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# CERTIFICATE OF TITLE ACT FOR VESSELS

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Prefatory Note

Background

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

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

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

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

Congress enacted the Vessel Identification System (VIS) in 1988 to create a central database of information, maintained by the Coast Guard, about vessels and their owners. The database is designed to be used by the public for law enforcement and other purposes relating to the ownership of vessels. 46 U.S.C. § 12501. States are not required to make their boat
numbering and titling information available to VIS, but they are encouraged to do so. This encouragement comes in a grant of preferred mortgage status to a security interest in a vessel perfected under a titling law that satisfies applicable federal requirements and is approved by the Coast Guard. 46 U.S.C. § 31322(d)(1). Currently, 31 states and territories are participating in the information exchange aspects of VIS. However, no state’s certificate of title law for undocumented vessels has received the requisite Coast Guard approval. One of the main purposes of this act is to provide states with a model that the Coast Guard will approve.

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

Purposes of the Act

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

The principal objectives are 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 notable 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.
CERTIFICATE OF TITLE ACT FOR VESSELS

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

SECTION 2. DEFINITIONS.

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

(1) “Barge” means a vessel described in 46 U.S.C. Section 102 and which is neither propelled by sail, paddles, oar, or the like, nor fitted for propulsion by sail, paddles, oar, or the like.

(2) “Builder’s certificate” means a certificate of the facts of build of a vessel described in 46 C.F.R. Section 67.99.

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

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

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

(6) “Casualty” includes a collision, lightning strike, fire, explosion, or the running aground of a vessel.
(7) “Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a manufacturer’s certificate of origin, a manufacturer’s statement of origin, an importer’s certificate of origin, and an importer’s statement of origin. The term does not include a builder’s certificate.

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

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

(i) not salvaged; and

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

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

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

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

(13) “Good faith” means honesty in fact and observance of reasonable commercial standards of fair dealing.
(14) “Hull identification number”, means the number assigned to a vessel pursuant to 33 C.F.R. Part 181 [as amended from time to time].

(15) “Lien creditor” means:

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

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

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

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

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

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

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

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

(20) “Principally used on the waters of this state” means used on the waters within the territorial limits of this state more than on the waters within the territorial limits of any other state during a calendar year. For the purposes of this paragraph, “use” includes operation, navigation, and employment but does not include storage on land or mooring.
(21) “Purchase” means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

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

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

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

(25) “Secured party” means:

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

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

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

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

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

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

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

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

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

(A) make or adopt a tangible symbol; or

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

(29) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
(30) “Title brand” means a designation of previous damage, use, or condition that [this act] or law other than [this act] requires to be indicated on a certificate of title created by a governmental agency of any jurisdiction.

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

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

(A) A seaplane.

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

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

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

(E) A stationary floating structure which:

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

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

(iii) has a permanent, continuous hookup to a shoreside sewage system.
(F) Watercraft owned by United States, a state, or a foreign government, or a political subdivision of any of them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) “Sale”, [UCC Section 2-106(1)].

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

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

(16) “Send”, [UCC Section 1-201(b)(36)].
(17) “Value”, [UCC Section 1-204].

Reporter’s Note

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

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

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

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

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

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

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

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

Paragraph (a)(20) is derived from 33 C.F.R. § 173.3(h) and (i). The definition rejects, for the purposes of this act, that mooring constitutes “use.” Cf. New Hampshire Ins. Co. v. Dagone, 475 F.3d 35 (1st Cir. 2007) (mooring constitutes “use” for the purpose of an insurance policy that
Subparagraph (A) of paragraph (a)(32) is derived from most state vessel titling statutes. Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099. The purpose of both subparagraphs is the same: to exclude from the scope of this act vessels that are covered by some other titling law, such as the Federal Aviation Act or a state’s motor vehicle certificate of title act.

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

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

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

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

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

Comment

The definition of “casualty” in paragraph (a)(6) and of “damaged” in paragraph (a)(9) deal with the obligation of an owner to brand the title or be deemed to have warranted the vessel to a purchaser for value. See Section 9(a), (d). For this purpose, a vessel is damaged if it is not “salvaged” within the meaning of paragraph (a)(24) and either: (i) the vessel is or ever has been sunk; or (ii) a casualty has affected a propulsion system of the vessel or the integrity of the vessel’s hull. Paragraph (a)(6) does not exhaustively define the term “casualty”; it merely
describes some of the events that qualify as a casualty. A casualty need not be an event of nature; vandalism and terrorism can result in a casualty. Damage resulting from routine operation is not a casualty.

