

DRAFT
FOR DISCUSSION ONLY

**CERTIFICATE OF TITLE
ACT FOR BOATS**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 5 – 6, 2010 Drafting Committee Meeting

Without Prefatory Note and With Reporter's Notes

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January 4, 2010

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CERTIFICATE OF TITLE ACT FOR BOATS

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1 (4) “Certificate of documentation” means a certificate issued by the United States
2 Coast Guard under 46 U.S.C. section 12103.

3 (5) “Certificate of origin” means a record created by a manufacturer or importer
4 as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a
5 manufacturer’s certificate of origin[, a manufacturer’s] [or] statement of origin[,] [or] an
6 importer’s certificate of origin[,] or [an importer’s] statement of origin.

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

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

13 (8) “Electronic certificate of title” means a certificate of title consisting of
14 information that is stored solely in an electronic or other medium and is retrievable in
15 perceivable form.

16 (9) “Hull identification number”, means the number assigned by the office to a
17 vessel pursuant to [33 C.F.R. Part 187].

18 (10) “Lien creditor” means:

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

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

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

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

1 (11) "Office" means [insert name of relevant department or agency that creates
2 certificates of title in enacting state].

3 (12) "Owner" means a person that has legal title to a vessel.

4 (13) "Owner of record" means the owner of a vessel as indicated in the files of
5 the office.

6 (14) "Person" means an individual, corporation, business trust, estate, trust,
7 partnership, limited liability company, association, joint venture, federally recognized Indian
8 Tribe, public corporation, government, or governmental subdivision, agency, or instrumentality,
9 or any other legal or commercial entity.

10 (15) "Principally used on the waters of this state" means used [or intended to be
11 used] on the waters within the territorial limits of this state more than on the waters within the
12 territorial limits of another state. For the purposes of this paragraph, "use" includes operation,
13 navigation, and employment but does not include [storage on land or] mooring.

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

16 (17) "Purchaser" means a person that takes by purchase.

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

19 (19) "Secured party" means:

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

22 (B) a person that is a consignor under [Uniform Commercial Code Article
23 9];

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

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

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

9 (21) “Security interest” means an interest in a vessel that secures payment or
10 performance of an obligation. The term includes any interest of a consignor in a vessel in a
11 transaction that is subject to [Uniform Commercial Code Article 9]. The term does not include
12 the special property interest of a buyer of a vessel on identification of that vessel to a contract for
13 sale under [Uniform Commercial Code Section 2-401], but a buyer may acquire a security
14 interest by complying with [Uniform Commercial Code Article 9]. Except as otherwise
15 provided in [Uniform Commercial Code Section 2-505], the right of a seller or lessor of a vessel
16 under [Uniform Commercial Code Article 2 or 2A] to retain or acquire possession of the vessel
17 is not a security interest, but a seller or lessor may also acquire a security interest by complying
18 with [Uniform Commercial Code Article 9]. The retention or reservation of title by a seller of a
19 vessel notwithstanding shipment or delivery to the buyer under [Uniform Commercial Code
20 Section 2-401] is limited in effect to a reservation of a security interest. Whether a transaction in
21 the form of a lease creates a security interest is determined by [UCC § 1-203].

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

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

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

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

6 (24) “Title brand” means a designation of previous damage, use, or condition that
7 [this [act] or] law other than this [act] requires to be indicated on a certificate of title created by a
8 governmental agency of any jurisdiction.

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

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

13 (A) A seaplane.

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

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

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

22 (E) A stationary floating structure which:

23 (i) does not have and is not designed to have a mode of power of

1 its own;

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

4 (iii) has a permanent, continuous hookup to a shoreside sewage
5 system.

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

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

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

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

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

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

14 (3) “Consumer goods”, [UCC § 9-102(a)(23)].

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

16 (5) “Good faith”, [UCC Section 1-201(b)(20)].

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

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

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

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

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

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

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

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

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

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

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

5 (17) “Value”, [UCC Section 1-204].

6 **Reporter’s Note**

7 Paragraph (a)(5) is derived from 33 C.F.R. § 187.7 but does not include a builder’s
8 certificate as a type of certificate of origin. *See* Section 6 Reporter’s Note.

9
10 Paragraph (a)(7) is more broad than the comparable definition in 33 C.F.R. § 187.7. That
11 is because there should be no need for the dealer to be engaged in the business of buying vessels
12 or to have an established place of business. A manufacturer can qualify as a dealer.

13
14 Paragraphs (a)(12), (14), (19) and (21) are derived from UCOTA § 2(a)(18), (20), (24),
15 and (26), respectively. Each differs from the comparably definition in 33 C.F.R § 187.7.

16
17 Paragraph (a)(15) is derived from 33 C.F.R. § 173.3(h) and (I). The definition rejects, for
18 the purposes of this act that mooring constitutes “use.” *Cf. New Hampshire Ins. Co. v. Dagon*,
19 475 F.3d 35 (1st Cir. 2007) (mooring constitutes “use” for the purpose of an insurance policy
20 that excluded coverage for use from November 1 to April 15). Similarly, storage on land does
21 not constitute “use.”

22
23 The term “principally used” arguably requires reference to a specified time period. In
24 other words, a vessel used in Illinois territorial waters 90% of the time and in Michigan
25 territorial waters 10% of the time, could be said to be “principally used” in Michigan during the
26 brief intervals when it is actually used in Michigan waters. Such an interpretation would not,
27 however, be consistent with the purposes of this act. The jurisdiction in which a vessel is
28 principally used can change, particularly when the use intended by the owner or operator
29 changes, but it is not something that changes on an hourly or daily basis. The principle is similar
30 to how classification of collateral can change under Article 9 of the Uniform Commercial Code.
31 A laptop computer used by a debtor both business and household purposes will be either
32 equipment or consumer goods, depending on which use predominates. The classification can
33 change when the predominant use changes, but the classification will not change twice a day,
34 once in the morning when the debtor brings the computer to the office to use it for business
35 purposes and again in the evening when the debtor brings the computer home to use it for
36 household purposes.

