

DRAFT  
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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January 2011 Interim Draft

*With Prefatory Note and Reporter's Notes*

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ON UNIFORM STATE LAWS

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January 18, 2011

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# CERTIFICATE OF TITLE ACT FOR VESSELS

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## *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 the vessel was ever sunk.

1                                 **CERTIFICATE OF TITLE ACT FOR VESSELS**

2                 **SECTION 1. SHORT TITLE.** This act may be cited as the Certificate of Title Act for

3                 Vessels.

4

5                                 **SECTION 2. DEFINITIONS.**

6                 (a) The following definitions apply to [this act] and do not apply to [state statutes  
7 governing licensing or registration] if the same term is used in [that act] [those acts].

8                                 (1) “Barge” means a non-self-propelled vessel which is not fitted for propulsion  
9 by sail, paddles, oar, or the like.

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

11                                 (3) “Buyer in ordinary course of business” has the meaning ascribed in [Uniform  
12 Commercial Code Section 1-201(b)(9)]; a buyer in ordinary course of business does not lose that  
13 status solely because no existing certificate of title was signed and delivered to the buyer or no  
14 new certificate of title listing the buyer as owner of record was created.

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

17                                 (5) “Casualty” includes a collision, allision, lightning strike, fire, explosion, or  
18 the running aground of a vessel. The term does not include theft.

19                                 (6) “Certificate of origin” means a record created by a manufacturer or importer  
20 as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a  
21 manufacturer’s certificate of origin, a manufacturer’s statement of origin, an importer’s  
22 certificate of origin, and an importer’s statement of origin.

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

5           (8) “Damaged,” with respect to a vessel, means:

6                   (i) not insurer sold; and

7                   (ii) a casualty has compromised the integrity of the vessel’s hull [or the  
8 vessel has sunk in a manner that creates a significant risk that the integrity of the vessel’s hull has  
9 been compromised].

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

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

15          (11) “Foreign documented vessel” means a vessel the ownership of which is  
16 recorded in a registry maintained by a government of a nation other than the United States for the  
17 purpose of identifying the persons with an ownership interest in vessels [and in which each  
18 vessel is identified by a unique alphanumeric designation].

19          (12) “Electronic certificate of title” means a certificate of title consisting of  
20 information that is stored solely in an electronic or other medium and is retrievable in perceivable  
21 form. The term does not include a written certificate of title.

1 (13) “Good faith” means honesty in fact and observance of reasonable  
2 commercial standards of fair dealing.

3 (14) “Hull identification number” means the number assigned to a vessel  
4 pursuant to 33 C.F.R. Part 181 [as amended from time to time].

5 (15) “Insurer sold” means an ownership interest in a vessel has been or is about to  
6 be transferred by an insurer acting on its own behalf or as agent for its insured following a  
7 casualty that has compromised the integrity of the vessel’s hull [or after the vessel has sunk in a  
8 manner that creates a significant risk that the integrity of the vessel’s hull has been  
9 compromised].

10 (16) “Lien creditor” means:

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

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

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

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

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

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

19 (19) “Owner of record” means the owner as indicated in the files of the office or,  
20 if more than one owner is indicated in the files of the office, the one first indicated.

21 (20) “Person” means an individual, corporation, business trust, estate, trust,  
22 statutory trust, partnership, limited liability company, association, joint venture, federally



1 recognized Indian Tribe, public corporation, government, or governmental subdivision, agency,  
2 or instrumentality, or any other legal or commercial entity.

3 (21) “Principally used on the waters of this state” means used or to be used on the  
4 waters within the territorial limits of this state more than on the waters within the territorial limits  
5 of any other state during a calendar year. For the purposes of this paragraph, “use” includes  
6 operation, navigation, employment, mooring, and storage in readiness for use in the jurisdiction  
7 where stored.

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

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

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

13 (25) “Secured party” means:

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

16 (B) a person that is a consignor under [Uniform Commercial Code Article  
17 9];

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

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

1 (26) “Secured party of record” means the secured party whose name is provided  
2 as the name of the secured party in an application for a certificate of title received by the office  
3 or, if more than one secured party is indicated, the one first indicated in the files of the office.

4 (27) “Security interest” means an interest in a vessel which secures payment or  
5 performance of an obligation if the interest is created by contract or arises under [Uniform  
6 Commercial Code Section 2-401, 2-505, 2-711(3) or 2A-508(5)]. The term includes any interest  
7 of a consignor in a vessel in a transaction that is subject to [Uniform Commercial Code Article  
8 9]. The term does not include the special property interest of a buyer of a vessel on identification  
9 of that vessel to a contract for sale under [Uniform Commercial Code Section 2-401], but a buyer  
10 may acquire a security interest by complying with [Uniform Commercial Code Article 9].

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

17 Whether a transaction in the form of a lease creates a security interest is determined by [UCC  
18 Section 1-203].

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

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

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

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

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

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

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

11 (A) A seaplane.

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

14 (C) Watercraft less than 16 feet in length and propelled solely by sail,  
15 paddles, oars, or an engine of less than 10 horsepower.

16 (D) Watercraft that operates only on a permanently fixed, manufactured  
17 course and the movement of which is restricted to or guided by means of a mechanical device to  
18 which the watercraft is attached or by which the watercraft is controlled.

19 (E) A stationary floating structure which:

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

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

3 (iii) has a permanent, continuous hookup to a shoreside sewage  
4 system.

5 (F) Watercraft owned by United States, a state, or a foreign government,  
6 or a political subdivision of any of them.

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

8 (33) "Written certificate of title" means a certificate of title consisting of  
9 information inscribed on a tangible medium.

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

11 (1) "Agreement", [UCC Section 1-201(b)(3)].

12 (2) "Conspicuous", [UCC Section 1-201(b)(10)].

13 (3) "Consumer goods", [UCC Section 9-102(a)(23)].

14 (4) "Debtor", [UCC Section 9-102(a)(28)].

15 (5) "Knowledge", [UCC Section 1-202].

16 (6) "Lease", [UCC Section 2A-103(a)(j)].

17 (7) "Lessor", [UCC Section 2A-103(a)(p)].

18 (8) "Representative", [UCC Section 1-201(b)(33)].

19 (9) "Sale", [UCC Section 2-106(1)].

20 (10) "Security agreement", [UCC Section 9-102(a)(73)].

21 (11) "Seller", [UCC Section 2-103(1)(o)].

22 (12) "Send", [UCC Section 1-201(b)(36)].

1 (13) “Value”, [UCC Section 1-204].

2 **Reporter’s Note**

3 The definition of “buyer in ordinary course of business” in paragraph (a)(4) has been  
4 significantly shortened through use of the cross-reference. This change makes more evident how  
5 the term varies from the U.C.C. definition.

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

9  
10 Paragraph (a)(9) is more broad than the comparable definition in 33 C.F.R. § 187.7. That  
11 is because there should be no need for the dealer to be engaged in the business of buying vessels  
12 or to have an established place of business. A manufacturer can qualify as a dealer.

13  
14 Paragraph (a)(13) incorporates the definition of “good faith” in revised Article 1 of the  
15 Uniform Commercial Code. Because not all states have enacted revised Article 1, and some of  
16 those that have enacted it chose not to adopt the revised definition of “goods faith,” paragraph  
17 (a)(13) defines the term “good faith” in the manner intended, rather than simply uses a cross-  
18 reference. The term “good faith” appears only in Section 23(b)(1).

19  
20 Paragraphs (a)(18), (20), (25) and (27) are derived from UCOTA Section 2(a)(18), (20),  
21 (24), and (26), respectively. Each differs from the comparably definition in 33 C.F.R § 187.7.

22  
23 Paragraph (a)(21) is derived from 33 C.F.R. § 173.3(h) and (i). The definition expressly  
24 provides that, for the purposes of this act, mooring constitutes “use.” *Cf. New Hampshire Ins.*  
25 *Co. v. Dagone*, 475 F.3d 35 (1st Cir. 2007) (mooring constitutes “use” for the purpose of an  
26 insurance policy that excluded coverage for use from November 1 to April 15). Similarly,  
27 storage in readiness for use, such as in a raised dock, constitutes “use.” This rule makes it much  
28 easier for owners and titling authorities to determine where a vessel is principally used. If  
29 mooring and storage in readiness for use did not constitute use, the owner of a vessel used for  
30 recreational purposes in the waters of two or more states might have to maintain detailed records  
31 merely to ascertain which state’s certificate of title law applies.

32  
33 Subparagraph (A) of paragraph (a)(32) is derived from most state vessel titling statutes.  
34 Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099. The purpose of both  
35 subparagraphs is the same: to exclude from the scope of this act vessels that are covered by some  
36 other titling law, such as the Federal Aviation Act or a state’s motor vehicle certificate of title  
37 act.

