

DRAFT
FOR DISCUSSION ONLY

CERTIFICATE OF TITLE ACT FOR VESSELS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 3-6, 2011 Drafting Committee Meeting

With Prefatory Note and Reporter's Notes

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ON UNIFORM STATE LAWS

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November 19, 2010

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CERTIFICATE OF TITLE ACT FOR VESSELS

TABLE OF CONTENTS

Prefatory Note.	1
SECTION 1. SHORT TITLE.	3
SECTION 2. DEFINITIONS.	3
SECTION 3. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY.	12
SECTION 4. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF TITLE.	13
SECTION 5. CERTIFICATE OF TITLE REQUIRED.	15
SECTION 6. APPLICATION FOR CERTIFICATE OF TITLE.	16
SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF TITLE.	20
SECTION 8. CONTENTS OF CERTIFICATE OF TITLE.	22
SECTION 9. TITLE BRAND.	24
SECTION 10. MAINTENANCE OF AND ACCESS TO FILES.	27
SECTION 11. ACTIONS REQUIRED UPON CREATION OF CERTIFICATE OF TITLE.	28
SECTION 12. EFFECT OF CERTIFICATE.	29
SECTION 13. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE; JUDICIAL PROCESS.	30
SECTION 14. PERFECTION OF SECURITY INTEREST.	30
SECTION 15. TERMINATION STATEMENT.	34
SECTION 16. TRANSFER.	36
SECTION 17. EFFECT OF MISSING OR INCORRECT INFORMATION.	38
SECTION 18. TRANSFER BY SECURED PARTY’S TRANSFER STATEMENT.	41
SECTION 19. TRANSFER BY OPERATION OF LAW.	42
SECTION 20. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.	45
SECTION 21. REPLACEMENT CERTIFICATE OF TITLE.	46
SECTION 22. RIGHTS OF PURCHASERS GENERALLY.	47
SECTION 23. RIGHTS OF SECURED PARTIES.	49
SECTION 24. DUTIES AND OPERATION OF FILING OFFICE.	50
SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	50
SECTION 26. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	52
SECTION 27. SAVINGS CLAUSE.	53
SECTION 28. REPEALS.	54
SECTION 29. EFFECTIVE DATE.	54

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 (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 on behalf or as agent for its insured if a casualty has
7 compromised the integrity of the vessel’s hull [or the vessel has sunk in a manner that creates a
8 significant risk that the integrity of the vessel’s hull has been compromised].

9 (16) “Lien creditor” means:

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

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

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

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

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

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

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

20 (20) “Person” means an individual, corporation, business trust, estate, trust,
21 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. Dagon*, 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 and the governing law might
32 change frequently.

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

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

1 And some do not title non-motor-powered watercraft of less than a designated length. This act
2 follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in
3 length are covered and all vessels propelled by an engine of at least 10 horsepower are covered.
4 Only those vessels that are both less than 16 feet in length and not mechanically powered are
5 excluded from coverage under this act by virtue of subparagraph (C).
6

7 Subparagraphs (D) and (E) are derived from Cal. Vehicle Code § 9873. Subparagraph
8 (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry
9 attached to a cable because, even with the cable, the ferry does not operate on a manufactured
10 course. Subparagraph (E) excludes non-powered floating residences that are fixed to the shore.
11 Most such residences would fail to satisfy the initial language in the definition, in that they are
12 not “used or capable of being used as a means of transportation on water.” Nevertheless, to
13 avoid any confusion they are expressly excluded.
14

15 Subparagraph (F) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of
16 title act do not seem apply to government-owned and operated vessels. By referring to vessels
17 “owned by a state,” subparagraph (F) covers, and therefore excludes from the definition of
18 “vessels,” vessels owned by a federally recognized Native American tribe. *See* Section 2(a)(29).
19

20 Subparagraph (G) is derived from 33 C.F.R. § 173.11(d).
21

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

25 **Legislative Note:** *The definition of “documented vessel” in paragraph (a)(10) includes a*
26 *reference to 44 U.S.C. Section 12105, “as amended.” That quoted language is intended to cover*
27 *any future amendments to the definition that Congress may enact. That language appears in*
28 *brackets because in some states this may be an unconstitutional delegation of state legislative*
29 *power. Such states should not enact the bracketed language. In its place, they may wish to*
30 *expressly delegate to the office the power to enact regulations that conform the definition to*
31 *whatever the federal term means.*
32

33 **Comment**

34
35 1. The definition for “barge” in paragraph (a)(1) facilitates an exemption from this act.
36 *See* Section 5(b)(2). Under federal law, barges (non-powered vessels) of 100 tons or less are not
37 documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301. *See*
38 *also* 33 C.F.R. §§ 173.11, 173.12, 174.11. More important, many existing barges are quite old
39 and records of prior transfers may be difficult to locate or resurrect. For this reason, an owner of
40 a barge is not required to obtain a certificate of title for it.
41

42 A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this
43 might include such things as sail boats and row boats, which are intended to be covered by this

1 act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or
2 fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted
3 from compliance with this act under Section 5(b)(2).
4

5 2. The definition of “casualty” in paragraph (a)(5) and of “damaged” in paragraph (a)(8)
6 deal with the obligation of an owner to brand the title or be deemed to have warranted the vessel
7 to a purchaser for value. *See* Section 9(a), (d). For this purpose, a vessel is damaged if it is not
8 “insurer sold” within the meaning of paragraph (a)(15) and a casualty has affected a propulsion
9 system of the vessel or the integrity of the vessel’s hull. Paragraph (a)(5) does not exhaustively
10 define the term “casualty”; it merely describes some of the events that qualify as a casualty. A
11 casualty need not be an event of nature; vandalism and terrorism can result in a casualty.
12 Damage resulting from routine operation is not a casualty.
13

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

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

26 3. Paragraph (a)(17) defines “office” to be the office that creates certificates of title for
27 vessels. The office need not be the same authority in the state that issues numbers for vessels
28 pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.
29

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

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

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

1 **Comment**

2
3 1. This section is consistent with [Uniform Commercial Code] Section 1-103(b). In
4 addition, like the [Uniform Commercial Code], this act should be liberally construed and applied
5 to promote its underlying purposes and policies, which are:

- 6
7 (1) to simplify, clarify, and modernize the law governing certificates of title;
8
9 (2) to permit the continued expansion of commercial practices through custom, usage,
10 and agreement of the parties; and
11
12 (3) to make uniform the law among the various jurisdictions.

