

CHAPTER 3

PREFERRED SHIP MORTGAGES AND MARITIME LIENS

Commencement: September 13, 1990

Source: P.L. 1990-92

P.L. 1992-93

P.L. 1997-33

P.L. 2000-8

P.L. 2001-27

P.L. 2012-4

P.L. 2013-5

P.L. 2013-7

§ 301. Short title.

This Chapter may be cited as the Preferred Ship Mortgage and Maritime Liens Act. *[Short title supplied by Reviser during recodification of the original Act.]*

§ 302. Recording and contents.

(1) A sale, conveyance, hypothecation, mortgage or assignment of mortgage of any vessel shall not be valid in respect of such vessel, against any person other than the grantor or mortgagor, his heirs or devisees and persons having actual notice thereof until the instrument evidencing such transaction is recorded in the central office of the Maritime Administrator, in the United States of America, or by its duly authorized agent elsewhere.

(2) Each duly authorized agent of the Maritime Administrator, wherever located, shall have full authority to record such instrument or instruments.

(3) The central office of the Maritime Administrator in the United States of America, or its duly authorized agent elsewhere, shall record such instruments in the order of their reception in appropriate indexes to be kept for that purpose, showing:

(a) the name of the vessel;

(b) the names of the parties;

(c) the time and date of reception of the instrument affected;

(d) the interest in the vessel transferred or affected; and

(e) the amount or amounts of the direct or contingent obligations, including those provided for in Section 309 of this Chapter, that are or may become secured by the mortgage. *[P.L. 1990-92, § 65; amended by P.L. 1992-32, § 4; P.L. 2001-27, § 302.]*

§ 302A. Registration, Recordation, and Discharge of Financing Charters

(1) Without adversely affecting the documentation or the eligibility for documentation or the renewal of documentation of a vessel, a documented owner and a charterer may execute a contract in the form of a demise or bareboat charter and either the documented owner or the charterer may register for recordation a true copy thereof with the Commissioner or Deputy Commissioner with respect to a vessel documented in the name of such documented owner. Such contract shall be signed and acknowledged by the documented owner and the charterer and shall include the name and official number of the vessel, the date of such contract, the names and addresses of the documented owner and the charterer, and the aggregate of the nominal amount of all charter hire payments and purchase option amounts payable, or which may become payable, thereunder, exclusive of any interest, indemnities, expenses, or fees. A security interest in a vessel in favor of a documented owner evidenced by any such contract which is a financing charter, which is registered for recordation in compliance with this section 302A, shall be deemed to be a preferred mortgage on the vessel in favor of the documented owner for all purposes, effective for all

purposes as of the date and time of filing. All the provisions of this Chapter 3 shall apply to any contract filed in accordance with this section 302A that is a financing charter.

(2) A documented owner may also register for recordation, any renewals, amendments, supplements, assignments, or other instruments related to any contract filed pursuant to paragraph (1) of this section 302A.

(3) A documented owner shall have the power to grant one or more preferred mortgages encumbering the whole of a vessel, and any supplements, amendments, assignments, or other instruments related thereto, notwithstanding that such documented owner or predecessor in interest shall have entered into any contract which is deemed to be a preferred mortgage on the vessel pursuant to paragraph (1) of this section 302A.

(4) The mere registration or recording of a contract as a financing charter hereunder shall not constitute evidence that such contract is, in fact, a financing charter or that it creates a security interest. No agreement between the parties thereto that a contract constitutes a financing charter shall be binding on any other person or any other government not in privity.

(5) With respect to any financing charter, the documented owner party thereto shall be deemed a mortgagee under a preferred mortgage and the finance charterer shall be deemed the mortgagor, for all purposes under the laws of the Republic. *[P.L. 2013-5, § 302A.]*

§ 303. Preferred Mortgage.