38  
39 Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft  
40 for which a certificate of title is required. Several states do not title watercraft less than a  
41 designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft.  
42 And some do not title non-motor-powered watercraft of less than a designated length. This act

1 follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in  
2 length are covered and all vessels propelled by an engine of at least 10 horsepower are covered.  
3 Only those vessels that are both less than 16 feet in length and not mechanically powered are  
4 excluded from coverage under this act by virtue of subparagraph (C).  
5

6 Subparagraphs (D) and (E) are derived from Cal. Vehicle Code § 9873. Subparagraph  
7 (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry  
8 attached to a cable because, even with the cable, the ferry does not operate on a manufactured  
9 course. Subparagraph (E) excludes non-powered floating residences that are fixed to the shore.  
10 Most such residences would fail to satisfy the initial language in the definition, in that they are  
11 not “used or capable of being used as a means of transportation on water.” Nevertheless, to  
12 avoid any confusion they are expressly excluded.  
13

14 Subparagraph (F) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of  
15 title act do not seem apply to government-owned and operated vessels. By referring to vessels  
16 “owned by a state,” subparagraph (F) covers, and therefore excludes from the definition of  
17 “vessels,” vessels owned by a federally recognized Native American tribe. *See* Section 2(a)(29).  
18

19 Subparagraph (G) is derived from 33 C.F.R. § 173.11(d).  
20

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

24 ***Legislative Note:*** *The definition of “documented vessel” in paragraph (a)(10) includes a*  
25 *reference to 44 U.S.C. Section 12105, “as amended.” That quoted language is intended to cover*  
26 *any future amendments to the definition that Congress may enact. That language appears in*  
27 *brackets because in some states this may be an unconstitutional delegation of state legislative*  
28 *power. Such states should not enact the bracketed language. In its place, they may wish to*  
29 *expressly delegate to the office the power to enact regulations that conform the definition to*  
30 *whatever the federal term means.*  
31

### 32 **Comment**

33  
34 1. The definition for “barge” in paragraph (a)(1) facilitates an exemption from this act.  
35 *See* Section 5(b)(2). Under federal law, barges (non-powered vessels) of 100 tons or less are not  
36 documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301. *See*  
37 *also* 33 C.F.R. §§ 173.11, 173.12, 174.11. More important, many existing barges are quite old  
38 and records of prior transfers may be difficult to locate or resurrect. For this reason, an owner of  
39 a barge is not required to obtain a certificate of title for it.  
40

41 A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this  
42 might include such things as sail boats and row boats, which are intended to be covered by this  
43 act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or

1 fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted  
2 from compliance with this act under Section 5(b)(2).  
3

4 2. The definition of “casualty” in paragraph (a)(5) and of “damaged” in paragraph (a)(8)  
5 deal with the obligation of an owner to brand the title or be deemed to have warranted the vessel  
6 to a purchaser for value. *See* Section 9(a), (d). For this purpose, a vessel is damaged if it is not  
7 “insurer sold” within the meaning of paragraph (a)(15) and a casualty has affected a propulsion  
8 system of the vessel or the integrity of the vessel’s hull. Paragraph (a)(5) does not exhaustively  
9 define the term “casualty”; it merely describes some of the events that qualify as a casualty. A  
10 casualty need not be an event of nature; vandalism and terrorism can result in a casualty.  
11 Damage resulting from routine operation is not a casualty. A vessel is not “sunk in a manner that  
12 creates a significant risk that the integrity of the vessel’s hull has been compromise” merely  
13 because the vessel is swamped during its normal operation. The distinction between “sinking”  
14 and “swamping” is a matter of buoyancy. A vessel sinks when it loses sufficient buoyancy to  
15 settle below the surface of the water. A vessel is swamped when it is filled with water but retains  
16 sufficient buoyancy to remain on or at the surface.  
17

18 Once a vessel is damaged, it remains damaged even though it is repaired. Thus, for  
19 example, if a vessel is sunk in a manner that creates a significant risk that the integrity of the  
20 vessel’s hull has been compromised, the vessel remains damaged even after it is raised and  
21 repaired. As a result, the brand “damaged” is indelible (unless superceded by the brand “insurer  
22 sold”). A branded vessel remains branded forever.  
23

24 A vessel is “insurer sold” whenever an insurer transfers an ownership interest in the  
25 vessel if a casualty has affected the integrity of the vessel’s hull. For this purpose, it does not  
26 matter if the ownership interest is the insurer’s – as might be the case if the insurer acquired  
27 ownership of the vessel upon or following payment of a claim for a total loss – or the insured’s,  
28 as long as the insurer or the insurer’s agent is the one conducting the transfer.  
29

30 3. Paragraph (a)(17) 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 4. The term “principally used” requires reference to a specified time period and the use  
35 of a “calendar year” for this purpose follows the time period specified for the purposes of vessel  
36 numbering in 46 U.S.C. § 12301(a) and 33 C.F.R. § 173.3(b).  
37

38 5. Paragraph (a)(31) should be read in conjunction with paragraph(a)(18). Only an  
39 owner has an ownership interest, and thus an ownership interest refers to the legal title of an  
40 owner. An ownership interest does not include an equitable or beneficial ownership interest. It  
41 also does not include a security interest or the interest of a lessee in a lease. There can, however  
42 be multiple owners, and a transfer of the interests of one, some, or all of them would be a transfer  
43 of ownership.  
44





1 (c) A vessel ceases to be covered by a certificate of title at the earlier of the time the  
2 certificate of title ceases to be effective under the law of the jurisdiction under which it was  
3 created or the time the vessel subsequently either becomes covered by another certificate of title  
4 or becomes a documented vessel.

5 **Comment**

6 Source: Uniform Commercial Code Section 9-303.

7  
8 1. This section provides which state's law governs a certificate of title. It is the law of  
9 the jurisdiction that created the certificate of title, from the moment the application is delivered to  
10 the titling office until such time as certificate of title ceases to be effective under the law of the  
11 issuing jurisdiction or an application is delivered to the titling office of a different state.

12  
13 2. There is no conflict between this section and Section 5, which requires the owner of a  
14 vessel principally used on the waters of this state to apply for a certificate of title in this state.  
15 Section 5 imposes a requirement on the owner. This section provides which state's law governs  
16 a certificate.

17  
18 **Example 1:** Owner has a vessel principally used on the waters of this state. Owner  
19 applies for and receives a certificate of title for the vessel from the titling office of another state.  
20 Owner has failed to comply with Section 5. Nevertheless, the law of the issuing state governs the  
21 all issues relating to the certificate of title.

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

32  
33 These rules should work well with this act, which provides that the governing law is the  
34 law of the jurisdiction of principal use.

35  
36 **Example 2:** Owner, who has granted a security interest in a vessel, applies in State A for  
37 a certificate of title for the vessel. Upon delivering that application to the titling office, the law  
38 of State A governs perfection and the effective of perfection, regardless of whether the debtor is

1 located in State A. If the application includes the required information about the existing  
2 security interest, the security interest will be perfected.  
3

4 **Example 3:** Same facts as Example 2 but the vessel later becomes principally used on  
5 the waters of State B. The law of State B requires the debtor to apply for a certificate of title  
6 from State B. If the debtor does not do so, then the law of State A will continue to govern the  
7 perfection of the security interest. As long as the law of State A does not invalidate its certificate  
8 of title when the principal use of the vessel changed to State B, the security interest will remain  
9 perfected.  
10

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

12 (a) Except as otherwise provided in subsections (b) and (c), the owner of a vessel  
13 principally used on the waters of this state shall deliver to the office an application for a  
14 certificate of title for the vessel, together with the applicable fee, not later than [20] days after the  
15 later of:

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

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

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

19 (1) a documented vessel;

20 (2) a foreign documented vessel;

21 (3) a barge;

22 (4) a vessel under construction pursuant to contract before delivery of the vessel;

23 or

24 (5) a vessel held by a dealer for sale.

25 (c) The [issuing authority in this State] shall not issue, transfer, or renew a certificate of  
26 number for a vessel issued pursuant to 46 U.S.C. Section 12301[, as amended,] unless the office

1 has created a certificate of title for the vessel or an application for a certificate of title for the  
2 vessel and the applicable fee has been delivered to the office.

### 3 **Reporter's Note**

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

7  
8 Paragraph (b)(3) responds to the concern that many old barges are not federally  
9 documented and the records necessary to title them may be unavailable or costly to obtain. *See*  
10 Reporter's Note to Section 2. Paragraph (b)(4) reflects the dual judgments that it is unnecessary  
11 for a certificate of title to be issued for a vessel under construction, even if the vessel is in the  
12 water for testing, and that requiring a certificate of title for such a vessel would undermine the  
13 efficacy of common financing arrangements. *See also* Section 13(g) (regarding perfection of a  
14 security interest in a vessel described in paragraph (b)(3) or (4)). Because Paragraph (b)(5)  
15 exempts dealers from having to apply for a certificate of title, paragraph (b)(4) is most relevant  
16 when the owner of the vessel is the buyer for whom the vessel is being constructed.