13
14 This act should be construed in accordance with its underlying purposes and policies.
15 The text of each section should be read in the light of the purpose and policy of the rule or
16 principle in question, as well as with the act as a whole, and the application of the language
17 should be construed narrowly or broadly, as the case may be, in conformity with the purposes and
18 policies involved.
19

20 **SECTION 4. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF**
21 **TITLE.**

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

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

30 (c) A vessel ceases to be covered by a certificate of title at the earlier of the time the
31 certificate of title ceases to be effective under the law of the jurisdiction under which it was

1 created or the time the vessel subsequently either becomes covered by another certificate of title
2 or becomes a documented vessel.

3 **Comment**

4 Source: Uniform Commercial Code Section 9-303.
5

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

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

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

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

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

34 **Example 2:** Owner, who has granted a security interest in a vessel, applies in State A for
35 a certificate of title for the vessel. Upon delivering that application to the titling office, the law
36 of State A governs perfection and the effective of perfection, regardless of whether the debtor is
37 located in State A. If the application includes the required information about the existing
38 security interest, the security interest will be perfected.
39

40 **Example 3:** Same facts as Example 2 but the vessel later becomes principally used on
41 the waters of State B. The law of State B requires the debtor to apply for a certificate of title

1 from State B. If the debtor does not do so, then the law of State A will continue to govern the
2 perfection of the security interest. As long as the law of State A does not invalidate its certificate
3 of title when the principal use of the vessel changed to State B, the security interest will remain
4 perfected.
5

6 **SECTION 5. CERTIFICATE OF TITLE REQUIRED.**

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

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

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

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

14 (1) a documented vessel;

15 (2) a foreign documented vessel;

16 (3) a barge;

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

18 or

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

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

1 **Reporter’s Note**

2
3 Sources: Loosely from Ill. Comp. Stat. ¶ 45/3A-1; NASBLA Model Act for Vessel
4 Titling Sections 3, 4, 6.

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

15
16 Subsection (c) accounts for the possibility that the state agency that issues numbers for
17 vessels may not be the office that creates certificates of title.

18
19 **Legislative Note:** *This act deals only with titling; it does not cover registration or licensing.*
20 *States that have a registration or licensing statute for vessels may wish to consider amending*
21 *that statute to condition registration or licensing on compliance with Section 5 of this act.*

22
23 **Comment**

24
25 Section 5(b) provides that no application for a certificate of title is required for barges or
26 for vessels under construction. Accordingly, if no application for a certificate of title for such a
27 vessel has been delivered to the office, the perfection of a security interest in the vessel is
28 governed by Article 9 of the Uniform Commercial Code, not by this act. However, if an owner
29 does apply for a certificate of title for the vessel, perfection must be through compliance with this
30 act. *See* comment to Section 14.

31
32 **SECTION 6. APPLICATION FOR CERTIFICATE OF TITLE.**

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

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

36 (1) the applicant’s name, street address, and, if different, address for receiving
37 first class mail delivered by the United States Postal Service;

- 1 (2) the names of all other owners of the vessel;
- 2 (3) the principal residence of at least one owner;
- 3 (4) the mailing address of at least one owner, if different from the principal
4 residence;
- 5 (5) the social security number or taxpayer identification number of each owner;
- 6 (6) the hull identification number for the vessel or, if there is none, an application
7 for the issuance of a hull identification number for the vessel;
- 8 (7) a description of the vessel as required by the office, which must include:
- 9 (A) the official number for the vessel, if any, assigned by the United
10 States Coast Guard;
- 11 (B) the name of the manufacturer, builder, or maker;
- 12 (C) the model year or the year in which the manufacture or build of a
13 vessel was completed;
- 14 (D) the overall length of the vessel;
- 15 (E) the vessel type;
- 16 (F) the hull material;
- 17 (G) the propulsion type; and
- 18 (H) the engine drive type.
- 19 (8) an indication of all security interests in the vessel known to the applicant,
20 including for each security interest the name and mailing address of the secured party;
- 21 (9) an affirmation that the vessel is neither a documented vessel nor a foreign
22 documented vessel;

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

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

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

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

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

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

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

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

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

20 (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 **Reporter's Note**

17
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 **Comment**

23
24
25 Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.317.

26
27 1. Not all of the information submitted will appear on the certificate of title. For
28 example, the principal residence of an owner and each owner's social security number or
29 taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear
30 on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 8.

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

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

13 **SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF**
14 **TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) The office shall provide an opportunity for a hearing at which the applicant
17 and any other interested party may present evidence in support of or opposition to the
18 cancellation. The office shall serve notice of the opportunity for a hearing to the applicant, the
19 owner of record, and all secured parties indicated in the files of the office. If not later than [30]
20 days after the notice was sent, the office receives a request for a hearing from the applicant or any
21 other interested party, the office shall hold the hearing no later than [20] days after receiving the
22 request.]

1 **Reporter’s Note**

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

5
6 Subsection (c) is derived in part from Indiana law and is intended to permit the office to
7 reject an application if the applicant does not provide sufficient proof of ownership.

