time] the record was delivered to the office;

18 (3) maintain the file for public inspection subject to subsection (d); and

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

20 (b) The office shall maintain in its files the information contained in all certificates of  
21 title created under this act. The files of the office must be accessible by the hull identification  
22 number for the vessel covered by the certificate, by the name of the owner of record, and by any  
23 other indexing method used by the office.

24 (c) The office shall maintain in its files, for each vessel for which it has created a  
25 certificate of title, all title brands known to the office, the name of each secured party known to  
26 the office, the name of each claimant to ownership of the vessel known to the office, and all  
27 stolen-property reports the office has received relating to the vessel.

28 [(d) Except as otherwise provided by [public records law of this state], the information

1 required under Section 8 is a public record. Whether other information in the files of the office is  
2 made available to the public is governed by law of this state other than this act.]

3 **Reporter’s Note**

4  
5 Source: UCOTA Section 14.

6  
7 Subsection (d) makes the information on the certificate of title a public record. It does  
8 not make the information in the application a public record. Therefore, nothing in this Act  
9 requires that the social security or taxpayer identification number of the owner or owners, which  
10 under Section 6(b)(4) must be included in the application, be made public.

11  
12 Federal regulations provides that a state must “retain the evidence used to establish the  
13 accuracy of the information required for vessel titling purposes and make it available on request  
14 to the Coast Guard, participating States, and law enforcement authorities.” 33 C.F.R. § 187.331.  
15 This section, along with Section 6(e), requires the office to comply with this regulation.  
16

17 **SECTION 11. SENDING OF CERTIFICATE OF TITLE.**

18 (a) Upon creation of a written certificate of title, the office shall promptly send the  
19 certificate to the secured party of record or, if there is none, to the owner of record, at the address  
20 indicated for that person in the files of the office. Upon creation of an electronic certificate of  
21 title, the office shall promptly send a record evidencing the certificate of title to the owner of  
22 record and, if there is one, to the secured party of record, at the address indicated for that person  
23 in the files of the office. A record evidencing an electronic certificate of title may be sent to a  
24 mailing address or, if indicated in the files of the office, an electronic address.

25 (b) If the office creates a written certificate of title for a vessel, any electronic certificate  
26 of title for the vessel is thereby cancelled and replaced by the written certificate of title. The  
27 office shall maintain in the files of the office an indication of the date [and time] of cancellation.

28 (c) Before the office creates an electronic certificate of title for a vessel, any written  
29 certificate of title for the vessel must be surrendered to the office. If the office creates an  
30 electronic certificate of title for a vessel, the office shall destroy or otherwise cancel any existing

1 written certificate of title for the vessel that has been surrendered to the office, and shall maintain  
2 in the files of the office an indication of the date [and time] of destruction or other cancellation.  
3 If a written certificate of title being cancelled is not destroyed, the office shall indicate on the  
4 face of the written certificate of title that the written certificate of title has been cancelled.

### 5 **Reporter's Note**

6 Source: UCOTA Section 15.  
7

8 The prior draft contained two alternatives of subsection (a), which differed only as to  
9 whom the office should send a written certificate of title: the owner of record or the secured  
10 party of record. To facilitate interstate transactions and standardize the process, the Committee  
11 chose to require that the office send the certificate to the secured party of record. This is  
12 probably the more common practice, but nevertheless one which would require titling offices and  
13 secured lenders in some states to change their procedures.  
14

15 Subsection (b) in the previous draft required the office to create and deliver the certificate  
16 of title within 15 business days. The mandate to create the certificate of title, without the time  
17 limit, already appeared in Section 6(a) (re-designated Section 7(a) in this draft). To avoid  
18 duplication, subsection (b) has been deleted and the time limit has been added to Section 7. As a  
19 result, this section now deals solely with the duty to send the certificate or a record evidencing  
20 the certificate, not the duty to create the certificate.  
21

22 **SECTION 12. EFFECT OF CERTIFICATE.** A certificate of title is prima facie  
23 evidence of the accuracy of the information in the record that constitutes the certificate of title.

