

D R A F T
FOR DISCUSSION ONLY

UNIFORM CERTIFICATE OF TITLE ACT FOR VESSELS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For 2011 Annual Meeting

With Prefatory Note and Reporter's Notes

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ON UNIFORM STATE LAWS

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March 9, 2011

**DRAFTING COMMITTEE FOR
UNIFORM CERTIFICATE OF TITLE ACT FOR VESSELS**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Uniform Certificate of Title Act for Vessels consists of the following individuals:

ESSON MCKENZIE MILLER, JR., Division of Legislative Services, 910 Capitol St., 2nd Floor,
Richmond, VA 23219, *Chair*

SCOTT L. BAENA, 1450 Brickell Ave., Suite 2500, Miami, FL 33131-3456

VINCENT P. CARDI, The Ohio State University Moritz College of Law, 55 W. 12th Ave.,
Columbus, OH 43210-1391

PAUL W. CHAIKEN, P.O. Box 1401, 84 Harlow St., Bangor, ME 04402-1401

JEFFREY T. FERRIELL, Capital University Law School, 303 E. Broad St., Columbus, OH
43215-3200

MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102

FREDERICK H. MILLER, University of Oklahoma College of Law, 300 Timberdell Rd.,
Norman, OK 73019

NEAL OSSEN, 500 Mountain Rd., West Hartford, CT 06117

RODNEY W. SATTERWHITE, 441 1st District Court, 500 N. Loraine St., Suite 901, Midland,
TX 79701

YVONNE L. THARPES, Legislature of the Virgin Islands, P.O. Box 1690, St. Thomas, VI
00804

STEPHEN L. SEPINUCK, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA
99220, *Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN
55455, *President*

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL
35487-0382, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

DAVID McI. WILLIAMS, 36 S. Charles St., Ste. 900, Baltimore, MD 21201-3114, *ABA
Advisor*

M.M. DALY, 10 Weybosset St., Floor 4, Providence, RI 02903-2818, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash, Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
312/450-6600
www.nccusl.org

UNIFORM CERTIFICATE OF TITLE ACT FOR VESSELS

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Prefatory Note

Background

Record ownership of vessels in the United States is governed by a composite of state and federal law. Some large commercial vessels – those that measure at least five net tons, owned by a U.S. entity, and used in the coastwise trade or fisheries – must be documented with the United States Coast Guard National Vessel Documentation Center. *See* 46 U.S.C. §§ 12102, 12103. Some other vessels may but need not be documented with the U.S. Coast Guard.

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

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

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

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

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

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

Purposes of the Act

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

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

The act's branding rules may be its greatest innovation. Few states currently brand the title of vessels, with the result that vessels with hidden hull damage are often salvaged and resold after cosmetic repairs without disclosure of the damage. The act creates two title brands, one that owners are required to place on the title and a second, supervening brand that insurers are required to place on the title. The act encourages compliance with its branding rules by imposing

an administrative penalty on owners who fail to comply and by having insurers who fail to comply make a warranty that the hull is merchantable.

1 **CERTIFICATE OF TITLE ACT FOR VESSELS**

2 **SECTION 1. SHORT TITLE.** This act may be cited as the Uniform Certificate of
3 Title Act for Vessels.
4

5 **SECTION 2. DEFINITIONS.**

6 (a) The following definitions apply to this [act] and do not apply to any state or federal
7 law governing licensing, numbering, or registration if the same term is used in that law.

8 (1) “Barge” means a vessel that is not self-propelled and which is not fitted for
9 propulsion by sail, paddle, oar, or the like.

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

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

13 (4) “Certificate of origin” means a record created by a manufacturer or importer
14 as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a
15 manufacturer’s certificate or statement of origin, or an importer’s certificate or statement of
16 origin.

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

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

1 (7) “Documented vessel” means a vessel covered by a certificate of
2 documentation issued pursuant to 46 U.S.C. Section 12105[, as amended]. The term does not
3 include a foreign-documented vessel.

4 (8) “Electronic” means relating to technology having electrical, digital, magnetic,
5 wireless, optical, electromagnetic, or similar capabilities.

6 (9) “Electronic certificate of title” means a certificate of title consisting of
7 information that is stored solely in an electronic medium and is retrievable in perceivable form.

8 (10) “Foreign-documented vessel” means a vessel the ownership of which is
9 recorded in a registry maintained by a nation other than the United States for the purpose of
10 identifying the persons that have an ownership interest in vessels and in which each vessel is
11 identified by a unique alphanumeric designation.

12 (11) “Good faith” means honesty in fact and observance of reasonable
13 commercial standards of fair dealing.

14 (12) “Hull-damaged” means the integrity of a vessel’s hull has been compromised
15 by a collision, allision, lightning strike, fire, explosion, running aground, or the like. The term
16 includes the sinking of a vessel in a manner that creates a significant risk that the integrity of the
17 vessel’s hull has been compromised.

18 (13) “Hull identification number” means the number assigned to a vessel
19 pursuant to 33 C.F.R. Part 181[, as amended].

20 (14) “Lien creditor” means:

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

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

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

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

4 (15) “Office” means [insert name of the department or agency that creates
5 certificates of title in enacting state].

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

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

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

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

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

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

18 (22) “Secured party” means:

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

21 (B) a person that is a consignor under [UCC Article 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 [UCC Section
4 2-401, 2-505, 2-711(3), or 2A-508(5)].

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

8 (24) “Security interest” means an interest in a vessel which secures payment or
9 performance of an obligation if the interest is created by contract or arises under [UCC Section
10 2-401, 2-505, 2-711(3) or 2A-508(5)]. The term includes any interest of a consignor in a vessel
11 in a transaction that is subject to [UCC Article 9]. The term does not include the special property
12 interest of a buyer of a vessel on identification of that vessel to a contract for sale under [UCC
13 Section 2-401], but a buyer may acquire a security interest by complying with [Uniform
14 Commercial Code Article 9]. Except as otherwise provided in [UCC Section 2-505], the right of
15 a seller or lessor of a vessel under [UCC Article 2 or 2A] to retain or acquire possession of the
16 vessel is not a security interest, but a seller or lessor may also acquire a security interest by
17 complying with [UCC Article 9]. The retention or reservation of title by a seller of a vessel
18 notwithstanding shipment or delivery to the buyer under [UCC Section 2-401] is limited in effect
19 to a reservation of a security interest. Whether a transaction in the form of a lease creates a
20 security interest is determined by [UCC Section 1-203].

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

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

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

3 (26) “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 (27) “State of principal use” means the state on whose waters a vessel is used or
7 to be used most during a calendar year. For this purpose, “use” means operate, navigate, or
8 employ.

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

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

14 (30) “Vessel” includes any watercraft used or capable of being used as a means of
15 transportation on water, except:

16 (A) a seaplane;

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

19 (C) watercraft less than 16 feet in length and propelled solely by sail,
20 paddles, oars, or an engine of less than 10 horsepower;

1 (D) watercraft that operates only on a permanently fixed, manufactured
2 course and the movement of which is restricted to or guided by means of a mechanical device to
3 which the watercraft is attached or by which the watercraft is controlled;

4 (E) a stationary floating structure that:

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

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

9 (iii) has a permanent, continuous hookup to a shoreside sewage
10 system.

11 (F) Watercraft owned by the United States, a state, or a foreign
12 government, or a political subdivision of any of them; and

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

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

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

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

18 (2) “Buyer in ordinary course of business”, [UCC Section 1-201(b)(9)].

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

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

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

22 (6) “Knowledge”, [UCC Section 1-202].

- 1 (7) “Lease”, [UCC Section 2A-103(a)(j)].
- 2 (8) “Lessor”, [UCC Section 2A-103(a)(p)].
- 3 (9) “Representative”, [UCC Section 1-201(b)(33)].
- 4 (10) “Sale”, [UCC Section 2-106(1)].
- 5 (11) “Security agreement”, [UCC Section 9-102(a)(73)].
- 6 (12) “Seller”, [UCC Section 2-103(1)(o)].
- 7 (13) “Send”, [UCC Section 1-201(b)(36)].
- 8 (14) “Value”, [UCC Section 1-204].