8
9 Subsection (d) supplements the rule of Section 5 by requiring that the office not create a
10 certificate of title for a documented vessel.

11
12 Subsection (e) includes a provision allowing the office to cancel a certificate of title for a
13 vessel that becomes federally documented.

14
15 Some states have laws that require the applicable office to cancel a motor vehicle
16 certificate of title for the owner’s failure to pay child support, failure to pay parking tickets, or
17 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws
18 apply to vessels but in any event this Section does not permit cancellation for any of these
19 reasons. Cancelling the vessel’s registration (*i.e.* license to use) for such failures would seem far
20 more appropriate than cancelling its certificate of title. Moreover, nothing in federal regulations
21 authorizes cancellation for any of these reasons, and therefore authorizing cancellation for any of
22 these reasons in this act might jeopardize the goal of having this act approved pursuant to 33
23 C.F.R. part 187, so that a security interest perfected pursuant to this act would qualify as a
24 “preferred mortgage” under 46 U.S.C. § 31322(d).

25
26 Pursuant to the Drafting Committee’s request, subsection (f) has been modified to permit
27 service other than by personal service or U.S. Mail. The new language is derived from Model
28 State Administrative Procedure Act § O1-102(11).

29
30 **Comment**

31
32 Subsection (f) is optional. It provides a procedure for the office to follow before
33 cancelling a certificate of title. It is intended for those states whose public records or other law
34 does not already provide a procedure that ensures all interested parties are notified in advance
35 and given an opportunity to be heard.

36
37 **SECTION 8. CONTENTS OF CERTIFICATE OF TITLE.**

38 (a) A certificate of title must contain:

- 39 (1) the date the certificate of title was created;

- 1 (2) the name of at least the owner of record and, if not all owners are listed, an
2 indication that there are additional owners;
- 3 (3) the address of the owner of record;
- 4 (4) the hull identification number;
- 5 (5) the information listed in Section 6(b)(7);
- 6 (6) except as otherwise provided in Section 14(b), the name and address of the
7 secured party of record, if any, and if not all secured parties are listed, an indication that there are
8 other security interests indicated in the files of the office or on a record created by a
9 governmental agency of another jurisdiction and submitted to the office; and
- 10 (7) all title brands covering the vessel, including brands indicated on a certificate
11 of title created by a governmental agency of another jurisdiction and delivered to the office.

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

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

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

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

8 **Reporter's Note**

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

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

15 **SECTION 9. TITLE BRAND**

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

22 (b) Before transferring an ownership interest in an insurer sold vessel that is covered by a
23 certificate of title created by the office, an insurer shall deliver to the office an application to have
24 the certificate amended by adding the title brand designation "Insurer Sold." Not later than [15]
25 business days after delivery of the application to the office, the office shall create a new

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

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

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

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

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

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

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

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

1 **Reporter’s Note**

2 Source: New.

3
4 The bracketed language in subsection (d) is presented for discussion. If a vessel insurer
5 that has paid the insured on a policy of insurance would have a common-law or statutory lien on
6 the vessel, the bracketed language may be necessary to make sure that the statutory warranty will
7 arise if the insurer fails to brand the title or otherwise disclose that the vessel is insurer sold.

8
9 The limitations period for the warranty and the rules about when the right of action for
10 breach accrues are derived from amended U.C.C. § 2-725.

11 **Comment**

12
13
14 1. Subsection (a) imposes only on the owner of record a duty to obtain a new certificate
15 of title for a damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore
16 unlikely to apply to a dealer because a dealer typically will not have title transferred into the
17 dealer’s name for the relatively short period that the dealer owns the vessel. Cf. Section 5(b)(5)
18 (exempting dealers from having to apply for a certificate of title). Subsection (a) is also unlikely
19 to apply to a secured party. In contrast, subsection (c) generally applies to any person that
20 transfers an ownership interest in a damaged or salvaged vessel. Accordingly, an owner other
21 than the owner of record who transfers its ownership interest can be deemed to have warranted
22 the vessel under subsection (c). Subsection (c) therefore applies to dealers, even though a dealer
23 need not apply for a certificate of title and may never become the owner of record.

24
25 Pursuant to subsection (d), subsection (c) does not apply to a secured party or other lienor
26 conducting a disposition under Uniform Commercial Code Section 9-610 or other applicable
27 law, even though such a disposition transfers the debtor’s ownership interest. See, e.g., Uniform
28 Commercial Code Section 9-617(a)(1). This is true even if the secured party or lienor has taken
29 title to the vessel prior and in order to conduct the disposition, and even if the casualty occurred
30 during or after repossession.

31
32 2. A warranty made under this section is a statutory warranty, not an implied warranty.
33 Even though the nature and scope of a warranty made under subsection (c) is co-extensive with
34 the implied warranty of merchantability that arises under Uniform Commercial Code Section
35 2-314, subsection (e) makes clear that a warranty made under this section cannot be disclaimed
36 through compliance with Uniform Commercial Code Section 2-316, Section 9-610(e), or
37 otherwise. For the same reason, other conditions to the creation of an implied warranty of
38 merchantability under Article 2 are immaterial to the existence of a warranty under this section.
39 A transferor or insurer makes a warranty under this section regardless of whether the transferor or
40 insurer is a merchant with respect to vessels of that kind or even a merchant at all.