37
38 Paragraph (a)(25) should be read in conjunction with paragraph(a)(12). Only an owner
39 has an ownership interest, and thus an ownership interest means legal title. An ownership

1 interest does not include an equitable or beneficial ownership interest. It also does not include a
2 security interest or the interest of a lessee in a lease. There can, however be multiple owners,
3 and a transfer of the interests of one, some or all of them would be a transfer of ownership.
4

5 Subparagraph (A) of paragraph (a)(26) is derived from most state vessel titling statutes.
6 Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099. The purpose of both
7 subparagraphs is the same: to exclude from the scope of this Act vessels that are covered by
8 some other titling law, such as the Federal Aviation Act or a state’s motor vehicle certificate of
9 title act.
10

11 Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft
12 for which a certificate of title is required. Several states do not title watercraft less than a
13 designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft.
14 And some do not title non-motor-powered watercraft of less than a designated length. This act
15 follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in
16 length are covered and all vessels propelled by an engine of at least 10 horsepower are covered.
17 Only those vessels that are both less than 16 feet in length and not mechanically powered are
18 excluded from coverage under this act by virtue of subparagraph (C).
19

20 Subparagraphs (D) and (E) are derived from Cal. Vehicle Code § 9873. Subparagraph
21 (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry
22 attached to a cable because, even with the cable, the ferry does not operate on a fixed course.
23 Subparagraph (E) excludes non-powered floating residences that are fixed to the shore. Most
24 such residences would fail to satisfy the initial language in the definition, in that they are not
25 “used or capable of being used as a means of transportation on water.” Nevertheless, to avoid
26 any confusion they are expressly excluded.
27

28 Subparagraph (F) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of
29 title act do not seem apply to government-owned and operated vessels.
30

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

33 Despite 33 C.F.R. § 187.303, there are no definitions for “documented vessel”, “issuing
34 authority”, or “titling authority”, because those terms are not used in this act. There are,
35 however, definitions for “certificate of documentation” and “office.”
36

37 **SECTION 3. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY.** Unless
38 displaced by this act, the principles of law and equity supplement its provisions.

39 **Comment**
40

41 1. This section is consistent with [Uniform Commercial Code] Section 1-103(b). In
42 addition, like the [Uniform Commercial Code], this act should be liberally construed and applied

1 to promote its underlying purposes and policies, which are:
2

- 3 (1) to simplify, clarify, and modernize the law governing certificates of title;
- 4
- 5 (2) to permit the continued expansion of commercial practices through custom,
6 usage, and agreement of the parties; and
- 7
- 8 (3) to make uniform the law among the various jurisdictions.
9

10 **SECTION 4. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF**
11 **TITLE.**

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

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

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

23 **Comment**

24 Source: UCC § 9-303.
25

26 1. This Section provides which states' law governs a certificate of title. It is the law of
27 the jurisdiction that issued the certificate of title, from the moment the application is delivered to
28 the titling office until such time as certificate of title ceases to be effective under the law of the
29 issuing jurisdiction or an application id delivered to the titling office of a different state.
30

1 2. There is no conflict between this Section and Section 5, which requires the owner of a
2 vessel principally used on the waters of this state to apply for a certificate of title in this state.
3 Section 4 imposes a requirement on the owner. This section provides which states law governed
4 a certificate.
5

6 **Example 1:** Owner has a vessel principally used on the waters of this state. Owner
7 applies for and receives a certificate of title for the vessel from the titling office of another state.
8 Owner has failed to comply with Section 5. Nevertheless, the law of the issuing state governs
9 the all issues relating to the certificate of title.
10

11 3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a
12 security interest in non-inventory collateral covered by a certificate of title statute is to have the
13 security interest noted on the certificate of title. *See* Uniform Commercial Code Section
14 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9’s choice of law rules.
15 Under those rules, the law of the jurisdiction which created the certificate (or for which an
16 application had been filed) is the law that governs, even if neither the debtor nor the goods are
17 located there. *See* Uniform Commercial Code Section 9-303. That law continues to control even
18 if the debtor or the goods move, until the certificate expires by its own terms or a new certificate
19 of title is applied for in a different state. *Id.*
20

21 These rules should work well with this act, which provides that the governing law is the
22 law of the jurisdiction of principal use.
23

24 **Example 2:** Owner, who has granted a security interest in a vessel, applies in State A for
25 a certificate of title for the vessel. Upon delivering that application to the titling office, the law
26 of State A governs perfection and the effective of perfection, regardless of whether the debtor is
27 located in State A. If the application includes the required information about the existing
28 security interest, the security interest will be perfected.
29

30 **Example 3:** Same facts as Example 2 but the vessel later becomes principally used on
31 the waters of State B. The law of State B requires the debtor to apply for a certificate of title
32 from State B. If the debtor does not do so, then the law of State A will still govern the perfection
33 of the security interest. As long as the law of State A does not invalidate its certificate of title
34 when the principle use of the vessel changed to State B, the security interest will remain
35 perfected.
36

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

38 (a) Except as provided in subsections (b) and (c), the owner of a vessel principally used
39 on the waters of this state shall deliver to the office an application for a certificate of title for the
40 vessel, together with the applicable fee, within [20 days] of the later of:

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

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

3 (b) No application for a certificate of title need be submitted for a vessel that is covered
4 by a [valid] certificate of documentation.