(1) A valid mortgage, whenever made, which at the time it is made includes the whole of any vessel, including, for the avoidance of doubt, any vessel under construction, shall have a preferred status in respect of such vessel as of the date of its recordation if the mortgage is recorded as provided herein. The preferred status of a mortgage under this Chapter shall not be prejudiced or impaired by reason of the fact that such instrument secures the payment, pledge or assignment of monies or rights, due or to become due, such as, but not limited to, guarantee fees, insurance options, charter hire, freight revenues or any other fees, costs or charges, direct or contingent, incidental to the sale, purchase or operation of a vessel of the Marshall Islands; or the applicability of or compliance with any provision of Section 309 of this Chapter; or by reason of the fact that no advance of monies is or has been made at the time of its recordation.

(2) Notwithstanding the provisions of the first sentence of subsection (1) of this Section, a valid mortgage whenever made which (i) includes the whole of any vessel, (ii) is recorded as provided herein, and (iii) is granted in continuation of a prior recorded mortgage, hypothecation or similar charge on such vessel, whether granted under the laws of the Marshall Islands or the laws of another nation under which the vessel was documented at the time such prior mortgage was recorded, shall have preferred status in respect of such vessel as of the date of recordation of such prior mortgage. For purposes of this subsection, a mortgage “granted in continuation of a prior recorded mortgage, hypothecation or similar charge” shall mean a mortgage on a Marshall Islands vessel where:

(a) The vessel covered by such mortgage is a vessel covered by the prior mortgage, hypothecation or similar charge;

(b) The obligations secured by such mortgage are obligations secured by the prior mortgage, hypothecation or similar charge;

(c) Such mortgage is granted by the current vessel owner whether or not the owner is the vessel owner which granted the prior mortgage, hypothecation or similar charge to secure obligations secured by the prior mortgage, hypothecation or similar charge; and

(d) For a vessel entering the Registry of the Republic, such mortgage is recorded during the period defined in § 303(3).

Nothing in this subsection (2) shall be construed to pre-empt any non-statutory law which, taking into account the foregoing and/or other circumstances, would recognize the preferred status of a mortgage on a vessel of the Marshall Islands prior to the date of recording thereof.

(3) For a vessel entering the registry of the Republic, the preferred status of a mortgage, hypothecation or similar charge on such vessel recognized under Section 317 shall continue for a period of thirty (30) days following registration of the vessel if the information with respect to such mortgage required by the Maritime Administrator is furnished to the Administrator in connection with the registration of the vessel under the laws of the Republic. Such preferred status shall not be adversely affected by the deletion or release of the mortgage as a matter of record from the vessel's prior register in connection with, or as a condition to, deletion of the vessel from that register.

(4) In the interpretation and application of this Section, a certified Extract of the Preferred Mortgage Index of the public register maintained by the Maritime Administrator, a Certificate of Ownership and Encumbrance issued by such Administrator or, in the case of a mortgage, hypothecation or similar charge recorded in another nation, similar documentation, including a transcript of registry, certified or issued by the appropriate governmental agency in such nation, shall be accepted as evidence of the granting and recordation of a mortgage, hypothecation or similar charge, including the date of recordation thereof. [P.L. 1990-92, § 66; amended by P.L. 1992-32, § 4; P.L. 1997-33, § 10A; P.L. 2000-8, § 303; P.L. 2001-27, § 303 P.L. 2012-4, § 303(1).]

§ 304. Termination of mortgagee's interest.

(1) The interest of a mortgagee in a vessel registered under this Title shall not be terminated by a forfeiture of the vessel for a violation of any law of the Republic, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation.

(2) A vessel which is the subject of a Preferred Mortgage may not be canceled from the Register for so long as the indebtedness secured by the Preferred Mortgage remains unsatisfied or the Mortgage is not otherwise discharged; provided however, that the Maritime Administrator may, not less than 60 days following the mailing of notice to all mortgagees of record at their last known mailing addresses of its intent to do so, strike a vessel from the Registry and Flag of the Republic as a result of receipt by it of evidence satisfactory to it that the vessel has been lost, destroyed, or transferred to another registry following sale by order of an Admiralty Court in a civil action *in rem*; such administrative action by the Maritime Administrator shall not impair or affect the lien or status of any Preferred Mortgage recorded under this Chapter, nor shall it terminate the interest of a mortgagee in such a vessel. [P.L. 1990-92, § 67; amended by P.L. 1992-32, § 4.]

