

David McI. Williams | dmwilliams@gandwlaw.com | www.gandwlaw.com
Admitted in Maryland and the District of Columbia

Suite 900 1020 19th Street, NW
36 South Charles Street Seventh Floor
Baltimore, MD 21201-3114 Washington, DC 20036-6121
P 410-528-0600 P 202-628-0564
F 410-528-0602

May 11, 2009

E.M. Miller, Jr., Director
Division of Legislative Services, General Assembly
910 Capitol Street, 2nd floor
Richmond, Virginia 23219

Professor Stephen Sepinuck
Gonzaga University School of Law
721 N. Cincinnati, PO Box 3528
Spokane, WA 99220-3582

Re. Uniform Certificate of Boat Title Act

Dear E.M. and Steve:

At the end of our May 6 conference call you asked for separate submissions of "major" issues which participants thought necessary to address in the proposed Uniform Certificate of Boat Title Act (UCBTA). I had few thoughts along those lines.

- 1 Consistency with 46 U.S.C. chap. 123 and regulations at 33 CFR parts 173 and 174. These are the vessel numbering statute and regulations. It seems all agree that state boat titling should be consistent with state boat numbering.
- 2 Consistency with 46 U.S.C. chap. 125 and regulations at 33 CFR part 187, subpart D. These are the Vessel Identification System (VIS) statute and regulations. I was surprised to learn after our conference call that 30 states (as defined at 33 CFR § 187.5 to include DC and territories, etc.) participate in VIS for purposes of vessel identification data exchange with the US Coast Guard (and presumably each other). (*But see* 33 CFR part 187, Appendix A). The information provided by states to the VIS is apparently only available to persons in program administration and law enforcement, but that issue is beyond the scope of the UCBTA project. No state's titling law has yet been certified as compliant with the requirements of 33 CFR part 187, subpart D. Nevertheless, the UCBTA should be consistent with subpart D of the VIS regulations.
- 3 Recognition of the importance of the HIN. Any state boat title complying with the VIS regulations should show the titled boat's vessel identification number. 33 CFR §§ 187.317(a)(5), 187.323(a)(2). Usually this will be the Hull Identification Number (HIN) 33 CFR § 187.9. The HIN is required on all vessels manufactured in, or imported into, the United States for recreational use. 33 CFR §§ 181.23. *See* 33 CFR § 187.321. A rule-making project long considered by the National Vessel Documentation Center (NVDC) has been to make mandatory the submission of the HIN to the NVDC for recreational

vessels to be documented. The vessel numbering regulations do not expressly require that the HIN be collected by states but I believe that most states in fact do collect the HIN. 33 CFR § 187.103(a).

4. Consistency in the means of perfection of a consensual lien. It is my understanding that 8 or 9 of the 35 states that issue boat titles provide for return of the state boat title to the owner of the boat and proof of the perfection of a security interest on a separate document. Maryland is one of these. The availability of the state boat title to the boat owner appears a potential source of confusion and fraud. *See Maryland National Bank v. Vessel Madam Chapel*, 46 F.3d 895 (9th Cir. 1995). The VIS regulations require that the name and address of the secured party and date of perfection be identified on the state boat title. 33 CFR § 187.317(a)(13),(14),(15). I believe that requirement is an important element for the UCBTA so that anyone receiving the surrender of a state boat title may know of the existence of the perfected security interest and the identity of the secured party.
5. Consistency in the surrender of a title upon a change in the state of principal use of the vessel. 46 U.S.C. § 12302(d) provides that when a vessel is removed to a new state of principal operation, the issuing authority of that new state shall recognize the validity of the number issued by the original state for 60 days. *See also* 33 CFR §§ 173.17(b), 173.77(d). The VIS regulations generally require that a state require that a state title be applied for within 60 days after a change in ownership or change of any of the other information noted on the title. 33 CFR §§ 187.304, 187.305(a), 187.311. This rule does not apply, however, if the new state does not have a state boat titling law. 33 CFR § 178.304. The UCBTA will need to address the possibility of a boat being moved to a new state of principal operation which does not have a titling law.
6. Protection of a secured party named on a state boat title. It is helpful that the VIS regulations require that the name and address of any secured appear on a state boat title. 33 CFR §§ 187.317(a)(13),(14),(15). Federal law provides that a deemed “preferred mortgage” (perfected security interest) under 46 U.S.C. §31322(d) will retain its preferred status even if the vessel is no longer titled in the state where it was titled when the security agreement attained preferred status. 46 U.S.C. §31322(d)(3); 33 CFR §§ 187.323(c). It is contemplated that if the vessel is moved to a new state of principal use, the title issued by the original state would be surrendered to the issuing authority in the new state of principal use. 33 CFR §§ 187.323(a)(2). There are presently no “preferred mortgages” under §31322(d), however, as no state’s titling laws have been certified. 33 CFR §§ 187.13.

Thus the UCBTA needs to be written to address various circumstances, including if the original titling is not certified under VIS and if the new state of principal use is a titling state not certified under VIS or is not a titling state. One possibility for a partial answer would be to require the written consent of the secured party as a condition to the issuance of a new certificate of title in the new state of principal use. Another possibility would be to permit the continued vitality of the certificate of title issued by the old state (on which

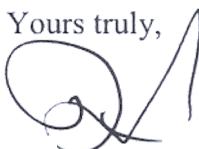
the identity of the secured party is noted) until the state title is surrendered either to the original state or a new state of principal use with the written consent of the secured party.

7. Consistency with respect to surrender of certificate of boat title upon documentation of the vessel. Federal law requires that "any certificate of title issued by a State for a documented vessel shall be surrendered as provided by regulations prescribed by the Secretary." 46 U.S.C. § 12106(a). No regulations have been prescribed by the Secretary, but the VIS regulations may be indicative. They provide that a state boat title becomes invalid when it is surrendered to the Coast Guard in exchange for certificate of documentation. 33 CFR § 187.315. *See also* 46 U.S.C. § 31322(d)(e). The UCBTA should take into account potential surrender of a certificate of title either to the Secretary or to the issuing state and provide for the effect of such a surrender upon the validity of the title and the perfection of any security interest perfected by notation upon the title. *Cf.*, 33 CFR §§ 187.323(a)(2).

Complicating the process of surrender of a certificate of state boat title on a vessel to be documented are the provisions of 46 U.S.C. § 31321 which provide that if the Secretary determines that a vessel cannot be documented in the name of an applicant, the Secretary may within 90 days return the instruments submitted. Protection of the perfected status of a security interest noted on a certificate of title may require federal regulations establishing that surrender of the certificate of title does not occur for purposes of documentation until the Secretary approves a tender of surrender of a certificate of title by an applicant. We have discussed a proposal for legislation in this regard because the Coast Guard has encountered difficulty completing regulatory projects in this area.

No state or federal law or system will be a perfect prophylactic to fraud. The UCBTA must address the problems of boats moving between titling states and registration states, between VIS certified states and states not certified under VIS, and between state titling states and federal documentation. Concerning the effect of documentation of a vessel on a security interest perfected under state law, the reasoning of McCorkle v. First Pennsylvania Banking and Trust Co., 321 F. Supp. 149 (D. Md. 1970), rev'd on other grounds, 459 F.2d 243 (4th Cir. 1972) still stands. The lender's security interest becomes void immediately upon documentation of the vessel, a principle which should apply equally to perfection by notation on a certificate of title as by filing a UCC-1.

I hope this is helpful. Thank you for your efforts on this project. very much look forward to working with you on it.

Yours truly,


David McI. Williams, P.C.