41
42 3. Remedies for breach of the statutory warranty created by this Section are determined
43 pursuant to Article 2 of the Uniform Commercial Code. For this reason, remedies for breach of

1 the warranty created by this Section can be limited pursuant to Uniform Commercial Code
2 Section 2-719 or liquidated pursuant to Uniform Commercial Code Section 2-718, subject to the
3 restrictions therein on limitation and liquidation.
4

5 The warranties created under this Section extend to the initial purchaser and to remote
6 purchasers. To give effect to the warranty to remote purchasers, the limitations period for a
7 remote purchaser begins to run when the remote purchaser receives the vessel, not when the
8 initial purchaser receives the vessel.
9

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

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

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

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

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

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

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

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

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

4 (c) Before the office creates an electronic certificate of title for a vessel, any written
5 certificate of title for the vessel must be surrendered to the office. If the office creates an
6 electronic certificate of title for a vessel, the office shall destroy or otherwise cancel the existing
7 written certificate of title for the vessel which has been surrendered to the office, and shall
8 maintain in the files of the office an indication of the date [and time] of destruction or other
9 cancellation. If a written certificate of title being cancelled is not destroyed, the office shall
10 indicate on the face of the written certificate of title that the written certificate of title has been
11 cancelled.

12 **Reporter's Note**

13 Source: UCOTA Section 15.
14

15 **SECTION 12. EFFECT OF CERTIFICATE.**

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

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

21 **Comment**

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

1 sufficiently identifies the person as secured party. The identification on the application for a
2 certificate of title of a person as owner, lessor, consignor, or bailor is not by itself a factor in
3 determining whether the person's interest is a security interest.

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

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

9 (2) the name and mailing address of the secured party;

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

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

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

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

20 (f) If a secured party assigns a perfected security interest in a vessel, the receipt by the
21 office of a statement providing the name of the assignee as secured party is not required in order
22 to continue the perfected status of the security interest against creditors of and transferees from

1 the original debtor. However, a purchaser of a vessel subject to a security interest which obtains
2 a release from the secured party indicated in the files of the office or on the certificate of title
3 takes free of the security interest and of the rights of a transferee if the transfer is not indicated
4 either in the files of the office or on the certificate of title.

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

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

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

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

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

17 (i) A security interest in a vessel arising under [Uniform Commercial Code Sections
18 2-401, 2-505, 2-711(3) or 2A-508(5)] is perfected when it attaches and remains perfected until
19 the debtor obtains possession of the vessel, unless before such time the security interest is
20 perfected pursuant to subsection (a) or (c).

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

1 **Comment**

2
3 Source: UCOTA Section 26; Uniform Commercial Code Sections 9-311(b), 9-505(a).

4
5 Section 5(b) provides that no application for a certificate of title is required for barges or
6 for vessels under construction. Paragraphs (g)(2) and (3) of this section are corollaries to Section
7 5(b). They provide that a security interest in such a vessel is to be perfected under other law if no
8 application for a certificate of title for the vessel has been delivered to the office. However, if an
9 owner does apply for a certificate of title for the vessel, perfection must be through compliance
10 with this section.

11
12 Subsection (d) provides that a security interest in a vessel is perfected upon delivery to
13 the office of an application for a certificate of title that identifies a security interest, together with
14 payment of the applicable fee. This rule operates in conjunction with Uniform Commercial Code
15 Section 9-311(b), which provides that compliance with this act is the equivalent of filing a
16 financing statement. Collectively, they allow for a security interest to attain priority under such
17 rules as Section 9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the
18 security agreement is authenticated and a financing statement is filed), Section 9-317(e) (giving a
19 perfected purchase-money security interest priority over a judicial lien if a financing statement is
20 filed within 20 days of when the debtor receives possession), and Section 9-324(a) (giving a
21 perfected purchase-money security interest priority over a conflicting security interest if a
22 financing statement is filed to perfect the purchase-money security interest within 20 days of
23 when the debtor received possession).

24
25 Because a security interest in a vessel covered by a certificate of title issued by the office
26 is perfected upon delivery to the office of an application for a certificate of title that identifies a
27 security interest, together with payment of the applicable fee, cancellation of the certificate does
28 not affect perfection under this act.

29
30 Subsection (h) provides a temporary period of automatic perfection for a security interest
31 in a vessel coming out of federal documentation. The purpose of this subsection is to facilitate
32 the decision by the owner of and creditors with a security interest in a vessel to surrender the
33 certificate of documentation and apply for a certificate of title. Without at least a temporary
34 period of perfection, secured parties might risk being unperfected for the interval between
35 surrender of the certificate of documentation and delivery to the titling office of an application
36 for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for perfection of a
37 security interest in a documented vessel to continue – indefinitely – upon surrender of the
38 document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be unnecessary.
39 However, it remains unclear whether federal law truly does provide for continuous and indefinite
40 perfection of what, in that situation, would be a secret lien. In the event it does not, subsection
41 (h) provides a temporary period of perfection.
42

1 Subsection (h) provides a temporary period of automatic perfection for a security interest
2 in a vessel coming out of federal documentation only if this state's law governs perfection of the
3 security interest. *See* Uniform Commercial Code Section 9-301.
4

5 **SECTION 15. TERMINATION STATEMENT.**

6 (a) A secured party indicated in the files of the office as having a security interest in a
7 vessel shall deliver to the office and, upon the debtor's request, to the debtor, a termination
8 statement upon the earlier of:

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

12 (2) [14] days after the secured party receives a signed demand from an owner and
13 there is no obligation secured by the vessel subject to the security interest and no commitment to
14 make an advance, incur an obligation, or otherwise give value secured by the vessel.

15 (b) If a written certificate of title has been created and delivered to a secured party and a
16 termination statement is required under subsection (a), the secured party, within the time
17 provided in subsection (a), shall deliver the written certificate of title to the debtor or the office
18 with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed, or
19 is otherwise unavailable or illegible, the secured party shall deliver with the termination
20 statement, within the time provided in subsection (a), an application for a replacement certificate
21 of title meeting the requirements of Section 21.

