

D R A F T
FOR DISCUSSION ONLY

CERTIFICATE OF TITLE ACT FOR VESSELS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For October 15 – 17, 2010 Drafting Committee Meeting

With Prefatory Note and Reporter's Notes

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ON UNIFORM STATE LAWS

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September 17, 2010

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Prefatory Note

Background

Record ownership of vessels in the United States is governed by a composite of state and federal law. Some large commercial vessels – those with a displacement volume of at least five net tons and owned by a U.S. citizen, partnership, or corporation – must be documented with the United States Coast Guard National Vessel Documentation Center. *See* 46 U.S.C. §§ 12012, 12103. Some other vessels may but need not be documented with the U.S. Coast Guard.

Documentation of a vessel with the Coast Guard is a way of identifying the owners of the vessel and is often required by marine lenders as a condition to financing. Only a documented vessel can be subject to a “preferred mortgage.” 46 U.S.C. §§ 31321, 31322. A preferred mortgage is a perfected lien, *see* 46 U.S.C. § 31321(a)(1), that has priority over certain (non-preferred) maritime liens and all non-maritime liens in an *in rem* admiralty foreclosure. *See* 46 U.S.C. §§ 31301(5), 31325, 31326. Federal law prohibits states from issuing a certificate of title for a documented vessel and requires that any certificate of title previously issued for a documented vessel be surrendered. 46 U.S.C. § 12106.

Fewer than one percent of vessels in the United States are documented; most of the remainder are pleasure boats operated as undocumented vessels. Federal law requires that most undocumented vessels equipped with propulsion machinery be issued a number by the state in which the vessel is principally operated. 46 U.S.C. § 12301. The numbering regulations are designed to deter, discover, and impede theft. In order to share in certain federal funds, all fifty states have established boat numbering systems that are approved as complying with the federal requirements.

Although all the states now comply with the federal regulations on the numbering of vessels, there is far less uniformity with respect to state certificate of title laws for undocumented vessels. Thirty-three states and the District of Columbia require certain undocumented vessels to be covered by a certificate of title. Sixteen states have no certificate of title law for vessels. And one state, Mississippi, gives the owners of undocumented vessels the option of getting a certificate of title. Even among the states that require certificates of title for undocumented vessels, the variation in the scope of those laws is substantial. The laws vary with respect to the size and type of vessels covered, the location or use the vessel subject to the law, and many other details. Moreover, many of the state titling laws do not clearly delineate how compliance or failure to comply affects the rights of the owner and others claiming an interest in the vessel. As a result, the principal objectives of a titling law – (i) to deter and impede theft; and (ii) to facilitate ownership transfers and financing – are somewhat undermined.

Congress enacted the Vessel Identification System (VIS) in 1988 to create a central database of information, maintained by the Coast Guard, about vessels and their owners. The database is designed to be used by the public for law enforcement and other purposes relating to the ownership of vessels. 46 U.S.C. § 12501. States are not required to make their boat

numbering and titling information available to VIS, but they are encouraged to do so. This encouragement comes in a grant of preferred mortgage status to a security interest in a vessel perfected under a titling law that satisfies applicable federal requirements and is approved by the Coast Guard. 46 U.S.C. § 31322(d)(1). Currently, 31 states and territories are participating in the information exchange aspects of VIS. However, no state's certificate of title law for undocumented vessels has received the requisite Coast Guard approval. One of the main purposes of this act is to provide states with a model that the Coast Guard will approve.

It is worth noting that one of the purposes of VIS is to facilitate commerce in recreational vessels by permitting public access to basic information about vessels numbered and titled under state law, as well as about documented vessels. However, while transactional information about documented vessels was and remains publicly available, transactional information about state-titled vessels in the VIS database is not available to the public. As a result, VIS has not resolved difficulties occasionally experienced by vessel buyers and lenders in transactions involving both the federal and state systems or transactions involving vessels that have moved from one state to another. This act seeks to remedy this problem by providing uniform rules on what information states will make available to those seeking to determine the ownership of a vessel.

Purposes of the Act

This act is modeled somewhat on the Uniform Certificate of Title Act, but draws heavily from other sources as well. Chief among these other sources are: (i) Coast Guard regulations relating to the approval of state certificate of title laws for the purposes of the VIS; and (ii) a Model Act for Vessel Titling, proposed by the Vessel Registration and Titling Committee of the National Association of State Boating Law Administrators.

The principal objectives of the act are to: (i) qualify as a state titling law that the Coast Guard will approve; (ii) facilitate transfers of ownership of a vessel; (iii) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (iv) accommodate existing financing arrangements for vessels; (v) work seamlessly with the Uniform Commercial Code, most notably Articles 2 and 9; (vi) manage, as best as possible, the complications that can arise from a vessel's transition in or out of federal documentation; (vii) provide clear rules on the consequences of compliance or noncompliance; and (viii) impose minimal or no new burdens or costs on state titling offices. Another goal is to protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty has caused significant damage to the vessel's hull integrity or propulsion system or the vessel was ever sunk.

1 (7) "Certificate of origin" means a record created by a manufacturer or importer
2 as the manufacturer's or importer's proof of identity of a vessel. The term includes a
3 manufacturer's certificate of origin, a manufacturer's statement of origin, an importer's
4 certificate of origin, and an importer's statement of origin. The term does not include a builder's
5 certificate.

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

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

11 (i) not salvaged; and

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

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

16 (11) "Documented vessel" means a vessel covered by a certificate of
17 documentation issued pursuant to 46 U.S.C. Section 12105.

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

21 (13) "Good faith" means honesty in fact and observance of reasonable
22 commercial standards of fair dealing.

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

3 (15) “Lien creditor” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (25) "Secured party" means:

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

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

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

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

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

21 (27) "Security interest" means an interest in a vessel which secures payment or
22 performance of an obligation if the interest is created by contract or arises under [Uniform

1 Commercial Code Section 2-401, 2-505, 2-711(3) or 2A-508(5)]. The term includes any interest
2 of a consignor in a vessel in a transaction that is subject to [Uniform Commercial Code Article
3 9]. The term does not include the special property interest of a buyer of a vessel on identification
4 of that vessel to a contract for sale under [Uniform Commercial Code Section 2-401], but a buyer
5 may acquire a security interest by complying with [Uniform Commercial Code Article 9].