### 24 **Comment**

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

26 This section does not make a certificate of title conclusive evidence of the ownership of a  
27 vessel. Instead, this section makes a certificate of title merely prima facie evidence of ownership.  
28 In litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is  
29 sufficient to prove ownership of a vessel unless someone comes forward with admissible  
30 evidence to the contrary. A certificate of title shifts both the burden of production and the burden  
31 of persuasion to anyone challenging the information on a written certificate or the information  
32 constituting an electronic certificate of title.  
33



1 may require] to have the security interest added to the certificate of title. The application must be  
2 authenticated by an owner of the vessel or by the secured party and must include:

3 (1) the name of the owner of record;

4 (2) the name and mailing address of the secured party or a representative of the  
5 secured party;

6 (3) the hull identification number for the vessel; and

7 (4) if the office has created a written certificate of title for the vessel, the written  
8 certificate of title.

9 (d) A security interest perfected under subsection (c) is perfected upon the later of  
10 delivery to the office of the application and any applicable fee or attachment of the security  
11 interest under [Uniform Commercial Code Section 9-203].

12 (e) Upon delivery of an application that complies with subsection (c) and payment of all  
13 fees, the office shall create a new certificate of title pursuant to Section 7(b), and deliver the new  
14 certificate pursuant to Section 11(a). The office shall maintain in the files of the office the date  
15 [and time] of delivery of the application to the office.

16 (f) If a secured party assigns a perfected security interest in a vessel, the receipt by the  
17 office of a statement providing the name of the assignee or its representative as secured party is  
18 not required in order to continue the perfected status of the security interest against creditors of  
19 and transferees from the original debtor. However, a purchaser of a vessel subject to a security  
20 interest who obtains a release from the secured party indicated in the files of the office or on the  
21 certificate of title takes free of the security interest and of the rights of a transferee if the transfer  
22 is not indicated either in the files of the office or on the certificate of title.

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

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

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

6 (3) a vessel under construction pursuant to contract, for which no application for  
7 a certificate of title has been delivered to the office, before delivery.

8 (h) A security interest in a documented vessel which is valid against third parties as a  
9 result of compliance with 46 U.S.C. § 31321 remains perfected for 30 days from the date the  
10 certificate of documentation is [canceled] [surrendered to the Secretary of the Department of  
11 Homeland Security].

12 (i) [In the case of a security interest in a vessel perfected by any method under the law of  
13 another jurisdiction when the vessel becomes covered by a certificate of title issued by this state,  
14 the security interest remains] [A security interest in a vessel is] perfected to the extent provided  
15 in [Uniform Commercial Code Section 9-316(d)].

16 (j) A security interest perfected under this section has priority over the rights of  
17 purchasers and creditors, including lien creditors, to the extent provided in [Uniform Commercial  
18 Code Article 9, Part 3]. For the purposes of [obtaining] priority over purchasers and creditors  
19 under [Uniform Commercial Code Article 9, Part 3], delivery of an application pursuant to  
20 subsection (a) or (c) is equivalent to filing a financing statement.

### 21 **Reporter's Note**

22  
23 Subsection (d) was formerly the last sentence of subsection (c), after the tabulation.  
24 Pursuant to ULC Drafting Rule 404(g), it is now a separate subsection.

25  
26 Subsections (g)(2) and (3) are new. They carry forward the Committee's decision not to



1 require a certificate of title for barges or for vessels under construction. *See* Reporter’s Note to  
2 Sections 2, 5. Accordingly, a security interest in such a vessel would be perfected under other  
3 law if no application for a certificate of title for the vessel has been delivered to the office.  
4 However, if the owner does apply for a certificate of title for the vessel, perfection must be  
5 through compliance with this section.  
6

7 Subsection (h) is new. It provides a temporary period of automatic perfection for a  
8 security interest in a vessel coming out of federal documentation. The purpose of this subsection  
9 is to facilitate the decision by the owner of and creditors with a security interest in a vessel to  
10 surrender the certificate of documentation and apply for a certificate of title. Without at least a  
11 temporary period of perfection, secured parties might risk being unperfected for the interval  
12 between surrender of the certificate of documentation and delivery to the titling office of an  
13 application for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for  
14 perfection of a security interest in a documented vessel to continue – indefinitely – upon  
15 surrender of the document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be  
16 unnecessary. However, it remains unclear whether federal law truly does provide for continuous  
17 perfection of what, in that situation, would be a secret lien.  
18

19 The Committee may wish to consider whether there should be a temporary perfection  
20 period for a newly constructed vessel for which an application for a certificate of documentation  
21 has been or will be filed.  
22

### 23 **Comment**

24  
25 Source: UCOTA Section 26; Uniform Commercial Code Sections 9-311(b), 9-505(a).  
26