5 (c) No application for a certificate of title need be submitted for a vessel held by a
6 dealer for resale.

7 (d) The office shall not issue, transfer, or renew a certificate of number for a vessel
8 unless the office has created a certificate of title for the vessel or an application for a certificate
9 of
10 title for the vessel and the applicable fee has been delivered to the office.

11 **Reporter's Note**

12
13 Sources: Loosely from Ill. Comp. Stat. ¶ 45/3A-1; NASBLA Model Act for Vessel
14 Titling §§ 3, 4, 6.
15

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

17 (a) Except as otherwise provided in Sections 13, 18 and 19, only the owner of a vessel
18 may apply for a certificate of title covering the vessel.

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

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

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

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

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

25 (5) the hull identification number for the vessel;

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

2 (A) the name of the manufacturer, builder, or maker;

3 (B) the model year or the year in which the vessel was manufactured or
4 built;

5 (C) the overall length of the vessel;

6 (D) the vessel type;

7 (E) the hull material;

8 (F) the propulsion type; and

9 (G) the engine drive type.

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

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

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

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

21 (d) Except as otherwise provided in Section 17, 18, 19, or 20, the application must be
22 accompanied by [either]:

23 (1) a certificate of title covering the vessel which has been signed by the owner

1 shown on the certificate and [delivered to the applicant or] which identifies the applicant as
2 owner of the vessel;

3 (2) a certificate of documentation covering the vessel which has been signed by
4 the owner shown on the certificate and [delivered to the applicant or] which identifies the
5 applicant as owner of the vessel; or

6 (3) if there is neither a certificate of title nor a certificate of documentation
7 covering the vessel, all existing certificates of origin covering the vessel which are known to the
8 applicant and which identify the applicant as owner of the vessel.

9 (e) A certificate of title, certificate of documentation, or certificate of origin submitted in
10 connection with an application is part of the application and must be maintained in the files of
11 the office.

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

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

15 (2) evidence of payment of all taxes and fees.

16
17 **Comment**

18
19 Sources: UCOTA § 9; 33 C.F.R. §§ 187.101, 187.317.

20
21 1. Unlike motor vehicles, which have only one title source document prior to titling (a
22 manufacturer's statement of origin), a vessel can have two: a manufacturer's statement or
23 certificate of origin and a builder's certificate. Because there is no ready way for the titling
24 office to know – unless informed by the applicant – if there is both a manufacturer's certificate
25 and a builder's certificate for the same vessel, and because a manufacturer's certificate should
26 exist even if there is a builder's certificate, this act generally ignores builder's certificates. *See*
27 Section 2(a)(5).

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

1 on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 8.
2

3 3. Paragraph (b)(6) implicitly requires the office to issue a hull identification number if
4 the vessel does not already have one, as an imported antique might not.
5

6 **SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF**
7 **TITLE.**

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

12 (b) If the office is authorized to create electronic certificates of title, the office shall
13 create an electronic certificate of title if so requested in the application by the secured party of
14 record, or if there is no secured party of record, by the owner of record. In the absence of a
15 request for a written certificate of title or an electronic certificate of title, the office shall decide
16 whether to create a written certificate of title or, if the office is authorized to do so, an electronic
17 certificate of title.

18 (c) The office may reject an application for a certificate of title only if:

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

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

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

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

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

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

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

5 (3) the [U.S. Coast Guard has informed the office that] the vessel has become
6 covered by a certificate of documentation.

7 [The office shall provide an opportunity for a hearing at which the applicant and any other
8 interested party may present evidence in support of or opposition to the cancellation. The office
9 shall serve the notice of the opportunity in person or send it by first class mail delivered by the
10 United States Postal Service to the applicant, the owner of record, and all secured parties
11 indicated in the files of the office. If the applicant or any other interested party requests a
12 hearing not later than [10] days after receiving the notice, the office shall hold the hearing not
13 later than [20] days after receiving the request].

14 **Reporter's Note**

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

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

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

20 Some states have laws that require the applicable office to cancel a motor vehicle
21 certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or
22 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws
23 apply to vessels but in any event this section does not permit cancellation for any of these
24 reasons. Cancelling the vessel's registration (*i.e.* license to use) for such failures would seem far
25 more appropriate than cancelling its certificate of title. Moreover, nothing in the Coast Guard
26 regulations authorizes cancellation for any of these reasons, and therefore authorizing
27 cancellation for any of those reasons in this act might jeopardize the goal of allowing security
28 interests perfected pursuant to this act to qualify as a "preferred mortgage" under 46 U.S.C.
29
30
31
32

1 § 31322(d).
2

3 **SECTION 8. CONTENTS OF CERTIFICATE OF TITLE.**

4 (a) A certificate of title must contain:

5 (1) the date the certificate of title was created;

6 (2) the name of at least the first owner of the vessel listed in the application and,
7 if not all owners are listed, an indication that there are additional owners;

8 (3) the address of the owner of record or the first owner listed on the certificate;

9 (4) the hull identification number;

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

11 (6) except as otherwise provided in Section 13(b), the name and address of the
12 secured party of record, if any, and an indication of whether other security interests are indicated
13 in the files of the office or on a record created by a governmental agency of another jurisdiction
14 and submitted to the office and

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

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

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

1 jurisdiction under whose law the title brand was created or whose certificate of title previously
2 indicated the title brand].”

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

5 (e) A certificate of title must contain a form that the owner [of record] [shown on the
6 certificate] may sign in order to evidence its consent to a transfer of ownership to another person.

7 **Reporter’s Note**

8 Sources: UCOTA § 11; 33 C.F.R. § 187.317.
9
10

11 **SECTION 9. MAINTENANCE OF AND ACCESS TO FILES.**

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

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

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

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

19 (4) index the files of the office so as to be accessible as required by subsection
20 (b).