9 *[Legislative Note: The definition of “documented vessel” in paragraph (a)(8) includes a*
10 *reference to 46 U.S.C. Section 12105, “as amended.” The definition of “hull identification*
11 *number” in paragraph (a)(14) includes a reference to 33 C.F.R. Part 181, “as amended.” The*
12 *quoted language in each instance is intended to cover any future amendments to the definition,*
13 *made by statute or by regulation. That language appears in brackets because in some states this*
14 *may be an unconstitutional delegation of state legislative power. Such states should not enact*
15 *the bracketed language. In its place, they may wish to expressly delegate to the office the power*
16 *to enact regulations that conform the definition to whatever the federal term means.]*
17

18 **Reporter’s Note**

19 The statement in subsection (a) that the definitions that follow “do not apply to any state
20 or federal law governing licensing, numbering, or registration if the same term is used in that
21 law” is included at the insistence of the U.S. Coast Guard. It is intended to make clear that the
22 definitions used here do not apply to other laws relating to vessels. This is due, in part, to the
23 fact that the definition of “vessel” in paragraph (a)(30) differs from the definition in 33 C.F.R.
24 § 187.7, one of the regulations relating to the Vessel Identification System. Accordingly, the
25 limiting language in subsection (a) is intended to make it clear that the definition of “vessel” in
26 this Section applies solely to this act, and is not relevant to a state’s participation in the VIS.
27

28 Paragraph (a)(4) is derived from 33 C.F.R. § 187.7 but does not include a builder’s
29 certificate as a type of certificate of origin. See Reporter’s Note to Section 6.
30

31 Paragraph (a)(6) is more broad than the comparable definition in 33 C.F.R. § 187.7. That
32 is because there should be no need for the dealer to be engaged in the business of buying vessels
33 or to have an established place of business. A shipyard or other manufacturer can qualify as a
34 dealer.
35

1 Paragraph (a)(11) incorporates the definition of “good faith” in revised Article 1 of the
2 Uniform Commercial Code. Because not all states have enacted revised Article 1, and some of
3 those that have enacted it chose not to adopt the revised definition of “good faith,” paragraph
4 (a)(13) defines the term “good faith” in the manner intended, rather than simply using a cross-
5 reference. The term “good faith” appears only in Sections 9(e) and 23(b)(1).
6

7 Paragraphs (a)(16), (18), (22) and (24) are derived from UCOTA Section 2(a)(18), (20),
8 (24), and (26), respectively. Each differs from the comparable definition in 33 C.F.R § 187.7.
9

10 Paragraph (a)(27) comes from 33 C.F.R. § 173.3(h) and (i), the regulations on vessel
11 numbering. Because a state’s certificate of title act must apply to vessels numbered by the state,
12 *see* 33 C.F.R. § 187.304, this act must defer to the numbering regulations to determine which
13 state will title a vessel.
14

15 Subparagraph (A) of paragraph (a)(30) is derived from most state vessel titling statutes as
16 well as 33 C.F.R. § 187.7. Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099.
17 The purpose of both subparagraphs is the same: to exclude from the scope of this act vessels that
18 are covered by some other titling law, such as the Federal Aviation Act or a state’s motor vehicle
19 certificate of title act.
20

21 Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft
22 for which a certificate of title is required. Several states do not title watercraft less than a
23 designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft.
24 And some do not title non-motor-powered watercraft of less than a designated length. This act
25 follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in
26 length are covered and all vessels propelled by an engine of at least 10 horsepower are covered.
27 Only those vessels that are both less than 16 feet in length and not mechanically powered by an
28 engine of at least 10 horsepower are excluded from coverage under this act by virtue of
29 subparagraph (C).
30

31 Subparagraphs (D) and (E) are derived from Cal. Vehicle Code § 9873. Subparagraph
32 (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry
33 attached to a cable because, even with the cable, the ferry does not operate on a manufactured
34 course. Subparagraph (E) excludes non-powered floating residences that are fixed to the shore.
35 Most such residences would fail to satisfy the initial language in the definition, in that they are
36 not “used or capable of being used as a means of transportation on water.” Nevertheless, to
37 avoid any confusion they are expressly excluded.
38

39 Subparagraph (F) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of
40 title act do not apply to government-owned and operated vessels. By referring to vessels “owned
41 by a state,” subparagraph (F) covers, and therefore excludes from the definition of “vessels,”
42 vessels owned by a federally recognized Native American tribe. *See* Section 2(a)(29).
43

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

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

4 **Comment**

5
6 1. The definition for “barge” in paragraph (a)(1) facilitates an exemption from this act.
7 *See* Section 5(b)(3). Under federal law, barges (non-powered vessels) of 100 tons or less are not
8 required to be documented. They also are exempted from the numbering rules. *See* 46 U.S.C.
9 § 12301. *See also* 33 C.F.R. §§ 173.11, 173.13, 174.11. More important, many existing barges
10 are quite old and records of prior transfers may be difficult to locate or resurrect. For this reason,
11 an owner of a barge is not required to obtain a certificate of title for it.
12

13 A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this
14 might include such things as sail boats and row boats, which are intended to be covered by this
15 act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or
16 fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted
17 from compliance with this act under Section 5(b)(3).
18

19 2. The definition of “hull-damaged” in paragraph (a)(12) deals with the obligation of an
20 owner or insurer to brand the title. *See* Section 9(a), (d). Paragraph (a)(12) does not exhaustively
21 list the types of casualties that can compromise the integrity of a vessel’s hull; it merely describes
22 some of the events that can do so. A qualifying casualty need not be an event of nature;
23 vandalism and terrorism can compromise the integrity of a vessel’s hull. However, damage
24 resulting from routine operation is not something that makes a vessel hull damaged. Similarly,
25 “the sinking of a vessel in a manner that creates a significant risk that the integrity of the vessel’s
26 hull has been compromised” is not something that occurs merely because the vessel is swamped
27 during its normal operation. The distinction between “sinking” and “swamping” is a matter of
28 buoyancy. A vessel sinks when it loses sufficient buoyancy to settle below the surface of the
29 water. A vessel is swamped when it is filled with water but retains sufficient buoyancy to remain
30 on or at the surface.
31

32 Once a vessel is hull-damaged, it remains hull-damaged for branding purposes even
33 though it is repaired. Thus, for example, if a vessel is sunk in a manner that creates a significant
34 risk that the integrity of the vessel’s hull has been compromised, the vessel remains damaged
35 even after it is raised and repaired. As a result, the brands “hull-damaged” and “insurer-sold” are
36 indelible. A branded vessel remains branded forever. *See* Section 6 comment 3.
37

38 3. Paragraph (a)(15) defines “office” to be the office that creates certificates of title for
39 vessels. The office need not be the same authority in the state that issues numbers for vessels
40 pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.
41

42 4. Paragraph (a)(29) should be read in conjunction with paragraph(a)(16). Only an
43 owner has an ownership interest, and thus an ownership interest refers to the legal title of an

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

5
6 5. Pursuant to paragraph (a)(30), unless some exclusion applies, vessels of at least 16 feet
7 in length are covered by this act and all vessels propelled by an engine of at least 10 horsepower
8 are covered. Only those vessels that are both less than 16 feet in length and not mechanically
9 powered by an engine of at least 10 horsepower are excluded from coverage under this act by
10 virtue of subparagraph (C). For this purpose, it does not matter whether the engine is inboard or
11 outboard.

12
13 6. Vessels are defined to consist solely of certain types of watercraft. Accordingly,
14 nothing in this act deals with fishing licenses or other intangible rights or property appurtenant to
15 a vessel. *See* Section 14 comment 6.
16

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

19 **Comment**
20

21 1. This section is consistent with UCC Section 1-103(b). In addition, like the UCC, this
22 act should be liberally construed and applied to promote its underlying purposes and policies,
23 which are:
24

- 25 (1) to simplify, clarify, and modernize the law governing certificates of title;
26
27 (2) to permit the continued expansion of commercial practices through custom, usage,
28 and agreement of the parties; and
29
30 (3) to make uniform the law among the various jurisdictions.
31

32 This act should be construed in accordance with its underlying purposes and policies.
33 The text of each section should be read in the light of the purpose and policy of the rule or
34 principle in question, as well as with the act as a whole, and the application of the language
35 should be construed narrowly or broadly, as the case may be, in conformity with the purposes and
36 policies involved.
37

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

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

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

Comment

Source: UCC Section 9-303.

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

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

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

3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a security interest in non-inventory collateral covered by a certificate of title statute is through compliance with the certificate of title act. *See* UCC Section 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9's choice of law rules. Under those rules, the law of the

1 jurisdiction which created the certificate (or for which an application had been filed) is the law
2 that governs, even if neither the debtor nor the goods are located there. *See* UCC Section 9-303.
3 That law continues to control even if the debtor or the goods move, until the certificate expires
4 by its own terms or a new certificate of title is applied for in a different state. *Id.*

5
6 These rules should work well with this act, which provides that the governing law is the
7 law of the jurisdiction of principal use.