27 Subsection (i) affirms that a security interest perfected under this act takes priority over a  
28 subsequent judicial lien. Subsection (h) also provides that delivering to the office an application  
29 for a certificate of title that identifies a security interest is the equivalent of filing a financing  
30 statement. *See* Uniform Commercial Code Section 9-311(b). It therefore allows for a security  
31 interest to attain priority under such rules as Section 9-317(a)(2)(B) (giving priority over a lien  
32 creditor whose lien arises after the security agreement is authenticated and a financing statement  
33 is filed) and Section 9-317(e) (giving a perfected purchase-money security interest priority over a  
34 judicial lien if a financing statement is filed within 20 days of when the debtor receives  
35 possession). Subsection (i) does not, by treating the delivery of an application for a certificate of  
36 title as the equivalent of filing a financing statement, subject the application or the certificate to  
37 the rules of Uniform Commercial Code Section 9-506. Instead, Section 17 of this act governs the  
38 effect of any errors or omissions in the certificate of title.  
39

### 40 **SECTION 15. TERMINATION STATEMENT.**

41 (a) A secured party indicated in the files of the office as having a security interest in a  
42 vessel shall deliver to the office and, upon the debtor’s request, to the debtor, a termination

1 statement upon the earlier of:

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

5 (2) [14] days after the secured party receives a signed demand from an owner and  
6 there is no obligation secured by the vessel subject to the security interest and no commitment to  
7 make an advance, incur an obligation, or otherwise give value secured by the vessel.

8 (b) If a written certificate of title has been created and delivered to a secured party and a  
9 termination statement is required under subsection (a), the secured party, within the time  
10 provided in subsection (a), shall deliver the written certificate of title to the debtor or the office  
11 with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed or  
12 is otherwise unavailable or illegible, the secured party shall deliver with the termination  
13 statement, within the time provided in subsection (a), an application for a replacement certificate  
14 of title meeting the requirements of Section 21.

15 (c) Upon delivery to the office of a termination statement authorized by the secured  
16 party, the security interest to which the termination statement relates ceases to be perfected. If  
17 the security interest to which the termination statement relates was indicated on the certificate of  
18 title, the office shall create a new certificate of title pursuant to Section 7(b), and deliver the new  
19 certificate pursuant to Section 11(a). The office shall maintain in its files the date [and time] of  
20 delivery to the office of the termination statement.

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

1 Section 6 or 21.

2 **Reporter’s Note**

3  
4 Source: UCOTA Section 27; Uniform Commercial Code Section 2-715(2).

5  
6 Subsection (c) as previously drafted provided that upon delivery of the termination  
7 statement, “any indication of the security interest on the certificate of title . . . ceases to be  
8 effective.” This language was removed – and new language expressly providing that the security  
9 interest becomes unperfected was added – because the draft does not treat indication of the  
10 security interest on the certificate of title as applicable method for perfecting. Instead, the act  
11 treats delivery of an application to the office and payment of the applicable fee as the method for  
12 perfecting. *See* Section 13(a), (c).

13  
14 **Comment**

15  
16 Subsection (c) requires the office, upon delivery of a termination statement, to create a  
17 new certificate of title if the security interest to which the termination statement applies was  
18 indicated on the existing certificate of title. This will be the situation whenever the secured party  
19 was the secured party of record. It will also be the case if the security interest was otherwise  
20 listed on the certificate of title or the certificate indicated the existence of other unlisted security  
21 interests and the termination statement relates to the only unlisted security interest. *See* Section  
22 8(a)(6). In creating a new certificate of title, the office shall comply with Section 7(b) in  
23 determining whether to create a written certificate of title or an electronic certificate of title.

24  
25 If a termination statement delivered to the office relates to the security interest of the  
26 secured party of record, and one or more other security interests in the vessel are indicated in the  
27 files of the office, there will now be a new secured party of record. The new secured party of  
28 record will be the secured party whose security interest was first communicated to the office and  
29 for which no termination statement has been filed.

30  
31 **SECTION 16. TRANSFER.**

32 (a) Upon a voluntary transfer of ownership of a vessel covered by a written certificate of  
33 title, the transferor, as promptly as practicable, shall sign and deliver the certificate to the  
34 transferee. Upon a voluntary transfer of ownership of a vessel covered by an electronic  
35 certificate of title, the transferor, as promptly as practicable, shall authenticate and deliver to the  
36 transferee a record evidencing the transfer of ownership to the transferee. A buyer of a vessel  
37 covered by a certificate of title has a specifically enforceable right to require the seller to sign and

1 deliver the certificate of title to the purchaser or authenticate and deliver to the purchaser a record  
2 evidencing the transfer of ownership.