22 (c) Upon delivery to the office of a termination statement authorized by the secured
23 party, the security interest to which the termination statement relates ceases to be perfected. If
24 the security interest to which the termination statement relates was indicated on the certificate of

1 title, the office shall create a new certificate of title pursuant to Section 7 and deliver the new
2 certificate pursuant to Section 11(a). The office shall maintain in its files the date [and time] of
3 delivery to the office of the termination statement.

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

8 **Reporter's Note**

9
10 Source: UCOTA Section 27; Uniform Commercial Code Section 2-715(2).

11
12 The limitation on damages in subsection (d) to those of which the secured party had
13 reason to know is derived from Uniform Commercial Code Section 2-715(2), and is a principle
14 long applicable to claims arising in contract. *See Hadley v. Baxendale*, 156 Eng. Rep. 145 (Ex.
15 Ct. 1854). However, it is a limitation not expressed in Article 9, *see* U.C.C. § 9-625, perhaps
16 because a secured party's failure to comply with Article 9 is regarded as something closer to a
17 tort than to a breach of contract. *Cf.* U.C.C. § 9-625 cmt. 3 (indicating that principles of tort law
18 would supplement the claim with respect to a secured party's breach of the peace during
19 repossession). Indeed, a secured party's failure to comply with this Section would give rise to a
20 claim very like one for slander of title, a tort. Of course, tort remedies are also subject to various
21 limitations, including the requirement of proximate cause and the economic loss doctrine (the
22 latter of which may not be applicable to defamation actions). However, the limitation expressed
23 in subsection (d) is not consistent with the traditional tort limits.

24 **Comment**

25
26
27 Subsection (c) requires the office, upon delivery of a termination statement, to create a
28 new certificate of title if the security interest to which the termination statement applies was
29 indicated on the existing certificate of title. This will be the situation whenever the secured party
30 was the secured party of record. It will also be the case if the security interest was otherwise
31 listed on the certificate of title or the certificate indicated the existence of other unlisted security
32 interests and the termination statement relates to the only unlisted security interest. See Section
33 8(a)(6). In creating a new certificate of title, the office shall comply with section 7(a) with
34 respect to timing and with Section 7(b) in determining whether to create a written certificate of
35 title or an electronic certificate of title.

1 If a termination statement delivered to the office relates to the security interest of the
2 secured party of record, and one or more other security interests in the vessel are indicated in the
3 files of the office, there will now be a new secured party of record. The new secured party of
4 record will be the secured party whose security interest was first communicated to the office and
5 for which no termination statement has been filed.
6

7 **SECTION 16. TRANSFER.**

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

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

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

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

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

23 (c) As among the parties to a transfer and their assignees and successors, a transfer of
24 ownership of a vessel is not rendered ineffective by a failure to comply with subsection (a) or by
25 a failure to apply for a new certificate of title. However, except as otherwise provided in

1 Sections 17, 18, 22(a), or 23, a transfer of ownership without compliance with subsection (a) is
2 not effective against other persons claiming an interest in the vessel.

3 **Reporter's Note**

4
5 Source: UCOTA Section 16.

6
7 As currently drafted, subsection (d) does not apply to involuntary transfers. *Cf.* Sections
8 18, 19. At its last meeting, the Committee briefly considered whether subsection (d) or Sections
9 18 and 19 should be amended to include a similar rule following an involuntary transfer but
10 reached no decision. After further reflection and consultation, no expansion of this rule to
11 involuntary transfers is recommended.

12 **Comment**

13
14
15 1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers
16 of ownership of a vessel covered by a certificate of title.

17
18 Subsection (a) requires the transferor to facilitate the creation of a new certificate of title
19 by either signing and delivering the existing written certificate of title or authenticating and
20 delivering a record evidencing the transfer of ownership with respect to a vessel covered by an
21 electronic certificate of title. By referring to a “transfer of ownership,” subsection (a) applies to
22 gifts as well as sales. It also covers a transfer of ownership by less than all of the owners, such as
23 when only one of several joint owners sells or gifts its interest. Subsection (a) does not apply to
24 the creation of a lease security interest because neither of those transactions involves a “transfer
25 of ownership.”

26
27 2. Subsection (a) provides the transferee with a right to execution of the certificate of
28 title upon sale of the vessel. Subsection (b) provides that execution of the certificate of title
29 constitutes a transfer of ownership. After execution of the certificate of title the transferor is no
30 longer the vessel owner, *e.g.*, for purposes of financial responsibility laws.

31
32 3. This act is supplemented by otherwise applicable law, for example the law of agency.
33 *See* Section 3. Therefore the obligations and rights recognized in this section can be exercised by
34 authorized representatives of the transferor and transferee.

35
36 4. Subsection (c) makes clear that a transfer of ownership is effective between the parties
37 thereto even if the transferor does not fulfill its duty to facilitate the creation of a new certificate
38 of title identifying the transferee as an owner and even if no application for a new certificate of
39 title is delivered to the office. This is consistent with the fact that a certificate of title is *prima*
40 *facie* evidence, but not conclusive evidence, of ownership. *See* Section 12.

1 Subsection (c) also clarifies that a transfer of ownership of a vessel, even though effective
2 between the parties, may not be effective against third parties claiming an interest in the vessel if
3 the certificate of title continues to identify the transferor as owner. See Sections 22 or 23, *e.g.*,
4 with respect to the rights of a good faith purchaser for value or a buyer in ordinary course of
5 business.
6

7 **SECTION 17. EFFECT OF MISSING OR INCORRECT INFORMATION.**

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

11 (b) Nothing in this section affects the application of [Uniform Commercial Code Section
12 9-337].