8
9 **Example 2:** Owner, who is not a dealer and who has granted a security interest in a
10 vessel, applies in State A for a certificate of title for the vessel. Upon delivering that application
11 to the titling office, the law of State A governs perfection and the effective of perfection,
12 regardless of whether the debtor is located in State A. If the application includes the required
13 information about the existing security interest, the security interest will be perfected.

14
15 **Example 3:** Same facts as Example 2 but State B later becomes the state of principal
16 use. The law of State B requires the debtor to apply for a certificate of title from State B. If the
17 debtor does not do so, then the law of State A will continue to govern the perfection of the
18 security interest. As long as the law of State A does not invalidate its certificate of title when the
19 principal use of the vessel changed to State B, the security interest will remain perfected.

20
21 4. Nothing in this section defers to the law of a foreign country. Thus, if a vessel titled in
22 this state becomes a foreign-documented vessel, the law of this state continues to govern. This is
23 true even though the office is required to and does cancel the certificate of title. *See* Section 7
24 comment.

25
26 **Example 4:** Owner, who is not a dealer and who has granted a security interest in a
27 vessel, applies in State A for a certificate of title for the vessel. The application includes the
28 required information about the existing security interest, with the result that the security interest
29 thereby becomes perfected. The vessel subsequently becomes a foreign-documented vessel. The
30 law of State A continues to govern, even if the office cancels the certificate of title. As a result,
31 the security interest remains perfected.

32 33 **SECTION 5. CERTIFICATE OF TITLE REQUIRED.**

34 (a) Except as otherwise provided in subsections (b) and (c), the owner of a vessel for
35 which this state is the state of principal use shall deliver to the office an application for a
36 certificate of title for the vessel, together with the applicable fee, not later than 20 days after the
37 later of:

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

1 (2) the date this state becomes the state of principal use of the vessel.

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

3 (1) a documented vessel;

4 (2) a foreign documented vessel;

5 (3) a barge;

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

7 or

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

9 (c) The [issuing authority in this State] may not issue, transfer, or renew a certificate of
10 number for a vessel issued pursuant to the requirements 46 U.S.C. Section 12301[, as amended,]
11 unless the office has created a certificate of title for the vessel or an application for a certificate of
12 title for the vessel and the applicable fee have been delivered to the office.

13
14 *[Legislative Notes: The reference in subsection (c) to 46 U.S.C. Section 12301, "as amended" is*
15 *intended to cover any future amendments to that provision that Congress may enact. That*
16 *language appears in brackets because in some states this may be an unconstitutional delegation*
17 *of state legislative power. Such states should not enact the bracketed language. In its place,*
18 *they may wish to expressly delegate to the office the power to enact regulations that conform this*
19 *rule to whatever changes Congress may make to the vessel numbering rules.*

20
21 *This act deals only with titling; it does not cover registration or licensing. States that have a*
22 *registration or licensing statute for vessels may wish to consider amending that statute to*
23 *condition registration or licensing on compliance with Section 5 of this act.]*
24

25 **Reporter's Note**

26
27 Sources: Ill. Comp. Stat. ¶ 45/3A-1; NASBLA Model Act for Vessel Titling Sections 3,
28 4, 6.
29

30 Paragraph (b)(3) responds to the concern that many old barges are not federally
31 documented and the records necessary to title them may be unavailable or costly to obtain. *See*
32 Reporter's Note to Section 2. Paragraph (b)(4) reflects the dual judgments that it is unnecessary

1 for a certificate of title to be issued for a vessel under construction, even if the vessel is in the
2 water for testing, and that requiring a certificate of title for such a vessel would undermine the
3 efficacy of common financing arrangements. *See also* Section 14(g) (regarding perfection of a
4 security interest in a vessel described in paragraph (b)(3) or (4)). Because Paragraph (b)(5)
5 exempts dealers from having to apply for a certificate of title, paragraph (b)(4) is most relevant
6 when the owner of the vessel is the buyer for whom the vessel is being constructed.

7
8 Subsection (c) accounts for the possibility that the state agency that issues numbers for
9 vessels may not be the office that creates certificates of title.

10 **Comment**

11
12
13 Paragraph 5(b)(3) provides that no application for a certificate of title is required for
14 barges or for vessels under construction. Accordingly, if no application for a certificate of title
15 for such a vessel has been delivered to the office, the perfection of a security interest in the vessel
16 is governed by UCC Article 9, not by this act. However, if an owner does apply for a certificate
17 of title for the vessel, perfection must be through compliance with this act. *See* Section 14
18 comment 1.
19

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

21 (a) Except as otherwise provided in Sections 14, 18, 19, 20, and 21, only an owner of a
22 vessel may apply for a certificate of title covering the vessel.

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

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

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

27 (3) the principal residence and, if different, the mailing address of at least one
28 owner;

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

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

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

- (A) the official number for the vessel, if any, assigned by the United States Coast Guard;
- (B) the name of the manufacturer, builder, or maker;
- (C) the model year or the year in which the manufacture or build of a vessel was completed;
- (D) the overall length of the vessel;
- (E) the vessel type;
- (F) the hull material;
- (G) the propulsion type; and
- (H) the engine drive type, if any.

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

(8) an statement that the vessel is not a documented vessel or a foreign-documented vessel;

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

(10) if the applicant knows that the vessel is hull-damaged, a statement indicating that the vessel is hull-damaged;

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

1 (12) if the vessel was previously registered or titled in another jurisdiction, a
2 statement indicating each jurisdiction known to the applicant in which the vessel was registered
3 or titled.

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

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

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

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

11 (B) is accompanied by a record that identifies the applicant as the owner
12 of the vessel; or

13 (2) if there is no certificate of title covering the vessel:

14 (A) if the vessel was a documented vessel, a record issued by the United
15 States Coast Guard which shows the vessel is no longer a documented vessel and which
16 identifies the applicant as the owner of the vessel;

17 (B) if the vessel was a foreign-documented vessel, a record issued by the
18 foreign country which shows the vessel is no longer a foreign-documented vessel and which
19 identifies the applicant as the owner of the vessel; or

20 (C) in all other cases, a certificate of origin, bill of sale, or other record
21 that to the satisfaction of the office identifies the applicant as the owner of the vessel.

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

3 (f) The office may require that an application for a certificate of title be accompanied by
4 payment or evidence of payment of all taxes and fees payable by the applicant under the law of
5 this state in connection with the application or with the acquisition or use of the vessel.

6 7 **Reporter's Note**

8
9 Paragraph (b)(8) has been revised to require that the applicant for a certificate of title
10 affirm that the vessel is not documented under the laws of a foreign country. *Cf.* 46 U.S.C.
11 § 12103(a)(3) (imposing a like requirement for documented vessels).
12

13 Subsection (a) does not include an exception for an application by an insurer pursuant
14 Section 9(d) because the insurer acts either as owner or as the agent of the insured owner when
15 filing such an application.
16

17 **Comment**

18
19 Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.103, 187.317.
20

21 1. Not all of the information submitted will appear on the certificate of title. For
22 example, the principal residence of an owner and each owner's social security number or
23 taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear
24 on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 8.
25

26 2. Paragraph (b)(5) implicitly requires that a hull identification number be issued for the
27 vessel if the vessel does not already have one, as an imported antique might not. If the state
28 agency that issues hull identification numbers is not the titling office, the applicant may, if the
29 titling office permits, submit to the titling office a copy of the application for a hull identification
30 number and evidence that the application has been submitted to the applicable state agency.
31

32 3. If the applicant knows that the vessel is hull-damaged, paragraph (b)(10) requires the
33 applicant to disclose the fact in the application. For this purpose, once a vessel is hull-damaged,
34 it remains hull-damaged even though it is repaired. *See* Section 2 comment 2.
35

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

1

2 **SECTION 7. CREATION AND CANCELLATION OF CERTIFICATE OF**
3 **TITLE.**

4 (a) Unless an application for a certificate of title is rejected under subsection (c), the
5 office shall create a certificate of title for the vessel in accordance with subsection (b) not later
6 than 20 days after delivery to it of an application that complies with Section 6.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The office shall provide an opportunity for a hearing at which the applicant and any other interested party may present evidence in support of or opposition to the cancellation. The office shall serve notice of the opportunity for a hearing to the applicant and to all owners and secured parties indicated in the files of the office. If not later than 30 days after the notice was sent, the office receives a request for a hearing from the applicant or any other interested party, the office shall hold the hearing not later than 20 days after receiving the request.]

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

Reporter’s Note

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

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

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

3
4 Subsection (e) includes a provision allowing the office to cancel a certificate of title for a
5 vessel that becomes federally documented.