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

5 (c) As between the parties to a transfer and their assignees and successors, a transfer of  
6 ownership of vessel is not rendered ineffective by a failure to comply with subsection (a) or by a  
7 failure to apply for a new certificate of title. However, except as otherwise provided in Section  
8 17, 18, 22(b) and (c), or 23, a transfer of ownership without compliance with subsection (a) is not  
9 effective against other persons claiming an interest in the vessel.

10 (d) After compliance with subsection (a), the transferor is not liable as owner for any  
11 damages resulting from operation of the vessel thereafter even if the transferee fails to apply for a  
12 new certificate of title reflecting the transfer.

### 13 **Reporter's Note**

14 Source: UCOTA Section 16.

15 As currently drafted, subsection (d) does not apply to involuntary transfers. *Cf.* Sections  
16 18, 19. The Committee may wish to consider whether subsection (d) or Sections 18 and 19  
17 should be amended to include a similar rule following an involuntary transfer.  
18  
19

### 20 **Comment**

21 1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers  
22 of ownership of a vessel covered by a certificate of title.  
23

24 Subsection (a) requires the transferor to facilitate the creation of a new certificate of title  
25 by either signing and delivering the existing written certificate of title or authenticating and  
26 delivering a record evidencing the transfer of ownership with respect to a vessel covered by an  
27 electronic certificate of title. By referring to a “transfer of ownership,” subsection (a) applies to  
28 gifts as well as sales. It also covers a transfer of ownership by less than all of the owners, such as  
29 when only one of several joint owners sells or gifts its interest. Subsection (a) does not apply to  
30 the creation of a lease security interest because neither of those transactions involves a “transfer  
31 of ownership.”  
32  
33  
34



1           **Example 2:** The office creates a certificate of title that misspells the name of the owner  
2 of record. The certificate remains effective regardless whether the applicant or the office made  
3 the error and regardless whether the files of the office contain the same error.  
4

5           2. Because subsection (a) applies not only to a certificate of title, but also to or any “other  
6 record required or authorized by this act,” it ensures that a security interest noted in an  
7 application for a certificate of title delivered to the office pursuant to Section 6 or 14 is perfected  
8 despite any error in the certificate or in the application. This is consistent with the approach  
9 taken in Uniform Commercial Code Article 9 to filed financing statements. A filed financing  
10 statement is effective to perfected even if it contains minor errors that are not seriously  
11 misleading. *See* Uniform Commercial Code Section 9-506. For this purpose, a failure to  
12 describe some collateral would be seriously misleading as to omitted collateral. An error in the  
13 debtor’s name could also be seriously misleading because searches are based on the debtor’s  
14 name and an error in that name may cause the filed financing statement not to be disclosed.  
15 However, an error in the secured party’s name or address cannot be seriously misleading.  
16 Section 9-506 cmt. 2.  
17

18           The same principles apply under this act. An error in the secured party’s name or address  
19 imposes no burden on someone seeking to identify who has an ownership interest or security in a  
20 titled vessel. As a result, such an error does not render the security interest unperfected. *See In*  
21 *re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name for secured parties on  
22 certificates of title was not seriously misleading and did not render security interests  
23 unperfected). The same is true with respect to an error in the name of the owner of record. *See*  
24 *In re Laursen*, 391 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor’s first name on  
25 certificate of title for vehicle did not render security interest unperfected because certificates of  
26 title are indexed by vehicle identification number, not by name).  
27

28           **Example 3:** Secured Party’s name is misspelled in the application for a certificate of title  
29 delivered to the office. As a result, Secured Party’s name is also misspelled on the certificate of  
30 title. The security interest is perfected.  
31

32           An error in the description of the vessel also does not render a security interest  
33 unperfected. Although search requests are processed using the hull identification number, *see*  
34 Section 24(c), an error in the hull identification number on the certificate of title cannot really  
35 deceive the searcher. If the error existed solely on a written certificate of title but not in the files  
36 of the office, a search under the correct number would yield all the relevant information. If the  
37 error existed both on the certificate of title and in the files of the office, then a search using the  
38 correct hull identification number would yield nothing. Anyone seeking to acquire an interest in  
39 such a seemingly untitled vessel after such search should conduct further investigation.  
40

41           3. Subsection (b) makes Uniform Commercial Code Section 9-337 applicable to  
42 certificates of title created under this act. Thus, if the office creates a certificate of title that fails  
43 to indicate a security interest that was identified in the application for the certificate, a buyer or  
44 secured party who relies on the clean certificate may take free or obtain priority.  
45

46           **Example 4:** Lender’s security interest is identified in the application for a certificate of

1 title delivered to the office. The office creates a certificate of title that fails to indicate Lender's  
2 security interest. Lender's security interest is perfected. See Section 14. However, a buyer,  
3 other than buyer in the business of selling goods of that kind, who gives value and receives  
4 delivery of the vessel without knowledge of Lender's security interest takes free of the security  
5 interest. Similarly, A security interest is perfected after creation of the certificate of title and  
6 without knowledge of Lender's security has priority over Lender's security interest.

