March 18, 2011

Mr. E.M. Miller and Mr. Steve Sepinuk
NCCUSL Drafting Committee
emiller@dls.virginia.gov
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Re: Uniform Certificate of Title Act for Vessels

Dear Mr. Miller and Mr. Sepinuk:

My name is Robin Minturn and I am a member of the Finance Committee of the Maritime Law Association. Bruce King suggested I contact you regarding the latest draft of UCOTAV. My comments are based on my experiences as in-house counsel for a vessel construction and term lender.

Although I primarily deal with vessels which are federally documented, I have a number of concerns, questions and suggestions regarding the proposed Act. Essentially I would prefer that the current practice of relying on a UCC financing statement as security prior to delivery of a vessel not be amended by this Act. Requiring two forms of security prior to delivery creates uncertainty thus discouraging lending in this market. My concerns are set forth below.

In the definition of Dealer, Section 2 (a) (6), I am happy to see the Reporter's Note regarding shipyards. I would encourage that this Note be kept so that shipyards building speculative yachts be clearly included within this definition. During the economic downturn and the accompanying downturn in construction orders, I worked with a number of yards who chose to build speculative yachts to keep the yards working. Normally these yards are not in the business of manufacturing vessels for retail sale and the Note helps to ensure that they are properly included in the definition.

In Section 4, I am concerned with subsection (a). I would prefer that the reference to a "documented vessel" be replaced with a "Documented vessel or a Foreign Documented vessel". Comment 4 to this section provides that if a vessel is titled in a state and later becomes a foreign documented vessel, the law of the state continues to govern. I understand from Example 4, that you are attempting to preserve the security rights of the lender at the time that the certificate of title was granted. However, there may be issues with subsequent lenders who finance the vessel after it is transferred to a foreign registry. How would a second lender perfect its security interest? Most lenders expect to file a mortgage in that foreign jurisdiction and have that mortgage serve as the primary security. The Act would seem to require a lender to not only file a mortgage, but to somehow note the new security interest on the former state title. Given that the former state title may be canceled, how would a lender do this? Additionally, how would a lender even know to look at the former state title? Lenders typically check the foreign flag registry and if the registry is clear, they assume that the mortgage secures the vessel. Requiring anything in addition to a mortgage to secure a foreign flagged vessel is overly burdensome for lenders and creates uncertainty regarding security.

In Section 5, I am happy to see that there is an exclusion for vessels "under construction pursuant to contract before delivery". Given the broad definition of "Vessel" in the Act, many of the construction projects I work on may qualify as a "Vessel" several days or even weeks before delivery. Many lenders require that title pass to a vessel owner as the vessel is constructed. Given the large amount of time spent adding equipment, gear and in some cases custom interiors, as well as time spent during sea trials, a lender has the potential for being unsecured for a significant period of time. This exception is necessary to close that gap. I encourage the Committee to leave in the Reporter's Note describing the purpose of this section and to expand the Note to clarify that a completed vessel before delivery, which is subject to a construction contract, is exempt from the requirements of the Act.

In Section 6, I note that an application must be accompanied by one of the documents listed in subsection (d). Presumably a Builder's Certificate indicating that the applicant is the owner of the vessel would suffice. My suggestion would be to specifically include this document in the list of approved documents in subsection (d) (2) (C).

In Section 14, my concerns center on subsection (g) (3). While I am glad to see that once again vessels under construction pursuant to a contract have been excluded, I am troubled by the qualification that an application of title submitted to the office requires that a lender's security interest be perfected according to the Act. Many lenders ensure that there is no gap in their security from the UCC to a vessel mortgage or title notation by making contractual arrangements with the owner/borrower and the shipyard to control the handover of the Builder's Certificate. The Builder's Certificate is typically not issued until final delivery which in some cases may be days or weeks following the date on which the hull under construction becomes a "Vessel" according to the Act's definition. The proposed language implies that simple delivery of the application by the owner/borrower without the Builder's Certificate would render the lender's UCC security interest invalid. I suggest either deleting the qualification regarding submission of the application of title, or requiring that not only the application but the accompanying title documents be delivered to the office.

Finally, under Section 15, the 30 days provided for in Section 15 (a) (1) is insufficient for processing purposes. I encourage the committee to consider a longer time period for delivery of a termination statement.

I appreciate your consideration of these points in reviewing the proposed Act. If you have any questions, please feel free to contact me at the address and number referenced below.

Sincerely,

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