

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31301(1), (2)	New
31301(3)	46:911(5)
31301(4)	Derived from 46:971-974
31301(5)	46:953(a)
31301(6)(A)	46:922(b)
31301(6)(B)	46:951 (2d par. less proviso)

Section 31301(1) defines the term “acknowledge”. This paragraph makes a substantive change to law to expand the current law by allowing a notarization under State law, a form prescribed by the Secretary, as well as a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

Section 31301(2) defines “district court”. This paragraph makes a substantive change to law by including the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Northern Mariana Islands, the High Court of American Samoa, and other Federal territorial courts as they are established. Under current law, only the district courts of the United States have jurisdiction under the Ship Mortgage Act, 1920.

Section 31301(3) defines “mortgagee” as a person to whom property is mortgaged and the trustee authorized under section 31328 that is designated in the trust agreement.

Section 31301(4) defines “necessaries” to include repairs, supplies, towage, and the use of a drydock and marine railway for a vessel. As in all codifications, the term “includes” means “includes but is not limited to” and, therefore, is not intended to be an exclusive listing of those items that a court has determined or may determine as falling within the meaning of the term “other necessities” as contained in current law. The definition is new, is based on 46 App. U.S.C. 971-974, and makes no substantive change to law.

Section 31301(5) defines “preferred maritime lien” to mean a lien on a vessel that arises before a preferred mortgage was filed under section 31321 of this title for damages arising out of maritime tort, stevedore wages, crew wages, general average, and salvage. The definition is new and is based on 46 App. U.S.C. 953(a). The only substantive change to law made by this paragraph is to change the effective date from the day the preferred mortgage is recorded and endorsed to when it is filed. This change is in keeping with other changes with regard to filing. The term “duly and validly” that is in existing law is not used because it is unnecessary. An instrument that is not “duly and validly” executed is not executed under the laws of the foreign country. This makes no substantive change to law.

Section 31301(6)(A) defines “preferred mortgage” to mean a mortgage that meets the requirements of section 31322. This clause makes no substantive change to law.

Section 31301(6)(B) defines “preferred mortgage” to also mean a mortgage on a documented foreign vessel that is preferred under sections 31325 and 31326 for purposes of enforcement of the outstanding mortgage indebtedness. Preference is only granted if the mortgage is executed under the laws of a foreign country, registered under those laws in a public register at the port of registry or at a central office. The use of the word “established” in place of “created” in the current law or “effective” as used in the treaties is not intended to make any substantive change to law. The only substantive changes to law made by this clause are the elimination of the exemption of foreign vessels of less than 200 gross tons, and clarification of the rule of interpretation that if a vessel is registered in one country, but is permitted to fly temporarily the flag of another country (such as through a demise charter), it is the law of the country in which the ownership of the vessel is documented that is used to determine when a mortgage attains preferred status.

EFFECTIVE DATE

Pub. L. 100-710, title I, §107, Nov. 23, 1988, 102 Stat. 4752, provided that:

“(a) This title [see Tables for classification] and amendments made by this title take effect on January 1, 1989. However, sections 31321 and 31322 of title 46 (as enacted by section 102 of this Act), United States Code (as sections 31321 and 32322 [probably should be 31322] apply to vessels for which an application for documentation has been filed), take effect on January 1, 1990.

“(b) An instrument filed before January 1, 1989, but not recorded before that date, is deemed to comply with section 31321 of title 46, United States Code, if it is in substantial compliance with the provisions in that section that had corresponding requirements under the law on December 31, 1988. However, the mortgage may not become a preferred mortgage until the vessel is documented.

“(c) This title and the amendments made by this title do not affect the validity of any instrument filed or recorded before January 1, 1989, if there was a corresponding requirement under the law on December 31, 1988.

“(d) An instrument filed or recorded before January 1, 1989, is deemed to comply with any new requirement under chapter 313 of title 46, United States Code (as enacted by section 102 of this Act), affecting the validity of that instrument.