17  
18 Subsection (c) accounts for the possibility that the state agency that issues numbers for  
19 vessels may not be the office that creates certificates of title.

20  
21 **Legislative Note:** *This act deals only with titling; it does not cover registration or licensing.*  
22 *States that have a registration or licensing statute for vessels may wish to consider amending*  
23 *that statute to condition registration or licensing on compliance with Section 5 of this act.*

### 24 **Comment**

25  
26  
27 Section 5(b) provides that no application for a certificate of title is required for barges or  
28 for vessels under construction. Accordingly, if no application for a certificate of title for such a  
29 vessel has been delivered to the office, the perfection of a security interest in the vessel is  
30 governed by Article 9 of the Uniform Commercial Code, not by this act. However, if an owner  
31 does apply for a certificate of title for the vessel, perfection must be through compliance with this  
32 act. *See* comment to Section 14.  
33

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

35 (a) Except as otherwise provided in Sections 14, 19, 20, and 21, only the owner of a  
36 vessel may apply for a certificate of title covering the vessel.

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

- 1 (1) the applicant's name, street address, and, if different, address for receiving  
2 first class mail delivered by the United States Postal Service;
- 3 (2) the names of all other owners of the vessel;
- 4 (3) the principal residence of at least one owner;
- 5 (4) the mailing address of at least one owner, if different from the principal  
6 residence;
- 7 (5) the social security number or taxpayer identification number of each owner;
- 8 (6) the hull identification number for the vessel or, if there is none, an application  
9 for the issuance of a hull identification number for the vessel;
- 10 (7) a description of the vessel as required by the office, which must include:
- 11 (A) the official number for the vessel, if any, assigned by the United  
12 States Coast Guard;
- 13 (B) the name of the manufacturer, builder, or maker;
- 14 (C) the model year or the year in which the manufacture or build of a  
15 vessel was completed;
- 16 (D) the overall length of the vessel;
- 17 (E) the vessel type;
- 18 (F) the hull material;
- 19 (G) the propulsion type; and
- 20 (H) the engine drive type.
- 21 (8) an indication of all security interests in the vessel known to the applicant,  
22 including for each security interest the name and mailing address of the secured party;

1 (9) an affirmation that the vessel is neither a documented vessel nor a foreign  
2 documented vessel;

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

5 (11) if the applicant knows that the vessel is damaged or insurer sold, a statement  
6 indicating that the vessel is damaged or insurer sold, whichever applies;

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

10 (13) if the vessel was previously registered or licensed in a jurisdiction other than  
11 the United States or a state, a statement indicating the jurisdiction in which the vessel was  
12 registered or licensed.

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

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

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

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

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

22 (2) if there is no certificate of title covering the vessel:

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

4 (B) if vessel was a foreign documented vessel, a record issued by the  
5 foreign country that shows that the vessel is no longer a foreign documented vessel and that  
6 identifies the applicant as the owner of the vessel; or

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

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

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

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

14 (2) evidence of payment of any taxes and fees not paid as provided in paragraph  
15 (1).

#### 16 17 **Reporter's Note**

18  
19 Paragraph (b)(8) has been revised to require that the applicant for a certificate of title  
20 affirm that the vessel is not documented under the laws of a foreign country. *Cf.* 46 U.S.C.  
21 § 12103(a)(3) (imposing a like requirement for documented vessels).

22  
23 Subsection (a) does not include an exception for an application by an insurer pursuant  
24 Section 9(b) because the insurer acts as the agent of the insured owner when filing such an  
25 application. *Cf.* Section 9, cmt. 2.

#### 26 27 **Comment**

28  
29 Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.317.

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

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

10  
11           3. Subsection (e) imposes a duty on the office to maintain either the original of a record  
12 submitted with the application or an image of that record. Thus, for example, if an applicant  
13 includes a builder's certificate in connection with the application, the office must maintain the  
14 builder's certificate or an image of it, to facilitate a later decision by the owner to seek federal  
15 documentation of the vessel. Section 10 imposes additional duties on the office.

16  
17           **SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF**  
18 **TITLE.**

19           (a) Unless an application for a certificate of title is rejected under subsection (c), the  
20 office shall create a certificate of title for the vessel in accordance with subsection (b) not later  
21 than [15] business days after delivery to it of an application that complies with Section 6.

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

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

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

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

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

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

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

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

7 (1) could have rejected the application for the certificate of title under subsection  
8 (c);

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

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

13 [(f) (1) In this section, “serve,” means to provide with personal service or to post in  
14 the United States mail, properly addressed, postage prepaid, return receipt requested. Service by  
15 mail is complete upon deposit in the United States mail. The office may, by rule, authorize  
16 service by electronic transmission, if a copy is mailed simultaneously, or by commercial parcel  
17 delivery company.

18 (2) The office shall provide an opportunity for a hearing at which the applicant  
19 and any other interested party may present evidence in support of or opposition to the  
20 cancellation. The office shall serve notice of the opportunity for a hearing to the applicant, the  
21 owner of record, and all secured parties indicated in the files of the office. If not later than [30]  
22 days after the notice was sent, the office receives a request for a hearing from the applicant or any



1 other interested party, the office shall hold the hearing no later than [20] days after receiving the  
2 request.]

### 3 **Reporter’s Note**

4  
5 Sources: UCOTA Section 10; Ind. Code § 9-31-2-9; Model State Administrative  
6 Procedure Act § O1-102(11).

7  
8 Subsection (c) is derived in part from Indiana law and is intended to permit the office to  
9 reject an application if the applicant does not provide sufficient proof of ownership.

10  
11 Subsection (d) supplements the rule of Section 5 by requiring that the office not create a  
12 certificate of title for a documented vessel.

13  
14 Subsection (e) includes a provision allowing the office to cancel a certificate of title for a  
15 vessel that becomes federally documented.

16  
17 Some states have laws that require the applicable office to cancel a motor vehicle  
18 certificate of title for the owner’s failure to pay child support, failure to pay parking tickets, or  
19 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws  
20 apply to vessels but in any event this Section does not permit cancellation for any of these  
21 reasons. Cancelling the vessel’s registration (*i.e.* license to use) for such failures would seem far  
22 more appropriate than cancelling its certificate of title. Moreover, nothing in federal regulations  
23 authorizes cancellation for any of these reasons, and therefore authorizing cancellation for any of  
24 these reasons in this act might jeopardize the goal of having this act approved pursuant to 33  
25 C.F.R. part 187, so that a security interest perfected pursuant to this act would qualify as a  
26 “preferred mortgage” under 46 U.S.C. § 31322(d).

27  
28 Pursuant to the Drafting Committee’s request, subsection (f) has been modified to permit  
29 service other than by personal service or U.S. Mail. The new language is derived from Model  
30 State Administrative Procedure Act § O1-102(11).

### 31 **Comment**

32  
33  
34 Subsection (f) is optional. It provides a procedure for the office to follow before  
35 cancelling a certificate of title. It is intended for those states whose public records or other law  
36 does not already provide a procedure that ensures all interested parties are notified in advance  
37 and given an opportunity to be heard.  
38

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

2           (a) A certificate of title must contain:

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

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

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

7                   (4) the hull identification number;

8                   (5) the information listed in Section 6(b)(7);

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

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

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

17           (c) An indication of a title brand on a certificate of title may consist of an abbreviation,  
18 but not a symbol, and must identify the jurisdiction that under whose law the title brand was  
19 created or the jurisdiction that created a certificate of title on which the title brand was indicated.  
20 If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the  
21 certificate of title, the certificate of title may state: “Previously branded in [insert the particular

1 jurisdiction under whose law the title brand was created or whose certificate of title previously  
2 indicated the title brand].”

3 (d) If a vessel was previously registered or licensed in a jurisdiction other than the United  
4 States or a state, the office shall indicate on the certificate of title that the vessel was registered or  
5 licensed in that jurisdiction.

6 (e) A certificate of title must contain a form that all owners shown on the certificate may  
7 sign to evidence consent to a transfer of ownership to another person. The form shall include a  
8 certification, signed under penalty of perjury, that the statements made are true and correct to the  
9 best of the owner’s knowledge, information, and belief.

10 **Reporter’s Note**

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

12 Pursuant to the Drafting Committee’s request, subsection (e) has been modified to more  
13 closely track the language and requirements of 33 C.F.R. § 187.317(b).  
14  
15  
16

17 **SECTION 9. TITLE BRAND**

18 (a) Unless subsection (b) applies, before transferring an ownership interest in a damaged  
19 vessel that is covered by a certificate of title created by the office, the owner of record shall  
20 deliver to the office an application to issue a new certificate that includes the title brand  
21 designation “Damaged.” Not later than [15] business days after delivery of the application to the  
22 office, the office shall create a new certificate of title that conspicuously indicates that the vessel  
23 is branded “Damaged.” The office shall deliver the new certificate pursuant to Section 11.

