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 State statutes superseded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.

(F) a mortgage trustee under subsection (f) of this section.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13107(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument is made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee—

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12113(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a ''commercial lender'' means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of $100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a ''lender syndicate'' means an arrangement established for the combined extension of credit of not less than $20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4743; Pub. L. 101–225, title III, § 303(3), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title XI, § 1113(a), Oct. 19, 1996, 110 Stat. 3970; Pub. L. 105–277, div. C, title II, § 202(b), Oct. 21, 1998, 112 Stat. 2681–618; Pub. L. 105–383, title IV, § 401(c)(1)–(4), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 106–31, title III, § 3027(a)(1), May 21, 1999, 113 Stat. 101; Pub. L. 107–20, title II, § 2202(b), (c), July 24, 2001, 115 Stat. 168, 169; Pub. L. 109–304, §§ 15(29), 16(c)(7), Oct. 6, 2006, 120 Stat. 1704, 1706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31322(a)(1)	46:922(a), (b)
31322(a)(2)	New
31322(b)	46:926(d)
31322(c)(1)	46:922(e)
31322(c)(2)	46:922(f)
31322(d), (e)	New

Section 31322 sets out the conditions that must be met for a mortgage to be considered a preferred mortgage, and the types of endorsements that the Secretary must make on any certificate of documentation of a vessel that is to be covered by a preferred mortgage.

Subsection (a)(1) makes many substantive changes to law. While a preferred mortgage must still include the whole of a vessel, this subsection eliminates the exception of certain vessels under 25 gross tons. It allows a vessel for which an application for documentation has been filed to have a preferred mortgage. It allows a mortgage to be a preferred mortgage from the time all four conditions are met, rather than from when the vessel is finally documented. Therefore, a mortgage will usually attain its preferred status when the application for documentation and the instrument have been filed. This subsection changes the requirement that all documented vessels have as a mortgagee a person that is a citizen of the United States, as defined in section 2 of the Shipping Act, 1916, and allows a State, the United States Government, a federally insured depository institution, or any other person approved by the Secretary to be a mortgagee.

Subsection (a)(2) makes a substantive change to law exempting fishing, fish processing, and fish tender vessels, and vessels operated only for pleasure from the mortgagee restrictions, since these vessels do not have significant national defense use.

Subsection (b) permits a preferred mortgage to have any rate of interest that is agreeable to the parties to the mortgage. This subsection makes no substantive change to law.

Subsection (c)(1) applies to a mortgage that covers more than one vessel or additional property that is not a vessel. This subsection allows a preferred mortgage to include a separate discharge of the additional vessels and property.

Subsection (c)(2) applies when a preferred mortgage covers more than one vessel, does not provide for the separate discharge of a vessel, and is to be sold by court order. The amount of the mortgage indebtedness attributable to a vessel is that part of the indebtedness, increased by 20 percent, that the court determines approximates the value that the particular vessel bears to the value of all the vessels and property covered by the mortgage. In other words, the amount to be set by the court is the estimated value of the one vessel plus 20 percent of that value to assure sufficiency of collateral.

This section also makes a substantive change by eliminating the requirement that a vessel's certificate of documentation be endorsed with information from the mortgage. This change is made since most of the information is out of date when examined, and since a mortgage must be carried on self-propelled vessels under section 31324(b). This section also eliminates the requirement for the inclusion of an affidavit of good faith. However, both criminal and civil penalties have been added [in section 31330] to help ensure that there is not fraud. This section also eliminates the requirement that a preferred mortgage include a separate discharge for additional property that is not a vessel, the requirement that the mortgage does not stipulate that the mortgagee waives the mortgage's preferred status; and the requirement for clearing vessels with endorsed documents through Customs.

HOUSE FLOOR STATEMENT

Under section 31322(a)(2) a ''vessel operated only for pleasure'' is exempt from any restrictions on who can be a mortgagee. This standard is the same as used for the documentation of a recreational vessel under section 12109 of title 46. The Committee intends that vessels that have a recreational vessel license, or combined fisheries and recreational license, fall under this exemption. However, if the vessel has a Coastwise License, Great Lakes License, or Registry combined with a Recreational License, the vessel would not fall under this exemption.

Under subsection (c)(2), if a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court *in rem*, and there is not a separate discharge, then the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness, and an allocation of mortgage indebtedness for purposes of a separate discharge may not be made. This change is made to eliminate the formula that did not work and to allow the vessel to be sold free and clear, regardless of the amount of the sale.