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

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

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

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

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

Comment

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

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

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

SECTION 4. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF TITLE.

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

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

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

Comment


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

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

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

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

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

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

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

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

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

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

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

(1) a documented vessel;

(2) a barge;

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

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

(c) The [issuing authority in this State] shall not issue, transfer, or renew a certificate of

number for a vessel unless the office has created a certificate of title for the vessel or an

application for a certificate of title for the vessel and the applicable fee has been delivered to the

office.

Reporter’s Note

Sources: Loosely from Ill. Comp. Stat. ¶ 45/3A-1; NASBLA Model Act for Vessel

Titling Sections 3, 4, 6.

Former subsections (b) and (c) have been merged. Paragraphs (b)(2) and (3) are new and

have been added at the Committee’s request. The former responds to the concern that many old

barges are not federally documented and the records necessary to title them may be unavailable

or costly to obtain. See Reporter’s Note to Section 2. The latter was added because the

Committee believed it unnecessary for a certificate of title to be issued for a vessel under

construction, even if it is in the water for testing, and that requiring a certificate of title for such a

vessel would undermine the efficacy of common financing arrangements. See also Section 13(g)

(regarding perfection of a security interest in a vessel described in paragraph (b)(2) or (3)).

Because Paragraph (b)(4) exempts dealers from having to apply for a certificate of title,

paragraph (b)(3) is most relevant when the owner of the vessel is the buyer for whom the vessel

is being constructed.

The Committee may wish to consider adding to the list in subsection (b) of vessels for

which no application need be filed a vessel covered by a certificate issued by or on behalf of the

government of a country other than the United States.
Subsection (c) has been revised to account for the possibility that the state agency that issues numbers for vessels may not be the office that creates certificates of title.

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

SECTION 6. APPLICATION FOR CERTIFICATE OF TITLE.

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

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

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

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

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

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

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

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

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

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

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

(D) the overall length of the vessel;
(E) the vessel type;

(F) the hull material;

(G) the propulsion type; and

(H) the engine drive type.

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

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

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

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

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

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

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

(1) a certificate of title covering the vessel which has been signed by the owner shown on the certificate and which:
(A) identifies the applicant as owner of the vessel; or

(B) is accompanied by a record or records that identify the applicant as the

owner of the vessel;

[(2) in the case of a vessel that has been documented, a record or records showing

surrender of documentation]; or

[(2)] [(3)] if there is not a certificate of title covering the vessel, all existing
certificates of origin and bills of sale or other documents of transfer covering the vessel which are
known to the applicant and which collectively identify the applicant as the owner of the vessel.

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

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

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

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

(1).

Reporter’s Note

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

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

Comment

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

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

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

SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF TITLE.

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

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

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

(1) the application does not comply with Section 6;
(2) the application does not contain documentation sufficient for the office to
determine whether the applicant is entitled to a certificate of title for the vessel;

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

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

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

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

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

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

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

[(f) The office shall provide an opportunity for a hearing at which the applicant and any
other interested party may present evidence in support of or opposition to the cancellation. The
office shall serve notice of the opportunity for a hearing in person, or send it by first class mail,
return receipt requested, through the United States Postal Service to the applicant, the owner of
record, and all secured parties indicated in the files of the office. If not later than [30] days after
the notice was sent, the office receives a request for a hearing from the applicant or any other
interested party, the office shall hold the hearing no later than [20] days after receiving the
request.]
Reporters Note

Sources: UCOTA Section 10; Ind. Code § 9-31-2-9.

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

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

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

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

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

Comment

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

SECTION 8. CONTENTS OF CERTIFICATE OF TITLE.

(a) A certificate of title must contain:

(1) the date the certificate of title was created;
(2) the name of at least the owner of record and, if not all owners are listed, an indication that there are additional owners;

(3) the address of the owner of record;

(4) the hull identification number;

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

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

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

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

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

(d) If a vessel was previously registered in a jurisdiction other than a state, the office shall indicate on the certificate of title that the vessel was registered in that jurisdiction.
(e) A certificate of title must contain a form that all owners shown on the certificate may sign in order to evidence consent to a transfer of ownership to another person.

**Reporter’s Note**

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

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

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

**SECTION 9. TITLE BRAND**

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

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

(1) if the insurer has become the owner of the vessel, an application for a new certificate of title pursuant to Section 6; or
(2) An application to have the certificate amended by adding the title brand designation “Salvaged.”