24 (b) Before transferring an ownership interest in an insurer sold vessel that is covered by a  
25 certificate of title created by the office, an insurer shall deliver to the office an application to have

1 the office issue a new certificate that includes the title brand designation “Insurer Sold.” Not  
2 later than [15] business days after delivery of the application to the office, the office shall create a  
3 new certificate of title that conspicuously indicates that the vessel is branded “Insurer Sold.” The  
4 office shall deliver the new certificate pursuant to Section 11.

5 (c) Except as provided in subsection (d), a person that transfers to a good-faith purchaser  
6 for value an ownership interest in a vessel that is damaged or insurer sold warrants to the  
7 purchaser and to all subsequent transferees that the hull of the vessel is merchantable within the  
8 meaning of [Uniform Commercial Code Section 2-314] unless, before the purchaser gives value:

9 (1) a certificate of title covering the vessel and indicating the vessel is damaged  
10 or insurer sold, whichever applies, is provided to the purchaser; or

11 (2) a record signed by the person and [conspicuously] indicating that the vessel is  
12 damaged or insurer sold, whichever applies, is provided to the purchaser.

13 (d) Subsection (c) shall not apply to a person[, other than an insurer,] who transfers an  
14 ownership interest pursuant to the exercise of the person’s rights as a secured party, lien creditor,  
15 or the holder of a lien created by statute or rule of law.

16 (e) A warranty made under subsection (c) cannot be modified or disclaimed by  
17 agreement.

18 (f) (1) An action for breach of the warranty arising under subsection (c) must be  
19 commenced within the latter of [four] years after the right of action has accrued under paragraph  
20 (2) or one year after the breach was or should have been discovered, but no longer than [five]  
21 years after the right of action accrued.

1 (2) A purchaser's right of action of breach of the warranty arising under  
2 subsection (c) accrues when the purchaser receives the vessel.

### 3 **Reporter's Note**

4 Source: New.

5  
6 The bracketed language in subsection (d) is presented for discussion. If a vessel insurer  
7 that has paid the insured on a policy of insurance would have a common-law or statutory lien on  
8 the vessel, the bracketed language may be necessary to make sure that the statutory warranty will  
9 arise if the insurer fails to brand the title or otherwise disclose that the vessel is insurer sold.

10  
11 The limitations period for the warranty and the rules about when the right of action for  
12 breach accrues are derived from amended U.C.C. § 2-725.

### 13 **Comment**

14  
15  
16 1. Subsection (a) imposes only on the owner of record a duty to obtain a new certificate  
17 of title for a damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore  
18 unlikely to apply to a dealer because a dealer typically will not have title transferred into the  
19 dealer's name for the relatively short period that the dealer owns the vessel. *Cf.* Section 5(b)(5)  
20 (exempting dealers from having to apply for a certificate of title). Subsection (a) is also unlikely  
21 to apply to a secured party. In contrast, subsection (c) generally applies to any person that  
22 transfers an ownership interest in a damaged or salvaged vessel. Accordingly, an owner other  
23 than the owner of record who transfers its ownership interest can be deemed to have warranted  
24 the vessel under subsection (c). Subsection (c) therefore applies to dealers, even though a dealer  
25 need not apply for a certificate of title and may never become the owner of record.

26  
27 Pursuant to subsection (d), subsection (c) does not apply to a secured party or other lienor  
28 conducting a disposition under Uniform Commercial Code Section 9-610 or other applicable  
29 law, even though such a disposition transfers the debtor's ownership interest. *See, e.g.,* Uniform  
30 Commercial Code Section 9-617(a)(1). This is true even if the secured party or lienor has taken  
31 title to the vessel prior and in order to conduct the disposition, and even if the casualty occurred  
32 during or after repossession.

33  
34 2. Because this section places an obligation directly on an insurer, even when the insured  
35 is transferring a vessel on behalf or as agent of the insured, *cf.* Section 2(a)(15), an insurer who  
36 fails to comply with this section while acting on behalf or as agent for the insured makes the  
37 warranty in its own capacity, not as agent for the insured. In contrast, if the insurer complies  
38 with Section 9(b) by applying for a new and branded certificate of title, the insurer does so as  
39 agent for the insured owner.

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

10  
11           4. Remedies for breach of the statutory warranty created by this Section are determined  
12 pursuant to Article 2 of the Uniform Commercial Code. For this reason, remedies for breach of  
13 the warranty created by this Section can be limited pursuant to Uniform Commercial Code  
14 Section 2-719 or liquidated pursuant to Uniform Commercial Code Section 2-718, subject to the  
15 restrictions therein on limitation and liquidation.

16  
17           The warranties created under this Section extend to the initial purchaser and to remote  
18 purchasers. To give effect to the warranty to remote purchasers, the limitations period for a  
19 remote purchaser begins to run when the remote purchaser receives the vessel, not when the  
20 initial purchaser receives the vessel.  
21

## 22           **SECTION 10. MAINTENANCE OF AND ACCESS TO FILES.**

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

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

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

28                   (3) maintain the file for public inspection [subject to subsection (d)]; and

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

30           (b) The office shall maintain in its files the information contained in all certificates of  
31 title created under [this act]. The files of the office must be accessible by the hull identification

1 number for the vessel covered by the certificate, by the name of the owner of record, and by any  
2 other indexing method used by the office.

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

7 (d) The office shall provide to the federal government for the purpose of safety, security  
8 or law enforcement the information in its files relating to any vessel for which the office has  
9 issued a certificate of title.

10 [(e) Except as otherwise provided by [public records law of this state], the information  
11 required under Section 8 is a public record. Whether other information in the files of the office is  
12 made available to the public is governed by law of this state other than {this act}.]

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

14 Source: UCOTA Section 14.

15 Subsection (d) is new and was added at the request of the U.S. Coast Guard.

16  
17 Subsection (e) makes the information on the certificate of title a public record. It does not  
18 make the information in the application a public record. Therefore, nothing in this act requires  
19 that the social security or taxpayer identification number of the owner or owners, which under  
20 Section 6(b)(5) must be included in the application, be made public.  
21  
22

23  
24 Federal regulations provides that a state must “retain the evidence used to establish the  
25 accuracy of the information required for vessel titling purposes and make it available on request  
26 to the Coast Guard, participating States, and law enforcement authorities.” 33 C.F.R. § 187.331.  
27 This section, along with Section 6(e), requires the office to comply with this regulation.  
28

29 The duties imposed by this Section are in addition to those imposed by Section 6(e).  
30

1           **SECTION 11. ACTIONS REQUIRED UPON CREATION OF CERTIFICATE OF**  
2 **TITLE.**

3           (a) Upon creation of a written certificate of title, the office shall promptly send the  
4 certificate to the secured party of record or, if there is none, to the owner of record, at the address  
5 indicated for that person in the files of the office. Upon creation of an electronic certificate of  
6 title, the office shall promptly send a record evidencing the certificate of title to the owner of  
7 record and, if there is one, to the secured party of record, at the address indicated for that person  
8 in the files of the office. A record evidencing an electronic certificate of title may be sent to a  
9 mailing address or, if indicated in the files of the office, an electronic address.

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

13           (c) Before the office creates an electronic certificate of title for a vessel, any written  
14 certificate of title for the vessel must be surrendered to the office. If the office creates an  
15 electronic certificate of title for a vessel, the office shall destroy or otherwise cancel the existing  
16 written certificate of title for the vessel which has been surrendered to the office, and shall  
17 maintain in the files of the office an indication of the date [and time] of destruction or other  
18 cancellation. If a written certificate of title being cancelled is not destroyed, the office shall  
19 indicate on the face of the written certificate of title that the written certificate of title has been  
20 cancelled.

21                                   **Reporter's Note**

22           Source: UCOTA Section 15.  
23



1           **SECTION 12. EFFECT OF CERTIFICATE.**

2           (a) A certificate of title is prima facie evidence of the accuracy of the information in the  
3 record that constitutes the certificate of title.

4           (b) After compliance with Section 16(a), a transferor is not liable as owner for any  
5 damages resulting from operation of the vessel thereafter even if the transferee fails to apply for a  
6 new certificate of title reflecting the transfer.