7  
8 **Example 5:** Owner delivers to the office an application for a certificate of title for a  
9 vessel. The application identifies Lender as a secured party but misstates the hull identification  
10 number for the vessel. Lender's security interest is perfected. Owner later offers to sell the  
11 vessel to Buyer. Buyer requests a search using the vessel's correct hull identification number.  
12 The office responds that is has no record relating to that hull identification number. Buyer  
13 insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner  
14 delivers to the office a new application for a certificate of title. The new application does not  
15 disclose Lender's security interest. Office issues a certificate of title for the vessel that does not  
16 indicate Lender's security interest. Lender's security interest remains perfected. However, Buyer  
17 may take free of Lender's security interest pursuant to Uniform Commercial Code Section  
18 9-337(1).  
19

20 **SECTION 18. TRANSFER BY SECURED PARTY'S TRANSFER STATEMENT.**

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

23 (1) that the owner of record has defaulted on an obligation to the secured party of  
24 record;

25 (2) that the secured party of record is exercising or has exercised post-default  
26 remedies with respect to the vessel;

27 (3) that, by reason of the exercise, the secured party of record has the right to  
28 transfer the rights of the owner of record;

29 (4) the name and last known mailing address of:

30 (A) the owner of record;

31 (B) the secured party of record; and

32 (C) the person acquiring the rights of the owner of record.

1 (5) any other information required by Section 6(b); and

2 (6) that:

3 (i) the certificate of title is an electronic certificate of title;

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

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

8 (b) Completion and delivery to the office of a secured party's transfer statement, and  
9 payment of all applicable taxes and fees, entitles the secured party to the creation of a certificate  
10 of title showing the person designated in paragraph (a)(4)(C) as the owner of record. Unless the  
11 secured party's transfer statement is rejected by the office for a reason set forth in Section 7(c),  
12 the office shall:

13 (1) accept the secured party's transfer statement;

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

15 (3) cancel the certificate of title created in the name of the owner of record listed  
16 in the secured party's transfer statement, whether or not the certificate of title has been delivered  
17 to the office;

18 (4) create a new certificate of title indicating the secured party of record or other  
19 purchaser as the vessel's owner of record; and

20 (5) deliver the new certificate of title pursuant to Section 11.

21 (c) The creation of a certificate of title under subsection (b) is not of itself a disposition  
22 of the vessel and does not of itself relieve the secured party of its duties under [Uniform  
23 Commercial Code Article 9].



1 **Comment**

2  
3 Source: UCOTA Section 21.

4  
5 A secured party could be “the person acquiring the rights of the owner of record” within  
6 the meaning of subparagraph (a)(4)(C) if the secured party either purchases the vessel at a  
7 disposition pursuant to Uniform Commercial Code Section 9-610 or accepts the vessel in full or  
8 partial satisfaction of the debt pursuant to Uniform Commercial Code Section 9-620.  
9

10 **SECTION 19. TRANSFER BY OPERATION OF LAW.**

11 (a) In this section:

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

14 (A) on account of death, divorce or other family law proceeding, merger,  
15 consolidation, dissolution, or bankruptcy;

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

18 (C) through other legal process.

19 (2) “Transfer-by-law statement” means a record signed by a transferee stating  
20 that, by operation of law, the transferee has acquired or has the right to acquire the ownership  
21 interest of the owner of record and containing:

22 (A) the name and mailing address of the owner of record and the  
23 transferee and the other information required by Section 6(b);

24 (B) documentation sufficient to establish the transferee’s ownership  
25 interest or right to acquire the ownership interest of the owner of record;

26 (C) a statement that:

27 (i) the certificate of title is an electronic certificate of title;

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

3 (iii) the transferee is delivering the written certificate of title to the  
4 office with the transfer-by-law statement; and

5 (D) except for a transfer pursuant to paragraph (a)(1)(A), evidence that  
6 notification of the transfer and the intent to file the transfer-by-law-statement has been sent to the  
7 owner of record and to all persons indicated in the files of the office as having an interest,  
8 including a security interest, in the vessel.