Under subsection (d) of section 31322, a mortgage or other instrument representing financing of a vessel under State law that is made under applicable State law and covers the whole of a vessel titled in a State is deemed to be a preferred mortgage if two conditions are fulfilled. The first condition is that the Secretary must certify that the State in which the vessel is titled has a titling system that complies with the Secretary's vessel titling guidelines established under section 13106(b)(8) of title 46. Congress mandated the promulgation of these guidelines in the Recreational Boating Safety Act of 1986, Public Law 99–626. The second condition is that the State in which the vessel is titled must make information available to the Secretary for the vessel identification system established under chapter 125 of title 46 (as enacted by this Act) on the vessel covered by the mortgage or other instrument. This status only applies to vessels titled in the State after those two conditions are met. The phrase ''instrument representing financing of a vessel under State law'' is used in addition to ''mortgage'' because State laws do not always use the term mortgage when referring to financing. It is intended, however, that the financing covered by this phrase would be the same as that covered by the concept of a mortgage under other Federal law.

Paragraph (2) of subsection (d) clarifies that mortgages or other financing instruments may obtain preferred status under subsection (d) if they cover vessels titled in a State after the Secretary certifies the compliance of the State's titling system, and the State begins making vessel identification information available to the Secretary. Preferred mortgage status can only be attained when these two conditions are in effect. Mortgages or financing instruments made prior to that are not preferred and, if these two conditions cease to exist, new mortgages or forecasting instruments made after that time cannot attain preferred status.

The law of the titling State controls the making of the preferred mortgage or financing instrument under this subsection. No additional Federal recording requirements may be imposed for the mortgage or instrument to obtain preferred status under this subsection.

Paragraph (3) of this subsection ensures that a preferred mortgage under this subsection retains that status if the vessel covered by the mortgage later relinquishes its title. If the vessel is subsequently documented, the continuing validity of the mortgage is determined by section 31321(g) (as enacted by this Act).

Subsection (e) of section 31322 clarifies the validity of preferred mortgages made under subsection (d). In the case of a State titled vessel covered by a preferred mortgage for which a new titling application is filed, the validity of the mortgage is governed by the law of the titling State in which the mortgage became preferred. In the case of a documented vessel covered by a preferred mortgage for which an application for a State title is filed, or a State titled vessel covered by a preferred mortgage for which an application for documentation is filed, the validity of the preferred mortgage is governed by section 31322(a) of title 46 (as enacted by this Act).

Information on vessels with preferred mortgages made under State law will be available to creditors

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

this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4745; Pub. L. 101–225, title III, § 303(4), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title XI, § 1124(a), (b), Oct. 19, 1996, 110 Stat. 3980; Pub. L. 105–383, title IV, § 401(c)(5)–(7), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 107–295, title II, § 205(b), Nov. 25, 2002, 116 Stat. 2096; Pub. L. 109–304, § 15(30), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 110–181, div. C, title XXXV, § 3529(b)(1)(B), Jan. 28, 2008, 122 Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31325(a)	46:951 (1st sentence)
31325(b)(1)	46:951 (2d sentence)
31325(b)(2)	46:954(a)
31325(b)(3)	New
31325(c)	46:951 (3d sentence)
31325(d)	46:951 (4th to 6th sentences)
31325(e)	46:952 (1st, 2d sentences)

Section 31325 provides for the enforcement of a preferred mortgage lien.

Section 31325(a) makes a ''preferred mortgage'' a lien on the vessel in the amount of the mortgage indebtedness secured by the vessel outstanding at foreclosure. This subsection makes no substantive change to law.

Section 31325(b) provides that, on default of any term, the mortgagee may enforce the preferred mortgage lien in a civil action *in rem*, or *in personam* in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This subsection makes a substantive change to law by allowing a nonadmiralty civil action to be brought against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This change allows an action to be brought even when the vessel is outside U.S. jurisdiction. This section will also allow the action to be brought against the comaker or guarantor of the mortgage.

Section 31325(c) provides for original and exclusive jurisdiction by a district court, to the exclusion of the courts of a State for civil actions brought *in rem*. It also provides for original jurisdiction for civil actions brought *in personam* in admiralty and civil actions brought under subsection (b)(3). This subsection makes a substantive change to law by broadening the jurisdiction to courts in the territories, as defined in section 31301, as well as giving original jurisdiction to the district courts in nonadmiralty civil actions brought to enforce the preferred mortgage lien.