§ 305. Ship mortgage; conditions precedent.

A mortgage shall not be recordable unless it states the interest of the mortgagor in the vessel, and the interest so mortgaged. A mortgage or instrument of release or discharge thereof shall not be recorded unless it bears an apostille issued by a competent authority of a State Party to the Hague Convention of 5 October 1961, as amended, or has been acknowledged or is submitted with such other proof of due execution as may be required by Regulation. [P.L. 1990-92, § 68; P.L. 2001-27, § 305.]

§ 306. Bill of sale; recording.

The central office of the Maritime Administrator in the United States of America or its duly authorized agent elsewhere may accept for recording any bill of sale or other conveyance of a vessel or a facsimile thereof, the original of which has been received by a Commissioner, any Deputy Commissioner

or any Special Agent, which recites the interest of the seller in the vessel and the interests sold or conveyed, provided it has previously been acknowledged or is submitted with such other proof of due execution as may be required by Regulation, and provided further that any bill of sale of a vessel already documented under the laws of Republic must have attached thereto a true copy of its latest Certificate of Registry. [P.L. 1990-92, § 69; amended by P.L. 1992-32, § 4; P.L. 2001-27, § 306.]

§ 307. Mortgages; recording.

The central office of the Maritime Administrator in the United States of America, or its duly authorized agent elsewhere, may accept for recording any mortgage on a vessel, whenever made, which recites the interest of the mortgagor in the vessel and the interest so mortgaged, provided it bears the Hague Convention apostille or has been acknowledged or is submitted with such other proof of due execution as may be required by Regulation, and provided further that written proof is furnished to it of the amounts and dates of any documents or evidence of debts in support thereof. The central office of the Maritime Administrator or its duly authorized agent elsewhere shall record a mortgage or related instrument submitted to it in proper form, and shall thereupon, upon request, issue a Certified Extract of the Preferred Mortgage Index of the public register maintained by the Maritime Administrator, as evidence of recordation of a Preferred Ship Mortgage under this Chapter. A Certificate of Ownership and Encumbrance shall upon timely request be issued by the central office of the Maritime Administrator or its duly authorized agent elsewhere, setting forth all recorded mortgages, encumbrances and related instruments with respect to a vessel registered under this Title as of the time and date of its issuance. [P.L. 1990-92, § 70; amended by P.L. 1992-32, § 4; P.L. 2001-27, § 307.]

§ 308. Allocation of mortgage indebtedness.

(1) A mortgage which complies with the conditions enumerated in this Chapter is designated as a Preferred Mortgage.

(2) 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.

(3) If a vessel covered by a Preferred Mortgage under this Chapter, that includes more than one vessel, or property that is not a vessel, is to be sold on the order of an Admiralty Court in a civil action *in rem* and the mortgage does not provide for separate discharge as provided in Section 308(2) of this Chapter, the said Preferred Mortgage shall constitute a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and an allocation of mortgage indebtedness for purposes of separate discharge may not be made by such Court among the vessel and other property covered by the mortgage. [P.L. 1990-92, § 71; amended by P.L. 1992-32, § 4; amended by P.L. 1999-91, § 2.]

§ 309. Advances and repayments.

(1) Advances or other value given pursuant to commitment:

(a) A Preferred Mortgage may secure future advances including contingent obligations and shall not be extinguished or lose its priority because all previously outstanding obligations secured thereby have been fully repaid or otherwise performed, provided that an advance or other value is to be given at a later time pursuant to commitment existing at the time the Mortgage is recorded. For the purpose of this paragraph an advance or other value is given "pursuant to commitment" if the mortgagee or other person entitled to the benefit of the security of the mortgage has bound himself to give it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

(b) When a Preferred Mortgage secures an obligation in respect of which one or more advances or repayments may be made from time to time in the future and the maximum amount outstanding under the obligation at any one time is limited to a certain amount, the amount to be recorded with respect to such obligation may be either:

- (i) such maximum amount that may be outstanding at any one time, or
- (ii) the aggregate of all possible advances that may be made.