6
7 Some states have laws that require the applicable office to cancel a motor vehicle
8 certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or
9 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws
10 apply to vessels but in any event this Section does not permit cancellation for any of these
11 reasons. Cancelling the vessel's registration (*i.e.* license to use) for such failures would seem far
12 more appropriate than cancelling its certificate of title. Moreover, nothing in federal regulations
13 authorizes cancellation for any of these reasons, and therefore authorizing cancellation for any of
14 the reasons in this act might jeopardize the goal of having this act approved pursuant to 33 C.F.R.
15 part 187, so that a security interest perfected pursuant to this act would qualify as a "preferred
16 mortgage" under 46 U.S.C. § 31322(d).

17
18 Pursuant to the Drafting Committee's request, subsection (f) has been modified to permit
19 service other than by personal service or U.S. Mail. The new language is derived from Model
20 State Administrative Procedure Act § O1-102(11).

21 **Comment**

22
23
24 1. Paragraph (c)(3) permits the office to reject an application if there is a reasonable basis
25 for concluding that the application is fraudulent or would facilitate a fraudulent or illegal act.
26 Such a basis may exist if, for example, the ownership disclosed and documented in the
27 application is contradicted by information obtained by the office through use of the Vessel
28 Identification System.

29
30 2. Cancellation of a certificate of title does not, by itself, change the law governing the
31 certificate or render unperfected a security interest perfected pursuant to this act. *See* Section 4
32 comment 4; Section 14 comment 3.

33 34 **SECTION 8. CONTENTS OF CERTIFICATE OF TITLE.**

35 (a) A certificate of title must contain:

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

37 (2) the name of the owner of record and, if not all owners are listed, an indication
38 that there are additional owners;

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

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

13 (c) For each title brand indicated on the certificate of title, the certificate must identify
14 the jurisdiction under whose law the title brand was created or the jurisdiction that created the
15 certificate of title on which the title brand was indicated. If the meaning of a title brand is not
16 easily ascertainable or cannot be accommodated on the certificate of title, the certificate of title
17 may state: “Previously branded in [insert the particular jurisdiction under whose law the title
18 brand was created or whose certificate of title previously indicated the title brand].”

19 (d) If the files of the office indicate that a vessel was previously registered or titled in a
20 jurisdiction other than the United States or a state, the office shall indicate on the certificate of
21 title that the vessel was registered or titled in that jurisdiction.

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

5 (f) A written certificate of title must contain a form for the owner of record to indicate, in
6 connection with a transfer of an ownership interest, that the vessel is hull-damaged.

7 **Reporter's Note**

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

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

14 **SECTION 9. TITLE BRAND.**

15 (a) Unless subsection (d) applies, at or before the time the owner of record transfers an
16 ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the
17 office, the owner shall:

18 (1) deliver to the office an application for a new certificate that includes the title
19 brand designation "Hull-Damaged"; or

20 (2) indicate on the certificate in the place designated for that purpose by the office
21 that the vessel is hull-damaged and deliver the certificate to the purchaser.

22 This subsection does not apply unless the hull damage occurred while the owner was an owner of
23 the vessel and a claim for the damage was filed with an insurer. If a secured party has possession
24 of the certificate, the secured party has a duty to facilitate the owner's compliance with this
25 paragraph unless the transfer is prohibited by the security agreement.

1 (b) Not later than 20 days after delivery to the office of the application under paragraph
2 (a)(1) or the certificate under paragraph (a)(2), the office shall create a new certificate that
3 indicates that the vessel is branded “Hull-Damaged”. The office shall deliver the new certificate
4 or a record evidencing an electronic certificate pursuant to Section 11(a).

5 (c) A person that fails to comply with or that solicits or colludes in a failure to comply
6 with subsection (a), is liable to the office for [an administrative] penalty of \$1,000.

7 (d) Before transferring an ownership interest on its own behalf or facilitating its insured’s
8 transfer of an ownership interest in a hull-damaged vessel that is covered by a certificate of title
9 created by the office, an insurer shall deliver to the office an application for a new certificate that
10 includes the title brand designation [“Insurer-Sold”] [“Hull-Damaged”]. Not later than 20 days
11 after delivery of the application to the office, the office shall create a new certificate that
12 indicates that the vessel is branded [“Insurer-Sold”] [“Hull-Damaged”]. The office shall deliver
13 the new certificate or a record evidencing an electronic certificate pursuant to Section 11(a).

14 (e) An insurer that transfers an ownership interest on its own behalf or facilitates its
15 insured’s transfer of an ownership interest in a hull-damaged warrants to a transferee that is a
16 good faith purchaser for value, and to all subsequent transferees, that the hull of the vessel is
17 merchantable within the meaning of [UCC Section 2-314] unless, at or before the purchaser
18 gives value:

19 (1) a certificate of title covering the vessel and indicating the vessel is
20 [insurer-sold] [hull-damaged] is provided to the purchaser; or

1 (2) a record signed by the insurer and conspicuously indicating that the vessel is
2 [insurer-sold] [hull-damaged] is provided to the purchaser and, within 20 days thereafter, to the
3 office in the manner prescribed by the office.

4 (f) A warranty made under subsection (e) cannot be modified or disclaimed by
5 agreement. Remedies for breach of the warranty do not include incidental or consequential
6 damages.

7 (g) An action for breach of the warranty arising under subsection (d) must be commenced
8 within [six] years after the insurer transfers or facilitates transfer of an ownership interest in the
9 vessel.

10 **Reporter's Note**

11 Source: New.

12
13 The branding rules have changed considerably in response to decisions made by the
14 Drafting Committee at its last meeting. The definition of “casualty” has been removed and
15 incorporated into the definition of “hull-damaged.” The definition of “insurer-sold” has also
16 been removed. One consequence of this is that it the Committee should consider whether to have
17 two title brands – “hull damaged” and “insured-sold” – or only one (“hull damaged”). Under the
18 current draft, the two brands mean essentially the same thing: the only difference is in who has
19 the obligation to brand. Using a single brand would be more harmonious with the current
20 language and structure of Section 6(b)(10).

21
22 Subsection (a) applies only to owners of record who had an ownership interest when the
23 hull damage occurred and who filed a claim for the damage with an insurer. The subsection is
24 therefore very unlikely to apply to a secured party conducting a disposition. Subsection (c),
25 however, applies to any person that “solicits or colludes in a failure to comply with subsection
26 (a),” and thus might conceivably apply to a secured party conducting a disposition if the secured
27 party conducted the disposition in collusion with the owner of record to avoid compliance with
28 subsection (a).

30 **Comment**

31
32 1. Subsection (a) imposes a duty to brand the title of a hull-damaged vessel only on the
33 owner of record. Other owners do not have such a duty. Subsection (a) is therefore unlikely to
34 apply to a dealer because a dealer typically will not have title transferred into the dealer's name

1 for the relatively short period that the dealer owns the vessel. Cf. Section 5(b)(5) (exempting
2 dealers from having to apply for a certificate of title). Subsection (a) is also unlikely to apply to a
3 secured party. In contrast, subsection (c) applies to any person that “solicits or colludes in a
4 failure to comply with subsection (a),” and thus might conceivably apply to dealer or secured
5 party acting in collusion with the owner of record to avoid compliance with subsection (a).
6

7 2. Subsection (d) places an obligation directly on an insurer, even when the insured is
8 transferring an ownership interest in the vessel on behalf of the insured. Accordingly, an insurer
9 who makes the warranty under subsection (e) does so in its own capacity, not as agent for or
10 representative of the insured.
11

12 3. A warranty made under this section is a statutory warranty, not an implied warranty.
13 Even though the nature and scope of a warranty made under subsection (c) is co-extensive with
14 the implied warranty of merchantability that arises under UCC Section 2-314, subsection (e)
15 makes clear that a warranty made under this section cannot be disclaimed through compliance
16 with UCC Section 2-316, Section 9-610(e), or otherwise. For the same reason, other conditions
17 to the creation of an implied warranty of merchantability under Article 2 are immaterial to the
18 existence of a warranty under this section. An insurer makes a warranty under this section
19 regardless of whether the insurer is a merchant with respect to vessels of that kind or even a
20 merchant at all.
21

22 4. Remedies for breach of the statutory warranty created by this Section are determined
23 pursuant to UCC Article 2. For this reason, remedies for breach of the warranty created by this
24 Section can be limited pursuant to UCC Section 2-719 or liquidated pursuant to UCC Section
25 2-718, subject to the restrictions therein on limitation and liquidation. However, because an
26 insurer who breaches the statutory warranty is not liable for incidental or consequential damages,
27 there is likely to be little need to limit or liquidate damages. In most cases, the aggrieved
28 purchaser will be entitled only to market damages under Section 2-714.
29

30 A warranty created under this Section extends to the initial purchaser, if that person is a
31 good faith purchaser for value, and to remote all purchasers. However, regardless of who brings
32 the warranty claim, the six-year limitations period begins to run when the initial purchaser
33 receives the vessel. That should be long enough for the hull damage to manifest itself and for the
34 injured person to bring a claim therefor.
35

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

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

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

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

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

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

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

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

(d) The office shall upon request provide to the federal government or to a state for safety, security or law enforcement purposes the information in its files relating to any vessel for which the office has issued a certificate of title.

