



## MEMORANDUM

To: E.M. Miller, Jr., Chair, Drafting Committee  
From: Professor Stephen L. Sepinuck  
Date: January 27, 2010  
Re: Uniform Certificate of Title for Vessels Act – Discussion Items for March Meeting

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It is my hope that the Committee will have time to review and comment upon the entire draft during its meeting on March 5-6, 2010. Nevertheless, I have taken the liberty of identifying some issues that may warrant particular attention. Here is a list of those issues, in no particular order.

1. How Should the Act Deal with Barges?

Under federal law, barges (non-powered vessels) of 100 tons or less are not documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301. *See also* 33 C.F.R. §§ 173.11, 173.12, 174.11. The question becomes how to deal with these barges in our Act. Specifically, should the Act not apply to them at all or merely make it clear that there need be no number for such barges?

One argument for exempting them entirely is that if owners must now apply for a certificate of title, the titling office may require proof that applicable sales taxes have been paid. Many of these barges are quite old and records of prior transfers may be difficult to locate or resurrect.

On a related note, the federal numbering rules apply only vessels “with propulsion machinery” and barges over 100 gross tons. A “barge” is defined as any “non-self-propelled vessel,” 46 U.S.C. § 102, and thus could include such things as sail boats and row boats. As a result, it appears that small non-powered vessels need not be numbered. If our Act will apply to non-powered vessels of at least 16 feet in length, as the Act is currently drafted to do, then we may need to allow for the fact that those vessel may not have a number.

2. A Time Reference for “Principal Use”

At its first meeting, the Committee decided to delete a reference to calendar year or any other time period in the definition of “principally used.” In trying to make this decision work, I expanded the Reporter’s Note to § 2 to indicate that where a vessel is principally used depends in part on the

intent of the user. *See* pp. 7-8 . My efforts may not have fully succeeded, and at the January meeting of the ABA Consumer Financial Services Committee, the general sentiment of the group discussing this Act was that some time reference was needed.

### 3. Effect of Errors or Omissions

No single issue occupied more of my time in preparing the current draft than this one. At its meeting last year, the Committee instructed me to develop a standard for inclusion in the Act and then provide illustrations in the comments. The Committee did not, however, provide instruction on what that standard should be.

In responding to the Committee's instructions, I drew heavily from UCC §§ 9-338 and 9-506, and less heavily from UCOTA § 20. The principal standard is that a purchaser takes free to the extent that the purchaser gives value in reasonable reliance on incorrect information or on the absence of omitted information. § 16(b). The standard also includes – in brackets – a requirement that the error or omission be seriously misleading. If the Committee does not wish to use the seriously misleading portion of the standard, then subsection (c), which expounds on when an error or omission is seriously misleading should either be: (i) deleted; or (ii) rephrased to deal with reasonable reliance.

It is worth noting the implicit and differing scopes of subsections (b), (c), and (d). Subsection (b) is by far the most broad of the three. It covers all errors. It also covers the omission of anything other than an interest in a vessel. Thus, for example, it deals with the omission of a name, and address, or a hull identification number. Subsection (c) deals with the omission of an ownership interest in the vessel, other than a security interest. Subsection (d), through its reference to UCC § 9-337, deals with the omission of a security interest.

The Reporter's Note and the Comment following § 16 identify the intended effect to many of the myriad possible errors or omissions. However, in some or all of the cases the effect intended may not be the best choice. Moreover, the draft may or may not clearly provide for the intended effect. The Committee should discuss § 16 in some depth. In doing so, it should also discuss whether the certificating office should be required to respond to searches by name of the owner, by hull identification number, or both. *See* § 23.

### 4. Exception for Documented Vessels

Section 5(b) currently provides that no application for a certificate of title need be submitted for a vessel covered by "a [valid] certificate of documentation." This language may not be sufficient because federal law prohibits the issuance of a certificate of title for a documented vessel. The bracketed word is intended to deal with the issue of what should happen if the certificate of documentation is not current.

5. Applications Regarding Documented Vessels

Section 6(d)(2) requires that a certificate of documentation covering the vessel be included with any application for a certificate of title (when the owner wishes to surrender the certificate of documentation). This may not be possible, because the certificate of documentation is to be surrendered to the Coast Guard.

6. Title of the Act

In response to a suggestion made both by the Committee and by the liaison from the Style Committee, I attempted to change the title of the Act to “Certificate of Title for Vessels Act.” In other words, to change “Boats” to “Vessels” and to reorder the words. The ULC staff prevented me from making this change without prior approval of the Executive Committee. The Committee should decide whether it wishes to seek such approval.