Subsection (d) provides that actual notice of a civil action *in rem* to enforce a maritime lien must be given in a manner directed by the court to the master, individual in charge of the vessel, to any person that recorded a notice of a claim of an undischarged lien, and, for the first time, to the mortgagee of a mortgage filed with the Secretary. This notice is not required if, after a search is made that is satisfactory to the court, the person entitled to notice is not found in the United States. Failure to give notice does not affect the court's jurisdiction. However, the mortgagor is still liable to the person not notified for damages in the amount of that person's interest in the vessel that was terminated by the civil action *in rem*, and a civil action may still 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 plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff.

Subsection (e) provides that, in a civil action *in rem*, the court may appoint a receiver and authorize operation of the vessel. When directed by the court, a United States marshal may take possession—even if the vessel is in the possession of or under the control of a person claiming a possessory common law lien. This subsection makes a substantive change to law by allowing the court to retain *in rem* jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located.

HOUSE FLOOR STATEMENT

Subsection (c) of this section clarifies that the district courts have original jurisdiction for a civil action under subsection (b) of this section, and exclusive jurisdiction in the case of vessels documented or to be documented under chapter 121 of title 46.

AMENDMENTS

2008—Subsec. (b)(3)(B). Pub. L. 110–181 amended Pub. L. 109–304, § 15(30). See 2006 Amendment note below.

2006—Subsec. (b)(3)(B). Pub. L. 109–304, § 15(30), as amended by Pub. L. 110–181, substituted ''section 56101 or 56102 of this title'' for ''section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)''.

2002—Subsec. (d)(1)(B). Pub. L. 107–295, § 205(b)(1), substituted ''an unexpired notice of a claim'' for ''a notice of a claim''.

Subsec. (f)(1). Pub. L. 107–295, § 205(b)(2), substituted ''an unexpired notice of a claim'' for ''a notice of a claim''.

1998—Subsecs. (b)(1), (3), (c). Pub. L. 105–383 inserted ''a vessel titled in a State,'' after ''chapter 121 of this title,''.

1996—Subsec. (b). Pub. L. 104–324, § 1124(a)(1), substituted ''mortgagee may'' for ''mortgage may'' in introductory provisions.

Subsec. (b)(1). Pub. L. 104–324, § 1124(a)(2)(A), substituted ''preferred'' for ''perferred''.

Subsec. (b)(3). Pub. L. 104–324, § 1124(a)(2)(B), (3), added par. (3).

Subsec. (f). Pub. L. 104–324, § 1124(b), added subsec. (f).

1989—Subsecs. (b), (c). Pub. L. 101–225 amended subsecs. (b) and (c) generally. Prior to amendment, subsecs. (b) and (c) read as follows:

''(b) On default of any term of the preferred mortgage, the mortgagee may enforce the preferred mortgage lien in—

''(1) a civil action in rem for a documented vessel or a vessel to be documented under chapter 121 of this title;

''(2) a civil action in personam in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness; and

''(3) a civil action against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness.

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–181 effective as if included in the enactment of Pub. L. 109–304, see section

3529(b)(2) of Pub. L. 110–181, set out as a note under section 3205 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–295, title II, § 205(e), Nov. 25, 2002, 116 Stat. 2096, provided that: ''This section [see Tables for classification] shall take effect January 1, 2003.''

CONSTRUCTION OF 1996 AMENDMENTS

Section 1124(c) of Pub. L. 104–324 provided that: ''The amendments made by subsections (a) and (b) [amending this section] may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section [Oct. 19, 1996] to enforce claims for outstanding indebtedness secured by mortgaged vessels.''

§ 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under chapter 537 of this title, has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under chapter 537 of this title, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746; Pub. L. 103–160, div. A, title XIII, § 1360, Nov. 30, 1993, 107 Stat. 1816; Pub. L. 109–304, § 15(31), Oct. 6, 2006, 120 Stat. 1704.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31326(a)	46:953(b), 961(c)
31326(b)(1)	46:953(b)
31326(b)(2)	46:951 (2d par. proviso)

Section 31326(a) provides for a court-ordered sale to enforce a preferred mortgage lien or a maritime lien and the priority of claims. When a mortgaged vessel is sold by court order in a civil action *in rem*, any prior claim in the vessel is terminated—including any possessory common law lien. This subsection makes a substantive change to law by making the process the same for maritime liens as was provided for preferred mortgage liens. This eliminates the requirement for making a new mortgagee for a court sale to enforce a maritime lien. This section also broadens the jurisdiction to courts in the territories, as defined in section 31301.