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

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

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

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

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

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

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

4 (31) "Transfer of ownership" means a voluntary or involuntary conveyance of an
5 ownership interest in a vessel.

6 (32) "Vessel" includes any watercraft used or capable of being used as a means of
7 transportation on water, except the following:

8 (A) A seaplane.

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

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

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

16 (E) A stationary floating structure which:

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

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

21 (iii) has a permanent, continuous hookup to a shoreside sewage
22 system.

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

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

4 (33) “Written certificate of title” means a certificate of title consisting of
5 information inscribed on a tangible medium.

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

7 (1) “Agreement”, [UCC Section 1-201(b)(3)].

8 (2) “Collateral”, [UCC Section 9-102(a)(12)].

9 (3) “Conspicuous”, [UCC Section 1-201(b)(10)].

10 (4) “Consumer goods”, [UCC Section 9-102(a)(23)].

11 (5) “Debtor”, [UCC Section 9-102(a)(28)].

12 (6) “Lease”, [UCC Section 2A-103(a)(j)].

13 (6) “Lessee”, [UCC Section 2A-103(1)(n)].

14 (7) “Lessee in ordinary course of business”, [UCC Section 2A-103(1)(o)]

15 (9) “Lessor”, [UCC Section 2A-103(a)(p)].

16 (10) “Merchant”, [UCC Section 2-104(1)].

17 (11) “Notice; Knowledge”, [UCC Section 1-202].

18 (12) “Representative”, [UCC Section 1-201(b)(33)].

19 (13) “Sale”, [UCC Section 2-106(1)].

20 (14) “Security agreement”, [UCC Section 9-102(a)(73)].

21 (15) “Seller”, [UCC Section 2-103(1)(o)].

22 (16) “Send”, [UCC Section 1-201(b)(36)].

1 (17) “Value”, [UCC Section 1-204].

2 **Reporter’s Note**

3 The definition for “barge” in paragraph (a)(1) is new. It is intended to facilitate an
4 exemption from this act. *See* § 5(b)(2). Under federal law, barges (non-powered vessels) of 100
5 tons or less are not documented. They also are exempted from the numbering rules. *See* 46
6 U.S.C. § 12301. *See also* 33 C.F.R. §§ 173.11, 173.12, 174.11. More important, many existing
7 barges are quite old and records of prior transfers may be difficult to locate or resurrect. For this
8 reason, the Committee provisionally decided that owners should not be required to obtain a
9 certificate of title for them.

10
11 A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this
12 might include such things as sail boats and row boats, which are intended to be covered by this
13 act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or
14 fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted
15 from compliance with this act under Section 5(b)(2).

16
17 The definition of “buyer in ordinary course of business” in paragraph (a)(4) has been
18 significantly shortened through use of the cross-reference. This change makes more evident how
19 the term varies from the U.C.C. definition.

20
21 Paragraph (a)(7) is derived from 33 C.F.R. § 187.7 but does not include a builder’s
22 certificate as a type of certificate of origin. *See* Reporter’s Note to Section 6.

23
24 Paragraph (a)(10) is more broad than the comparable definition in 33 C.F.R. § 187.7.
25 That is because there should be no need for the dealer to be engaged in the business of buying
26 vessels or to have an established place of business. A manufacturer can qualify as a dealer.

27
28 Paragraph (a)(13) is new. Section 2(b) of the previous draft incorporated the definition in
29 revised Article 1 of the Uniform Commercial Code. Because not all states have enacted revised
30 Article 1, and some of those that have enacted it chose not to adopt the revised definition of
31 “goods faith,” this new draft defines the term “good faith” in the manner intended.

32
33 Paragraphs (a)(17), (19), (25) and (27) are derived from UCOTA Section 2(a)(18), (20),
34 (24), and (26), respectively. Each differs from the comparably definition in 33 C.F.R § 187.7.

35
36 Paragraph (a)(19) refers to a “business trust.” That is phrasing appears in U.C.C. Section
37 1-201(b)(27). Pursuant to a suggestion made at the annual meeting, the Committee may wish
38 consider changing this language to “statutory trust.”

39
40 Paragraph (a)(20) is derived from 33 C.F.R. § 173.3(h) and (i). The definition rejects, for
41 the purposes of this act, that mooring constitutes “use.” *Cf. New Hampshire Ins. Co. v. Dagon*,
42 475 F.3d 35 (1st Cir. 2007) (mooring constitutes “use” for the purpose of an insurance policy that

1 excluded coverage for use from November 1 to April 15). Similarly, storage on land does not
2 constitute “use.”
3

4 Subparagraph (A) of paragraph (a)(32) is derived from most state vessel titling statutes.
5 Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099. The purpose of both
6 subparagraphs is the same: to exclude from the scope of this act vessels that are covered by some
7 other titling law, such as the Federal Aviation Act or a state’s motor vehicle certificate of title
8 act.
9

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

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

27 Subparagraph (F) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of
28 title act do not seem apply to government-owned and operated vessels. By referring to vessels
29 “owned by a state,” subparagraph (F) covers vessels owned by a federally recognized Native
30 American tribe. *See* Section 2(a)(29).
31

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

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

37 **Comment**

38
39 The definition of “casualty” in paragraph (a)(6) and of “damaged” in paragraph (a)(9)
40 deal with the obligation of an owner to brand the title or be deemed to have warranted the vessel
41 to a purchaser for value. *See* Section 9(a), (d). For this purpose, a vessel is damaged if it is not
42 “salvaged” within the meaning of paragraph (a)(24) and either: (i) the vessel is or ever has been
43 sunk; or (ii) a casualty has affected a propulsion system of the vessel or the integrity of the
44 vessel’s hull. Paragraph (a)(6) does not exhaustively define the term “casualty”; it merely

1 describes some of the events that qualify as a casualty. A casualty need not be an event of nature;
2 vandalism and terrorism can result in a casualty. Damage resulting from routine operation is not
3 a casualty.

4
5 Once a vessel is damaged, it remains damaged even though it is repaired. Thus, for
6 example, a vessel that was sunk is damaged and remains so even after it is raised and repaired.
7 As a result, the brand “damaged” is indelible (unless superceded by the brand “salvaged”). A
8 branded vessel remains branded forever.