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

Reporter's Note

Source: UCOTA Section 14.

Subsection (d) is new and was added at the request of the U.S. Coast Guard.

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

5
6 Federal regulations provide that a state must “retain the evidence used to establish the
7 accuracy of the information required for vessel titling purposes and make it available on request
8 to the Coast Guard, participating States, and law enforcement authorities.” 33 C.F.R. § 187.331.
9 This section, along with Section 6(e), requires the office to comply with this regulation.

10
11 The duties imposed by this Section are in addition to those imposed by Section 6(e).
12

13 **SECTION 11. ACTIONS REQUIRED UPON CREATION OF CERTIFICATE OF**
14 **TITLE.**

15 (a) On creation of a written certificate of title, the office shall send promptly the
16 certificate to the secured party of record or, if there is none, to the owner of record, at the address
17 indicated for that person in the files of the office. On creation of an electronic certificate of title,
18 the office shall send promptly a record evidencing the certificate of title to the owner of record
19 and, if there is one, to the secured party of record, at the address indicated for that person in the
20 files of the office. The office may send a record evidencing an electronic certificate of title to a
21 mailing address or, if indicated in the files of the office, an electronic address.

22 (b) If the office creates a written certificate of title for a vessel, any electronic certificate
23 of title for the vessel is cancelled and replaced by the written certificate. The office shall
24 maintain in the files of the office an indication of the date and time of cancellation.

25 (c) Before the office creates an electronic certificate of title for a vessel, any written
26 certificate for the vessel must be surrendered to the office. If the office creates an electronic
27 certificate of title for a vessel, the office shall destroy or otherwise cancel the existing written
28 certificate for the vessel which has been surrendered to the office and maintain in the files of the

1 office an indication of the date and time of destruction or other cancellation. If a written
2 certificate of title being cancelled is not destroyed, the office shall indicate on the face of the
3 written certificate of title that the written certificate of title has been cancelled.

4 **Reporter's Note**

5 Source: UCOTA Section 15.
6

7 **SECTION 12. EFFECT OF CERTIFICATE OF TITLE.**

8 A certificate of title is prima facie evidence of the accuracy of the information in the
9 record that constitutes the certificate of title.

10 **Comment**

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

12 This section does not make a certificate of title conclusive evidence of the ownership of a
13 vessel. Instead, this section makes a certificate of title merely prima facie evidence of ownership.
14 In litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is
15 sufficient to prove ownership of a vessel unless someone comes forward with admissible
16 evidence to the contrary. A certificate of title shifts both the burden of production and the burden
17 of persuasion to anyone challenging the information on a written certificate or the information
18 constituting an electronic certificate of title.
19

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

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

1 **Reporter's Note**

2 Source: UCOTA Section 12.
3

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

5 (a) Except as otherwise provided in this section or in Section (27), a security interest in a
6 vessel may be perfected only by delivery to the office of an application for a certificate of title
7 that identifies the secured party and otherwise complies with Section 6. The security interest is
8 perfected on the later of delivery to the office of the application and any applicable fee or
9 attachment of the security interest under [UCC Section 9-203].

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

15 (c) If the office has created a certificate of title for a vessel, a security interest in the
16 vessel may be perfected by delivery to the office of an application, on any form the office may
17 require, to have the security interest added to the certificate of title. The application must be
18 signed by an owner of the vessel or by the secured party and must include:

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

1 (d) A security interest perfected under subsection (c) is perfected on the later of delivery
2 to the office of the application and all applicable fees or attachment of the security interest under
3 [UCC Section 9-203].

4 (e) On delivery of an application that complies with subsection (c) and payment of all
5 fees, the office shall create a new certificate of title pursuant to Section 7 and deliver the new
6 certificate or a record evidencing an electronic certificate pursuant to Section 11(a). The office
7 shall maintain in the files of the office the date and time of delivery of the application to the
8 office.

9 (f) 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 as secured party is not required in order
11 to continue the perfected status of the security interest against creditors of and transferees from
12 the original debtor. However, a purchaser of a vessel subject to a security interest which obtains
13 a release from the secured party indicated in the files of the office or on the certificate of title
14 takes free of the security interest and of the rights of a transferee if the transfer is not indicated
15 either in the files of the office or on the certificate of title.

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

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

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

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

(h) If a certificate of documentation for a vessel is deleted or cancelled, a security interest in the vessel which immediately prior to deletion or cancellation was valid against third parties as a result of compliance with 46 U.S.C. Section 31321 remains perfected until the earlier of four months after cancellation of the certificate of documentation or the time the security interest becomes perfected under this [act].

(i) A security interest in a vessel arising under [UCC Sections 2-401, 2-505, 2-711(3) or 2A-508(5)] is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before such time the security interest is perfected pursuant to subsection (a) or (c).

(j) A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in [UCC Section 9-315].

(k) A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in [UCC Section 9-316(d)].

Comment

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

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

2. Subsection (d) provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee. This rule operates in conjunction with UCC Section 9-311(b),

1 which provides that compliance with this act is the equivalent of filing a financing statement.
2 Collectively, they allow for a security interest to attain priority under such rules as Section
3 9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the security agreement
4 is authenticated and a financing statement is filed), Section 9-317(e) (giving a perfected
5 purchase-money security interest priority over a judicial lien if a financing statement is filed
6 within 20 days of when the debtor receives possession), and Section 9-324(a) (giving a perfected
7 purchase-money security interest priority over a conflicting security interest if a financing
8 statement is filed to perfect the purchase-money security interest within 20 days of when the
9 debtor received possession).

10
11 3. Because a security interest in a vessel covered by a certificate of title issued by the
12 office is perfected upon delivery to the office of an application for a certificate of title that
13 identifies a security interest, together with payment of the applicable fee, cancellation of the
14 certificate does not affect perfection under this act.

15
16 4. Subsection (h) provides a temporary period of automatic perfection for a security
17 interest in a vessel coming out of federal documentation. The purpose of this subsection is to
18 facilitate the decision by the owner of and creditors with a security interest in a vessel to
19 surrender the certificate of documentation and apply for a certificate of title. Without at least a
20 temporary period of perfection, secured parties might risk being unperfected for the interval
21 between surrender of the certificate of documentation and delivery to the titling office of an
22 application for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for
23 perfection of a security interest in a documented vessel to continue – indefinitely – upon
24 surrender of the document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be
25 unnecessary. However, it remains unclear whether federal law truly does provide for continuous
26 and indefinite perfection of what, in that situation, would be a secret lien. In the event it does
27 not, subsection (h) provides a temporary period of perfection.

28
29 Subsection (h) provides a temporary period of automatic perfection for a security interest
30 in a vessel coming out of federal documentation only if this state's law governs perfection of the
31 security interest. *See* UCC Section 9-301.

32
33 5. Subsection (j) permits a security interest in a vessel to be perfected pursuant to UCC
34 Section 9-315. Under UCC Section 9-315(a)(2), a security interest attaches to a vessel that is
35 identifiable proceeds of other collateral. Pursuant to subsections (c) and (d) of UCC Section
36 9-315, if the security interest in the original collateral was perfected, the security interest in the
37 vessel will also be perfected. However, in most cases, such perfection will lapse after 20 days
38 unless before then the security interest is perfected pursuant Section 14(a) of this act. That is
39 because, unless Section 14(g) applies, a security interest in a vessel cannot be perfected by filing
40 a financing statement. *Cf.* UCC Section 9-315(d).

41
42 6. Nothing in this act deals with whether a security interest in a vessel also attaches to
43 fishing licenses or other rights or property appurtenant to the vessel. Similarly, nothing in this

1 act deals with perfection of a security interest in fishing licenses or other rights or property
2 appurtenant to a vessel. *See* Section 2 comment 6.
3

4 **SECTION 15. TERMINATION STATEMENT.**

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

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

11 (2) 20 days after the secured party receives a signed demand from an owner and
12 there is no obligation secured by the vessel subject to the security interest and no commitment to
13 make an advance, incur an obligation, or otherwise give value secured by the vessel.