9 (b) If a transfer-by-law statement is delivered to the office with all taxes and fees and  
10 documentation satisfactory to the office as to the transferee's ownership interest or right to  
11 acquire the ownership interest of the owner of record, unless it is rejected by the office for a  
12 reason set forth in Section 7(c), the office shall:

13 (1) accept delivery of the transfer-by-law statement;

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

15 (3) cancel the certificate of title created in the name of the owner of record  
16 indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the  
17 office;

18 (4) create a new certificate of title, indicating the transferee as owner of record;

19 and

20 (5) send the new certificate of title pursuant to Section 11(a).

21 (c) This section does not apply to a transfer of an interest in a vessel by a secured party  
22 under [Uniform Commercial Code Article 9, Part 6].

23 **Reporter's Note**  
24

1 Source: UCOTA Section 22.  
2

3 **SECTION 20. APPLICATION FOR TRANSFER OF OWNERSHIP OR**  
4 **TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.**

5 (a) Except as otherwise provided in Section 18 or 19, upon receiving either:

6 (i) an application for a new or amended certificate of title that includes an  
7 indication of a transfer of ownership; or

8 (ii) a termination statement that is not accompanied by submission of a signed  
9 certificate of title, the office may create or amend a certificate of title under this section only if:

10 (1) all other requirements under Sections 6 and 7 are met;

11 (2) the applicant has provided an affidavit stating facts that indicate the  
12 applicant is entitled to a transfer of ownership or termination statement;

13 (3) the applicant has provided the office with satisfactory evidence that, at  
14 least 45 days before the office creates or amends the certificate of title, notification of the  
15 application has been sent to the owner of record and to all persons indicated in the files of the  
16 office as having an interest in the vessel, and no objection from any of those persons has been  
17 received by the office; and

18 (4) the applicant submits any other information required by the office to  
19 evidence the applicant's ownership or right to terminate the security interest, and the office has  
20 no credible information indicating theft, fraud, or any undisclosed or unsatisfied security interest,  
21 lien, or other claim to an interest in the vessel.

22 (b) The office may indicate in a certificate of title created or amended under subsection

23 (a) that the certificate of title was created without submission of a signed certificate of title or  
24 termination statement. If no credible information indicating theft, fraud, or any undisclosed or

1 unsatisfied security interest, lien, or other claim to an interest in the vessel has been delivered to  
2 the office within one year after creation of the certificate of title, upon request in a form and  
3 manner specified by the office, the office shall remove the indication from the certificate of title.

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

12 [(d) If the office has not received a claim for indemnity within one year after creation or  
13 amendment of the certificate of title under subsection (a), upon request in a form and manner  
14 specified by the office, the office shall release any bond, indemnity, or other security.]

15 **Reporter's Note**

16 Source: UCOTA Section 33.

17 Subsections (c) and (d) are optional.  
18  
19  
20

21 **SECTION 21. REPLACEMENT CERTIFICATE OF TITLE.**

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

1 (b) An application for a replacement certificate of title must be submitted in a record  
2 signed by the applicant and, except as otherwise permitted by the office, must comply with  
3 Section 6.

4 (c) Unless it has been lost, stolen, or destroyed or is otherwise unavailable, the existing  
5 written certificate of title must be submitted to the office with an application for a replacement  
6 certificate of title.

7 (d) A replacement certificate of title created by the office must comply with Section 8  
8 and indicate on the face of the certificate of title that it is a replacement certificate of title.

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

#### 12 **Reporter's Note**

13 Source: UCOTA Section 24.  
14  
15

#### 16 **SECTION 22. RIGHTS OF PURCHASERS GENERALLY.**

17 (a) A purchaser of a vessel has the protections afforded by [Uniform Commercial Code  
18 Sections 2-403(1), 2A-304(1), and 2A-305(1)].

19 (b) A buyer in ordinary course of business has the protections afforded by [Uniform  
20 Commercial Code Sections 2-403(2)], even if the seller does not comply with Section 16(a).

21 (c) A purchase of a leasehold interest is subject to [Uniform Commercial Code Section  
22 2A-303].

23 (d) Except as otherwise provided in Section 16, the rights of other purchasers of vessels  
24 and of lien creditors are governed by [Uniform Commercial Code Articles 2, 2A, [6,] 7, and 9].