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

1 (c) The office shall maintain in its files, for each vessel for which it has created a
2 certificate of title, all title brands known to the office, the name of each secured party known to
3 the office, the name of each claimant to ownership of the vessel known to the office, and all
4 stolen-property reports the office has received relating to the vessel.

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

8 **Reporter's Note**

9 Source: UCOTA § 14.

10
11 Subsection (d) makes the information on the certificate of title a public record. It does
12 not make the information in the application a public record. Therefore, nothing in this Act
13 requires that the social security or taxpayer identification numbers of the owners, which is
14 required by Section 6(b)(4), be made public.

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

21 **SECTION 10. SENDING OF CERTIFICATE OF TITLE.**

22 *[First Alternative Subsection (a)]*

23 (a) Upon creation of a written certificate of title, the office shall promptly send the
24 certificate to either the owner of record or the secured party of record, as designated in the
25 application, at the address indicated for that person in the files of the office. Upon creation of an
26 electronic certificate of title, the office shall promptly send a record evidencing the certificate of
27 title to the owner of record and, if there is one, to the secured party of record, at the address
28 indicated for that person in the files of the office. A record evidencing an electronic certificate
29 of title may be sent to a mailing address or, if indicated in the files of the office, an electronic

1 address.

2 *[Second Alternative Subsection (a)]*

3 (a) Upon creation of a written certificate of title, the office shall promptly send the
4 certificate to the owner of record at the address indicated for the owner in the files of the office.
5 Upon creation of an electronic certificate of title, the office shall promptly send a record
6 evidencing the certificate of title to the owner of record [and, if there is one, to the secured party
7 of record,] at the address indicated for [the owner] [that person] in the files of the office. A
8 record evidencing an electronic certificate of title may be sent to a mailing address or, if
9 indicated in the files of the office, an electronic address.

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

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

20 **Reporter's Note**

21 Source: UCOTA § 15.

22
23 Pursuant to directions given at the last meeting of the Committee, two alternative
24 subsections (a) are presented for consideration. The first alternative allows the applicant to
25 designate whether a written certificate of title is to be sent to the owner of record or the secured
26 party of record. The second alternative requires the office to send a written certificate to the

1 owner of record. The two alternatives also differ slightly in their treatment of electronic
2 certificates of title. The first alternative requires the office to inform both the owner of record
3 and the secured party of record, if there is one, of the creation of an electronic certificate. The
4 second alternative puts the requirement to inform the secured party of record in brackets. It
5 would, of course, be possible to create a variation on these alternatives, such as a requirement
6 that the office inform only the person designated in the application of the creation of an
7 electronic certificate of title.
8

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

16 **SECTION 11. EFFECT OF CERTIFICATE.** A certificate of title is prima facie
17 evidence of [the truth of] the information in the record that constitutes the certificate of title.

18 **Comment**

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

20 This section does not make a certificate of title conclusive evidence of the ownership of a
21 vessel. Instead, this section makes a certificate of title prima facie evidence of ownership. In
22 litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is
23 sufficient to prove ownership of a vessel unless someone comes forward with admissible
24 evidence to the contrary. A certificate of title shifts both the burden of production and the
25 burden of proof to anyone challenging the information on a written certificate or the information
26 constituting an electronic certificate of title.
27

28 **SECTION 12. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE;
29 JUDICIAL PROCESS.** A certificate of title does not by itself provide a right to obtain
30 possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against
31 the certificate of title is not effective to determine possessory rights with respect to the vessel.
32 However, this act does not prohibit enforcement of a security interest in, levy on, or foreclosure
33 of a statutory or common-law lien on a vessel under law of this state other than this act. The

1 absence of an indication of a statutory or common-law lien on a certificate of title does not
2 invalidate the lien.

3 **Reporter's Note**

4 Source: UCOTA § 12.
5

6 **SECTION 13. PERFECTION OF SECURITY INTEREST.**

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

13 (b) If the interest of the person named as owner[, lessor, consignee, or bailor,] in an
14 application for a certificate of title delivered to the office is a security interest, the application
15 sufficiently identifies the person as secured party. The identification of a person as owner[,
16 lessor, consignee, or bailor] on the application for a certificate of title is not of itself a factor in
17 determining whether the person's interest is a security interest.

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

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

23 (2) the name and mailing address of the secured party or a representative of the

1 secured party;

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

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

5 (d) Upon delivery of an application that complies with subsection (c) and payment of all
6 fees, the office shall create a new certificate of title pursuant to Section 7(b), and deliver the new
7 certificate pursuant to Section 10(a). The office shall maintain in the files of the office the date
8 [and time] of delivery of the application to the office.

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

16 (f) This section does not apply to a security interest in a vessel created by a person
17 during any period in which the vessel is inventory held for sale or lease by the person or is leased
18 by the person as lessor if the person is in the business of selling goods of that kind.

19 (g) A security interest in a vessel is perfected to the extent provided in [Uniform
20 Commercial Code Section 9-316(d)]. [A secured party may also perfect a security interest in a
21 vessel pursuant to [Uniform Commercial Code Sections 9-313(b) and 9-316(d)]].

22 (h) A security interest perfected under this section shall be entitled to priority over the
23 rights of a lien creditor to extent provided in [Uniform Commercial Code Article 9]. For the

1 purposes of [Uniform Commercial Code Article 9, Part 3], delivering an application pursuant to
2 subsection (a) or (c) is equivalent to filing a financing statement.

3 **Comment**

4
5 Source: UCOTA § 26; UCC § 9-311(b).

