from the vessel identification system under chapter 125 of title 46 (as enacted by this Act).

AMENDMENTS

2006—Subsec. (a)(4)(A). Pub. L. 109–304, § 15(29)(A), substituted ''section 12113(c)'' for ''section 12102(c)''.

Subsec. (a)(4)(E). Pub. L. 109–304, § 15(29)(B), substituted ''for purposes of documentation under section 12103'' for ''under section 12102(a)''.

Subsec. (d)(1)(A). Pub. L. 109–304, § 16(c)(7), substituted ''section 13107(b)(8)'' for ''section 13106(b)(8)''.

Subsec. (f)(2). Pub. L. 109–304, § 15(29)(C), substituted ''section 12113(c)'' for ''section 12102(c)''.

2001—Subsec. (a)(4)(B) to (F). Pub. L. 107–20, § 2202(b), added subpars. (B) to (F) and struck out former subpars. (B) and (C) which read as follows:

''(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b));

''(C) a person that complies with the provisions of section 12102(c)(4) of this title.''

Subsecs. (f) to (h). Pub. L. 107–20, § 2202(c), added subsecs. (f) to (h).

1999—Subsec. (a)(4). Pub. L. 106–31 made technical amendment to directory language of Pub. L. 105–277, § 202(b). See 1998 Amendment note below.

1998—Subsec. (a)(4). Pub. L. 105–277, § 202(b), as amended by Pub. L. 106–31, added par. (4).

Subsec. (b). Pub. L. 105–383, § 401(c)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.''

Subsec. (d)(1). Pub. L. 105–383, § 401(c)(2), substituted ''mortgage, security agreement, or instrument'' for ''mortgage or instrument'' in introductory provisions and subpar. (B).

Subsec. (d)(2). Pub. L. 105–383, § 401(c)(4), substituted ''mortgages, security agreements, or instruments'' for ''mortgages or instruments'' in introductory provisions.

Subsec. (d)(3). Pub. L. 105–383, § 401(c)(3), added par. (3) and struck out former par. (3) which read as follows: ''A preferred mortgage under this subsection continues to be a preferred mortgage if the vessel is no longer titled in the State where the mortgage was made.''

1996—Subsec. (a). Pub. L. 104–324 amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of 2 pars. with substantially similar provisions defining a preferred mortgage except that it included a mortgage with a State, the United States Government, a federally insured depository institution, or specified individual as mortgagee.

1989—Subsec. (a)(2). Pub. L. 101–225, § 303(3)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1)(D) of this subsection does not apply to a vessel operated only as a fishing vessel, fish processing vessel, or a fish tender vessel (as defined in section 2101 of this title) or to a vessel operated only for pleasure.''

Subsec. (d)(1). Pub. L. 101–225, § 303(3)(B), substituted ''granting a security interest perfected under State law'' for ''representing financing of a vessel under State law that is made under applicable State law''.

Subsec. (e). Pub. L. 101–225, § 303(3)(C), substituted ''the status of the preferred mortgage'' for ''the validity of the preferred mortgage'' in pars. (1) and (2).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–20, title II, § 2202(d), July 24, 2001, 115 Stat. 170, provided that: ''Section 31322 of title 46, United States Code as amended in this section, and as amended by section 202(b) of the American Fisheries Act (Public Law 105–277, division C, title II) shall not take effect until April 1, 2003, nor shall the Secretary of Transportation, in determining whether a vessel owner complies with the requirements of section 12102(c) of title 46, United States Code [now 46 U.S.C. 12113(b)(2) to (d)], consider the citizenship status of a lender, in its capacity as a lender with respect to that vessel owner, until after April 1, 2003.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title II, § 203(a), Oct. 21, 1998, 112 Stat. 2681–619, provided that: ''The amendments made by section 202 [amending this section and former section 12102 of this title] shall take effect on October 1, 2001.''

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 other exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 31301 of this title.

§ 31323. Disclosing and incurring obligations before executing preferred mortgages

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(2) wages for the crew of the vessel;

(3) general average; or

(4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31323(a)	46:924(1)
31323(b)	46:924(2)
31323(c)	46:941(b) (last sentence)

Section 31323(a) requires the mortgagor to disclose any obligations on the vessel before executing a preferred mortgage. This subsection makes no substantive change to law.

Section 31323(b) provides that, after executing a preferred mortgage, the mortgagor may not incur, without consent of the mortgagee, any contractual obligations establishing a lien on the vessel—except a lien for stevedore wages, crew wages, general average, and salvage. The only substantive change to law made by this subsection is that the reasonable time to record a mortgage is changed to a reasonable time to file the mortgage, and the elimination of the reference to endorsements. These changes are in keeping with the changes made in section 31322.

Section 31323(c) provides that if a mortgagor is convicted of a violation of this section, then the mortgage indebtedness, at the option of the mortgagee, is payable immediately. This subsection makes no substantive change to law.

§ 31324. Retention and examination of mortgages of vessels covered by preferred mortgages

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31324	46:923

Section 31324(a) provides for examination of mortgages of a vessel that is covered by a preferred mortgage by persons that have business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of the mortgage. This subsection makes no substantive change to law.

Section 31324(b) requires that a certified copy of the mortgage must be on board a self-propelled vessel. This subsection makes no substantive change to law.

§ 31325. Preferred mortgage liens and enforcement

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness, if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 56101 or 56102 of this title.

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title an unexpired notice of a claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. 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 may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded an unexpired notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of