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

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

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

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

8 **Reporter's Note**

9
10 Source: UCOTA Section 27; UCC Section 2-715(2).

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

24 **Comment**

25
26
27 Subsection (c) requires the office, upon delivery of a termination statement, to create a
28 new certificate of title if the security interest to which the termination statement applies was
29 indicated on the existing certificate of title. This will be the situation whenever the secured party
30 was the secured party of record. It will also be the case if the security interest was otherwise
31 listed on the certificate of title or the certificate indicated the existence of other unlisted security
32 interests and the termination statement relates to the only unlisted security interest. *See* Section
33 8(a)(6). In creating a new certificate of title, the office shall comply with section 7(a) with
34 respect to timing and with Section 7(b) in determining whether to create a written certificate of
35 title or an electronic certificate of title.
36

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

7 **SECTION 16. TRANSFER OF OWNERSHIP.**

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

10 (1) If the certificate is a written certificate of title and the transferor's interest is
11 noted on the certificate, the transferor promptly shall sign the certificate and deliver it to the
12 transferee. If the transferor does not have possession of the certificate, the person in possession
13 of the certificate has a duty to facilitate the transferor's compliance with this paragraph. A
14 secured party does not have a duty to facilitate the transferor's compliance with this paragraph to
15 the extent the transfer is prohibited by the security agreement.

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

19 (3) The transferee has a right enforceable by specific performance to require the
20 transferor comply with paragraph (1) or (2).

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

23 (c) A transfer of ownership of a vessel is not rendered ineffective between the parties
24 merely by a failure to comply with subsection (a) or by a failure to apply for a new certificate of
25 title. However, except as otherwise provided in Section 17, 18, 22(a), or 23, a transfer of

ownership without compliance with subsection (a) is not effective against another person claiming an interest in the vessel.

(d) After compliance with subsection (a), a transferor will not have any liability as owner of the vessel for any event occurring after the transfer even if the transferee fails to apply for a new certificate of title reflecting the transfer.

Reporter's Note

Source: UCOTA Section 16.

Comment

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

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

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

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

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

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

6
7 5. Subsection (d) deals with any rule of law that assesses damages or imposes a fee or
8 penalty on an owner of a vessel solely because of the person's ownership interest. Thus, for
9 example, if applicable law makes the owner of a vessel liable for property taxes, environmental
10 contamination caused by the vessel, or for damages caused when the vessel escapes its mooring,
11 an owner who complies with subsection (a) will not be liable for any such taxes assessed,
12 contamination occurring, or damages caused after that compliance.
13

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

15 Except as provided in [UCC Section 9-337], for the purposes of this [act], a certificate of
16 title or other record required or authorized by this [act] is effective even if it contains incorrect
17 information or does not contain required information.

18 **Comment**

19
20 Sources: UCOTA Section 20, UCC Sections 9-338, 9-506.

21
22 1. This section states the general rule that a certificate of title remains effective even if it
23 contains errors or omissions. As a result, the certificate remains *prima facie* evidence of the
24 information in record that constitutes the certificate of title. *See* Section 12.

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

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

34
35 2. Because this section applies not only to a certificate of title, but also to any "other
36 record required or authorized by this act," the section applies to an application for a certificate of
37 title. This rule must be read in conjunction with Section 14(d), which provides that a security
38 interest in a vessel is perfected upon delivery to the office of an application for a certificate of
39 title that identifies a security interest, together with payment of the applicable fee, and UCC

1 Section 9-311(b), which provides that compliance with this act is the equivalent of filing a
2 financing statement. Thus, delivery to the office of an application for a certificate of title that
3 identifies a security interest, together with payment of the applicable fee, even if the application
4 contains an error or omission, constitutes compliance with this act and is the equivalent of filing
5 a financing statement.
6

7 Collectively, these rules ensure that a security interest noted in an application for a
8 certificate of title delivered to the office pursuant to Section 6 or 14 is perfected despite any error
9 in the *certificate*. To determine whether the security interest is perfected if the *application* has an
10 error or omission, one must refer to the rules of Article 9 regarding the efficacy of financing
11 statements. *See* UCC Sections 9-506, 9-516, 9-520.
12

13 For example, a filed financing statement is effective to perfect even if it contains a minor
14 error that is not seriously misleading. *See* UCC Section 9-506. For this purpose, a failure to
15 describe some collateral would be seriously misleading as to omitted collateral. An error in the
16 debtor's name on a financing statement could also be seriously misleading because searches are
17 based on the debtor's name and an error in that name may cause the filed financing statement not
18 to be disclosed. However, an error in the secured party's name or address cannot be seriously
19 misleading. Section 9-506 cmt. 2.
20

21 The same rule applies under this act. Thus, an error in the secured party's name or
22 address imposes no burden on someone seeking to identify who has an ownership interest or
23 security in a titled vessel. As a result, such an error does not render the security interest
24 unperfected. *See In re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name
25 for secured parties on certificates of title was not seriously misleading and did not render security
26 interests unperfected).
27

28 **Example 3:** Secured Party's name is misspelled in the application for a certificate of title
29 delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of
30 title. The security interest is perfected.
31

32 However, application of the seriously misleading standard in UCC Section 9-506 to
33 applications for a certificate of title must take into account the different manner in which
34 searches for perfected security interests are conducted. In particular, whereas searches for
35 financing statements are based on the debtor's name, searches relating to vessels covered by a
36 certificate of title are ordinarily based on the hull identification number. *See* Section 24(d).
37 Accordingly, whereas an error in a debtor's name on a filed financing statement may prevent the
38 financing statement from being disclosed in response to a proper search request, an error in the
39 name of the owner of record is unlikely to prevent a searcher from discovering the existence of a
40 perfected security interest in a vessel covered by a certificate of title. *See In re Laursen*, 391
41 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor's first name on certificate of title for
42 vehicle did not render security interest unperfected because certificates of title are indexed by
43 vehicle identification number, not by name).
44

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

5 Even an error in the description of the vessel will not render a security interest
6 unperfected. Although search requests can be processed using the hull identification number, *see*
7 Section 24(d), 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 The same method of analysis applies to applications that the office rejects. If rejection
15 was authorized under Section 6, then a security interest noted in the application will not be
16 perfected by delivery of the application to the office. *See* UCC Section 9-516(b). If, however,
17 rejection was not authorized under Section 6, then delivery of the application, together with
18 payment of the applicable fee, will perfect a security interest identified in the application. *See*
19 UCC Section 9-516(a), (c). The priority of that security interest may, however, be affected by the
20 office's rejection of the application. *See* Section 23(a); UCC Section 9-516(c). Similarly, errors
21 in the application might affect the priority of a security interest. *See* UCC Sections 9-338,
22 9-520(c).
23

24 3. This section makes UCC Section 9-337 applicable to certificates of title created under
25 this act. Thus, if the office creates a certificate of title that fails to indicate a security interest that
26 was identified in the application for the certificate, a buyer or secured party who relies on the
27 clean certificate may take free or obtain priority.
28

29 **Example 5:** Lender's security interest is identified in the application for a certificate of
30 title delivered to the office. The office creates a certificate of title that fails to indicate Lender's
31 security interest. Lender's security interest is perfected. *See* Section 14. However, a buyer,
32 other than buyer in the business of selling goods of that kind, who gives value and receives
33 delivery of the vessel without knowledge of Lender's security interest takes free of the security
34 interest. Similarly, a security interest perfected after creation of the certificate of title and
35 without knowledge of Lender's security has priority over Lender's security interest.
36

37 **Example 6:** Owner delivers to the office an application for a certificate of title for a
38 vessel. The application identifies Lender as a secured party but misstates the hull identification
39 number for the vessel. Lender's security interest is perfected. Owner later offers to sell the
40 vessel to Buyer. Buyer requests a search using the vessel's correct hull identification number.
41 The office responds that it has no record relating to that hull identification number. Buyer
42 insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner
43 delivers to the office a new application for a certificate of title. The new application does not
44 disclose Lender's security interest. Office issues a certificate of title for the vessel that does not

1 indicate Lender's security interest. Lender's security interest remains perfected. However, Buyer
2 may take free of Lender's security interest pursuant to UCC Section 9-337(1).
3

4 **SECTION 18. TRANSFER OF OWNERSHIP BY SECURED PARTY'S**
5 **TRANSFER STATEMENT.**

6 (a) In this section, "secured party's transfer statement" with respect to a vessel means a
7 record signed by the secured party of record stating:

8 (1) that there has been a default on an obligation secured by the vessel;

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

11 (3) that, by reason of the exercise, the secured party of record has the right to
12 transfer the ownership interest of an owner, and the name of the owner;

13 (4) the name and last known mailing address of the owner of record and the
14 secured party of record;

15 (5) the name of the transferee;

16 (6) other information required by Section 6(b); and

17 (7) that:

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

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

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

1 (b) Unless the office rejects a secured party's transfer statement for a reason set forth in
2 Section 7(c), not later than 20 days after delivery to the office of the transfer statement and
3 payment of all applicable taxes and fees, the office shall:

4 (1) accept the statement;

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

6 (3) if the name of the owner whose ownership interest is being transferred is
7 indicated on the certificate of title:

8 (A) cancel the certificate, even if the certificate of title has not been
9 delivered to the office;

10 (B) create a new certificate indicating as owner the name of the transferee;
11 and

12 (C) deliver the new certificate or a record evidencing an electronic
13 certificate pursuant to Section 11(a).