6
7 Subsection (h) affirms that a security interest perfected under this act takes priority over
8 a subsequent judicial lien. Subsection (h) also provides that delivering to the office an
9 application for a certificate of title that identifies a security interest is the equivalent of filing a
10 financing statement. *See* Uniform Commercial Code Section 9-311(b). It therefore allows for a
11 security interest to attain priority under such rules as Section 9-317(a)(2)(B) (giving priority over
12 a lien creditor who lien arises after the security agreement is authenticated and a financing
13 statement is filed) and Section 9-317(e) (giving a perfected purchase-money security interest
14 priority over a judicial lien if a financing statement is filed within 20 days of when the debtor
15 receives possession). Subsection (h) does not, by treating the delivery of an application for a
16 certificate of title as the equivalent of filing a financing statement, subject the application or the
17 certificate to the rules of Uniform Commercial Code Section 9-506. Instead, Section 16 of this
18 act governs the effect of any errors or omissions in the certificate of title.
19

20 **SECTION 14. TERMINATION STATEMENT.**

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

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

27 (2) [14] days after the secured party receives a signed demand from an owner and
28 there is no obligation secured by the vessel subject to the security interest and no commitment to
29 make an advance, incur an obligation, or otherwise give value secured by the vessel.

30 (b) If a written certificate of title has been created and delivered to a secured party and a
31 termination statement is required under subsection (a), the secured party, within the time

1 provided in subsection (a), shall deliver the written certificate of title to the debtor or the office
2 with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed or
3 is otherwise unavailable or illegible, the secured party shall deliver with the termination
4 statement, within the time provided in subsection (a), an application for a replacement certificate
5 of title meeting the requirements of Section 20.

6 (c) Upon delivery of a termination statement [authenticated by the secured party] to the
7 office [pursuant to this section], any indication of the security interest on the certificate of title to
8 which the termination statement relates ceases to be effective. If the security interest to which
9 the termination statement applies was indicated on the certificate of title, the office shall create a
10 new certificate of title pursuant to Section 7(b), and deliver the new certificate pursuant to
11 Section 10(a). The office shall maintain in the files of the office the date [and time] of delivery
12 of the termination statement to the office.

13 (d) A secured party is liable for damages in the amount of any loss caused by its failure
14 to comply with this section and for the reasonable cost of an application for a certificate of title
15 under Section 6 or 20.

16 **Reporter's Note**

17 Source: UCOTA § 27.

18 Subsections (a) and (b) in the previous draft have been combined.
19

20 Subsection (c) as originally drafted was perhaps imprecise. It applied only to a
21 termination statement delivered “pursuant to this section.” However, this section deals only with
22 when a termination statement is required, not when it is permitted. For example, a secured party
23 may file a termination statement with respect to a vessel that is not consumer goods upon
24 payment of the secured obligation even if the debtor has not demanded one. The Committee
25 may therefore wish to consider replacing that language, which is now in brackets, with the other
26 bracketed language. In considering this change, the Committee should also consider whether the
27 termination statement must be signed or authenticated.
28
29
30

1 **Comment**

2
3 Subsection (c) requires the office, upon delivery of a termination statement, to create a
4 new certificate of title if the security interest to which the termination statement applies was
5 indicated on the existing certificate of title. This will be the situation whenever the secured party
6 was the secured party of record. It will also be the case if the security interest was otherwise
7 listed on the certificate of title or the certificate indicated the existence of other unlisted security
8 interests and the termination statement relates to the only unlisted security interest. See Section
9 8(a)(6). In creating a new certificate of title, the office shall comply with Section 7(b) in
10 determining whether to create a written certificate of title or an electronic certificate of title.
11

12 If a termination statement delivered to the office relates to the security interest of the
13 secured party of record, and one or more other security interests in the vessel are indicated in the
14 files of the office, there will now be a new secured party of record. The new secured party of
15 record will be the secured party whose security interest was first communicated to the office and
16 for which no termination statement has been filed.
17

18 **SECTION 15. TRANSFER.**

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

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

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

1 16, 17, 21(b) and (c), or 22, a transfer of ownership without compliance with subsection (a) is
2 not effective against other persons claiming an interest in the vessel.

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

6 **Reporter’s Note**

7
8 Source: UCOTA § 16.

9
10 As currently drafted, subsection (d) does not apply to involuntary transfers. *Cf.* Sections
11 17, 18. The Committee may wish to consider whether subsection (d) or Sections 17 and 18
12 should be amended to include a similar rule following an involuntary transfer.

13
14 **Comment**

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

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

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

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

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

1 facie evidence, but not conclusive evidence, of ownership. *See* Section 11.
2

3 Subsection (c) also clarifies that a transfer of ownership of a vessel, even though
4 effective between the parties, may not be effective against third parties claiming an interest in the
5 vessel if the certificate of title continues to identify the transferor as owner. *See* Sections 21 or
6 22, *e.g.*, with respect to the rights of a good faith purchaser for value or a buyer in ordinary
7 course of business.
8

9 **SECTION 16. EFFECT OF MISSING OR INCORRECT INFORMATION.**

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

13 (b) If a certificate of title [or other record required or authorized by this act] [is seriously
14 misleading because it] contains incorrect information or omits required information, a purchaser
15 of the vessel to which the record relates takes free of any interest[, other than a security interest,]
16 to the extent that the purchaser gives value in reasonable reliance on the incorrect information or
17 on the absence of the omitted information.

18 (c) With respect to an interest in a vessel, other than a security interest, not indicated on
19 a written certificate of title, a failure to indicate the information is not seriously misleading if:

20 (1) a search of the files of the office using the correct hull identification number,
21 using the office's standard search logic, if any, would disclose the interest[; or

22 (2) a search of the files of the office using the correct name of the owner of
23 record, using the office's standard search logic, if any, would disclose the interest.]