9
10 Paragraph (a)(16) defines “office” to be the office that creates certificates of title for
11 vessels. The office need not be the same authority in the state that issues numbers for vessels
12 pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.

13
14 The term “principally used” requires reference to a specified time period and the use of a
15 “calendar year” for this purpose follows the time period specified for the purposes of vessel
16 numbering in 46 U.S.C. § 12301(a) and 33 C.F.R. § 173.3(b).

17
18 Paragraph (a)(31) should be read in conjunction with paragraph(a)(17). Only an owner
19 has an ownership interest, and thus an ownership interest refers to the legal title of an owner. An
20 ownership interest does not include an equitable or beneficial ownership interest. It also does not
21 include a security interest or the interest of a lessee in a lease. There can, however be multiple
22 owners, and a transfer of the interests of one, some or all of them would be a transfer of
23 ownership.

24
25 **SECTION 3. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY.** Unless

26 displaced by a provision of [this act], the principles of law and equity supplement its provisions.

27 **Comment**

28
29 1. This section is consistent with [Uniform Commercial Code] Section 1-103(b). In
30 addition, like the [Uniform Commercial Code], this act should be liberally construed and applied
31 to promote its underlying purposes and policies, which are:

- 32
33 (1) to simplify, clarify, and modernize the law governing certificates of title;
34
35 (2) to permit the continued expansion of commercial practices through custom, usage,
36 and agreement of the parties; and
37
38 (3) to make uniform the law among the various jurisdictions.

39
40 This act should be construed in accordance with its underlying purposes and policies.
41 The text of each section should be read in the light of the purpose and policy of the rule or

1 principle in question, as well as with the act as a whole, and the application of the language
2 should be construed narrowly or broadly, as the case may be, in conformity with the purposes and
3 policies involved.
4

5 **SECTION 4. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF**
6 **TITLE.**

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

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

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

19 **Comment**

20 Source: Uniform Commercial Code Section 9-303.

21
22 1. This section provides which state's law governs a certificate of title. It is the law of
23 the jurisdiction that created the certificate of title, from the moment the application is delivered to
24 the titling office until such time as certificate of title ceases to be effective under the law of the
25 issuing jurisdiction or an application is delivered to the titling office of a different state.

26
27 2. There is no conflict between this section and Section 5, which requires the owner of a
28 vessel principally used on the waters of this state to apply for a certificate of title in this state.

1 Section 5 imposes a requirement on the owner. This section provides which state’s law governs
2 a certificate.
3

4 **Example 1:** Owner has a vessel principally used on the waters of this state. Owner
5 applies for and receives a certificate of title for the vessel from the titling office of another state.
6 Owner has failed to comply with Section 5. Nevertheless, the law of the issuing state governs the
7 all issues relating to the certificate of title.
8

9 3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a
10 security interest in non-inventory collateral covered by a certificate of title statute is to have the
11 security interest noted on the certificate of title. *See* Uniform Commercial Code Section
12 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9’s choice of law rules.
13 Under those rules, the law of the jurisdiction which created the certificate (or for which an
14 application had been filed) is the law that governs, even if neither the debtor nor the goods are
15 located there. *See* Uniform Commercial Code Section 9-303. That law continues to control even
16 if the debtor or the goods move, until the certificate expires by its own terms or a new certificate
17 of title is applied for in a different state. *Id.*
18

19 These rules should work well with this act, which provides that the governing law is the
20 law of the jurisdiction of principal use.
21

22 **Example 2:** Owner, who has granted a security interest in a vessel, applies in State A for
23 a certificate of title for the vessel. Upon delivering that application to the titling office, the law
24 of State A governs perfection and the effective of perfection, regardless of whether the debtor is
25 located in State A. If the application includes the required information about the existing
26 security interest, the security interest will be perfected.
27

28 **Example 3:** Same facts as Example 2 but the vessel later becomes principally used on
29 the waters of State B. The law of State B requires the debtor to apply for a certificate of title
30 from State B. If the debtor does not do so, then the law of State A will still govern the perfection
31 of the security interest. As long as the law of State A does not invalidate its certificate of title
32 when the principal use of the vessel changed to State B, the security interest will remain
33 perfected.
34

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

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

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

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

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

4 (1) a documented vessel;

5 (2) a barge;

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

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

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

12 **Reporter's Note**

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

16 Former subsections (b) and (c) have been merged. Paragraphs (b)(2) and (3) are new and
17 have been added at the Committee's request. The former responds to the concern that many old
18 barges are not federally documented and the records necessary to title them may be unavailable
19 or costly to obtain. *See* Reporter's Note to Section 2. The latter was added because the
20 Committee believed it unnecessary for a certificate of title to be issued for a vessel under
21 construction, even if it is in the water for testing, and that requiring a certificate of title for such a
22 vessel would undermine the efficacy of common financing arrangements. *See also* Section 13(g)
23 (regarding perfection of a security interest in a vessel described in paragraph (b)(2) or (3)).
24 Because Paragraph (b)(4) exempts dealers from having to apply for a certificate of title,
25 paragraph (b)(3) is most relevant when the owner of the vessel is the buyer for whom the vessel
26 is being constructed.
27

28
29 The Committee may wish to consider adding to the list in subsection (b) of vessels for
30 which no application need be filed a vessel covered by a certificate issued by or on behalf of the
31 government of a country other than the United States.
32

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

3
4 **Legislative Note:** *This act deals only with titling; it does not cover registration or licensing.*
5 *States that have a registration or licensing statute for vessels may wish to consider amending*
6 *that statute to condition registration or licensing on compliance with Section 5 of this act.*
7

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

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

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

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

14 (2) the names of all other owners of the vessel;

15 (3) the principal residence of at least one owner;

16 (4) the social security number or taxpayer identification number of each owner;

17 (5) the hull identification number for the vessel or, if there is none, an application
18 for the issuance of a hull identification number for the vessel;

19 (6) a description of the vessel as required by the office, which must include:

20 (A) the official number for the vessel, if any, assigned by the United
21 States Coast Guard;

22 (B) the name of the manufacturer, builder, or maker;

23 (C) the model year or the year in which the manufacture or build of a
24 vessel was completed;

25 (D) the overall length of the vessel;

- 1 (E) the vessel type;
- 2 (F) the hull material;
- 3 (G) the propulsion type; and
- 4 (H) the engine drive type.