(c) A Preferred Mortgage made pursuant to commitment shall clearly indicate whether the amount is the maximum amount that may be outstanding at any one time or is the aggregate of all possible advances.

(2) Advances or other value given pursuant to agreement:

(a) Notwithstanding any other provision of this Chapter, a Preferred Mortgage may secure an agreed-upon maximum amount representing all debts or obligations arising or that may arise between the debtor and the creditor within a specified period. Such maximum amount may exceed the value of the vessel or vessels, which may themselves represent only a part of all of the assets that are subject to the Preferred Mortgage. Only that indebtedness incurred on or prior to the maturity date or date of termination of a Preferred mortgage made "pursuant to agreement" shall retain its status and ranking as a preferred maritime lien under this Chapter. The indebtedness secured thereby shall include all expenses and interest associated with such indebtedness prior to maturity. A Preferred Mortgage made "pursuant to agreement" under this Subsection shall not be required to represent a commitment to lend on the part of the mortgagee, but shall secure all debts or obligations arising or that may arise between the parties as a result of transactions the nature of which are subject to the provisions of the mortgage deed, whether present or future, actual or contingent, and shall set forth in addition to other terms and conditions the maximum amount and the maturity date, or a statement of the date of termination if it is other than the maturity date thereof.

(b) Nothing contained in this Subsection 2 shall be construed to impair the lien status, recordability, validity or enforceability with respect to a vessel registered under this Chapter of a Preferred Mortgage granted by its owner that:

- (i) secures obligations, in whole or in part, arising out of specific successive business contracts or other transactions, whether or not such contracts or transactions are related to or arise from the construction, purchase, sale or chartering of a vessel registered under this Title, or
- (ii) secures all debts or obligations owed or to be owed thereunder, so long as the aggregate amount of such debts or obligations does not exceed at any one time the stated maximum amount of the Mortgage.

The preferred status of a mortgage made "pursuant to agreement" in accordance with this Subsection 2, which may be secured by property that is not a vessel, or more than one vessel, shall not be impaired by reason of the fact that the mortgage does not provide for separate discharge thereof. [*P.L. 1990-92, § 72; amended by P.L. 1992-32, § 4.*]

§ 310. Units of Account.

(1) The obligations secured by a Preferred Mortgage may be expressed in any unit or units of account to which the parties may agree, including but not limited to currency of the Republic, currency or

currencies of any foreign state or states, or in equivalents of any other unit or units of account established by intergovernmental organizations.

(2) If a Preferred Mortgage secures an obligation in one or more specified units of account and there is an option to have a unit of account altered from time to time, the principal amount of the mortgage to be recorded shall be denominated in one or more of the said specified units of account. The recordation may include as additional words "or an equivalent amount in any alternate unit of account," or similar language, and if such additional words are recorded, no change in the recorded amount shall be required to reflect the fact that the obligation or any portion thereof is subsequently denominated in a different unit or units of account, unless the parties otherwise agree.

(3) When a Preferred Mortgage secures an obligation in respect of which there is an option to have the obligation amount denominated from time to time in alternate units of account but which continues to be payable in, or by reference to, a specified unit of account:

(a) the amount of the obligation to be recorded shall be expressed in the specified unit of account; and

(b) notwithstanding any exercise of the option, no change in the recorded amount shall be required.

(4) A Preferred Mortgage as described in Subsections (2) or (3) of this Section may additionally secure any loss up to a specified amount arising out of fluctuations between a specified unit of account and any alternate unit of account in which the obligation amount may be denominated from time to time, and such specified amount shall also be recorded. *[P.L. 1990-92, § 73.]*

§ 311. Lien of Preferred Mortgage.

A Preferred Mortgage shall constitute a maritime lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel. The lien of a Preferred Mortgage shall not be in any way impaired or affected because the vessel's document following recording of the mortgage has expired, or has been restrictively endorsed, suspended, revoked or canceled. *[P.L. 1990-92, § 74.]*

§ 312. Interest on Preferred Mortgage.