7                                   **Comment**

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

9           This section does not make a certificate of title conclusive evidence of the ownership of a  
10 vessel. Instead, this section makes a certificate of title merely prima facie evidence of ownership.  
11 In litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is  
12 sufficient to prove ownership of a vessel unless someone comes forward with admissible  
13 evidence to the contrary. A certificate of title shifts both the burden of production and the burden  
14 of persuasion to anyone challenging the information on a written certificate or the information  
15 constituting an electronic certificate of title.  
16

17           **SECTION 13. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE;**

18 **JUDICIAL PROCESS.** A certificate of title does not by itself provide a right to obtain  
19 possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against  
20 the certificate of title is not effective to determine possessory rights with respect to the vessel.

21 However, [this act] does not prohibit enforcement of a security interest in, levy on, or foreclosure  
22 of a statutory or common-law lien on a vessel under law other than [this act]. The absence of an  
23 indication of a statutory or common-law lien on a certificate of title does not invalidate the lien.

24                                   **Reporter’s Note**

25           Source: UCOTA Section 12.  
26

1           **SECTION 14. PERFECTION OF SECURITY INTEREST.**

2           (a) Except as otherwise provided in this section or in Section (27), a security interest in a  
3 vessel may be perfected only by delivery to the office of an application for a certificate of title  
4 that identifies the secured party and that otherwise complies with Section 6. The security interest  
5 is perfected upon the later of delivery to the office of the application and any applicable fee or  
6 attachment of the security interest under [Uniform Commercial Code Section 9-203].

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

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

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

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

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

8 (f) If a secured party assigns a perfected security interest in a vessel, the receipt by the  
9 office of a statement providing the name of the assignee as secured party is not required in order  
10 to continue the perfected status of the security interest against creditors of and transferees from  
11 the original debtor. However, a purchaser of a vessel subject to a security interest which obtains  
12 a release from the secured party indicated in the files of the office or on the certificate of title  
13 takes free of the security interest and of the rights of a transferee if the transfer is not indicated  
14 either in the files of the office or on the certificate of title.

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

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

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

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

1 (h) If a certificate of documentation for a vessel is canceled, a security interest in the  
2 vessel which is valid against third parties as a result of compliance with 46 U.S.C. § 31321  
3 remains perfected until the earlier of four months after cancellation of the certificate of  
4 documentation or the time the security interest becomes perfected under this [Act].

5 (i) A security interest in a vessel arising under [Uniform Commercial Code Sections  
6 2-401, 2-505, 2-711(3) or 2A-508(5)] is perfected when it attaches and remains perfected until  
7 the debtor obtains possession of the vessel, unless before such time the security interest is  
8 perfected pursuant to subsection (a) or (c).

9 (j) A security interest in a vessel is perfected to the extent provided in [Uniform  
10 Commercial Code Section 9-316(d)].

### 11 **Comment**

12  
13 Source: UCOTA Section 26; Uniform Commercial Code Sections 9-311(b), 9-505(a).

14  
15 Section 5(b) provides that no application for a certificate of title is required for barges or  
16 for vessels under construction. Paragraphs (g)(2) and (3) of this section are corollaries to Section  
17 5(b). They provide that a security interest in such a vessel is to be perfected under other law if no  
18 application for a certificate of title for the vessel has been delivered to the office. However, if an  
19 owner does apply for a certificate of title for the vessel, perfection must be through compliance  
20 with this section.

21  
22 Subsection (d) provides that a security interest in a vessel is perfected upon delivery to  
23 the office of an application for a certificate of title that identifies a security interest, together with  
24 payment of the applicable fee. This rule operates in conjunction with Uniform Commercial Code  
25 Section 9-311(b), which provides that compliance with this act is the equivalent of filing a  
26 financing statement. Collectively, they allow for a security interest to attain priority under such  
27 rules as Section 9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the  
28 security agreement is authenticated and a financing statement is filed), Section 9-317(e) (giving a  
29 perfected purchase-money security interest priority over a judicial lien if a financing statement is  
30 filed within 20 days of when the debtor receives possession), and Section 9-324(a) (giving a  
31 perfected purchase-money security interest priority over a conflicting security interest if a  
32 financing statement is filed to perfect the purchase-money security interest within 20 days of  
33 when the debtor received possession).

1           Because a security interest in a vessel covered by a certificate of title issued by the office  
2 is perfected upon delivery to the office of an application for a certificate of title that identifies a  
3 security interest, together with payment of the applicable fee, cancellation of the certificate does  
4 not affect perfection under this act.  
5

6           Subsection (h) provides a temporary period of automatic perfection for a security interest  
7 in a vessel coming out of federal documentation. The purpose of this subsection is to facilitate  
8 the decision by the owner of and creditors with a security interest in a vessel to surrender the  
9 certificate of documentation and apply for a certificate of title. Without at least a temporary  
10 period of perfection, secured parties might risk being unperfected for the interval between  
11 surrender of the certificate of documentation and delivery to the titling office of an application  
12 for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for perfection of a  
13 security interest in a documented vessel to continue – indefinitely – upon surrender of the  
14 document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be unnecessary.  
15 However, it remains unclear whether federal law truly does provide for continuous and indefinite  
16 perfection of what, in that situation, would be a secret lien. In the event it does not, subsection  
17 (h) provides a temporary period of perfection.  
18

19           Subsection (h) provides a temporary period of automatic perfection for a security interest  
20 in a vessel coming out of federal documentation only if this state’s law governs perfection of the  
21 security interest. *See* Uniform Commercial Code Section 9-301.  
22

## 23           **SECTION 15. TERMINATION STATEMENT.**

24           (a) A secured party indicated in the files of the office as having a security interest in a  
25 vessel shall deliver to the office and, upon the debtor’s request, to the debtor, a termination  
26 statement upon the earlier of:

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

30                   (2) [14] days after the secured party receives a signed demand from an owner and  
31 there is no obligation secured by the vessel subject to the security interest and no commitment to  
32 make an advance, incur an obligation, or otherwise give value secured by the vessel.

1 (b) If a written certificate of title has been created and delivered to a secured party and a  
2 termination statement is required under subsection (a), the secured party, within the time  
3 provided in subsection (a), shall deliver the written certificate of title to the debtor or the office  
4 with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed, or  
5 is otherwise unavailable or illegible, the secured party shall deliver with the termination  
6 statement, within the time provided in subsection (a), an application for a replacement certificate  
7 of title meeting the requirements of Section 21.

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

14 (d) A secured party that fails to comply with this section is liable for any loss that the  
15 secured party had reason to know might result from its failure to comply and which could not  
16 reasonably have been prevented, and for the cost of an application for a certificate of title under  
17 Section 6 or 21.

#### 18 **Reporter's Note**

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

20 The limitation on damages in subsection (d) to those of which the secured party had  
21 reason to know is derived from Uniform Commercial Code Section 2-715(2), and is a principle  
22 long applicable to claims arising in contract. *See Hadley v. Baxendale*, 156 Eng. Rep. 145 (Ex.  
23 Ct. 1854). However, it is a limitation not expressed in Article 9, *see* U.C.C. § 9-625, perhaps  
24 because a secured party's failure to comply with Article 9 is regarded as something closer to a  
25 tort than to a breach of contract. *Cf.* U.C.C. § 9-625 cmt. 3 (indicating that principles of tort law  
26  
27

1 would supplement the claim with respect to a secured party's breach of the peace during  
2 repossession). Indeed, a secured party's failure to comply with this Section would give rise to a  
3 claim very like one for slander of title, a tort. Of course, tort remedies are also subject to various  
4 limitations, including the requirement of proximate cause and the economic loss doctrine (the  
5 latter of which may not be applicable to defamation actions). However, the limitation expressed  
6 in subsection (d) is not consistent with the traditional tort limits.

7  
8 **Comment**  
9

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

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

26 **SECTION 16. TRANSFER.**

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

29 (1) If the certificate is a written certificate of title and if the transferor's interest is  
30 noted on the certificate, the transferor, as promptly as practicable, shall sign the certificate and  
31 deliver it to the transferee. If the transferor does not have possession of the certificate, the person  
32 in possession of the certificate has a duty to facilitate the transferor's compliance with this  
33 paragraph.

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

4 (3) The transferee has a specifically enforceable right to require the transferor to  
5 sign and deliver the written certificate of title to the transferee or sign and deliver to the  
6 transferee a record evidencing the transfer of ownership.

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

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

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

15  
16 Source: UCOTA Section 16.

17  
18 As currently drafted, subsection (d) does not apply to involuntary transfers. *Cf.* Sections  
19 18, 19. At its last meeting, the Committee briefly considered whether subsection (d) or Sections  
20 18 and 19 should be amended to include a similar rule following an involuntary transfer but  
21 reached no decision. After further reflection and consultation, no expansion of this rule to  
22 involuntary transfers is recommended.

#### 23 24 **Comment**

25  
26 1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers  
27 of ownership of a vessel covered by a certificate of title.