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

8 (8) an affirmation that the vessel is neither a documented vessel nor documented
9 under the laws of a foreign country;

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

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

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

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

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

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

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

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

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

6 [(2)] [(3) if there is not a certificate of title covering the vessel, all existing
7 certificates of origin and bills of sale or other documents of transfer covering the vessel which are
8 known to the applicant and which collectively identify 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 version of the record, in its files.

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

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

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

16
17 **Reporter's Note**

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

22
23 Paragraph (d)(2) will, when drafted, deal with vessels that are coming out of federal
24 documentation and into the state certificate of title system. Further research is needed to ensure
25 that the process and documents required by this act will be consistent with federal law and with
26 the operation of the National Vessel Documentation Center.

27
28 **Comment**

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

31

1 1. Unlike motor vehicles, which have only one title source document prior to titling (a
2 manufacturer’s statement of origin), a vessel can have two: a manufacturer’s statement or
3 certificate of origin and a builder’s certificate. Because there is no ready way for the titling office
4 to know – unless informed by the applicant – if there is both a manufacturer’s certificate and a
5 builder’s certificate for the same vessel, and because a manufacturer’s certificate should exist
6 even if there is a builder’s certificate, this act generally ignores builder’s certificates. *See* Section
7 2(a)(7).
8

9 2. Not all of the information submitted will appear on the certificate of title. For
10 example, the principal residence of an owner and each owner’s social security number or
11 taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear
12 on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 8.
13

14 3. Paragraph (b)(5) implicitly requires that a hull identification number be issued for the
15 vessel if the vessel does not already have one, as an imported antique might not. If the state
16 agency that issues hull identification numbers is not the titling office, the applicant may, if the
17 titling office permits, submit to the titling office a copy of the application for a hull identification
18 number and evidence that the application has been submitted to the applicable state agency.
19

20 **SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF**
21 **TITLE.**

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

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

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

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

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

3 (3) there is a reasonable basis for [concluding] [believing] that the application is
4 fraudulent or would facilitate a fraudulent or illegal act; or

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

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

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

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

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

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

15 [(f) The office shall provide an opportunity for a hearing at which the applicant and any
16 other interested party may present evidence in support of or opposition to the cancellation. The
17 office shall serve notice of the opportunity for a hearing in person, or send it by first class mail,
18 return receipt requested, through the United States Postal Service to the applicant, the owner of
19 record, and all secured parties indicated in the files of the office. If not later than [30] days after
20 the notice was sent, the office receives a request for a hearing from the applicant or any other
21 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.

4
5 Subsection (c) is derived in part from Indiana law and is intended to permit the office to
6 reject an application if the applicant does not provide sufficient proof of ownership.

7
8 Subsection (d) is new. It supplements the rule of Section 5 by requiring that the office
9 not create a certificate of title for a documented vessel.

10
11 Subsection (e) includes a provision allowing the office to cancel a certificate of title for a
12 vessel that becomes federally documented.

13
14 Some states have laws that require the applicable office to cancel a motor vehicle
15 certificate of title for the owner’s failure to pay child support, failure to pay parking tickets, or
16 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws
17 apply to vessels but in any event this Section does not permit cancellation for any of these
18 reasons. Cancelling the vessel’s registration (*i.e.* license to use) for such failures would seem far
19 more appropriate than cancelling its certificate of title. Moreover, nothing in federal regulations
20 authorizes cancellation for any of these reasons, and therefore authorizing cancellation for any of
21 these reasons in this act might jeopardize the goal of having this act approved pursuant to 33
22 C.F.R. part 187, so that a security interest perfected pursuant to this act would qualify as a
23 “preferred mortgage” under 46 U.S.C. § 31322(d).

24
25 Subsection (f) requires the office to serve notice of the opportunity for a hearing by U.S.
26 Mail. The Committee may wish to consider whether this is too restrictive and whether service by
27 one or more other methods (*e.g.*, personal service, electronic communication) should be
28 permitted.

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)(6);
- 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].”

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

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

3 **Reporter’s Note**
4

5 Sources: UCOTA Section 11; 33 C.F.R. § 187.317.
6

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

14 At its last meeting, the Drafting Committee asked that subsection (d) be deleted, pending
15 an explanation of its purpose in UCOTA and an analysis of whether that purpose applies to
16 vessels and to this act. Given the current state of the law, in which several states do not title
17 vessels and few brand them, and uncertainty about how other countries deal with liens and title
18 branding, it seems worthwhile to alert purchasers to the fact that the title to a vessel may be
19 laundered. Accordingly, subsection (d) has been retained for further discussion.
20

21 **SECTION 9. TITLE BRAND**

22 (a) Before transferring an ownership interest in a vessel that is or was damaged and that
23 is covered by a certificate of title created by the office, the owner of record shall deliver to the
24 office an application to have the certificate amended by adding the title brand designation
25 “Damaged.” Not later than [15] business days after delivery of the application to the office, the
26 office shall create a new certificate of title that conspicuously indicates that the vessel is branded
27 “Damaged.” The office shall deliver the new certificate pursuant to Section 11.

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

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

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

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

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

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

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

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

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

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

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

3 **Reporter's Note**

4 Source: New.

5
6 As presently drafted, subsection (d) applies to anyone transferring an ownership interest
7 in a vessel. Accordingly, while it does not apply to a secured party that assigns its security
8 interest, because a security interest is not an ownership interest, it does apply to a secured party
9 that conducts a disposition and thereby transfers the debtor's ownership interest. The Committee
10 may wish to consider whether this is appropriate, given that the secured party may have no way
11 of knowing that the vessel was damaged, particularly if the vessel has since been repaired.
12

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

21 Application of a branding rule to dealers can be problematic because dealers typically
22 have no obligation to – and do not – apply for a certificate of title. *See Storie v. Randy's Auto*
23 *Sales, LLC*, 589 F.3d 873 (7th Cir. 2009). Revisions to the first paragraph of the comment
24 address this issue.
25