Any other provision of law or regulation to the contrary notwithstanding, a Preferred Mortgage may secure such interest, including interest on interest, on an obligation secured by the mortgage as the parties may agree, which interest may be at fixed rates, variable rates, rates based upon formulas, or by adding margins to the mortgagee's cost from time to time of funding an obligation secured by the mortgage, or by any other method to which the parties may agree. *[P.L. 1990-92, § 75.]*

§ 313. Priority; disclosure of liens; penalty.

(1) The mortgagor, before executing a Preferred Mortgage, shall disclose to the mortgagee in writing the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged which is known to the mortgagor.

(2) After the execution of such Mortgage and before the mortgagee has had a reasonable time in which to record it, the mortgagor, without the consent of the mortgagee, shall not incur any contractual obligation creating a lien upon the vessel, other than liens for wages of stevedores when employed directly by the owner, operator, Master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average or for salvage, including contract salvage, tonnage taxes and other charges of the Maritime Administrator in respect of the vessel.

(3) Whoever, being a mortgagor or the president or principal officer of a corporate mortgagor, violates this Section with intent to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lien or of the mortgaged vessel, shall be subject to a penalty of not more than twenty-five thousand US dollars (US\$25,000), imprisonment for a term not exceeding two (2) years, or both. The mortgage indebtedness shall thereupon become immediately due and payable at the election of the mortgagee. [P.L. 1990-92, § 76; P.L. 2013-7, §313(3).]

§ 314. Certified copies; exhibition.

(1) Upon recording a Preferred Mortgage, two certified copies thereof shall be delivered to the mortgagor who shall place and use due diligence to retain one copy on board the mortgaged vessel, and cause such copy and the document of the vessel to be exhibited by the Master to any person having business which may give rise to a maritime lien or to the sale, conveyance, or mortgage of the vessel.

(2) The license of a Master who willfully fails to exhibit such documents and copy of mortgage may be suspended or revoked. [P.L. 1990-92, § 77.]

§ 315. Discharge of mortgage.

The mortgagor upon a complete discharge of the mortgage indebtedness shall forthwith file a certificate of such discharge duly executed by the mortgagee, his successors or assigns, with the central office of the Maritime Administrator in the United States of America, or its duly authorized agent elsewhere, which shall thereupon record the certificate; and the mortgagor may similarly file a certificate of partial discharge, which shall be similarly recorded. [P.L. 1990-92, § 78; amended by P.L. 1992-32, § 4; P.L. 2001-27, § 315.]

§ 316. Foreclosure and default; jurisdiction and procedure.

(1) The lien of a Preferred Mortgage may be enforced in the Republic by a suit *in rem* in the High Court of the Republic, sitting in Admiralty, upon default of any term or condition. In addition to any notice by publication, actual notice of the commencement of suit shall be given by the libellant, in such manner as the Court directs, to the Master, other ranking officer, or caretaker of the vessel, and to any person who has recorded a notice of claim of an undischarged lien upon the vessel, unless after search by the libellant satisfactory to the Court such person is not found within the Republic. Failure to give such notice shall not constitute a jurisdictional defect, but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit.

(2) The lien of a Preferred Mortgage may also be enforced by a suit *in rem* in Admiralty or otherwise in any foreign country in which the vessel shall be found, pursuant to the procedure of said country for the enforcement of ship mortgages constituting maritime liens on vessels documented under the laws of said country.

(3) Notwithstanding anything in this Chapter, the mortgagee may, in addition to all other remedies granted by this Chapter, bring suit *in personam* against the mortgagor, maker, co-maker, or guarantor in any court of competent jurisdiction for the amount of the outstanding mortgage indebtedness or for any deficiency in the full payment thereof.

(4) The enforcement by suit *in rem* in Admiralty of the rights of the mortgagee with respect to a vessel or vessels covered by a Preferred Mortgage shall not be precluded or impaired, notwithstanding the enforcement of any rights that the mortgagee may have under the said mortgage to property that is not a vessel. [P.L. 1990-92, § 79; amended by P.L. 1992-32, § 4.]

§ 317. Preferred status.