28  
29 Subsection (a) requires the transferor to facilitate the creation of a new certificate of title  
30 by either signing and delivering the existing written certificate of title or authenticating and  
31 delivering a record evidencing the transfer of ownership with respect to a vessel covered by an



1 electronic certificate of title. By referring to a “transfer of ownership,” subsection (a) applies to  
2 gifts as well as sales. It also covers a transfer of ownership by less than all of the owners, such as  
3 when only one of several joint owners sells or gifts its interest. Subsection (a) does not apply to  
4 the creation of a lease security interest because neither of those transactions involves a “transfer  
5 of ownership.”  
6

7           2. Subsection (a) provides the transferee with a right to execution of the certificate of  
8 title upon sale of the vessel. Subsection (b) provides that execution of the certificate of title  
9 constitutes a transfer of ownership. After execution of the certificate of title the transferor is no  
10 longer the vessel owner, *e.g.*, for purposes of financial responsibility laws.  
11

12           3. This act is supplemented by otherwise applicable law, for example the law of agency.  
13 *See* Section 3. Therefore the obligations and rights recognized in this section can be exercised by  
14 authorized representatives of the transferor and transferee.  
15

16           4. Subsection (c) makes clear that a transfer of ownership is effective between the parties  
17 thereto even if the transferor does not fulfill its duty to facilitate the creation of a new certificate  
18 of title identifying the transferee as an owner and even if no application for a new certificate of  
19 title is delivered to the office. This is consistent with the fact that a certificate of title is *prima*  
20 *facie* evidence, but not conclusive evidence, of ownership. *See* Section 12.  
21

22           Subsection (c) also clarifies that a transfer of ownership of a vessel, even though effective  
23 between the parties, may not be effective against third parties claiming an interest in the vessel if  
24 the certificate of title continues to identify the transferor as owner. *See* Sections 22 or 23, *e.g.*,  
25 with respect to the rights of a good faith purchaser for value or a buyer in ordinary course of  
26 business.  
27

## 28           **SECTION 17. EFFECT OF MISSING OR INCORRECT INFORMATION.**

29           (a) Except as otherwise provided in this section, a certificate of title or other record  
30 required or authorized by [this act] is effective even if it contains incorrect information or does  
31 not contain required information.

32           (b) Nothing in this section affects the application of [Uniform Commercial Code Section  
33 9-337].

1 **Comment**

2  
3 Sources: UCOTA Section 20, Uniform Commercial Code Sections 9-338, 9-506.

4  
5 1. Subsection (a) states the general rule that a certificate of title remains effective even if  
6 it contains errors or omissions. As a result, the certificate remains prima facie evidence of the  
7 information in record that constitutes the certificate of title. *See* Section 12(a).

8  
9 **Example 1:** The office creates a certificate of title that transposes two of the digits in the  
10 hull identification for the vessel. The certificate remains effective regardless whether the  
11 applicant or the office made the error and regardless whether the files of the office contain the  
12 same error.

13  
14 **Example 2:** The office creates a certificate of title that misspells the name of the owner  
15 of record. The certificate remains effective regardless whether the applicant or the office made  
16 the error and regardless whether the files of the office contain the same error.

17  
18 2. Because subsection (a) applies not only to a certificate of title, but also to or any “other  
19 record required or authorized by this act,” subsection (a) applies to an application for a certificate  
20 of title. This rule must be read in conjunction with Section 14(d), which provides that a security  
21 interest in a vessel is perfected upon delivery to the office of an application for a certificate of  
22 title that identifies a security interest, together with payment of the applicable fee, and Uniform  
23 Commercial Code Section 9-311(b), which provides that compliance with this act is the  
24 equivalent of filing a financing statement. Thus, delivery to the office of an application for a  
25 certificate of title that identifies a security interest, together with payment of the applicable fee,  
26 even if the application contains an error or omission, constitutes compliance with this act and is  
27 the equivalent of filing a financing statement.

28  
29 Collectively, these rules ensure that a security interest noted in an application for a  
30 certificate of title delivered to the office pursuant to Section 6 or 14 is perfected despite any error  
31 in the *certificate*. To determine whether the security interest is perfected if the *application* has an  
32 error or omission, one must refer to the rules of Article 9 regarding the efficacy of financing  
33 statements. *See* Uniform Commercial Code Sections 9-506, 9-516, 9-520.

34  
35 For example, a filed financing statement is effective to perfected even if it contains a  
36 minor error that is not seriously misleading. *See* Uniform Commercial Code Section 9-506. For  
37 this purpose, a failure to describe some collateral would be seriously misleading as to omitted  
38 collateral. An error in the debtor’s name on a financing statement could also be seriously  
39 misleading because searches are based on the debtor’s name and an error in that name may cause  
40 the filed financing statement not to be disclosed. However, an error in the secured party’s name  
41 or address cannot be seriously misleading. Section 9-506 cmt. 2.

42  
43 The same rule applies under this act. Thus, an error in the secured party’s name or  
44 address imposes no burden on someone seeking to identify who has an ownership interest or

1 security in a titled vessel. As a result, such an error does not render the security interest  
2 unperfected. *See In re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name  
3 for secured parties on certificates of title was not seriously misleading and did not render security  
4 interests unperfected).

5  
6 **Example 3:** Secured Party's name is misspelled in the application for a certificate of title  
7 delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of  
8 title. The security interest is perfected.

9  
10 However, application of the seriously misleading standard in Uniform Commercial Code  
11 Section 9-506 to applications for a certificate of title must take into account the different manner  
12 in which searches for perfected security interests are conducted. In particular, whereas searches  
13 for financing statements are based on the debtor's name, searches relating to vessels covered by a  
14 certificate of title are ordinarily based on the hull identification number. *See* Section 24(e).  
15 Accordingly, whereas an error in a debtor's name on a filed financing statement may prevent the  
16 financing statement from being disclosed in response to a proper search request, an error in the  
17 name of the owner of record is unlikely to prevent a searcher from discovering the existence of a  
18 perfected security interest in a vessel covered by a certificate of title. *See In re Laursen*, 391  
19 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor's first name on certificate of title for  
20 vehicle did not render security interest unperfected because certificates of title are indexed by  
21 vehicle identification number, not by name).

22  
23 **Example 4:** Owner's name is misspelled in the application for a certificate of title  
24 delivered to the office. As a result, Owner's name is also misspelled on the certificate of title.  
25 The application identifies Bank as a secured party. The security interest is perfected.

26  
27 Even an error in the description of the vessel will not render a security interest  
28 unperfected. Although search requests can be processed using the hull identification number, *see*  
29 Section 24(e), an error in the hull identification number on the certificate of title cannot really  
30 deceive the searcher. If the error existed solely on a written certificate of title but not in the files  
31 of the office, a search under the correct number would yield all the relevant information. If the  
32 error existed both on the certificate of title and in the files of the office, then a search using the  
33 correct hull identification number would yield nothing. Anyone seeking to acquire an interest in  
34 such a seemingly untitled vessel after such search should conduct further investigation.

35  
36 The same method of analysis applies to applications that the office rejects. If rejection  
37 was authorized under Section 6, then a security interest noted in the application will not be  
38 perfected by delivery of the application to the office. *See* Uniform Commercial Code Section  
39 9-516(b). If, however, rejection was not authorized under Section 6, then delivery of the  
40 application, together with payment of the applicable fee, will perfected a security interest  
41 identified in the application. *See* Uniform Commercial Code Section 9-516(a), (c). The priority  
42 of that security interest may, however, be affected by the office's rejection of the application. *See*  
43 Section 23(a); Uniform Commercial Code Section 9-516(c). Similarly, errors in the application

1 might affect the priority of a security interest. *See* Uniform Commercial Code Sections 9-338,  
2 9-520(c).

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

8  
9 **Example 5:** Lender’s security interest is identified in the application for a certificate of  
10 title delivered to the office. The office creates a certificate of title that fails to indicate Lender’s  
11 security interest. Lender’s security interest is perfected. *See* Section 14. However, a buyer,  
12 other than buyer in the business of selling goods of that kind, who gives value and receives  
13 delivery of the vessel without knowledge of Lender’s security interest takes free of the security  
14 interest. Similarly, A security interest is perfected after creation of the certificate of title and  
15 without knowledge of Lender’s security has priority over Lender’s security interest.

16  
17 **Example 6:** Owner delivers to the office an application for a certificate of title for a  
18 vessel. The application identifies Lender as a secured party but misstates the hull identification  
19 number for the vessel. Lender’s security interest is perfected. Owner later offers to sell the  
20 vessel to Buyer. Buyer requests a search using the vessel’s correct hull identification number.  
21 The office responds that is has no record relating to that hull identification number. Buyer  
22 insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner  
23 delivers to the office a new application for a certificate of title. The new application does not  
24 disclose Lender’s security interest. Office issues a certificate of title for the vessel that does not  
25 indicate Lender’s security interest. Lender’s security interest remains perfected. However, Buyer  
26 may take free of Lender’s security interest pursuant to Uniform Commercial Code Section  
27 9-337(1).