“(e) Section 102 of this Act and amendments made by that section [enacting former section 30101 and sections 31301 to 31309, 31321 to 31330, and 31341 to 31343 of this title and provisions set out as a note preceding section 2101 of this title] do not affect any civil action filed before January 1, 1989.

“(f) Section 104(b) of this Act and the amendments made by section 104(b) of this Act [amending section 808 of the former Appendix to this title] do not apply to any change in control resulting from, or which may at any time result from, any proposed plan of reorganization filed under the United States bankruptcy laws prior to the date of enactment of this Act [Nov. 23, 1988], except that transactions undertaken as a result of such a plan shall continue to be governed by section 9 of the Shipping Act, 1916 ([former] 46 App. U.S.C. 808) [see 46 U.S.C. 56101, 57109], as it existed prior to the date of enactment of this Act, to the extent that such section 9 would have governed such transactions.”

§ 31302. Availability of instruments, copies, and information

The Secretary of Transportation shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31302(1)	46:927 (1st sentence)
31302(2)	46:927 (2d sentence)
31302(3)	New

Section 31302(1) makes all instruments filed for recording or recorded with the Secretary of Transportation available for public inspection. The only substantive change to law made by this subsection is the inclusion of instruments filed for recording, which is in keeping with the new requirements on filing of instruments made in section 31321.

Section 31302(2) requires the Secretary to provide the public with a certified copy of the material made available to the public under subsection (a). This subsection makes no substantive change to law.

Section 31302(3) requires the Secretary, on request, to issue a certificate containing the information included in instruments on file, such as certificates of ownership.

§ 31303. Certain civil actions not authorized

If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31303	46:954(b)

Section 31303 makes it clear that, if a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem in admiralty to enforce rights against the additional property. This section makes no substantive change to law.

§ 31304. Liability for noncompliance

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31304	46:941(c)

Section 31304 imposes liability on the mortgagor if the mortgagor, master, or other individual in charge of the vessel does not comply with the statutory requirements. A civil action may be brought in a district court of the United States for losses incurred. If the plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff. This section makes two substantive changes to law. First, is the broadening of its coverage from documented vessels covered by a preferred mortgage to any vessel covered by a mortgage that is filed or recorded under the chapter. The second substantive change repeals the liability on the United States Government for losses caused because the Secretary did not comply with statutory requirements. This is covered by the Federal Tort Claims Act due to the non-discretionary responsibility of the Secretary.

§ 31305. Waiver of lien rights

This chapter does not prevent a mortgagee or other lien holder from waiving or subordinating at any time by agreement or otherwise the lien

holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31305	46:974

Section 31305 provides for the waiver of lien rights by the mortgagee or a person performing or supplying necessities. This section makes no substantive change to law and is included only because of a like provision in current law. Without this provision the Committee believes these waivers would be permissible as a matter of law as they do not violate any public policy and on their face reflect an arms length transaction between the parties. The inclusion of this provision should not raise the implication that a similar provision is required for other matters that may be waivable as a matter of law.

HOUSE FLOOR STATEMENT

Section 31305 has been changed to clarify that the chapter does not prevent a mortgagee or other lien holder from waiving by contract the right to a lien, or the priority of that lien.

§ 31306. Declaration of citizenship

(a) Except as provided by the Secretary of Transportation, when an instrument transferring an interest in a vessel is presented to the Secretary for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 56102 or 56103 of this title.

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101-225, title III, §303(1), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 109-304, §15(27), Oct. 6, 2006, 120 Stat. 1704.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31306	46:838

Section 31306(a) requires that a person submitting an instrument transferring interest in a vessel to the Secretary for recording is also to file a declaration stating information about citizenship and other information to show that the transfer is not in violation of section 9 of the Shipping Act, or section 37 of that Act in a national emergency. This section makes no substantive change to law.

Section 31306(b) requires that a declaration filed by a corporation must be signed by the president, secretary, treasurer, or other official authorized by the corpora-