24 (d) Nothing in this section affects the application of [Uniform Commercial Code Section
25 9-337].

26 **Reporter's Note** 27

1 There are many possible errors that may arise. Moreover, each type of error can exist in
 2 one or more different locations. The following chart depicts some of the possibilities, with a
 3 suggested legal or practical effect for each.
 4

	Location of Error			
	Written Certificate Only	Written Certificate & Office Files	Electronic Certificate	Application & Office Files
Error in name of owner of record	No legal effect	No legal effect, although it could impact a searcher's ability to check the files of the office if searches by name were available		
Error in address of owner of record	No legal effect			
Error in vessel description (not HIN)	No legal effect			
Error in HIN	No legal effect.	May make certificate seem to be about a different vessel, depending on how wrong the HIN is		
Error in both HIN & name of owner of record	Cert. seems about another vessel	Would make a search of the files of the office virtually impossible, but could there ever be reasonable reliance?		
Error in secured party's name or address	No legal effect			
Omission of an ownership interest	No legal effect	A purchaser who reasonably relies on the omission (which is likely) should take free of the omitted ownership interest		
Omission of a security interest	Governed by UCC § 9-337: buyer without knowledge takes free; subsequent secured party without knowledge gets priority		Security interest is unperfected	

22
 23 As this chart indicates, not every error should have the same legal effect. Some errors should
 24 have no legal effect. Some should impact the rights of a subsequent purchaser, perhaps
 25 depending on whether the purchaser acted in reasonable reliance on the error or omission. Some
 26 should impact the rights of a subsequent lien creditor. And some should, perhaps, render the
 27 certificate of title ineffective entirely (*i.e.*, it no longer creates a presumption of the facts
 28 appearing on it).
 29

30 Pursuant to this Section, purchasers are protected to the extent they give value in
 31 reasonable reliance on the incorrect or missing information. What qualifies as reasonable
 32 reliance might depend on the nature of the purchase transaction. The due diligence expected in
 33 the financed acquisition of a multi-million dollar yacht may be substantially different from that
 34 expected in a transaction between unrepresented consumers with respect to an inexpensive
 35 17-foot sailboat.
 36

37 Subsection (c) provides that a purchaser cannot take free of an interest indicated in the
 38 files of the office if that interest is discoverable through a search. The bracketed language in
 39 subsection (c) assumes that the files of the titling office can be searched both by hull
 40 identification number and by name of the owner of record. However, the current version of
 41 Section 23 requires the office to respond to search requests made only by hull identification
 42 number. The Committee should consider whether to expand the office's duties in Section 23 or

1 to delete the bracketed language and thereby expand the protections this Section provides for
2 purchasers. Alternatively, the Committee may wish to delete subsection (c) altogether, if it
3 concludes that some purchasers could reasonably rely without conducting a search of the files of
4 the office.

5
6 **Comment**

7
8 Sources: UCOTA § 20, U.C.C. §§ 9-338, 9-506.

9
10 1. Subsection (a) states the general rule that a certificate of title remains effective even if
11 it contains errors or omissions. As a result, the certificate remains prima facie evidence of the
12 information in record that constitutes the certificate of title. See Section 11.

13
14 **Example 1:** The office creates a certificate of title that transposes two of the digits in the
15 hull identification for the vessel. The certificate remains effective regardless whether the
16 applicant or the office made the error and regardless whether the files of the office contain the
17 same error.

18
19 **Example 2:** The office creates a certificate of title that misspells the name of the owner
20 of record. The certificate remains effective regardless whether the applicant or the office made
21 the error and regardless whether the files of the office contain the same error.

22
23 2. Because subsection (a) applies not only to a certificate of title, but also to or any
24 “other record required or authorized by this act,” it ensures that a security interest noted in an
25 application for a certificate of title delivered to the office pursuant to Section 6 or 13 is perfected
26 despite any error in the certificate or in the application. This is consistent with the approach
27 taken in Uniform Commercial Code Article 9 to filed financing statements. A filed financing
28 statement is effective to perfected even if it contains minor errors that are not seriously
29 misleading. See Uniform Commercial Code Section 9-506. For this purpose, a failure to
30 describe some collateral would be seriously misleading as to omitted collateral. An error in the
31 debtor’s name could also be seriously misleading because searches are based on the debtor’s
32 name and an error in that name may cause the filed financing statement not to be disclosed.
33 However, an error in the secured party’s name or address cannot be seriously misleading.
34 Section 9-506 cmt. 2.

35
36 The same principles apply under this act. An error in the secured party’s name or address
37 imposes no burden on someone seeking to identify who has an ownership interest or security in a
38 titled vessel. As a result, such an error does not render the security interest unperfected. See *In*
39 *re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name for secured parties on
40 certificates of title was not seriously misleading and did not render security interests
41 unperfected). The same is true with respect to an error in the name of the owner of record. See
42 *In re Laurson*, 391 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor’s first name on
43 certificate of title for vehicle did not render security interest unperfected because certificates of
44 title are indexed by vehicle identification number, not by name).