As used in Sections 311, 316, 318 and 320 of this Chapter, the term “Preferred Mortgage” shall include, in addition to a Preferred Mortgage made pursuant to the provisions of this Part, any mortgage, hypothecation or similar charge created as security upon any documented foreign vessel if such mortgage, hypothecation or similar charge has been duly and validly executed and registered in accordance with the laws of the nation where the vessel’s ownership is documented; and the term “Preferred Mortgage lien” shall also include the lien of such mortgage, hypothecation or similar charge. As used in sections 302A, 303, 311, 316, 318, and 320 of this Chapter, the term “Preferred Mortgage” also means a financing charter of a foreign vessel that has been registered in a public registry at the port of registry of the vessel or at the central office (i) in the foreign country under whose laws the ownership of the vessel is registered in the name of the person stated to be the owner of the financing charter, and (ii) if applicable, in the foreign country under whose bareboat charter registry laws the financing charter of the vessel is registered in order to permit the vessel to sail under the flag of such foreign country. [P.L. 1990-92, § 80; P.L. 2001-27, §317; P.L. 2013-5, §317.]

§ 318. Foreclosure; priority of Preferred Mortgage lien; exemption.

Upon the sale of any vessel in a suit *in rem* in the High Court of the Republic, sitting in Admiralty for the enforcement of a Preferred Mortgage lien, all preexisting claims in the vessel, including any possessory common law lien, shall terminate and shall thereafter attach in like amount and in accordance with their respective priorities to the proceeds of sale; except that the Preferred Mortgage lien shall have priority over all claims against the vessel, except maritime liens for damages arising out of tort, maritime liens arising under Section 238 of this Title, maritime liens for crew’s wages, for general average, and for salvage (including contract salvage) and expenses and fees allowed and costs taxed by the Court. [P.L. 1990-92, § 81; amended by P.L. 2000-8, § 318.]

§ 319. Necessaries; lien; enforcement.

(1) Whoever furnishes repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any foreign or domestic vessel upon the order of the owner or person authorized by the owner, shall have a maritime lien on the vessel.

(2) The managing owner, ship’s husband, Master, or any person to whom the management of the vessel at the port of supply is entrusted, including any such appointed by a charterer, owner *pro hac vice* or agreed purchaser in possession, shall be presumed to have authority from the owner to procure such necessaries; but a person tortuously or unlawfully in possession or charge of the vessel shall not have authority to bind it.

(3) This Section shall not confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering necessaries was without authority to bind the vessel therefor. [P.L. 1990-92, § 82.]

§ 320. Necessaries; waiver of lien.

This Chapter shall not prevent the furnisher of repairs, supplies, towage, use of dry dock or marine railway or other necessaries, or the mortgagee, from waiving his right to a lien or in the case of a Preferred Mortgage lien to the preferred status of such lien, at any time by agreement or otherwise. [P.L. 1990-92, § 83.]

§ 321. Abolition of mortgage endorsement.

(1) Except as provided in Subsection (2) of this Section, nothing previously contained in the Maritime Act 1987, as amended, P. L. 1987-17, (the "Maritime Act 1987") or in any other provision of law, shall require, permit or be construed as requiring or permitting, endorsements upon any vessel's document in connection with the validity, recording, designation as a Preferred Mortgage, or preferred status of any mortgage in respect of any such vessel, or the clearance to be given to such vessel following the recording of any such mortgage.

(2) Notwithstanding the provisions of Subsection (1) of this Section any vessel's document issued or reissued prior to the effective date of this Title and any instrument made, recorded and endorsed prior to the effective date of this Title shall remain subject to the endorsement requirements previously contained in the Maritime Title 1987, until such time as the vessel's document is surrendered or reissued or a new document is issued, as the case may be. *[P.L. 1990-92, § 84.]*

§ 322. Yacht mortgage or security agreement; recording.

The Central Office of the Maritime Administrator in the United States of America or its duly authorized agent elsewhere may accept for recording any mortgage or other document securing an installment loan or other debt with respect to the financing of a yacht, the original which has been received by a Commissioner, any Deputy Commissioner or any Special Agent, provided it has been acknowledged or is submitted with such other proof of due execution as may be required by Regulation. *[P.L. 2001-27, § 322. New yacht provision.]*