Section 31326(b)(1) provides that each of these terminated claims attaches, in the same amount and priority, to the proceeds of sale—except that the preferred mortgage lien always has priority over these other claims. However, the preferred mortgage lien is still subordinated to expenses and fees allowed by the court, costs imposed by the court, and any preferred maritime liens. This may include statutory fees such as the fee of the United States Marshal under 28 U.S.C. 1921. Except for broadening its coverage under subsection (a), this makes no substantive change to law.

Section 31326(b)(2) provides in the case of a foreign vessel, the preferred mortgage lien is also subordinated to a maritime lien for necessaries performed or supplied for the vessel in the United States. ''Provided'' has been substituted for ''provided or supplied'' for consistency in usage. Except for broadening its coverage under subsection (a), this paragraph makes no substantive change to law.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–304, § 15(31)(A), substituted ''chapter 537 of this title,'' for ''title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)''.

Subsec. (b)(2). Pub. L. 109–304, § 15(31)(B), substituted ''chapter 537 of this title'' for ''title XI of that Act''.

1993—Subsec. (b)(1). Pub. L. 103–160, § 1260(1), inserted '', including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)'' after ''preferred mortgage lien''.

Subsec. (b)(2). Pub. L. 103–160, § 1360(2), inserted ''whose mortgage has not been guaranteed under title XI of that Act'' after ''foreign vessel''.

§ 31327. Forfeiture of mortgagee interest

The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31327	46:961(b)

Section 31327 provides for forfeiture of the mortgagee's interest if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation that caused forfeiture of the vessel. This section makes no substantive change to law.

[§ 31328. Repealed. Pub. L. 104–324, title XI, § 1113(b)(1), Oct. 19, 1996, 110 Stat. 3970]

Section, Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746, related to limitations on parties serving as trustees of mortgaged vessel interests.

§ 31329. Court sales of documented vessels

(a) A documented vessel may be sold by order of a district court only to—

(1) a person eligible to own a documented vessel under section 12103 of this title; or

(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

(1) the vessel must be held by the mortgagee for resale;

(2) the vessel held by the mortgagee is subject to chapter 563 of this title; and

(3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title.

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary of Transportation.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104–324, title XI, § 1118, Oct. 19, 1996, 110 Stat. 3973; Pub. L. 109–304, § 15(32), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111–281, title IX, § 913(c), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31329	46:961(f)

Section 31329 sets out certain restrictions on the court sale of a documented vessel.

Section 31329(a) restricts the sale only to a person eligible to own a documented vessel under section 12102 of title 46 or to the mortgagee, which may be a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel.

Section 31329(b) sets out conditions on the sale to a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel. First, the vessel must be held by the trustee for resale. Second, while being held for resale, the vessel is subject to requisition or purchase during a national emergency under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242). And third, the sale of the vessel to the trustee is not a sale foreign within the terms of the First Proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

Section 31329(c) requires a person that is eligible to document the vessel that purchases a vessel from the court to document the vessel. This subsection also requires the person purchasing the vessel from the trustee to document it, thereby restricting to whom the trustee can sell the vessel. Many documented vessels have no national defense utility, such as recreational vessels and fishing vessels. Therefore, both of these restrictions can be waived by the Secretary. As previously discussed, these waivers can be on a case-by-case basis or with a blanket waiver.

Section 31329(d) prohibits a trustee from operating the vessel without the approval of the Secretary.

Section 31329(e) voids any sale that is done contrary to this section.

HOUSE FLOOR STATEMENT

Under section 31329(d) a vessel may be operated by the trustee only with the approval of the Secretary. Under current law a vessel may be documented by a trust if all of the members of the trust are citizens of the United States. If the trust buying the vessel at the court sale includes foreign investors, the vessel cannot be documented. The Committee intends in this section that the vessel will only be ''operated'' in a maintenance manner, but not in a commercial service.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–281 substituted ''Secretary of Transportation'' for ''Secretary''.

2006—Subsec. (a)(1). Pub. L. 109–304, § 15(32)(A), substituted ''section 12103'' for ''section 12102''.

Subsec. (b)(2). Pub. L. 109–304, § 15(32)(B)(i), substituted ''chapter 563 of this title'' for ''section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242)''.

Subsec. (b)(3). Pub. L. 109–304, § 15(32)(B)(ii), substituted ''sale to a person not a citizen of the United States under section 12132 of this title'' for ''sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883)''.

1996—Subsec. (f). Pub. L. 104–324 added subsec. (f).