13 **Comment**

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

15 1. Subsection (a) states the general rule that a certificate of title remains effective even if
16 it contains errors or omissions. As a result, the certificate remains *prima facie* evidence of the
17 information in record that constitutes the certificate of title. *See* Section 12(a).
18
19

20 **Example 1:** The office creates a certificate of title that transposes two of the digits in the
21 hull identification for the vessel. The certificate remains effective regardless whether the
22 applicant or the office made the error and regardless whether the files of the office contain the
23 same error.
24

25 **Example 2:** The office creates a certificate of title that misspells the name of the owner
26 of record. The certificate remains effective regardless whether the applicant or the office made
27 the error and regardless whether the files of the office contain the same error.
28
29

30 2. Because subsection (a) applies not only to a certificate of title, but also to or any “other
31 record required or authorized by this act,” subsection (a) applies to an application for a certificate
32 of title. This rule must be read in conjunction with Section 14(d), which provides that a security
33 interest in a vessel is perfected upon delivery to the office of an application for a certificate of
34 title that identifies a security interest, together with payment of the applicable fee, and Uniform
35 Commercial Code Section 9-311(b), which provides that compliance with this act is the
36 equivalent of filing a financing statement. Thus, delivery to the office of an application for a
37 certificate of title that identifies a security interest, together with payment of the applicable fee,

1 even if the application contains an error or omission, constitutes compliance with this act and is
2 the equivalent of filing a financing statement.

3
4 Collectively, these rules ensure that a security interest noted in an application for a
5 certificate of title delivered to the office pursuant to Section 6 or 14 is perfected despite any error
6 in the *certificate*. To determine whether the security interest is perfected if the *application* has an
7 error or omission, one must refer to the rules of Article 9 regarding the efficacy of financing
8 statements. *See* Uniform Commercial Code Sections 9-506, 9-516, 9-520.

9
10 For example, a filed financing statement is effective to perfected even if it contains a
11 minor error that is not seriously misleading. *See* Uniform Commercial Code Section 9-506. For
12 this purpose, a failure to describe some collateral would be seriously misleading as to omitted
13 collateral. An error in the debtor's name on a financing statement could also be seriously
14 misleading because searches are based on the debtor's name and an error in that name may cause
15 the filed financing statement not to be disclosed. However, an error in the secured party's name
16 or address cannot be seriously misleading. Section 9-506 cmt. 2.

17
18 The same rule applies under this act. Thus, an error in the secured party's name or
19 address imposes no burden on someone seeking to identify who has an ownership interest or
20 security in a titled vessel. As a result, such an error does not render the security interest
21 unperfected. *See In re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name
22 for secured parties on certificates of title was not seriously misleading and did not render security
23 interests unperfected).

24
25 **Example 3:** Secured Party's name is misspelled in the application for a certificate of title
26 delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of
27 title. The security interest is perfected.

28
29 However, application of the seriously misleading standard in Uniform Commercial Code
30 Section 9-506 to applications for a certificate of title must take into account the different manner
31 in which searches for perfected security interests are conducted. In particular, whereas searches
32 for financing statements are based on the debtor's name, searches relating to vessels covered by a
33 certificate of title are ordinarily based on the hull identification number. *See* Section 24(e).
34 Accordingly, whereas an error in a debtor's name on a filed financing statement may prevent the
35 financing statement from being disclosed in response to a proper search request, an error in the
36 name of the owner of record is unlikely to prevent a searcher from discovering the existence of a
37 perfected security interest in a vessel covered by a certificate of title. *See In re Laursen*, 391
38 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor's first name on certificate of title for
39 vehicle did not render security interest unperfected because certificates of title are indexed by
40 vehicle identification number, not by name).

41
42 **Example 4:** Owner's name is misspelled in the application for a certificate of title
43 delivered to the office. As a result, Owner's name is also misspelled on the certificate of title.
44 The application identifies Bank as a secured party. The security interest is perfected.

1 Even an error in the description of the vessel will not render a security interest
2 unperfected. Although search requests can be processed using the hull identification number, *see*
3 Section 24(e), an error in the hull identification number on the certificate of title cannot really
4 deceive the searcher. If the error existed solely on a written certificate of title but not in the files
5 of the office, a search under the correct number would yield all the relevant information. If the
6 error existed both on the certificate of title and in the files of the office, then a search using the
7 correct hull identification number would yield nothing. Anyone seeking to acquire an interest in
8 such a seemingly untitled vessel after such search should conduct further investigation.
9

10 The same method of analysis applies to applications that the office rejects. If rejection
11 was authorized under Section 6, then a security interest noted in the application will not be
12 perfected by delivery of the application to the office. *See* Uniform Commercial Code Section
13 9-516(b). If, however, rejection was not authorized under Section 6, then delivery of the
14 application, together with payment of the applicable fee, will perfect a security interest
15 identified in the application. *See* Uniform Commercial Code Section 9-516(a), (c). The priority
16 of that security interest may, however, be affected by the office's rejection of the application. *See*
17 Section 23(a); Uniform Commercial Code Section 9-516(c). Similarly, errors in the application
18 might affect the priority of a security interest. *See* Uniform Commercial Code Sections 9-338,
19 9-520(c).
20

21 3. Subsection (b) makes Uniform Commercial Code Section 9-337 applicable to
22 certificates of title created under this act. Thus, if the office creates a certificate of title that fails
23 to indicate a security interest that was identified in the application for the certificate, a buyer or
24 secured party who relies on the clean certificate may take free or obtain priority.
25

26 **Example 5:** Lender's security interest is identified in the application for a certificate of
27 title delivered to the office. The office creates a certificate of title that fails to indicate Lender's
28 security interest. Lender's security interest is perfected. *See* Section 14. However, a buyer,
29 other than buyer in the business of selling goods of that kind, who gives value and receives
30 delivery of the vessel without knowledge of Lender's security interest takes free of the security
31 interest. Similarly, A security interest is perfected after creation of the certificate of title and
32 without knowledge of Lender's security has priority over Lender's security interest.
33

34 **Example 6:** Owner delivers to the office an application for a certificate of title for a
35 vessel. The application identifies Lender as a secured party but misstates the hull identification
36 number for the vessel. Lender's security interest is perfected. Owner later offers to sell the
37 vessel to Buyer. Buyer requests a search using the vessel's correct hull identification number.
38 The office responds that it has no record relating to that hull identification number. Buyer
39 insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner
40 delivers to the office a new application for a certificate of title. The new application does not
41 disclose Lender's security interest. Office issues a certificate of title for the vessel that does not
42 indicate Lender's security interest. Lender's security interest remains perfected. However, Buyer
43 may take free of Lender's security interest pursuant to Uniform Commercial Code Section
44 9-337(1).