26 **Comment**

27
28 Subsection (a) imposes only on the owner of record a duty to obtain a new certificate of
29 title for a damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore
30 unlikely to apply to a dealer because a dealer typically will not have title transferred into the
31 dealer's name for the relatively short period that the dealer owns the vessel. *Cf.* Section 5(b)(4)
32 (exempting dealers from having to apply for a certificate of title). Subsection (a) is also unlikely
33 to apply to a secured party. In contrast, subsection (d) applies to any person that transfers an
34 ownership interest in a damaged or salvaged vessel. Accordingly, an owner other than the owner
35 of record who transfers its ownership interest can be deemed to have warranted the vessel under
36 subsection (c). Subsection (d) therefore applies to dealers, even though a dealer need not apply
37 for a certificate of title and may never become the owner of record. Subsection (d) also applies
38 to a secured party conducting a disposition under Uniform Commercial Code Section 9-610,
39 because such a disposition transfers the debtor's ownership interest. *See* Uniform Commercial
40 Code Section 9-617(a)(1).
41

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

11
12 Remedies for breach of the statutory warranty created by this Section are determined
13 pursuant to Article 2 of the Uniform Commercial Code.
14

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

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

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

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

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

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

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

27 (c) The office shall maintain in its files, for each vessel for which it has created a
28 certificate of title, all title brands known to the office, the name of each secured party known to

1 the office, the name of each person known to the office to be claiming an ownership interest, and
2 all stolen-property reports the office has received relating to the vessel.

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

6 **Reporter's Note**

7
8 Source: UCOTA Section 14.

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

14
15 Federal regulations provides that a state must “retain the evidence used to establish the
16 accuracy of the information required for vessel titling purposes and make it available on request
17 to the Coast Guard, participating States, and law enforcement authorities.” 33 C.F.R. § 187.331.
18 This section, along with Section 6(e), requires the office to comply with this regulation.
19

20 **SECTION 11. ACTIONS REQUIRED UPON CREATION OF CERTIFICATE OF**
21 **TITLE.**

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

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

21
22 Subsection (b) in the previous draft required the office to create and deliver the certificate
23 of title within 15 business days. The mandate to create the certificate of title, without the time
24 limit, already appeared in Section 6(a) (re-designated Section 7(a) in this draft). To avoid
25 duplication, subsection (b) has been deleted and the time limit has been added to Section 7. As a
26 result, this section now deals solely with the duty to send the certificate or a record evidencing
27 the certificate, not the duty to create the certificate.
28

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

1 **Comment**

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

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

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

12 **JUDICIAL PROCESS.** A certificate of title does not by itself provide a right to obtain
13 possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against
14 the certificate of title is not effective to determine possessory rights with respect to the vessel.
15 However, [this act] does not prohibit enforcement of a security interest in, levy on, or foreclosure
16 of a statutory or common-law lien on a vessel under law other than [this act]. The absence of an
17 indication of a statutory or common-law lien on a certificate of title does not invalidate the lien.

18 **Reporter’s Note**

19 Source: UCOTA Section 12.
20

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

22 (a) Except as otherwise provided in this section, a security interest in a vessel may be
23 perfected only by delivery to the office of an application for a certificate of title that identifies the
24 secured party or a representative of the secured party and that otherwise complies with Section 6.
25 The security interest is perfected upon the later of delivery to the office of the application and any

1 applicable fee or attachment of the security interest under [Uniform Commercial Code Section
2 9-203].

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

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

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

13 (2) the name and mailing address of the secured party or a representative of the
14 secured party;

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

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

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

21 (e) Upon delivery of an application that complies with subsection (c) and payment of all
22 fees, the office shall create a new certificate of title pursuant to Section 7 and deliver the new

1 certificate pursuant to Section 11(a). The office shall maintain in the files of the office the date
2 [and time] of delivery of the application to the office.

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

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

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

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

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

18 (h) A security interest in a documented vessel which is valid against third parties as a
19 result of compliance with 46 U.S.C. Section 31321 remains perfected for 30 days from the date
20 the certificate of documentation is [cancelled] [surrendered to the Secretary of the United States
21 Department of Homeland Security].

1 (i) A security interest in a vessel arising under [Uniform Commercial Code Sections
2 2-401, 4-505, 2-711(3) or 2A-508(5)] is perfected when it attaches and remains perfected until
3 the debtor obtains possession of the vessel, unless before such time the security interest is
4 perfected pursuant to subsection (a) or (c).

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

9 (k) [A security interest perfected under this section has priority over the rights of
10 purchasers and creditors, including lien creditors, to the extent provided in {Uniform
11 Commercial Code Article 9, Part 3}]. For the purposes of priority over a purchaser of a vessel or
12 a creditor with an interest in a vessel, including a lien creditor, delivery of an application
13 pursuant to subsection (a) or (c) and payment of the applicable fee is the equivalent of, and has
14 the same effect as, the filing a financing statement under [Uniform Commercial Code Article 9].

15 **Reporter's Note**

16
17 Subsections (a), (c) and (f) all refer to a “representative of the secured party.” So too does
18 Section 6(b)(7). The Committee may wish to consider whether such references are necessary
19 given that the definition of “secured party” in Section 2(a)(25)(C) encompass a representative.
20 *See also* Section 16 cmt. 2

21
22 Subsection (d) was formerly the last sentence of subsection (c), after the tabulation.
23 Pursuant to ULC Drafting Rule 404(g), it is now a separate subsection.
24

25 Subsection (e) formerly directed the office to “create a new certificate of title pursuant to
26 Section 7(b).” Subsection (b) deals solely with the decision on whether to create a written
27 certificate or an electronic certificate. Subsection (e) now references all of Section 7, and thereby
28 picks up the rule in subsection (a) on how quickly the office must issue the certificate and the
29 rules in subsections (c) and (d) on rejection of an application. A similar change was made to
30 Section 15(c).

1 Subsections (g)(2) and (3) are new. They carry forward the Committee’s decision not to
2 require a certificate of title for barges or for vessels under construction. *See Reporter’s Note to*
3 *Sections 2, 5.* Accordingly, a security interest in such a vessel would be perfected under other
4 law if no application for a certificate of title for the vessel has been delivered to the office.
5 However, if the owner does apply for a certificate of title for the vessel, perfection must be
6 through compliance with this section.