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

17
18 **Comment**
19

20 Source: UCOTA Section 21.
21

22 A secured party could be "the transferee" within the meaning of paragraph (a)(5) if the
23 secured party either purchases the vessel at a disposition pursuant to UCC Section 9-610 or
24 accepts the vessel in full or partial satisfaction of the debt pursuant to UCC Section 9-620.
25

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

2 (a) In this section:

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

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

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

9 (C) through other legal process.

10 (2) “Transfer-by-law statement” means a record signed by a transferee stating that
11 by operation of law the transferee has acquired or has the right to acquire an ownership interest in
12 a vessel and containing:

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

15 (B) documentation sufficient to establish the transferee’s ownership
16 interest or right to acquire the ownership interest;

17 (C) a statement that:

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

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

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

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

5 (b) Unless the office rejects a transfer-by-law statement for a reason set forth in Section
6 7(c), not later than 20 days after delivery to the office of the a transfer-by-law statement,
7 including documentation satisfactory to the office as to the transferee's ownership interest or
8 right to acquire the ownership interest, and payment of all applicable taxes and fees, the office
9 shall:

10 (1) accept the statement;

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

12 (3) if the name of the owner whose ownership interest is being transferred is
13 indicated on the certificate of title:

14 (A) cancel the certificate, even if the certificate of title has not been
15 delivered to the office;

16 (B) create a new certificate indicating as owner the name of the transferee;

17 (C) indicate on the new certificate any security interest indicated on the
18 canceled certificate, unless a court order provides otherwise; and

19 (D) deliver the new certificate or a record evidencing an electronic
20 certificate pursuant to Section 11(a).

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

1 **Comment**

2
3 Source: UCOTA Section 22.

4
5 Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted
6 pursuant to judicial order. It includes a sale following governmental seizure of a vessel.
7

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

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

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

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

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

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

1 (b) The office may indicate in a certificate of title created under subsection (a) that the
2 certificate was created without submission of a signed certificate of title or termination statement.
3 Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security
4 interest, lien, or other claim to an interest in the vessel has been delivered to the office not later
5 than one year after creation of the certificate of title, on request in a form and manner specified
6 by the office, the office shall remove the indication from the certificate of title.

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

15 [(d) Unless the office receives a claim for indemnity not later than one year after creation
16 of the new certificate of title under subsection (a), on request in a form and manner specified by
17 the office, the office shall release any bond, indemnity, or other security.]

18 **Reporter's Note**

19
20 Source: UCOTA Section 33.

21
22 Subsections (c) and (d) are optional.
23

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

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

7 (b) An applicant for a replacement certificate must sign the application, and, except as
8 otherwise permitted by the office, the application must comply with Section 6. The application
9 must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or
10 otherwise unavailable.

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

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

16 **Reporter's Note**

17
18 Source: UCOTA Section 24.

19
20 **Comment**

21
22 When creating a replacement certificate of title, the office must comply with subsection
23 (d) regardless of whether it creates a written certificate of title or an electronic certificate of title.
24 No matter the format, the replacement certificate of title must be designated on its face as a
25 replacement.
26

SECTION 22. RIGHTS OF A PURCHASER OTHER THAN A SECURED PARTY.

(a) A buyer in ordinary course of business has the protections afforded by [UCC Sections 2-403(2) and 9-320(a)] even if no existing certificate of title was signed and delivered to the buyer or no new certificate of title listing the buyer as owner of record was created.

(b) Except as otherwise provided in Sections 16 and 23, the rights of a purchaser of a vessel, other than a buyer in ordinary course of business , and of a lien creditor are governed by [the UCC].

Comment

1. Subsection (a) is a specific application of the general rule principle stated in subsection (b) and is designed to overrule the line of cases ruling that the buyer must obtain or apply for a new certificate of title identifying the buyer as the owner.

2. Subsection (b) incorporates the provisions of UCC Section 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value” is defined in UCC 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* UCC Section 2-403(1). Before Owner takes any action, Scoundrel sells the vessel for value to Buyer, who applies for a new certificate of title. If Buyer purchased the vessel in good faith, Buyer acquires good title to the vessel.

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

However, in some circumstances, 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)(11) to include observance of reasonable commercial standards of fair dealing. While it may be customary for a buyer in ordinary course of business – that is, a person buying from a dealer – to buy a vessel without seeing or obtaining the existing certificate of title, this is not customary for a purchase from a non-dealer. Thus a buyer who buys a vessel outside the

1 ordinary course of business and without execution of the certificate of title may not be observing
2 reasonable commercial standards of fair dealing and may not qualify as a good faith purchaser.
3

4 **Example 2:** Same facts as Example 1, except that through inadvertence no application is
5 delivered to the office for a certificate of title indicating Buyer's ownership of the vessel.
6 Buyer's failure to have a new certificate of title created means that Buyer may lose ownership of
7 the vessel to a subsequent transferee from Scoundrel. *See* Section 16(c). However, Buyer's
8 failure to have a new certificate of title created does not suggest a lack of fair dealing toward
9 Owner, and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.
10

11 **Example 3:** Same facts as Example 2, except that Buyer suspects that Scoundrel may
12 have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an
13 effort to make it more difficult for any prior owner to identify Buyer and Buyer's interest in the
14 vessel. Buyer does not qualify as a good faith purchaser and therefore does obtain good title to
15 the vessel under UCC Section 2-403(1).
16

17 5. Subsection (a) applies the "entrustment" rule of UCC Section 2-403(2) to vessels,
18 even if no application to have the buyer's interest noted on the certificate of title is ever delivered
19 with the office.
20

21 **Example 4:** Owner, whose interest in a vessel is indicated on the certificate of title,
22 brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling
23 vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary
24 course of business. Buyer acquires Owner's rights to the vessel. This result follows even though
25 Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title,
26 and no application for a new certificate of title is delivered to the office.
27

28 **Example 5:** Same facts as Example 4, except that subsequently Owner purports to sell
29 the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title
30 and delivers it to Purchaser. Even though there was no compliance with Section 16(a) in
31 connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to
32 the vessel. *See* Section 16(c), which is made expressly subject to Section 22(a). The result
33 would be the same if Owner purported to grant Purchaser a security interest in the vessel.
34

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

36 (a) Subject to subsection (b), the effect of perfection and nonperfection of a security
37 interest and the priority of a perfected or unperfected security interest with respect to the rights of
38 purchasers and creditors, including lien creditors, is governed by [the UCC].

1 (b) If, while a security interest in a vessel is perfected by any method under this [Act], the
2 office creates a certificate of title that does not indicate that the vessel is subject to the security
3 interest or contain a statement that it may be subject to security interests not indicated on the
4 certificate of title:

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

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

11 **Reporter's Note**

12
13
14 Source: Loosely on UCOTA Section 19.

15 **Comment**

16
17
18 Because perfection of a security interest in a vessel held as inventory for sale or lease by a
19 person engaged in the business of selling goods of that kind is not governed by this Act, *see*
20 Section 14(g)(1), subsection (b) of this Section has no application to such a security interest.
21 Therefore, if a security interest in a vessel is perfected by filing and the office creates a certificate
22 of title that neither indicates the security interest nor notes that the vessel may be subject to
23 security interests not so noted, a buyer of the vessel cannot take free of the security interest under
24 this Section. If such a buyer qualifies as a buyer in ordinary course of business, the buyer will
25 take free of the security interest under Section 22(a) and U.C.C. Section 9-320(a). If the buyer
26 does not qualify as buyer in ordinary course of business, say perhaps because the buyer acquired
27 the vessel in total or partial satisfaction of a preexisting money debt, the buyer will take subject
28 to the perfected security interest. *See* U.C.C. Section 9-201(a).
29

1 **SECTION 24. DUTIES AND OPERATION OF OFFICE.**

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

5 (b) The office shall retain in its files all information regarding a security interest in a
6 vessel, including any termination statement received by the office under Section 15, until at least
7 10 years after the office receives a termination statement regarding the security interest. The
8 information must be accessible by the hull identification number for the vessel and any other
9 indexing methods provided by the office.