§ 31330. Penalties

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title; or

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than $10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title; or

(C) files with the Secretary a mortgage made not in good faith.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than $25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104–324, title XI, § 1113(b)(2), Oct. 19, 1996, 110 Stat. 3970; Pub. L. 111–281, title IX, § 913(a)(1), (d), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31330(a)	46:941(b) (1st sentence)
31330(b)	New
31330(c)	46:941(b) (1st sentence)

Section 31330(a) provides for criminal penalties for not disclosing obligations, incurring contractual obligations in violation of section 31323(b), and filing a mortgage made not in good faith. This subsection makes a substantive change to law by adding civil penalties and by making it a crime to record with the Secretary of Transportation a mortgage made not in good faith with the intent to hinder an existing or future creditor of the mortgagor or a lienor of the vessel. This is done since the affidavit of good faith has been eliminated from the elements of a preferred mortgage.

Section 31330(b) adds criminal and civil penalties for violating the sale and trust requirements under sec-

tions 31328 and 31329. It also makes a vessel and its equipment involved in those violations subject to seizure by the Government.

Section 31330(c) makes the president or chief executive officer of a corporation or association liable as a mortgagor for the penalties under this section.

HOUSE FLOOR STATEMENT

Subsection (a) of this section adds criminal and civil penalties for a preferred mortgagor's failure to carry out certain requirements under chapter 313 of title 46 (as enacted by this Act).

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111–281, § 913(d)(1)(A), inserted ''or'' after semicolon.

Subsec. (a)(1)(C). Pub. L. 111–281, § 913(d)(1)(B), substituted ''Secretary.'' for ''Secretary; or''.

Pub. L. 111–281, § 913(a)(1), struck out ''of Transportation'' after ''Secretary''.

Subsec. (a)(1)(D). Pub. L. 111–281, § 913(d)(1)(C), struck out subpar. (D) which read as follows: ''with intent to defraud, does not comply with section 31321(h) of this title.''

Subsec. (a)(2)(B) to (D). Pub. L. 111–281, § 913(d)(2), inserted ''or'' at end of subpar. (B), substituted ''faith.'' for ''faith; or'' at end of subpar. (C), and struck out subpar. (D) which read as follows: ''does not comply with section 31321(h) of this title.''

1996—Subsec. (b). Pub. L. 104–324 struck out ''31328 or'' before ''31329'' in pars. (1) to (3).

SUBCHAPTER III—MARITIME LIENS

§ 31341. Persons presumed to have authority to procure necessaries

(a) The following persons are presumed to have authority to procure necessaries for a vessel:

(1) the owner;

(2) the master;

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) an officer or agent appointed by—

(A) the owner;

(B) a charterer;

(C) an owner pro hac vice; or

(D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 101–225, title III, § 303(5), Dec. 12, 1989, 103 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31341(a)	46:972 (1st sentence), 973
31341(b)	46:972 (2d sentence)

Section 31341(a) lists those persons who are presumed to have authority to procure necessaries for a vessel. These include the owner, master, or a manager at the port of supply; and an officer or agent appointed by the owner, charterer, owner *pro hac vice*, or buyer in possession of the vessel. This subsection makes no substantive change to law.

Section 31341(b) provides that any person that is tortiously or unlawfully in possession of or in charge of a vessel has no authority to procure necessaries. This subsection makes no substantive change to law.

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101–225 substituted ''management'' for ''mangement''.

§ 31342. Establishing maritime liens

(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner—

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 101–225, title III, § 303(6), Dec. 12, 1989, 103 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31342	46:971

Section 31342 provides that any authorized person providing necessaries for a vessel has a maritime lien on the vessel, may bring a civil action *in rem* in admiralty to enforce the lien, and is not required to allege or prove that credit was given to the vessel. ''Providing'' has been substituted for ''furnishing'' for consistency with other laws. This section makes no substantive change to law. This section does not supersede the prohibition under the Public Vessels Act, the Foreign Sovereign Immunities Act, or the Suits in Admiralty Act, on bringing an *in rem* action against a public vessel.

AMENDMENTS

1989—Pub. L. 101–225 designated existing provisions as subsec. (a), substituted ''Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner'' for ''A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title'', and added subsec. (b).

§ 31343. Recording and discharging notices of claim of maritime lien

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel documented, or for which an application for documentation has been filed, under chapter 121 may record with the Secretary a notice of that person's lien claim on the vessel. To be recordable, the notice must—

(1) state the nature of the lien;

(2) state the date the lien was established;

(3) state the amount of the lien;

(4) state the name and address of the person; and

(5) be signed and acknowledged.

(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

(i) The owner of the vessel.

(ii) Each person that recorded under subsection (a) of this section an unexpired no-