HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
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 corporation to execute the declaration. This section makes no substantive change to law.

Section 31306(c) invalidates any instrument transferring an interest until the declaration is filed. This section makes no substantive change to law.

Section 31306(d) provides for a criminal penalty for a violation of this section. The amount of the fine is prescribed under title 18, United States Code, and may include imprisonment for not more than 5 years, or both. This section makes no substantive change to law.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–281 struck out ''of Transportation'' after ''provided by the Secretary''.

2006—Subsec. (a). Pub. L. 109–304 substituted ''section 56102 or 56103 of this title'' for ''section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)''.

1989—Subsec. (a). Pub. L. 101–225, § 303(1)(A), substituted ''Except as provided by the Secretary of Transportation, when'' for ''When'' and ''Secretary for filing'' for ''Secretary of Transportation for filing''.

Subsec. (c). Pub. L. 101–225, § 303(1)(B), substituted ''Except as provided by the Secretary, an'' for ''An''.

§ 31307. State statutes superseded

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

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

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31307	46:975

Section 31307 provides for preemption of State laws to the extent a claim for necessaries is enforced by a civil action *in rem* in admiralty against the vessel.

§ 31308. Secretary of Commerce or Transportation as mortgagee

The Secretary of Commerce or Transportation, as a mortgagee under this chapter, may foreclose on a lien arising from a right established under a mortgage under chapter 537 of this title, subject to section 362(b) of title 11.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–595, title VI, § 603(13), Nov. 16, 1990, 104 Stat. 2993; Pub. L. 109–304, § 15(28), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111–281, title IX, § 913(b), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31308	46:952 (last sentence)

Section 31308 allows the Secretary of Commerce or Transportation to foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936. This section makes no substantive change to law.

AMENDMENTS

2010—Pub. L. 111–281 substituted ''The Secretary of Commerce or Transportation, as a mortgagee under this chapter,'' for ''When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary''.

2006—Pub. L. 109–304 substituted ''chapter 537 of this title'' for ''title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.)''.

1990—Pub. L. 101–595 substituted ''(46 App. U.S.C. 1271 et seq.)'' for ''(46 App. U.S.C. 1241 et seq.)''.

§ 31309. General civil penalty

Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.

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

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31309	New

Section 31309 provides for a civil penalty of not more than $10,000 for a violation of this chapter or a regulation prescribed under this chapter.

SUBCHAPTER II—COMMERCIAL INSTRUMENTS

§ 31321. Filing, recording, and discharge

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary to be valid, to the extent the vessel is involved, against any person except—

(A) the grantor, mortgagor, or assignor;

(B) the heir or devisee of the grantor, mortgagor, or assignor; and

(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

(Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–225, title III, §303(2), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title III, §305, Oct. 19, 1996, 110 Stat. 3918; Pub. L. 107–295, title IV, §420, Nov. 25, 2002, 116 Stat. 2124; Pub. L. 111–281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31321(a)(1)	46:921(a)
31321(a)(2)	46:1012
31321(a)(3)	New
31321(b)	46:926(a), (b)
31321(c), (d)	New
31321(e)	46:921(b)
31321(f)	46:925(b)
31321(g)	New
31321(h)	46:925(b)

Section 31321(a)(1) provides for the filing of a bill of sale, conveyance, mortgage, assignment, or related instrument of a vessel. This subsection makes substantive changes to law. The bill would allow a bill of sale, conveyance, mortgage, assignment, or related instrument to be filed at the same time an application for documentation under chapter 121 is filed. The Committee intends that the types of related instruments required to be filed be defined by regulations prescribed by the Secretary of Transportation. A major change the bill makes is that the instrument needs only be filed with the Secretary of Transportation to be valid. It is not necessary that it be recorded. This change is being made to eliminate a problem under existing law that prevents a person from recording an instrument when the vessel has not been yet documented. When filed with the Secretary, it is valid (to the extent the vessel is involved) against any person except the grantor, mortgagor, or assignor, their heirs or devisees, and a person having actual notice of that instrument. Clauses (A)–(C) make no substantive change to law.

Paragraph (2) provides that each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with the requirements of this section is valid against any person from the time it is filed with the Secretary.

Paragraph (3) provides that it is the responsibility of the parties to an instrument to use diligence to ensure that the particulars of a filed instrument for which they are responsible are in substantial compliance. It is not the responsibility of the Secretary to validate the information in the instrument. If an instrument is later found to be invalid because it is not in substantial compliance, and the parties lose the benefits of a preferred mortgage, it is their fault, not the Secretary's.

Section 31321(b) sets out the requirements that an instrument must meet to be properly filed. To be filed the instruments must: (1) identify the vessel; (2) state the name and address of each party to the instrument; (3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees; (4) state the interest of the grantor, mortgagor, or assignor; (5) state the interest sold, conveyed, mortgaged, or assigned; and (6) be signed and acknowledged. While most of these items are required under current law to be included in the index, and therefore required to be submitted to the Secretary to be recorded, this subsection makes a number of substantive changes to law. First, while vessel names are currently required to be submitted, this requirement has been broadened so that hull identification numbers and official numbers can be used to more specifically identify a vessel (since many vessels have the same name). Second, it requires the mortgage to state the maximum amount of the obligation, including principal, interest, fees, etc., that are secured by the mortgage. It also clarifies that the mortgage obligation may be payable in more than one unit of account, such as yen, franc, or

special drawing right. Third, it recognizes that under some modern financing practices an instrument may not have a date of maturity. The requirement for supplying the date of maturity has been eliminated.