28  
29 **SECTION 18. TRANSFER BY SECURED PARTY’S TRANSFER STATEMENT.**

30 (a) In this section, “secured party’s transfer statement” means a record signed by the  
31 secured party of record stating:

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

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

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

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

4 (A) the owner of record;

5 (B) the secured party of record; and

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

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

8 (6) that:

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

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

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

14 (b) Unless the office rejects a secured party's transfer statement for a reason set forth in  
15 Section 7(c), not later than [15] business days after delivery to the office of the transfer statement  
16 and payment of all applicable taxes and fees, the office shall:

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

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

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

1 (4) create a new certificate of title indicating name of the person designated in  
2 paragraph (a)(4)(C) as the owner of record; and

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

4 (c) Neither an application under subsection (a) nor the creation of a certificate of title  
5 under subsection (b) is not by itself a disposition of the vessel and does not by itself relieve the  
6 secured party of its duties under [Uniform Commercial Code Article 9].

7  
8 **Comment**  
9

10 Source: UCOTA Section 21.  
11

12 A secured party could be “the person acquiring the rights of the owner of record” within  
13 the meaning of subparagraph (a)(4)(C) if the secured party either purchases the vessel at a  
14 disposition pursuant to Uniform Commercial Code Section 9-610 or accepts the vessel in full or  
15 partial satisfaction of the debt pursuant to Uniform Commercial Code Section 9-620.  
16

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

18 (a) In this section:

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

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

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

25 (C) through other legal process.

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

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

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

8                               (C) a statement that:

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

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

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

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

18                   (b) Unless the office rejects a transfer-by-law statement for a reason set forth in Section  
19 7(c), not later than [15] business days after delivery to the office of the a transfer-by-law  
20 statement, including documentation satisfactory to the office as to the transferee’s ownership  
21 interest or right to acquire the ownership interest of the owner of record, and payment of all  
22 applicable taxes and fees, the office shall:

- 1 (1) accept delivery of the transfer-by-law statement;
- 2 (2) amend the files of the office to reflect the transfer;
- 3 (3) cancel the certificate of title created in the name of the owner of record
- 4 indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the
- 5 office;
- 6 (4) create a new certificate of title, indicating the transferee as owner of record;
- 7 (5) indicate on the new certificate of title any security interest indicated on the
- 8 canceled certificate of title, unless a court order provides otherwise; and
- 9 (6) send the new certificate of title pursuant to Section 11(a).
- 10 (c) This section does not apply to a transfer of an interest in a vessel by a secured party
- 11 under [Uniform Commercial Code Article 9, Part 6].

12 **Comment**

13 Source: UCOTA Section 22.

14 Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted

15 pursuant to judicial order. It includes a sale following governmental seizure of a vessel.

16

17

18

19 **SECTION 20. APPLICATION FOR TRANSFER OF OWNERSHIP OR**

20 **TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.**

21 (a) Except as otherwise provided in Section 18 or 19, if the office receives,

22 unaccompanied by submission of a signed certificate of title, either an application for a new or

23 amended certificate of title that includes an indication of a transfer of ownership or a termination

24 statement, the office may create or amend a certificate of title under this section only if:

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



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

3 (3) the applicant has provided the office with satisfactory evidence that  
4 notification of the application has been sent to the owner of record and to all persons indicated in  
5 the files of the office as having an interest in the vessel, at least 45 days have passed since the  
6 notification was sent, and no objection from any of those persons has been received by the office;  
7 and

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

12 (b) The office may indicate in a certificate of title created or amended under subsection  
13 (a) that the certificate of title was created without submission of a signed certificate of title or  
14 termination statement. If no credible information indicating theft, fraud, or any undisclosed or  
15 unsatisfied security interest, lien, or other claim to an interest in the vessel has been delivered to  
16 the office within one year after creation of the certificate of title, upon request in a form and  
17 manner specified by the office, the office shall remove the indication from the certificate of title.

18 [(c) Unless the office determines, by any reasonable method, that the value of the vessel  
19 is less than [\$x,000], before creating or amending the certificate of title, the office may require an  
20 applicant under subsection (a) to post a bond or provide an equivalent source of indemnity or  
21 security. The bond, indemnity, or other security, which may not exceed twice the value of the  
22 vessel as determined by the office, must be in a form prescribed by the office and provide for

1 indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or  
2 damage, including reasonable attorney's fees and costs but not consequential damages, resulting  
3 from creation or amendment of the certificate of title.]

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

7 **Reporter's Note**

8  
9 Source: UCOTA Section 33.

10 Subsections (c) and (d) are optional.  
11  
12

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

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

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

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

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

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

6 **Reporter's Note**

7  
8 Source: UCOTA Section 24.  
9

10 **Comment**

11  
12 When creating a replacement certificate of title, the office must comply with subsection  
13 (d) regardless of whether it creates a written certificate of title or an electronic certificate of title.  
14 No matter the format, the replacement certificate of title must be designated on its face as a  
15 replacement.  
16

17 **SECTION 22. RIGHTS OF PURCHASERS GENERALLY.**

18 (a) A buyer in ordinary course of business has the protections afforded by [Uniform  
19 Commercial Code Sections 2-403(2) and 9-320(a)] even if the seller does not comply with  
20 Section 16(a).

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

24 **Comment**

25  
26 1. Subsection (a) is a specific application of the general rule principle stated in  
27 subsection (b) and is designed to overrule the line of cases ruling that the buyer must obtain or  
28 apply for a new certificate of title identifying the buyer as the owner. This principle is embedded  
29 in the definition of "buyer in ordinary course of business" in Section 2(a)(3), but is stated  
30 expressly here to avoid any possible confusion.  
31

1           2. A buyer in ordinary course of business is a type of purchaser whose rights are  
2 governed by subsection (b).

3  
4           3. Subsection (b) incorporates the provisions of Uniform Commercial Code Section  
5 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value” is  
6 defined in Uniform Commercial Code Section 1-204.

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

14  
15           4. Compliance with this act is generally not relevant to an owner’s rights against a  
16 grantor or someone else up the chain of title; it is relevant only to the owner’s rights against some  
17 down the chain of title (*e.g.*, someone else who subsequently acquired rights from the grantor).

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

28  
29           **Example 2:** Same facts as Example 1, except that through inadvertence no application is  
30 delivered to the office for a certificate of title indicating Buyer’s ownership of the vessel.  
31 Buyer’s failure to have a new certificate of title created means that Buyer may lose ownership of  
32 the vessel to a subsequent transferee from Scoundrel. *See* Section 16(c). However, Buyer’s  
33 failure to have a new certificate of title created does not suggest a lack of fair dealing toward  
34 Owner, and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.

35  
36           **Example 3:** Same facts as Example 2, except that Buyer suspects that Scoundrel may  
37 have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an  
38 effort to make it more difficult for any prior owner to identify Buyer and Buyer’s interest in the  
39 vessel. Buyer does not qualify as a good faith purchaser and therefore does not obtain good title to  
40 the vessel under Uniform Commercial Code Section 2-403(1).

41  
42           5. Subsection (a) applies the “entrustment” rule of Uniform Commercial Code Section  
43 2-403(2) to vessels, even if no application to have the buyer’s interest noted on the certificate of  
44 title is ever delivered with the office.

1           **Example 4:** Owner, whose interest in a vessel is indicated on the certificate of title,  
2 brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling  
3 vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary  
4 course of business. Buyer acquires Owner’s rights to the vessel. This result follows even though  
5 Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title,  
6 and no application for a new certificate of title is delivered to the office.  
7

8           **Example 5:** Same facts as Example 4, except that subsequently Owner purports to sell  
9 the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title  
10 and delivers it to Purchaser. Even though there was no compliance with Section 16(a) in  
11 connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to  
12 the vessel. See Section 16(c), which is made expressly subject to Section 22(a). The result  
13 would be the same if Owner purported to grant Purchaser a security interest in the vessel.  
14

### 15           **SECTION 23. RIGHTS OF SECURED PARTIES.**

16           (a) Subject to subsection (b), the effect of perfection and non-perfection of a security  
17 interest and the priority of a perfected or unperfected security interest with respect to the rights of  
18 purchasers and creditors, including lien creditors, is governed by [the Uniform Commercial  
19 Code].

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

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

27                   (2) the security interest is subordinate to a conflicting security interest in the  
28 vessel that is perfected under Section 14 after creation of the certificate of title and without the  
29 conflicting secured party’s knowledge of the security interest.

1 **Reporter’s Note**

2  
3 Source: Loosely on UCOTA Section 19.