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

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

23
24 Subsection (i) is new. It is derived from Uniform Commercial Code Section 9-309(6)
25 and is intended to make clear that the automatic perfection rule of that provision applies to a
26 vessel covered by a certificate of title. The Committee should determine whether the provision is
27 necessary or desirable, given that UCOTA contains no similar provision.

28
29 The first sentence of subsection (k) affirms that a security interest perfected under this act
30 takes priority over a subsequent judicial lien. The Committee should decided whether this
31 sentence is necessary or desirable.

32 33 **Comment**

34
35 Source: UCOTA Section 26; Uniform Commercial Code Sections 9-311(b), 9-505(a).

36
37 Subsection (k) provides that delivering to the office an application for a certificate of title
38 that identifies a security interest, together with payment of the applicable fee, is the equivalent of
39 filing a financing statement. *See* Uniform Commercial Code Section 9-311(b). It therefore
40 allows for a security interest to attain priority under such rules as Section 9-317(a)(2)(B) (giving
41 priority over a lien creditor whose lien arises after the security agreement is authenticated and a
42 financing statement is filed) and Section 9-317(e) (giving a perfected purchase-money security
43 interest priority over a judicial lien if a financing statement is filed within 20 days of when the
44 debtor receives possession). Subsection (k) does not, by treating the delivery of an application

1 for a certificate of title as the equivalent of filing a financing statement, subject the application or
2 the certificate to the rules of Uniform Commercial Code Section 9-506. Instead, Section 17 of
3 this act governs the effect of any errors or omissions in the certificate of title.
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 Subsection (c) as previously drafted provided that upon delivery of the termination
13 statement, “any indication of the security interest on the certificate of title . . . ceases to be
14 effective.” This language was removed – and new language expressly providing that the security
15 interest becomes unperfected was added – because the draft does not treat indication of the
16 security interest on the certificate of title as applicable method for perfecting. Instead, the act
17 treats delivery of an application to the office and payment of the applicable fee as the method for
18 perfecting. *See* Section 13(a), (c).

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

32 **Comment**

33
34
35 Subsection (c) requires the office, upon delivery of a termination statement, to create a
36 new certificate of title if the security interest to which the termination statement applies was
37 indicated on the existing certificate of title. This will be the situation whenever the secured party

1 was the secured party of record. It will also be the case if the security interest was otherwise
2 listed on the certificate of title or the certificate indicated the existence of other unlisted security
3 interests and the termination statement relates to the only unlisted security interest. See Section
4 8(a)(6). In creating a new certificate of title, the office shall comply with section 7(a) with
5 respect to timing and with Section 7(b) in determining whether to create a written certificate of
6 title or an electronic certificate of title.

7
8 If a termination statement delivered to the office relates to the security interest of the
9 secured party of record, and one or more other security interests in the vessel are indicated in the
10 files of the office, there will now be a new secured party of record. The new secured party of
11 record will be the secured party whose security interest was first communicated to the office and
12 for which no termination statement has been filed.
13

14 **SECTION 16. TRANSFER.**

15 (a) Upon a voluntary transfer of ownership of a vessel covered by a written certificate of
16 title, the transferor, as promptly as practicable, shall sign the certificate and deliver it to the
17 transferee. Upon a voluntary transfer of ownership of a vessel covered by an electronic
18 certificate of title, the transferor, as promptly as practicable, shall authenticate and deliver to the
19 transferee a record evidencing the transfer of ownership to the transferee. A buyer of a vessel
20 covered by a certificate of title has a specifically enforceable right to require the seller to sign and
21 deliver the certificate of title to the purchaser or authenticate and deliver to the purchaser a record
22 evidencing the transfer of ownership.

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

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

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

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

6 **Reporter's Note**

7
8 Source: UCOTA Section 16.

9
10 As currently drafted, subsection (d) does not apply to involuntary transfers. *Cf.* Sections
11 18, 19. The Committee may wish to consider whether subsection (d) or Sections 18 and 19
12 should be amended to include a similar rule following an involuntary transfer.

13 **Comment**

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

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

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

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

36
37 4. Subsection (c) makes clear that a transfer of ownership is effective between the parties
38 thereto even if the transferor does not fulfill its duty to facilitate the creation of a new certificate
39 of title identifying the transferee as an owner and even if no application for a new certificate of

1 title is delivered to the office. This is consistent with the fact that a certificate of title is prima
2 facie evidence, but not conclusive evidence, of ownership. See Section 12.

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

9
10 **SECTION 17. EFFECT OF MISSING OR INCORRECT INFORMATION.**

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

14 (b) Nothing in this section affects the application of [Uniform Commercial Code Section
15 9-337].

16 **Comment**

17
18 Sources: UCOTA Section 20, Uniform Commercial Code Sections 9-338, 9-506.

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

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

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

32
33 2. Because subsection (a) applies not only to a certificate of title, but also to or any “other
34 record required or authorized by this act,” it ensures that a security interest noted in an
35 application for a certificate of title delivered to the office pursuant to Section 6 or 14 is perfected
36 despite any error in the certificate or in the application. This is consistent with the approach
37 taken in Uniform Commercial Code Article 9 to filed financing statements. A filed financing

1 statement is effective to perfected even if it contains minor errors that are not seriously
2 misleading. *See* Uniform Commercial Code Section 9-506. For this purpose, a failure to
3 describe some collateral would be seriously misleading as to omitted collateral. An error in the
4 debtor's name could also be seriously misleading because searches are based on the debtor's
5 name and an error in that name may cause the filed financing statement not to be disclosed.
6 However, an error in the secured party's name or address cannot be seriously misleading.
7 Section 9-506 cmt. 2.
8

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

19 **Example 3:** Secured Party's name is misspelled in the application for a certificate of title
20 delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of
21 title. The security interest is perfected.
22

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

32 3. Subsection (b) makes Uniform Commercial Code Section 9-337 applicable to
33 certificates of title created under this act. Thus, if the office creates a certificate of title that fails
34 to indicate a security interest that was identified in the application for the certificate, a buyer or
35 secured party who relies on the clean certificate may take free or obtain priority.
36

37 **Example 4:** Lender's security interest is identified in the application for a certificate of
38 title delivered to the office. The office creates a certificate of title that fails to indicate Lender's
39 security interest. Lender's security interest is perfected. *See* Section 14. However, a buyer,
40 other than buyer in the business of selling goods of that kind, who gives value and receives
41 delivery of the vessel without knowledge of Lender's security interest takes free of the security
42 interest. Similarly, A security interest is perfected after creation of the certificate of title and
43 without knowledge of Lender's security has priority over Lender's security interest.
44

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

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

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

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

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

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

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

23 (A) the owner of record;

24 (B) the secured party of record; and

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

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

27 (6) that:

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

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

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

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

8 (1) accept the secured party's transfer 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 listed
11 in the secured party's transfer statement, whether or not the certificate of title has been delivered
12 to the office;

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

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

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

19 **Reporter's Note**

20
21 Subsection (b) has been revised. The changes remove the passive voice and add a time
22 limit on compliance by the office. This limit is derived from and the same as that imposed by
23 Section 7(a).