#### 25 **Comment**

1           1. Subsection (a) incorporates by reference the provisions of Uniform Commercial Code  
2 Section 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value”  
3 is defined in Uniform Commercial Code Section 1-204.  
4

5           **Example 1:** Scoundrel buys a vessel from Owner and a new certificate of title is created  
6 identifying Scoundrel as owner of record. In connection with the transaction, Scoundrel deceived  
7 Owner as to Scoundrel’s identity, with the result that the transaction is voidable by Owner. *See*  
8 Uniform Commercial Code Section 2-403(1). Before Owner takes any action, Scoundrel sells  
9 the vessel for value to Buyer, who applies for a new certificate of title. If Buyer purchased the  
10 vessel in good faith, Buyer acquires good title to the vessel.  
11

12           2. The failure of a purchaser to ensure that an application is delivered to the office for a  
13 certificate of title that indicates purchaser’s interest in the vessel may prevent the purchaser from  
14 qualifying as a good faith purchaser. “Good faith” is defined in Section 2(b)(5) to include  
15 observance of reasonable commercial standards of fair dealing. While it may be customary for a  
16 buyer in ordinary course of business – that is, a person buying from a dealer – to buy a vessel  
17 without seeing or obtaining the existing certificate of title, this is not customary for a purchase  
18 from a non-dealer. Thus a buyer who buys a vessel outside the ordinary course of business and  
19 without execution of the certificate of title may not be observing reasonable commercial  
20 standards of fair dealing and may not qualify as a good faith purchaser.  
21

22           **Example 2:** Same facts as Example 1, except that through inadvertence no application is  
23 delivered to the office for a certificate of title indicating Buyer’s ownership of the vessel.  
24 Buyer’s failure to have a new certificate of title created means that Buyer may lose ownership of  
25 the vessel to a subsequent transferee from Scoundrel. *See* Section 17(c). However, Buyer’s  
26 failure to have a new certificate of title created does suggest a lack of fair dealing toward Owner,  
27 and thus does not in itself prevent Buyer from qualifying as a good faith purchaser.  
28

29           **Example 3:** Same facts as Example 2, except that Buyer suspects that Scoundrel may  
30 have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an  
31 effort to make it more difficult for any prior owner to identify Buyer and Buyer’s interest in the  
32 vessel. Buyer does not qualify as a good faith purchaser.  
33

34           3. Subsection (b) applies the “entrustment” rule of Uniform Commercial Code Section  
35 2-403(2) to vessels, even if no application to have the buyer’s interest noted on the certificate of  
36 title is ever delivered with the office.  
37

38           **Example 4:** Owner, whose interest in a vessel is indicated on the certificate of title,  
39 brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling  
40 vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary  
41 course of business. Buyer acquires Owner’s rights to the vessel. This result follows even though  
42 Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title,  
43 and no application for a new certificate of title is delivered to the office.  
44

45           **Example 5:** Same facts as Example 4, except that subsequently Owner purports to sell  
46 the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title

1 and delivers it to Purchaser. Even though there was no compliance with Section 16(a) in  
2 connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to  
3 the vessel. See Section 16(c), which is made expressly subject to Section 22(b). The result  
4 would be the same if Owner purported to grant Purchaser a security interest in the vessel.  
5

6 **SECTION 23. RIGHTS AGAINST SECURED PARTIES.**

7 (a) Except as otherwise provided in this section or Section 22(b), a transferee of  
8 ownership takes subject to:

9 (1) a security interest in the vessel indicated on a certificate of title; and

10 (2) if the certificate of title contains a statement that the vessel is or may be  
11 subject to security interests not indicated on the certificate of title, a security interest not so  
12 indicated.

13 (b) If, while a security interest in a vessel is perfected by any method under the law of  
14 any jurisdiction, the office creates a certificate of title that does not indicate the vessel is subject  
15 to the security interest or contain a statement that it may be subject to security interests not  
16 indicated on the certificate, a buyer of the vessel, other than a person in the business of selling or  
17 leasing goods of that kind, takes free of the security interest if the buyer:

18 (1) gives value in good faith, receives possession of the vessel, and obtains  
19 execution of the certificate of title; and

20 (2) does not have knowledge of the security interest in the vessel.