1 **SECTION 18. TRANSFER BY SECURED PARTY’S TRANSFER STATEMENT.**

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

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

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

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

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

11 (A) the owner of record;

12 (B) the secured party of record; and

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

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

15 (6) that:

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

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

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

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

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

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

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

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

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

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

15
16 **Comment**
17

18 Source: UCOTA Section 21.
19

20 A secured party could be "the person acquiring the rights of the owner of record" within
21 the meaning of subparagraph (a)(4)(C) if the secured party either purchases the vessel at a
22 disposition pursuant to Uniform Commercial Code Section 9-610 or accepts the vessel in full or
23 partial satisfaction of the debt pursuant to Uniform Commercial Code Section 9-620.
24

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

26 (a) In this section:

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

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

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

7 (C) through other legal process.

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

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

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

15 (C) a statement that:

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

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

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

21 (D) except for a transfer pursuant to paragraph (a)(1)(A), evidence that
22 notification of the transfer and the intent to file the transfer-by-law-statement has been sent to all

1 persons indicated in the files of the office as having an interest, including a security interest, in
2 the vessel.

3 (b) Unless the office rejects a transfer-by-law statement for a reason set forth in Section
4 7(c), not later than [15] business days after delivery to the office of the a transfer-by-law
5 statement, including documentation satisfactory to the office as to the transferee's ownership
6 interest or right to acquire the ownership interest of the owner of record, and payment of all
7 applicable taxes and fees, the office shall:

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

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

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

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

14 (5) indicate on the new certificate of title any security interest indicated on the
15 canceled certificate of title, unless a court order provides otherwise; and

16 (6) send the new certificate of title pursuant to Section 11(a).

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

19 **Comment**

20 Source: UCOTA Section 22.

21
22
23 Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted
24 pursuant to judicial order. It includes a sale following governmental seizure of a vessel.

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

3 (a) Except as otherwise provided in Section 18 or 19, if the office receives,
4 unaccompanied by submission of a signed certificate of title, either an application for a new or
5 amended certificate of title that includes an indication of a transfer of ownership or a termination
6 statement, the office may create or amend a certificate of title under this section only if:

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

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

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

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

19 (b) The office may indicate in a certificate of title created or amended under subsection
20 (a) that the certificate of title was created without submission of a signed certificate of title or
21 termination statement. If no credible information indicating theft, fraud, or any undisclosed or
22 unsatisfied security interest, lien, or other claim to an interest in the vessel has been delivered to

1 the office within one year after creation of the certificate of title, upon request in a form and
2 manner specified by the office, the office shall remove the indication from the certificate of title.

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

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

14 **Reporter's Note**

15 Source: UCOTA Section 33.

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

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

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

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

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

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

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

12 **Reporter's Note**

13 Source: UCOTA Section 24.

14 **Comment**

15
16
17
18 When creating a replacement certificate of title, the office must comply with subsection
19 (d) regardless of whether it creates a written certificate of title or an electronic certificate of title.
20 No matter the format, the replacement certificate of title must be designated on its face as a
21 replacement.
22

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

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

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

4 **Comment**

5
6 1. Subsection (a) is a specific application of the general rule principle stated in
7 subsection (b) and is designed to overrule the line of cases ruling that the buyer must obtain or
8 apply for a new certificate of title identifying the buyer as the owner. This principle is embedded
9 in the definition of “buyer in ordinary course of business” in Section 2(a)(3), but is stated
10 expressly here to avoid any possible confusion.

11
12 2. A buyer in ordinary course of business is a type of purchaser whose rights are
13 governed by subsection (b).

14
15 3. Subsection (b) incorporates the provisions of Uniform Commercial Code Section
16 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value” is
17 defined in Uniform Commercial Code Section 1-204.

18
19 **Example 1:** Scoundrel buys a vessel from Owner and a new certificate of title is created
20 identifying Scoundrel as owner of record. In connection with the transaction, Scoundrel deceived
21 Owner as to Scoundrel’s identity, with the result that the transaction is voidable by Owner. *See*
22 Uniform Commercial Code Section 2-403(1). Before Owner takes any action, Scoundrel sells
23 the vessel for value to Buyer, who applies for a new certificate of title. If Buyer purchased the
24 vessel in good faith, Buyer acquires good title to the vessel.

25
26 4. Compliance with this act is generally not relevant to an owner’s rights against a
27 grantor or someone else up the chain of title; it is relevant only to the owner’s rights against some
28 down the chain of title (*e.g.*, someone else who subsequently acquired rights from the grantor).

29
30 However, in some circumstances, the failure of a purchaser to ensure that an application
31 is delivered to the office for a certificate of title that indicates purchaser’s interest in the vessel
32 may prevent the purchaser from qualifying as a good faith purchaser. “Good faith” is defined in
33 Section 2(b)(5) to include observance of reasonable commercial standards of fair dealing. While
34 it may be customary for a buyer in ordinary course of business – that is, a person buying from a
35 dealer – to buy a vessel without seeing or obtaining the existing certificate of title, this is not
36 customary for a purchase from a non-dealer. Thus a buyer who buys a vessel outside the
37 ordinary course of business and without execution of the certificate of title may not be observing
38 reasonable commercial standards of fair dealing and may not qualify as a good faith purchaser.