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

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

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

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

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

1 (2) with respect to the vessel:

2 (A) the name and address of any owner as indicated in the files of the
3 office or on the certificate of title;

4 (B) the name and address of any secured party as indicated in the files of
5 the office or on the certificate of title, and the effective date of the information; and

6 (C) any termination statement indicated in the files of the office and the
7 effective date of the termination statement; and

8 (3) with respect to the vessel, a copy of any certificate of origin, secured party
9 transfer statement, transfer-by-law statement, and other evidence of previous or current transfers
10 or ownership.

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

14 *[Legislative Note: the bracketed terms in subsection (e) should be replaced with the terms*
15 *appropriate to the enacting jurisdiction.]*
16

17 **Reporter's Note**

18
19 Source: UCOTA Section 28.
20

21 **Comment**

22
23 Subsection (a) requires the office to maintain the evidence used to establish certain
24 information but does not dictate how the office must maintain that evidence. Therefore the office
25 may, if permissible under applicable law and its own rules and regulations, maintain the evidence
26 in electronic or digitized form.
27

28 Except as provided in subsection (a) or (b), the office should retain information about
29 previous owners of a vessel or information on a previous certificate of title for a vessel pursuant
30 to the state's records retention law of the office's record retention policy.
31

An existing or new owner of a vessel covered by a certificate of title may wish to have the vessel become a documented vessel. To accomplish this, the owner will need a certified copy of the a certificate of origin or other documents previously submitted to the office with an application for a certificate of title. Subsection (e) facilitates this by requiring the office to provide those documents in a form that the owner needs. *Cf.* Section 6(e) (requiring the office to maintain either the original or the image of documents submitted with an application for a certificate of title).

SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Reporter's Note

Source: ULC Drafting Rule 601.

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

Reporter's Note

Source: ULC Drafting Rule 603.

1 **SECTION 27. SAVINGS CLAUSE.**

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

5 (b) With respect to a vessel, a transaction, certificate of title, or record that was validly
6 entered into or created before [the effective date of this act] and would be subject to this [act] if it
7 had been entered into or created on or after [the effective date of this act], and the rights, duties,
8 and interests flowing from the transaction, certificate of title, or record, remain valid on and after
9 the [effective date of this act].

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

12 (d) Except as otherwise provided in subsection (e), a security interest that is enforceable
13 immediately before [the effective date of this act] and would have priority over the rights of a
14 person that becomes a lien creditor at that time is a perfected security interest under this [act].

15 (e) A security interest perfected immediately before [the effective date of this act]
16 remains perfected for the earlier of:

17 (1) the time perfection would have ceased under the law under which the security
18 interest was perfected; or

19 (2) three years after the [effective date of this act].

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

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

Reporter's Note

Sources: ULC Drafting Rule 603; UCOTA Section 31.

Subsection (e) is new. It limits the duration of perfection for security interests perfected by possession or filing. The effect of subsections (d) and (e) is summarized by the following chart.

Effect on Security Interest in Vessel For Which State Enacting UCOTA-V Is the State of Principal Use

		Effect on Security Interest of Enactment
Governing Law Was Law of State Enacting UCOTA-V	Had a COT law that applied	None. If perfected under old law, remains perfected. If unperfected under old law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under old law (presumably by filing or possession), remains perfected until earlier of [three] years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	
Governing Law Was Law of State Different from State Enacting UCOTA-V	Had a COT law that applied	None immediately. If perfected under other state's COT law, remains perfected until perfection would have ceased. If unperfected under other state's law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under other state's law (presumably by filing or possession), remains perfected until earlier of [three] years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	

The analysis of perfection must begin with U.C.C. § 9-303. If a COT covering the collateral has been issued or applied for, the law of that jurisdiction governs. U.C.C. § 9-303(b), (c). We then go to that jurisdiction's U.C.C. § 9-311. Its version U.C.C. of § 9-311(a)(2) will tell us that perfection is governed by the COT statute.

1 If no application has been filed or COT issued, then the law where the debtor is located
2 governs (or the law where the collateral is located if a security interest is perfected by
3 possession). We then go to that jurisdiction's U.C.C. § 9-311. If that jurisdiction has a COT
4 statute that applies, then U.C.C. § 9-311(a)(2) will require compliance with that COT statute. If
5 the vessel is subject to the certificate of title statute in another jurisdiction, then U.C.C.
6 § 9-311(a)(3) will require compliance with that other jurisdiction's COT statute. *Compare*
7 U.C.C. § 9-311(a) (referring to property "subject to" a certificate-of-title statute) *with* U.C.C.
8 § 9-303(a)-(c) (indicating that the governing law is the law of the jurisdiction issuing a certificate
9 of title that "cover[s]" the goods).

10
11 Through this multi-step process, the choice-of-law rules in Article 9 always point to the
12 law of the same jurisdiction.

13
14 **Scenario 1: Perfected by filing in State A (where debtor is located). Now governed**
15 **by UCOTA-V in State A.** Under law of State A, the security interest remains perfected until the
16 earlier of [three] years after effective date of State A's UVOTA or when perfection would have
17 ceased under the law of State A. As long as the secured interest remains perfected under the law
18 of State A, whether due to an initial financing statement, a proper continuation statement, or
19 possession, the secured party will have [three] years to have the security interest noted on a
20 certificate of title issued by State A. This is true even if, during that time, the owner applies for a
21 certificate of title under this act and fails to list the security interest in the application. As a
22 result, the secured party has, in general, [three] years to make sure that its interest is noted on the
23 certificate of title in order to maintain perfection. Of course, if during this time, a certificate of
24 title is issued that fails to identify the security interest, a purchaser may take priority over or take
25 free of the security interest pursuant to U.C.C. § 9-337.

26
27 **Scenario 2: Perfected by filing in State A (where debtor is located). Now governed**
28 **by UCOTA-V in State B.** Once an application for a COT is applied for in State B, State B's law
29 governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 27, the security
30 interest remains perfected until the earlier of [three] years after effective date of State B's
31 UVOTA or when perfection would have ceased under the law of State A. As long as the secured
32 interest remains perfected under the law of State A, whether due to an initial financing statement,
33 a proper continuation statement, or possession, the secured party will have [three] years to have
34 the security interest noted on a certificate of title issued by State B. This is true even if the
35 application for a certificate of title in State B and fails to list the security interest in the
36 application. However, a purchaser may benefit from U.C.C. § 9-337.

37
38 If no application for a certificate of title is applied for in State B, then the law of State A
39 continues to govern. State A's U.C.C. § 9-311(a)(3) will now look to State B. Because of the
40 operation of Section 27 of State B's UCOTA-V, perfection will continue until the earlier of
41 [three] years after the effective date of State B's UVOTA or when perfection would have ceased
42 under the law of State A. As long as the secured interest remains perfected under the law of
43 State A, whether due to an initial financing statement, a proper continuation statement, or

possession, the secured party will have [three] years to have the security interest noted on a certificate of title issued by State B.

Scenario 3: Perfected by compliance with certificate of title statute in State A. Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 27, the security interest remains perfected until the earlier of [three] years after effective date of State B's UVOTA or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, the secured party will have [three] years to have the security interest noted on a certificate of title issued by State B. However, because State A's certificate of title statute will no longer govern, perfection will have lapsed under the law of State A, and thus the secured party has no grace period for perfection. If the security interest is noted on the application for the certificate of title filed in State B, which is likely if it was noted on the surrendered State A certificate, the security interest will be perfected under Section 14. If the security interest is not noted on the application filed in or certificate issued by State B, the security interest will be unperfected.

If no application for a certificate of title is applied for in State B, then pursuant to U.C.C. § 9-303 the law of State A continues to govern. State A's U.C.C. § 9-311(a)(2) will continue to look to the certificate of title law of State A. Consequently, the security interest remains perfected as long as State A's certificate of title law continues to apply.

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

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

[add legislative note]

Reporter's Note

Source: UCOTA Section 32.

SECTION 29. EFFECTIVE DATE. this [act] takes effect

Reporter's Note

Source: ULC Drafting Rule 604. No uniform effective date is necessary.