Section 31321(c) provides that if an instrument filed involves a vessel that has not yet been documented, and the Secretary decides that the vessel cannot be documented by the applicant, then the Secretary shall send notice of that denial to the parties, including the reasons for the Secretary's decision. If the parties have not corrected the deficiencies within 90 days, the Secretary may terminate the filing and return the instruments. This invalidates the instruments.

Section 31321(d) prohibits a person from withdrawing an application for documentation of a vessel for which a mortgage has been filed unless the mortgagee consents. Since the withdrawal will invalidate the mortgage, the mortgagee should be allowed to prohibit the withdrawal.

Section 31321(e) makes a substantive change to law. It requires the Secretary to record instruments in the order they are received for filing, not in the order in which they were received for recording. It also makes a substantive change by eliminating the specific indexes required under the law and substituting a general requirement for the Secretary to maintain indexes of instruments filed or recorded, or both, for use by the public. These indexes, prescribed by regulations, must be in keeping with U.S. obligations under treaties to which the United States is a party. Since section 104 [105] of this Act makes the existing rules and regulations applicable under this subsection, the current indexing system will be maintained that includes the names of the vessels; names of the parties to the instruments; time and date each instrument was received; the interest in the vessel that was sold, conveyed, mortgaged, or assigned; and the date of the maturity of the mortgage, if any. However, it allows the Secretary by regulation to automate the system with computers, as long as the new system provides the public with an adequate method of finding and examining these public records.

Section 31321(f) makes a substantive change to law by eliminating the requirement that a partial discharge of indebtedness be filed with the Secretary. The bill requires that on the full and final discharge of indebtedness the mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness. This subsection also makes a substantive change by requiring that the mortgagee, not the mortgagor, provide the certificate of discharge. The Secretary shall then record the certificate. However, this does not prohibit a person from submitting a certificate of discharge under subsection (a) since it is a related instrument. This subsection also makes a substantive change to law by eliminating the requirement that the discharge be endorsed on the vessel's certificate of documentation, and that the Customs Service only may clear a vessel after an endorsement has been made. This change is made because of the elimination of endorsements under section 31322.

HOUSE FLOOR STATEMENT

Section 31321 has been changed to clarify that a mortgage, whenever made, must be filed to be valid against third parties. This clarification allows mortgage closings to occur previous to filing of an instrument, and to eliminate the need for a fictional simultaneous closing and filing.

Subsection (g) clarifies that if an application for documentation is filed for a vessel covered by a preferred mortgage under section 31322(d) (as enacted by this Act), the preferred mortgage must be filed with the Secretary at the same time the application for documentation is filed to be valid against third parties. If the preferred mortgage is filed with the Secretary at the time the documentation application is filed, it is valid from the time it became a preferred mortgage under section 31322(d).

When a State preferred mortgage under section 31322(d) is finally discharged, subsection (h) of this section requires the mortgagee to provide upon request to the Secretary or a State, whichever is more appropriate, an acknowledged certificate of discharge of indebtedness. This is necessary when a vessel in the system moves from a participating titling State and is not retitled in another participating State. In this case, there is no way to update the status of the indebtedness through the original titling State. The Secretary is required to accept this information to be maintained in the vessel identification system under section 12503(c) of title 46 (as enacted by this Act).

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–281 struck out ''of Transportation'' after ''Secretary'' in introductory provisions.

2002—Subsec. (a)(4) Pub. L. 107–295 struck out subpar. (A) designation before ''A bill of sale'' and subpar. (B) which read as follows: ''A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing unless the original instrument is provided to the Secretary within that 10-day period.''

1996—Subsec. (a). Pub. L. 104–324 added par. (4).

1989—Subsec. (c). Pub. L. 101–225 substituted ''for which an application for documentation is filed'' for ''that has not yet been documented'' in introductory provisions and ''interested party to'' for ''party whose name and address is stated on'' in par. (1).

EFFECTIVE DATE

Section effective Jan. 1, 1989, not to affect any civil action filed before that date, and, insofar as applicable to vessels for which an application for documentation has been filed, effective Jan. 1, 1990, with further provision for an instrument filed before Jan. 1, 1989, but not recorded before that date, and with other qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 31301 of this title.

§ 31322. Preferred mortgages

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title;

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

(A) a person eligible to own a vessel with a fishery endorsement under section 12113(c) of this title;

(B) a state[1] or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(C) a farm credit lender established under title 12, chapter 23 of the United States Code;

(D) a commercial fishing and agriculture bank established pursuant to State law;

(E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel for purposes of documentation under section 12103 of this title; or

[1] So in original. Probably should be capitalized.