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

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

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

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

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

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

(2) a record signed by the person and indicating that the vessel is salvaged is provided to the purchaser.
(f) A warranty made under subsection (c) or (e) cannot be modified or disclaimed by
agreement.

**Reporter’s Note**

Source: New.

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

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

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

**Comment**

Subsection (a) imposes only on the owner of record a duty to obtain a new certificate of
title for a damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore
unlikely to apply to a dealer because a dealer typically will not have title transferred into the
dealer’s name for the relatively short period that the dealer owns the vessel. Cf. Section 5(b)(4)
(exempting dealers from having to apply for a certificate of title). Subsection (a) is also unlikely
to apply to a secured party. In contrast, subsection (d) applies to any person that transfers an
ownership interest in a damaged or salvaged vessel. Accordingly, an owner other than the owner
of record who transfers its ownership interest can be deemed to have warranted the vessel under
subsection (c). Subsection (d) therefore applies to dealers, even though a dealer need not apply
for a certificate of title and may never become the owner of record. Subsection (d) also applies
to a secured party conducting a disposition under Uniform Commercial Code Section 9-610,
because such a disposition transfers the debtor’s ownership interest. See Uniform Commercial
Code Section 9-617(a)(1).
A warranty made under this section is a statutory warranty, not an implied warranty. Even though the nature and scope of a warranty made under subsection (c) or (e) is co-extensive with the implied warranty of merchantability that arises under Uniform Commercial Code Section 2-314, subsection (f) makes clear that a warranty made under this section cannot be disclaimed through compliance with Uniform Commercial Code Section 2-316, Section 9-610(e), or otherwise. For the same reason, other conditions to the creation of an implied warranty of merchantability under Article 2 are immaterial to the existence of a warranty under this section. A transferor or insurer makes a warranty under this section regardless of whether the transferor or insurer is a merchant with respect to vessels of that kind or even a merchant at all.

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

SECTION 10. MAINTENANCE OF AND ACCESS TO FILES.

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

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

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

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

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

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

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

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

Reporter’s Note

Source: UCOTA Section 14.

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

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

SECTION 11. ACTIONS REQUIRED UPON CREATION OF CERTIFICATE OF
TITLE.

(a) Upon creation of a written certificate of title, the office shall promptly send the
certificate to the secured party of record or, if there is none, to the owner of record, at the address
indicated for that person in the files of the office. Upon creation of an electronic certificate of
title, the office shall promptly send a record evidencing the certificate of title to the owner of
record and, if there is one, to the secured party of record, at the address indicated for that person
in the files of the office. A record evidencing an electronic certificate of title may be sent to a
mailing address or, if indicated in the files of the office, an electronic address.
If the office creates a written certificate of title for a vessel, any electronic certificate of title for the vessel is thereby cancelled and replaced by the written certificate of title. The office shall maintain in the files of the office an indication of the date [and time] of cancellation.

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

**Reporter’s Note**

Source: UCOTA Section 15.

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

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

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

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

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

SECTION 13. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE;

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

Reporter’s Note

Source: UCOTA Section 12.

SECTION 14. PERFECTION OF SECURITY INTEREST.

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

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

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

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

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

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

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

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

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

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

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

(h) A security interest in a documented vessel which is valid against third parties as a
result of compliance with 46 U.S.C. Section 31321 remains perfected for 30 days from the date
the certificate of documentation is [cancelled] [surrendered to the Secretary of the United States
Department of Homeland Security].
(i) A security interest in a vessel arising under [Uniform Commercial Code Sections 2-401, 4-505, 2-711(3) or 2A-508(5)] is perfected when it attaches and remains perfected until the debtor obtains possession of the vessel, unless before such time the security interest is perfected pursuant to subsection (a) or (c).

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

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

**Reporter’s Note**

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

*See also* Section 16 cmt. 2

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

Subsection (e) formerly directed the office to “create a new certificate of title pursuant to Section 7(b).” Subsection (b) deals solely with the decision on whether to create a written certificate or an electronic certificate. Subsection (e) now references all of Section 7, and thereby picks up the rule in subsection (a) on how quickly the office must issue the certificate and the rules in subsections (c) and (d) on rejection of an application. A similar change was made to Section 15(c).
Subsections (g)(2) and (3) are new. They carry forward the Committee’s decision not to require a certificate of title for barges or for vessels under construction. See Reporter’s Note to Sections 2, 5. Accordingly, a security interest in such a vessel would be perfected under other law if no application for a certificate of title for the vessel has been delivered to the office. However, if the owner does apply for a certificate of title for the vessel, perfection must be through compliance with this section.