21 (c) A buyer in ordinary course of business takes free of a security interest in the vessel,  
22 including a security interest indicated on a certificate of title, created by the buyer's seller, even if  
23 the security interest is perfected, the buyer knows of the existence of the security interest, and the  
24 seller did not comply with Section 16(a). A lessee in ordinary course of business takes its  
25 leasehold interest free of a security interest in the vessel, including a security interest indicated on

1 a certificate of title, created by the lessee's lessor, even if the security interest is perfected, the  
2 lessee knows of its existence, and the lessor did not comply with Section 16(a). This subsection  
3 does not affect a security interest in a vessel in the possession of the secured party under  
4 [Uniform Commercial Code Article 9].

5 (d) If, while a security interest in a vessel is perfected by any method under the law of  
6 any jurisdiction, the office creates a certificate of title that does not indicate that the vessel is  
7 subject to the security interest or contain a statement that it may be subject to security interests  
8 not indicated on the certificate of title, the security interest is subordinate to a conflicting security  
9 interest in the vessel which is perfected after creation of the certificate of title and without the  
10 conflicting secured party's knowledge of the security interest.

11 (e) A security interest is indicated on an electronic certificate of title if it is indicated in  
12 the record of the certificate of title maintained by the office.

### 13 **Reporter's Note**

14 Source: UCOTA Section 19.

### 15 **Comment**

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17  
18 Nothing in subsection (c) is intended to suggest that a security interest in a vessel held for  
19 sale a lease and qualifying as inventory will be or should be noted on the certificate of title for the  
20 vessel. To be perfected, the security interest must be perfected not through compliance with this  
21 act, but through compliance with Article 9 of the Uniform Commercial Code, which will  
22 typically require the filing of a financing statement. *See* Section 13(f); Uniform Commercial  
23 Code Section 9-311(d). Subsection (c) merely reiterates protections for buyers and lessors  
24 provided by Article 9, *see* Uniform Commercial Code Sections 9-320(a), 9-321(c), and makes it  
25 clear that those protections apply even if the security interest is noted on the certificate of title.

26  
27 Subsection (c) also makes it clear that the buyer's or lessee's rights against the secured  
28 party do not depend on whether the seller or lessor has complied with Section 16(a) or whether  
29 the certificate of title identifies the interest of the buyer or lessor. Put simply, compliance with  
30 this act is generally not relevant to an owner's rights against a grantor or someone else up the  
31 chain of title, *but cf.* Section 21, cmt. 2, ex. 3, it is relevant only to the owner's rights against  
32 some down the chain of title (*e.g.*, someone else who subsequently acquired rights from the  
33 grantor).



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**SECTION 24. DUTIES AND OPERATION OF FILING 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 the vessel and all information on the certificate of title.

(b) The office shall retain in its files all information regarding a security interest in a vessel, including any termination statement received by the office under Section 15, until 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 indexing methods provided by the office.

(c) Except as provided in subsection (a) or (b), the office shall 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 policy].

(d) 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.

(e) [Subject to exceptions in [state’s public records law] that protect private information, t] [T]he 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

1 office, but not a date earlier than [three] business days before the office received the request, any  
2 certificate of title, security interest, termination statement, or title brand that relates to a vessel  
3 identified by a hull identification number designated in the request;

4 (2) the name of the owner of record;

5 (3) the name and address of any secured party indicated in the files of the office  
6 or on the certificate of title, and the effective date of any such information; and

7 (4) any termination statement indicated in the files of the office and the effective  
8 date of the termination statement.

9 (f) In responding to a request under this section, the office may communicate the  
10 requested information in any medium. However, if requested, the office shall send the requested  
11 information in a record that is self-authenticating under [cite applicable rule of evidence].

#### 12 **Reporter's Note**

13 Source: UCOTA Section 28.

14 After the Committee's last meeting, a reference to title brands was added to paragraph  
15 (e)(1), to ensure that this information is available to searchers.

#### 16 **Comment**

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

21 **SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
22 applying and construing this uniform act, consideration must be given to the need to promote  
23 uniformity of the law with respect to its subject matter among states that enact it.

#### 24 **Reporter's Note**

25 Source: ULC Drafting Rule 601.



1 priority is established.

2 **Reporter’s Note**

3  
4 Sources: ULC Drafting Rule 603; UCOTA Section 31.  
5

6 **SECTION 28. REPEALS.** The following acts and parts of acts are repealed:

7 [add legislative note]

8 **Reporter’s Note**

9  
10 Source: UCOTA Section 32.  
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13 **SECTION 29. EFFECTIVE DATE.** This act takes effect ....

14 **Reporter’s Note**

15  
16 Source: ULC Drafting Rule 604.