24
25 The Committee may wish to consider whether a secured party's transfer statement must
26 be accompanied evidence that the secured party has notified all persons indicated in the files of

1 the office as having an interest in the vessel. *Cf.* Section 19(a)(2)(B). Such evidence may not be
2 necessary given that the secured party will have been required to provide such persons with
3 advance notification of the disposition. *See* U.C.C. § 9-611.

4
5 **Comment**

6
7 Source: UCOTA Section 21.

8
9 A secured party could be “the person acquiring the rights of the owner of record” within
10 the meaning of subparagraph (a)(4)(C) if the secured party either purchases the vessel at a
11 disposition pursuant to Uniform Commercial Code Section 9-610 or accepts the vessel in full or
12 partial satisfaction of the debt pursuant to Uniform Commercial Code Section 9-620.
13

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

15 (a) In this section:

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

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

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

22 (C) through other legal process.

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

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

1 (B) documentation sufficient to establish the transferee's ownership
2 interest or right to acquire the ownership interest of the owner of record;

3 (C) a statement that:

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

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

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

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

13 (b) Unless the office rejects a transfer-by-law statement for a reason set forth in Section
14 7(c), not later than [15] business days after delivery to the office of the a transfer-by-law
15 statement, including documentation satisfactory to the office as to the transferee's ownership
16 interest or right to acquire the ownership interest of the owner of record, and payment of all
17 applicable taxes and fees, the office shall:

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

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

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

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

2 [(5) indicate on the new certificate of title any security interest indicated on the
3 cancelled certificate of title, unless a court order provides otherwise;] and

4 [(5)] [(6)] send the new certificate of title pursuant to Section 11(a).

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

7 **Reporter's Note**

8
9 UCOTA Section 22, from which this Section is derived, requires the office to notify those
10 with a record interest of the transfer by law. The Committee chose not to impose such a burden
11 on the office and to instead require that the person filing the transfer-by-law statement send the
12 notifications. Subparagraph (a)(2)(D) requires such notification except for a transfer on account
13 of death, divorce, other family law proceeding, merger, consolidation, dissolution, or bankruptcy.
14 The Committee may wish to consider whether this exception should be deleted or restricted. In
15 some settings, notice may be useful. For example, a divorce decree may call for the transfer only
16 after a condition is triggered, and the triggering event may not be obvious to or known by all
17 those affected.

18
19 Subsection (b) has been revised in much the same way that Section 18(b) was revised: by
20 adding a time limit on compliance by the office. This limit is derived from and the same as that
21 imposed by Section 7(a).

22
23 In some cases, such as a bankruptcy sale under 11 U.S.C. § 363(f), the transfer may be
24 free of existing liens. More commonly, a transfer by operation of law will be subject to any
25 existing liens. As originally drafted, this Section provided no directive about whether liens
26 indicated on the cancelled certificate of title should or should not be indicated on the new
27 certificate of title. The bracketed language at paragraph (b)(5) now deals with this issue. The
28 Committee should consider whether such language is necessary or desirable.

29 **Comment**

30
31 Source: UCOTA Section 22.

32
33
34 Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted
35 pursuant to judicial order. It includes a sale following governmental seizure of a vessel.
36

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 The Committee may wish to consider whether the bond requirement provided for in
15 Section 20(c) should also be included in this Section.

16 **Comment**

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

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

23 (a) A purchaser of a vessel has the protections afforded by [Uniform Commercial Code
24 Sections 2-403(1), 2A-304(1), and 2A-305(1)].
25

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

3 (c) A purchase of a leasehold interest is subject to [Uniform Commercial Code Section
4 2A-303].

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

7 **Comment**
8

9 1. Subsection (a) incorporates by reference the provisions of Uniform Commercial Code
10 Section 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value”
11 is defined in Uniform Commercial Code Section 1-204.
12

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

20 2. The failure of a purchaser to ensure that an application is delivered to the office for a
21 certificate of title that indicates purchaser’s interest in the vessel may prevent the purchaser from
22 qualifying as a good faith purchaser. “Good faith” is defined in Section 2(b)(5) to include
23 observance of reasonable commercial standards of fair dealing. While it may be customary for a
24 buyer in ordinary course of business – that is, a person buying from a dealer – to buy a vessel
25 without seeing or obtaining the existing certificate of title, this is not customary for a purchase
26 from a non-dealer. Thus a buyer who buys a vessel outside the ordinary course of business and
27 without execution of the certificate of title may not be observing reasonable commercial
28 standards of fair dealing and may not qualify as a good faith purchaser.
29

30 **Example 2:** Same facts as Example 1, except that through inadvertence no application is
31 delivered to the office for a certificate of title indicating Buyer’s ownership of the vessel.
32 Buyer’s failure to have a new certificate of title created means that Buyer may lose ownership of
33 the vessel to a subsequent transferee from Scoundrel. *See* Section 17(c). However, Buyer’s
34 failure to have a new certificate of title created does suggest a lack of fair dealing toward Owner,
35 and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.
36

37 **Example 3:** Same facts as Example 2, except that Buyer suspects that Scoundrel may
38 have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an

1 effort to make it more difficult for any prior owner to identify Buyer and Buyer’s interest in the
2 vessel. Buyer does not qualify as a good faith purchaser.