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

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

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

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

Comment

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

Subsection (k) provides that delivering to the office an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, is the equivalent of filing a financing statement. See Uniform Commercial Code Section 9-311(b). It therefore allows for a security interest to attain priority under such rules as Section 9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the security agreement is authenticated and a financing statement is filed) and Section 9-317(e) (giving a perfected purchase-money security interest priority over a judicial lien if a financing statement is filed within 20 days of when the debtor receives possession). Subsection (k) does not, by treating the delivery of an application
for a certificate of title as the equivalent of filing a financing statement, subject the application or
the certificate to the rules of Uniform Commercial Code Section 9-506. Instead, Section 17 of
this act governs the effect of any errors or omissions in the certificate of title.

SECTION 15. TERMINATION STATEMENT.

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

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

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

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

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

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

**Reporter’s Note**

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

Subsection (c) as previously drafted provided that upon delivery of the termination
statement, “any indication of the security interest on the certificate of title . . . ceases to be
effective.” This language was removed – and new language expressly providing that the security
interest becomes unperfected was added – because the draft does not treat indication of the
security interest on the certificate of title as applicable method for perfecting. Instead, the act
treats delivery of an application to the office and payment of the applicable fee as the method for
perfecting. See Section 13(a), (c).

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

**Comment**

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

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

SECTION 16. TRANSFER.

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

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

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

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

**Reporter’s Note**

Source: UCOTA Section 16.

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

**Comment**

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

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

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

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

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

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

SECTION 17. EFFECT OF MISSING OR INCORRECT INFORMATION.

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

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

Comment

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

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

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

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

2. Because subsection (a) applies not only to a certificate of title, but also to or any “other record required or authorized by this act,” it ensures that a security interest noted in an application for a certificate of title delivered to the office pursuant to Section 6 or 14 is perfected despite any error in the certificate or in the application. This is consistent with the approach taken in Uniform Commercial Code Article 9 to filed financing statements. A filed financing
statement is effective to perfected even if it contains minor errors that are not seriously misleading. See Uniform Commercial Code Section 9-506. For this purpose, a failure to describe some collateral would be seriously misleading as to omitted collateral. An error in the debtor’s name could also be seriously misleading because searches are based on the debtor’s name and an error in that name may cause the filed financing statement not to be disclosed. However, an error in the secured party’s name or address cannot be seriously misleading. Section 9-506 cmt. 2.

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

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

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

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

Example 4: Lender’s security interest is identified in the application for a certificate of title delivered to the office. The office creates a certificate of title that fails to indicate Lender’s security interest. Lender’s security interest is perfected. See Section 14. However, a buyer, other than buyer in the business of selling goods of that kind, who gives value and receives delivery of the vessel without knowledge of Lender’s security interest takes free of the security interest. Similarly, A security interest is perfected after creation of the certificate of title and without knowledge of Lender’s security has priority over Lender’s security interest.
Example 5: Owner delivers to the office an application for a certificate of title for a vessel. The application identifies Lender as a secured party but misstates the hull identification number for the vessel. Lender’s security interest is perfected. Owner later offers to sell the vessel to Buyer. Buyer requests a search using the vessel’s correct hull identification number. The office responds that is has no record relating to that hull identification number. Buyer insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner delivers to the office a new application for a certificate of title. The new application does not disclose Lender’s security interest. Office issues a certificate of title for the vessel that does not indicate Lender’s security interest. Lender’s security interest remains perfected. However, Buyer may take free of Lender’s security interest pursuant to Uniform Commercial Code Section 9-337(1).

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

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

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

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

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

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

(A) the owner of record;

(B) the secured party of record; and

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

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

(6) that:

(A) the certificate of title is an electronic certificate of title;
(B) the secured party does not have possession of the written certificate of
title created in the name of the owner of record; or

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

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

(1) accept the secured party’s transfer statement;

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

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

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

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

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

 Reporter’s Note

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

The Committee may wish to consider whether a secured party’s transfer statement must
be accompanied evidence that the secured party has notified all persons indicated in the files of
the office as having an interest in the vessel. *Cf.* Section 19(a)(2)(B). Such evidence may not be necessary given that the secured party will have been required to provide such persons with advance notification of the disposition. *See* U.C.C. § 9-611.

**Comment**

Source: UCOTA Section 21.