1 **Example 3:** Secured Party’s name is misspelled in the application for a certificate of
2 title delivered to the office. As a result, Secured Party’s name is also misspelled on the
3 certificate of title. The security interest is perfected.
4

5 An error in the description of the vessel also does not render a security interest
6 unperfected. Although search requests are processed using the hull identification number, *see*
7 Section 23(c), an error in the hull identification number on the certificate of title cannot really
8 deceive the searcher. If the error existed solely on a written certificate of title but not in the files
9 of the office, a search under the correct number would yield all the relevant information. If the
10 error existed both on the certificate of title and in the files of the office, then a search using the
11 correct hull identification number would yield nothing. Anyone seeking to acquire an interest in
12 such a seemingly untitled vessel after such search should conduct further investigation.
13

14 3. Subsections (b) and (c) give limited protection to a purchaser who gives value in
15 reasonable reliance on a certificate of title that contains incorrect information or that omits
16 information. To qualify for that protection, the error or omission must render the certificate of
17 title seriously misleading and the purchaser must reasonably rely on that error. This rule is
18 similar to the rules in Uniform Commercial Code Section 9-338. A purchaser cannot reasonably
19 rely if the correct information is readily available from the office.
20

21 4. Purchasers are protected by subsections (b) and (c) on “to the extent” they give value.
22 This language limits the protection available to a secured party. *See* Section (2)(a)(16), (17)
23 (defining “purchaser” so as to include a secured party). A secured party who reasonably relies
24 on the missing or incorrect information will be protected only up to the amount of the secured
25 obligation. In contrast, a buyer protected by this section takes free of the interest that is omitted
26 from or incorrectly identified in the certificate of title.
27

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

33 **Example 4:** Lender’s security interest is identified in the application for a certificate of
34 title delivered to the office. The office creates a certificate of title that fails to indicate Lender’s
35 security interest. Lender’s security interest is perfected. *See* Section 13. However, a buyer,
36 other than buyer in the business of selling goods of that kind, who gives value and receives
37 delivery of the vessel without knowledge of Lender’s security interest takes free of the security
38 interest. Similarly, A security interest is perfected after creation of the certificate of title and
39 without knowledge of Lender’s security has priority over Lender’s security interest.
40

41 **Example 5:** Owner delivers to the office an application for a certificate of title for a
42 vessel. The application identifies Lender as a secured party but misstates the hull identification
43 number for the vessel. Lender’s security interest is perfected. Owner later offers to sell the
44 vessel to Buyer. Buyer requests a search using the vessel’s correct hull identification number.
45 The office responds that is has no record relating to that hull identification number. Buyer

1 insists, as a condition to the transaction, that Owner get a certificate of title for the vessel.
2 Owner delivers to the office a new application for a certificate of title. The new application does
3 not disclose Lender's security interest. Office issues a certificate of title for the vessel that does
4 not indicate Lender's security interest. Lender's security interest remains perfected. However,
5 Buyer may take free of Lender's security interest pursuant to Uniform Commercial Code Section
6 9-337(1).
7

8 **SECTION 17. TRANSFER BY SECURED PARTY'S TRANSFER STATEMENT.**

9 (a) In this section, "secured party's transfer statement" means a record signed by the
10 secured party of record stating:

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

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

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

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

18 (A) the owner of record;

19 (B) the secured party of record; and

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

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

22 (6) that the certificate of title is an electronic certificate of title, or that the
23 secured party does not have possession of the written certificate of title created in the name of
24 the owner of record, or that the secured party is delivering the written certificate of title to the
25 office with the secured party's transfer statement.

26 (b) Completion and delivery to the office of a secured party's transfer statement, and

1 payment of all applicable taxes and fees, entitles the secured party to the creation of a certificate
2 of title showing the person designated in paragraph (a)(4)(C) as the owner of record. Unless the
3 secured party's transfer statement is rejected by the office for a reason set forth in Section 7(c),
4 the office shall:

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

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

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

10 (4) create a new certificate of title indicating the secured party of record or other
11 purchaser as the vessel's owner of record; and

12 (5) deliver the new certificate of title pursuant to Section 10.

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

16 **Comment**

17 Source: UCOTA § 21.

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

1 (b) If a transfer-by-law statement is delivered to the office with all taxes and fees and
2 documentation satisfactory to the office as to the transferee's ownership interest or right to
3 acquire the ownership interest of the owner of record, unless it is rejected by the office for a
4 reason set forth in Section 6(c), the office shall:

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

6 (2) except for a transfer pursuant to paragraph (a)(1)(A), promptly send notice to
7 the owner of record and to all persons indicated in the files of the office as having an interest,
8 including a security interest, in the vessel that a transfer-by-law statement has been delivered to
9 the office;

10 (3) amend the files of the office to reflect the transfer;

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

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

15 and

16 (6) send the new certificate of title pursuant to Section 10(a).

17 *[Second Alternative Subsections (a) and (b)]*

18 (a) In this section:

19 (1) "By operation of law" means pursuant to a law or judicial order affecting
20 ownership of a vessel:

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

23 (B) through the exercise of the rights of a lien creditor or a person having

1 a lien created by statute or rule of law; or

2 (C) through other legal process.

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

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

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

10 (C) a statement that [either]:

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

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

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

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

20 (b) If a transfer-by-law statement is delivered to the office with all taxes and fees and
21 documentation satisfactory to the office as to the transferee’s ownership interest or right to
22 acquire the ownership interest of the owner of record, unless it is rejected by the office for a
23 reason set forth in Section 7(c), the office shall:

- 1 (1) accept delivery of the transfer-by-law statement;
- 2 (2) amend the files of the office to reflect the transfer;
- 3 (3) cancel the certificate of title created in the name of the owner of record
- 4 indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the
- 5 office;
- 6 (4) create a new certificate of title, indicating the transferee as owner of record;
- 7 and
- 8 (5) send the new certificate of title pursuant to Section 10(a).

9 ***[End of Alternatives]***

10 (c) This section does not apply to a transfer of an interest in a vessel by a secured party

11 under [Uniform Commercial Code Article 9].

12 **Reporter's Note**

13 Source: UCOTA § 22.

14 The first alternative is a slightly modified version of the original draft. It requires the

15 office, in paragraph (b)(2), to notify all persons with an interest in the vessel, of the

16 transfer-by-law statement, except in the case of a transfer pursuant to subparagraph (a)(1)(A).