3
4 3. Subsection (b) applies the “entrustment” rule of Uniform Commercial Code Section
5 2-403(2) to vessels, even if no application to have the buyer’s interest noted on the certificate of
6 title is ever delivered with the office.

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

14
15 **Example 5:** Same facts as Example 4, except that subsequently Owner purports to sell
16 the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title
17 and delivers it to Purchaser. Even though there was no compliance with Section 16(a) in
18 connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to
19 the vessel. See Section 16(c), which is made expressly subject to Section 22(b). The result
20 would be the same if Owner purported to grant Purchaser a security interest in the vessel.
21

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

23 (a) Except as otherwise provided in this section or Section 22(b), a transferee of
24 ownership takes subject to a perfected security in a vessel.

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

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

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

1 (c) A buyer in ordinary course of business takes free of a security interest in the vessel,
2 including a security interest indicated on a certificate of title, created by the buyer's seller, even if
3 the security interest is perfected, the buyer knows of the existence of the security interest, and the
4 seller did not comply with Section 16(a). A lessee in ordinary course of business takes its
5 leasehold interest free of a security interest in the vessel, including a security interest indicated on
6 a certificate of title, created by the lessee's lessor, even if the security interest is perfected, the
7 lessee knows of its existence, and the lessor did not comply with Section 16(a). This subsection
8 does not affect a security interest in a vessel in the possession of the secured party under
9 [Uniform Commercial Code Article 9].

10 (d) If, while a security interest in a vessel is perfected by any method under the law of
11 any jurisdiction, the office creates a certificate of title that does not indicate that the vessel is
12 subject to the security interest or contain a statement that it may be subject to security interests
13 not indicated on the certificate of title, the security interest is subordinate to a conflicting security
14 interest in the vessel which is perfected [under Section 14] [through compliance with Section 14]
15 after creation of the certificate of title and without the conflicting secured party's knowledge of
16 the security interest.

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

19 **Reporter's Note**

20 Source: UCOTA Section 19.

21
22 Subsection (a) in the prior draft, taken almost verbatim from UCOTA, was both too broad
23 and too narrow in its protection of security interests. It was too broad in two respects. First, it
24 made the transferee subject to a security interest noted on the certificate of title even if a
25 termination statement authorized by the secured party had been delivered to the office (but the

1 office had not yet re-issued a new title certificate). Second, it made the transferee subject to any
2 security not noted on the certificate of title if the certificate indicated that there were or might be
3 other security interests, even if the office had no record of the security interest. It was too narrow
4 in that it failed to protect a security interest perfected by delivery to the office of the appropriate
5 application if the office had not yet issued a new certificate indicating the security interest. As
6 revised, subsection is more simple and more accurate.

7
8 The Committee may wish to consider whether all of this Section is necessary. Subsection
9 (a) is somewhat duplicative of and could easily be merged with Section 22(d). Subsection (c) is
10 somewhat duplicative of subsection (b) and (c) of Section 22. Subsection (e) is a rule that could
11 easily be moved elsewhere, perhaps to Section 14. Subsections (b) and (d) are derived from
12 Uniform Commercial Code Section 9-337 but are more broad than that provision because they
13 cover *intrastate* transactions as well as *interstate* transactions. The rules could, however, easily
14 be incorporated into Section 22.

15
16 The Committee may also wish to consider with subsections (b) and (d), even if needed in
17 some form. are nevertheless too broad. Both seem, inappropriately, to cover security interests
18 perfected by filing (while the collateral is inventory of a dealer). For example, subsection (b)
19 seems to cover a security in inventory perfected by filing and allows a buyer who does not
20 qualify as a buyer in ordinary course – perhaps because the buyer bought in bulk or in satisfaction
21 of a preexisting debt – to take free of the security interest. Subsection (d) is even more
22 problematic. It would seem to make a security interest in vessel inventory perfected by filing
23 subordinate to a later security interest also perfected by filing, provided that the later secured
24 party did not know of the first security interest. Given that the filing system does not provide the
25 searcher with knowledge of a security interest, merely notice of it, this should not be the result.
26 The bracketed language in subsection (d), which conforms the text more closely with Uniform
27 Commercial Code Section 9-337(2), may solve the overbreadth problem with that subsection.

28 29 30 **Comment**

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

39
40 Subsection (c) also makes it clear that the buyer's or lessee's rights against the secured
41 party do not depend on whether the seller or lessor has complied with Section 16(a) or whether
42 the certificate of title identifies the interest of the buyer or lessor. Put simply, compliance with
43 this act is generally not relevant to an owner's rights against a grantor or someone else up the
44 chain of title, *but cf.* Section 21, cmt. 2, ex. 3, it is relevant only to the owner's rights against

1 some down the chain of title (*e.g.*, someone else who subsequently acquired rights from the
2 grantor).
3

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

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

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

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

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

1 (e) [Subject to exceptions in {state’s public records law} that protect private information,
2 t] [T]he office shall send or otherwise make available in a record the following information to
3 any person that requests it and pays the applicable fee:

4 (1) whether the files of the office indicate, as of a date [and time] specified by the
5 office, but not a date earlier than [three] business days before the office received the request, any
6 certificate of title, security interest, termination statement, or title brand that relates to a vessel
7 identified by a hull identification number designated in the request;

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

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

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

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

16 **Reporter’s Note**

17 Source: UCOTA Section 28.

18 After the Committee’s last meeting, a reference to title brands was added to paragraph
19 (e)(1), to ensure that this information is available to searchers.
20
21
22

23 **Comment**

24 Subsection (a) requires the office to maintain the evidence used to establish certain
25 information but does not dictate how the office must maintain that evidence. Therefore the office
26 may, if permissible under applicable law and its own rules and regulations, maintain the evidence
27 in electronic or digitized form.
28
29

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

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

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

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

11 **Reporter's Note**

12 Sources: ULC Drafting Rule 603; UCOTA Section 31.

13 Subsection (f) is new. It is intended to make clear that the branding warranty does not
14 arise in connection with a sale or other transfer that precedes the effective date of this act.
15
16
17

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

19 [add legislative note]

20 **Reporter's Note**

21 Source: UCOTA Section 32.
22
23
24

25 **SECTION 29. EFFECTIVE DATE.** [This act] takes effect

26 **Reporter's Note**

27 Source: ULC Drafting Rule 604.
28