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

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

(a) In this section:

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

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

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

(C) through other legal process.

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

(A) the name and mailing address of the owner of record and the transferee and the other information required by Section 6(b);
(B) documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest of the owner of record;

(C) a statement that:

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

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

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

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

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

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

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

(3) cancel the certificate of title created in the name of the owner of record indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the office;
(4) create a new certificate of title, indicating the transferee as owner of record;

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

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

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

**Reporter’s Note**

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

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

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

**Comment**

Source: UCOTA Section 22.

Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted pursuant to judicial order. It includes a sale following governmental seizure of a vessel.
SECTION 20. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.

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

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

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

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

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

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

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

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

**Reporter’s Note**

Source: UCOTA Section 33.

Subsections (c) and (d) are optional.

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

(a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if there is no secured party indicated in the files of the office, the owner of record may apply for and, by furnishing information satisfactory to the office, obtain a replacement certificate of title in the name of the owner of record.
(b) An application for a replacement certificate of title must be submitted in a record
signed by the applicant and, except as otherwise permitted by the office, must comply with
Section 6.

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

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

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

Reporter’s Note

Source: UCOTA Section 24.

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

Comment

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

SECTION 22. RIGHTS OF PURCHASERS GENERALLY.

(a) A purchaser of a vessel has the protections afforded by [Uniform Commercial Code
Sections 2-403(1), 2A-304(1), and 2A-305(1)].
(b) A buyer in ordinary course of business has the protections afforded by [Uniform Commercial Code Sections 2-403(2)], even if the seller does not comply with Section 16(a).

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

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

Comment

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

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

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

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

Example 3: Same facts as Example 2, except that Buyer suspects that Scoundrel may have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an
effort to make it more difficult for any prior owner to identify Buyer and Buyer’s interest in the vessel. Buyer does not qualify as a good faith purchaser.

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

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

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

### SECTION 23. RIGHTS AGAINST SECURED PARTIES.

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

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

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

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

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

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

**Reporter’s Note**

Source: UCOTA Section 19.

Subsection (a) in the prior draft, taken almost verbatim from UCOTA, was both too broad and too narrow in its protection of security interests. It was too broad in two respects. First, it made the transferee subject to a security interest noted on the certificate of title even if a termination statement authorized by the secured party had been delivered to the office (but the
office had not yet re-issued a new title certificate). Second, it made the transferee subject to any
security not noted on the certificate of title if the certificate indicated that there were or might be
other security interests, even if the office had no record of the security interest. It was too narrow
in that it failed to protect a security interest perfected by delivery to the office of the appropriate
application if the office had not yet issued a new certificate indicating the security interest. As
revised, subsection is more simple and more accurate.

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

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

Comment

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

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

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

SECTION 24. DUTIES AND OPERATION OF FILING OFFICE.

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

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

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

(d) If a person submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, the office shall send to the person an acknowledgment showing the hull identification number of the vessel to which the record or submission relates, the information in the filed record or submission, and the date [and time] the record was received or the submission accepted. A request under this section must contain the hull identification number and be delivered by means authorized by the office.
(e) [Subject to exceptions in {state’s public records law} that protect private information, the office shall send or otherwise make available in a record the following information to any person that requests it and pays the applicable fee:

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

(2) the name of the owner of record;

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

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

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

Reporter’s Note

Source: UCOTA Section 28.

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

Comment

Subsection (a) requires the office to maintain the evidence used to establish certain information but does not dictate how the office must maintain that evidence. Therefore the office may, if permissible under applicable law and its own rules and regulations, maintain the evidence in electronic or digitized form.
SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Reporter’s Note

Source: ULC Drafting Rule 601.

SECTION 26. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. [This act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Reporter’s Note

Source: ULC Drafting Rule 603.

SECTION 27. SAVINGS CLAUSE.

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

(b) A transaction, certificate of title, or record that was validly entered into or created before the effective date of [this act] and would be subject to [this act] if it had been entered into or created on or after the effective date of [this act], and the rights, duties, and interests flowing from the transaction, certificate of title, or record, remains valid after the effective date of [this act].
(c) [This act] does not affect an action or proceeding commenced before the effective date of [this act].

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

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

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

**Reporter’s Note**

Sources: ULC Drafting Rule 603; UCOTA Section 31.

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

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

[add legislative note]

**Reporter’s Note**

Source: UCOTA Section 32.

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

**Reporter’s Note**

Source: ULC Drafting Rule 604.