17 The second alternative, which was requested by the Committee, differs in that, pursuant to

18 subparagraph (a)(2)(D), it puts the burden on the transferee to send such notifications and

19 requires evidence of such notification to given to the office.

20

21

1 **SECTION 19. APPLICATION FOR TRANSFER OF OWNERSHIP OR**
2 **TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.**

3 (a) Except as otherwise provided in Section 17 or 18, upon receiving either an
4 application that includes an indication of a transfer of ownership or a termination statement that
5 is not accompanied by submission of a signed certificate of title, the office may create or amend
6 a certificate of title under this section only if:

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

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

10 (3) at least 45 days before the office creates or amends the certificate of title, the
11 office has sent notice of the application to all persons having an interest in the vessel as indicated
12 in the files of the office and no objection from any of those persons has been received by the
13 office; and

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

18 [(b) Unless the office determines, by any reasonable method, that the value of the vessel
19 is less than [\$x,000], before creating or amending the certificate of title, the office may require
20 an applicant under subsection (a) to post a bond or provide an equivalent source of indemnity or
21 security. The bond, indemnity, or other security must be in a form prescribed by the office and
22 provide for indemnification of any owner, purchaser, or other claimant for any expense, loss,
23 delay, or damage, including reasonable attorney's fees and costs but not consequential damages,

1 resulting from creation or amendment of the certificate of title, but may not exceed twice the
2 value of the vessel as determined by the office.]

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

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

12 **Reporter's Note**

13 Source: UCOTA § 33.
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16 **SECTION 20. REPLACEMENT CERTIFICATE OF TITLE.**

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

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

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

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

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

9 **Reporter's Note**

10 Source: UCOTA § 24.
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13 **SECTION 21. RIGHTS OF PURCHASERS GENERALLY.**

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

16 (b) A buyer in ordinary course of business has the protections afforded by [Uniform
17 Commercial Code Sections 2-403(2)], even if the seller does not comply with Section 15(a).

18 (c) A purchase of a leasehold interest is subject to [Uniform Commercial Code Section
19 2A-303].

20 (d) Except as otherwise provided in Section 15, the rights of other purchasers of vessels
21 and of lien creditors are governed by [Uniform Commercial Code Articles 2, 2A, [6,] 7, and 9].

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Reporter’s Note

Subsection (b) provides that a buyer in ordinary course of business has all the rights granted in Article 2 even if no application is delivered to the office for a certificate of title that identifies the buyer as owner. The previous draft included a similar rule for a lessee in ordinary course of business. However, because under this draft a lessee is not an “owner” and a lease is not a “transfer of ownership,” there is no need for a lessee to ever have its interest noted on a certificate of title. Accordingly, the reference to lessees in ordinary course of business was removed as unnecessary.

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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 to Buyer for value. 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 vehicle 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 16(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 in 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.

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

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

12 **Example 5:** Same facts as Example 4, except that subsequently Owner purports to sell
13 the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title
14 and delivers it to Purchaser. Even though there was no compliance with Section 15(a) in
15 connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to
16 the vessel. See Section 15(c), which is made expressly subject to Section 21(b).
17

18 **SECTION 22. RIGHTS OF PURCHASERS AGAINST SECURED PARTIES.**

19 (a) Except as otherwise provided in this section or Section 21(b), a transferee of
20 ownership takes subject to:

21 (1) a security interest in the vessel indicated on a certificate of title; and

22 (2) if the certificate of title contains a statement that the vessel is or may be
23 subject to security interests not indicated on the certificate of title, a security interest not so
24 indicated.

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

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

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

2 (c) A buyer in ordinary course of business takes free of a security interest in the vessel,
3 including a security interest indicated on a certificate of title, created by the buyer's seller, even
4 if the security interest is perfected, the buyer knows of its existence, and the seller did not
5 comply with Section 15(a). A lessee in ordinary course of business takes its leasehold interest
6 free of a security interest in the vessel, including a security interest indicated on a certificate of
7 title, created by the lessee's lessor, even if the security interest is perfected, the lessee knows of
8 its existence, and the lessor did not comply with Section 15(a). This subsection does not affect a
9 security interest in a vessel in the possession of the secured party under [Uniform Commercial
10 Code Article 9].

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

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

19 **Reporter's Note**

20 Source: UCOTA § 19.
21

22 **SECTION 23. DUTIES AND OPERATION OF FILING OFFICE.**

23 (a) The office shall retain the evidence used to establish the accuracy of the information

1 in its files.

2 (b) The office shall maintain in its files all information regarding a security interest in a
3 vessel, including any termination statement received by the office under Section 14, until least
4 [10] years after the office receives a termination statement regarding the security interest. The
5 information must be accessible by the hull identification number for the vessel and any other
6 indexing methods provided by the office.

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

13 (d) The office shall send or otherwise make available in a record the following
14 information to any person that requests it and pays the applicable fee, if any:

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

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

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

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

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

4 **Reporter's Note**

5 Source: UCOTA § 28.
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8 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
9 applying and construing this uniform act, consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states that enact it.
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12 **Reporter's Note**

13 Source: ULC Drafting Rule 601.
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16 **SECTION 25. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL**
17 **COMMERCE ACT.** This act modifies, limits, and supersedes the federal Electronic Signatures
18 in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify,
19 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic
20 delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section
21 7003(b)).

22 **Reporter's Note**

23 Source: ULC Drafting Rule 603.
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1 Source: UCOTA § 32.

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4 **SECTION 28. EFFECTIVE DATE.** This act takes effect

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Reporter's Note

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Source: ULC Drafting Rule 604.