4  
5 **Comment**

6  
7 Because perfection of a security interest in a vessel held as inventory for sale or lease by a  
8 person engaged in the business of selling goods of that kind is not governed by this Act, *see*  
9 Section 14(g), subsection (b) of this Section has no application to such a security interest.  
10 Therefore, if a security interest in a vessel is perfected by filing and the office creates a certificate  
11 of title that neither indicates the security interest nor notes that the vessel may be subject to  
12 security interests not so noted, a buyer of the vessel cannot take free of the security interest under  
13 this Section. If such a buyer qualifies as a buyer in ordinary course of business, the buyer will  
14 take free of the security interest under Section 22(a) and U.C.C. Section 9-320(a). If the buyer  
15 does not qualify as buyer in ordinary course of business, say perhaps because the buyer acquired  
16 the vessel in total or partial satisfaction of a preexisting money debt, the buyer will take subject  
17 to the perfected security interest. *See* U.C.C. Section 9-201(a).  
18

19 **SECTION 24. DUTIES AND OPERATION OF FILING OFFICE.**

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

23 (b) The office shall retain in its files all information regarding a security interest in a  
24 vessel, including any termination statement received by the office under Section 15, until at least  
25 [10] years after the office receives a termination statement regarding the security interest. The  
26 information must be accessible by the hull identification number for the vessel and any other  
27 indexing methods provided by the office.

28 (c) Except as otherwise provided in subsection (a) or (b), the office shall retain  
29 information about previous owners of a vessel or information on a previous certificate of title for  
30 a vessel pursuant to [the state’s records policy].

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

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

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

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

13 (B) owned by a person designated in the request; and

14 (2) with respect to each such vessel:

15 (A) the name of the owner of record;

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

18 (C) any termination statement indicated in the files of the office and the  
19 effective date of the termination statement.

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

1 **Reporter’s Note**

2  
3 Source: UCOTA Section 28.  
4

5 **Comment**

6  
7 Subsection (a) requires the office to maintain the evidence used to establish certain  
8 information but does not dictate how the office must maintain that evidence. Therefore the office  
9 may, if permissible under applicable law and its own rules and regulations, maintain the evidence  
10 in electronic or digitized form.  
11

12 **SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

13 applying and construing this uniform act, consideration must be given to the need to promote  
14 uniformity of the law with respect to its subject matter among states that enact it.  
15

16 **Reporter’s Note**

17 Source: ULC Drafting Rule 601.  
18  
19

20 **SECTION 26. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL**

21 **COMMERCE ACT.** [This act] modifies, limits, and supersedes the federal Electronic  
22 Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify,  
23 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic  
24 delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

25 **Reporter’s Note**

26 Source: ULC Drafting Rule 603.  
27  
28



1           **SECTION 27. SAVINGS CLAUSE.**

2           (a) Except as otherwise provided in this section, [this act] applies to any transaction,  
3 certificate of title, or record involving a vessel, even if the transaction, certificate of title, or  
4 record was entered into or created before the effective date of [this act].

5           (b) A transaction, certificate of title, or record that was validly entered into or created  
6 before the effective date of [this act] and would be subject to [this act] if it had been entered into  
7 or created on or after the effective date of [this act], and the rights, duties, and interests flowing  
8 from the transaction, certificate of title, or record, remains valid after the effective date of [this  
9 act].

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

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

15          (e) A security interest perfected immediately before the effective date of [this act]  
16 remains perfected for the earlier of:

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

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

20          (f) [This act] does not affect the priority of a security interest in a vessel if immediately  
21 before the effective date of [this act] the security interest is enforceable and perfected, and that  
22 priority is established.

(g) No warranty arises under Section 9 in connection with a transaction entered into before the effective date of [this act].

**Reporter’s Note**

Sources: ULC Drafting Rule 603; UCOTA Section 31.

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

**Effect on Security Interest in Vessel  
Now Principally Used on the Waters of State Enacting UCOTA-V**

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

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

1 If no application has been filed or COT issued, then the law where the debtor is located  
2 governs (or the law where the collateral is located if a security interest is perfected by  
3 possession). We then go to that jurisdiction’s U.C.C. § 9-311. If that jurisdiction has a COT  
4 statute that applies, then U.C.C. § 9-311(a)(2) will require compliance with that COT statute. If  
5 the vessel is subject to the certificate of title statute in another jurisdiction, then U.C.C.  
6 § 9-311(a)(3) will require compliance with that other jurisdiction’s COT statute. *Compare*  
7 U.C.C. § 9-311(a) (referring to property “subject to” a certificate-of-title statute) *with* U.C.C.  
8 § 9-303(a)-(c) (indicating that the governing law is the law of the jurisdiction issuing a certificate  
9 of title that “cover[s]” the goods).

10  
11 Through this multi-step process, the choice-of-law rules in Article 9 always point to the  
12 law of the same jurisdiction.

13  
14 **Scenario 1: Perfected by filing in State A (where debtor is located). Now governed**  
15 **by UCOTA-V in State A.** Under law of State A, the security interest remains perfected until the  
16 earlier of [three] years after effective date of State A’s UVOTA or when perfection would have  
17 ceased under the law of State A. As long as the secured interest remains perfected under the law  
18 of State A, whether due to an initial financing statement, a proper continuation statement, or  
19 possession, the secured party will have [three] years to have the security interest noted on a  
20 certificate of title issued by State A. This is true even if, during that time, the owner applies for a  
21 certificate of title under this act and fails to list the security interest in the application. As a  
22 result, the secured party has, in general, [three] years to make sure that its interest is noted on the  
23 certificate of title in order to maintain perfection. Of course, if during this time, a certificate of  
24 title is issued that fails to identify the security interest, a purchaser may take priority over or take  
25 free of the security interest pursuant to U.C.C. § 9-337.

26  
27 **Scenario 2: Perfected by filing in State A (where debtor is located). Now governed**  
28 **by UCOTA-V in State B.** Once an application for a COT is applied for in State B, State B’s law  
29 governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 27, the security  
30 interest remains perfected until the earlier of [three] years after effective date of State B’s  
31 UVOTA or when perfection would have ceased under the law of State A. As long as the secured  
32 interest remains perfected under the law of State A, whether due to an initial financing statement,  
33 a proper continuation statement, or possession, the secured party will have [three] years to have  
34 the security interest noted on a certificate of title issued by State B. This is true even if the  
35 application for a certificate of title in State B and fails to list the security interest in the  
36 application. However, a purchaser may benefit from U.C.C. § 9-337.

37  
38 If no application for a certificate of title is applied for in State B, then the law of State A  
39 continues to govern. State A’s U.C.C. § 9-311(a)(3) will now look to State B. Because of the  
40 operation of Section 27 of State B’s UCOTA-V, perfection will continue until the earlier of  
41 [three] years after the effective date of State B’s UVOTA or when perfection would have ceased  
42 under the law of State A. As long as the secured interest remains perfected under the law of  
43 State A, whether due to an initial financing statement, a proper continuation statement, or

1 possession, the secured party will have [three] years to have the security interest noted on a  
2 certificate of title issued by State B.

3  
4 **Scenario 3: Perfected by compliance with certificate of title statute in State A. Now**  
5 **governed by UCOTA-V in State B.** Once an application for a COT is applied for in State B,  
6 State B’s law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section  
7 27, the security interest remains perfected until the earlier of [three] years after effective date of  
8 State B’s UVOTA or when perfection would have ceased under the law of State A. As long as  
9 the secured interest remains perfected under the law of State A, the secured party will have  
10 [three] years to have the security interest noted on a certificate of title issued by State B.  
11 However, because State A’s certificate of title statute will no longer govern, perfection will have  
12 lapsed under the law of State A, and thus the secured party has no grace period for perfection. If  
13 the security interest is noted on the application for the certificate of title filed in State B, which is  
14 likely if it was noted on the surrendered State A certificate, the security interest will be perfected  
15 under Section 14. If the security interest is not noted on the application filed in or certificate  
16 issued by State B, the security interest will be unperfected.

17  
18 If no application for a certificate of title is applied for in State B, then pursuant to U.C.C.  
19 § 9-303 the law of State A continues to govern. State A’s U.C.C. § 9-311(a)(2) will continue to  
20 look to the certificate of title law of State A. Consequently, the security interest remains  
21 perfected as long as State A’s certificate of title law continues to apply.

22  
23 Subsection (g) is new. It is intended to make clear that the branding warranty does not  
24 arise in connection with a sale or other transfer that precedes the effective date of this act.  
25

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

27 [add legislative note]

28 **Reporter’s Note**

29 Source: UCOTA Section 32.

30  
31  
32  
33 **SECTION 29. EFFECTIVE DATE.** [This act] takes effect ....

34 **Reporter’s Note**

35 Source: ULC Drafting Rule 604. No uniform effective date is necessary.  
36