39
40 **Example 2:** Same facts as Example 1, except that through inadvertence no application is
41 delivered to the office for a certificate of title indicating Buyer’s ownership of the vessel.

1 Buyer's failure to have a new certificate of title created means that Buyer may lose ownership of
2 the vessel to a subsequent transferee from Scoundrel. *See* Section 16(c). However, Buyer's
3 failure to have a new certificate of title created does not suggest a lack of fair dealing toward
4 Owner, and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.
5

6 **Example 3:** Same facts as Example 2, except that Buyer suspects that Scoundrel may
7 have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an
8 effort to make it more difficult for any prior owner to identify Buyer and Buyer's interest in the
9 vessel. Buyer does not qualify as a good faith purchaser and therefore does not obtain good title to
10 the vessel under Uniform Commercial Code Section 2-403(1).
11

12 5. Subsection (a) applies the "entrustment" rule of Uniform Commercial Code Section
13 2-403(2) to vessels, even if no application to have the buyer's interest noted on the certificate of
14 title is ever delivered with the office.
15

16 **Example 4:** Owner, whose interest in a vessel is indicated on the certificate of title,
17 brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling
18 vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary
19 course of business. Buyer acquires Owner's rights to the vessel. This result follows even though
20 Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title,
21 and no application for a new certificate of title is delivered to the office.
22

23 **Example 5:** Same facts as Example 4, except that subsequently Owner purports to sell
24 the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title
25 and delivers it to Purchaser. Even though there was no compliance with Section 16(a) in
26 connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to
27 the vessel. *See* Section 16(c), which is made expressly subject to Section 22(a). The result
28 would be the same if Owner purported to grant Purchaser a security interest in the vessel.
29

30 **SECTION 23. RIGHTS OF SECURED PARTIES.**

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

35 (b) If, while a security interest in a vessel is perfected by any method under this [Act], the
36 office creates a certificate of title for the vessel that does not indicate that the vessel is subject to

1 the security interest or contain a statement that it may be subject to security interests not
2 indicated on the certificate of title:

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

6 (2) the security interest is subordinate to a conflicting security interest in the
7 vessel that is perfected under Section 14 after creation of the certificate of title and without the
8 conflicting secured party's knowledge of the security interest.

9
10 **Reporter's Note**

11
12 Source: Loosely on UCOTA Section 19.

13
14 **Comment**

15
16 Because perfection of a security interest in a vessel held as inventory for sale or lease by a
17 person engaged in the business of selling goods of that kind is not governed by this Act, *see*
18 Section 14(g), subsection (b) of this Section has no application to such a security interest.
19 Therefore, if a security interest in a vessel is perfected by filing and the office creates a certificate
20 of title that neither indicates the security interest nor notes that the vessel may be subject to
21 security interests not so noted, a buyer of the vessel cannot take free of the security interest under
22 this Section. If such a buyer qualifies as a buyer in ordinary course of business, the buyer will
23 take free of the security interest under Section 22(a) and U.C.C. Section 9-320(a). If the buyer
24 does not qualify as buyer in ordinary course of business, say perhaps because the buyer acquired
25 the vessel in total or partial satisfaction of a preexisting money debt, the buyer will take subject
26 to the perfected security interest. *See* U.C.C. Section 9-201(a).
27

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

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

1 (b) The office shall retain in its files all information regarding a security interest in a
2 vessel, including any termination statement received by the office under Section 15, until at least
3 [10] years after the office receives a termination statement regarding the security interest. The
4 information must be accessible by the hull identification number for the vessel and any other
5 indexing methods provided by the office.

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

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

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

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

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

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

22 (2) with respect to each such vessel:

- 1 (A) the name of the owner of record;
- 2 (B) the name and address of any secured party indicated in the files of the
- 3 office or on the certificate of title, and the effective date of any such information; and
- 4 (C) any termination statement indicated in the files of the office and the
- 5 effective date of the termination statement.

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

9 **Reporter’s Note**

10 Source: UCOTA Section 28.

11 **Comment**

12 Subsection (a) requires the office to maintain the evidence used to establish certain
13 information but does not dictate how the office must maintain that evidence. Therefore the office
14 may, if permissible under applicable law and its own rules and regulations, maintain the evidence
15 in electronic or digitized form.
16
17
18
19

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

21 applying and construing this uniform act, consideration must be given to the need to promote
22 uniformity of the law with respect to its subject matter among states that enact it.
23

24 **Reporter’s Note**

25 Source: ULC Drafting Rule 601.
26
27

28 **SECTION 26. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL**
29 **COMMERCE ACT.** [This act] modifies, limits, and supersedes the federal Electronic
30 Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify,

1 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic
2 delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

3 **Reporter's Note**

4
5 Source: ULC Drafting Rule 603.
6

7 **SECTION 27. SAVINGS CLAUSE.**

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

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

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

18 (d) A security interest that is enforceable immediately before the effective date of [this
19 act] and would have priority over the rights of a person that becomes a lien creditor at that time is
20 a perfected security interest under [this act].

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

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

3 **Reporter’s Note**

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

6
7 Subsection (f) is new. It is intended to make clear that the branding warranty does not
8 arise in connection with a sale or other transfer that precedes the effective date of this act.
9

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

11 [add legislative note]

12 **Reporter’s Note**

13
14 Source: UCOTA Section 32.

15
16 **SECTION 29. EFFECTIVE DATE.** [This act] takes effect
17

18 **Reporter’s Note**

19
20 Source: ULC Drafting Rule 604.