

DRAFT
FOR DISCUSSION ONLY

**CERTIFICATE OF TITLE ACT
FOR VESSELS**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For October 16 - 18, 2009 Drafting Committee Meeting

Without Prefatory Note and With Reporter's Notes

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ON UNIFORM STATE LAWS

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August 19, 2009

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CERTIFICATE OF TITLE ACT FOR VESSELS

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1 **CERTIFICATE OF TITLE ACT FOR VESSELS**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Certificate of Title Act
3 for Vessels.

4 **SECTION 2. DEFINITIONS.**

5 (a) In this [act]:

6 (1) "Buyer" means a person that buys or contracts to buy goods.

7 (2) "Buyer in ordinary course of business" means a person that buys goods in
8 good faith, without knowledge that the sale violates the rights of another person in the goods,
9 and in ordinary course from a person, other than a pawnbroker, in the business of selling goods
10 of that kind. A person buys goods in ordinary course if the sale comports with the usual or
11 customary practices in the kind of business in which the seller is engaged or with the seller's
12 own usual or customary practices. A buyer in ordinary course of business may buy for cash, by
13 exchange of other property, or on secured or unsecured credit, and may acquire goods under a
14 pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to
15 recover the goods from the seller under [Uniform Commercial Code Article 2] may be a buyer in
16 ordinary course of business. The term does not include a person that acquires goods in a transfer
17 in bulk or as security for or in total or partial satisfaction of a money debt. A buyer in ordinary
18 course of business does not lose that status solely because a certificate of title was not executed
19 to the buyer.

20 (3) "Cancel", with respect to a certificate of title, means to make the certificate
21 ineffective.

22 (4) "Certificate of documentation", means a certificate issued by the United
23 States Coast Guard under 46 U.S.C. § 12103.

1 (5) “Certificate of origin”, means a manufacturer’s certificate of origin, a
2 manufacturer’s statement of origin, an importer’s certificate of origin, or an importer’s statement
3 of origin.

4 (6) “Certificate of title”, except in the phrases “certificate of title created by a
5 governmental agency of any state” and “certificate of title created by a governmental agency of
6 any jurisdiction”, means a record, created by the office and designated as a certificate of title by
7 it, that is evidence of ownership of a vessel.

8 (7) “Dealer”, means any person in the business of selling vessels [who has an
9 established place of business for the sale and display of vessels].

10 (8) “Electronic certificate of title” means a certificate of title consisting of
11 information that is stored solely in an electronic medium and is retrievable in perceivable form.

12 (9) “Office” means [insert name of relevant department or agency that creates
13 certificates of title in enacting state].

14 (10) “Owner” means a person that has legal title to a vessel.

15 (11) “Owner of record” means the owner of a vessel as indicated in the files of
16 the office.

17 (12) “Person” means an individual, corporation, business trust, estate, trust,
18 partnership, limited liability company, association, joint venture, federally recognized Indian
19 Tribe, public corporation, government, or governmental subdivision, agency, or instrumentality,
20 or any other legal or commercial entity.

21 (13) “Principally used” means used or to operate, navigate, or employ most
22 during a calendar year.

23 (14) “Purchase” means to take by sale, lease, mortgage, pledge, consensual lien,

1 security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

2 (15) “Purchaser” means a person that takes by purchase.

3 (16) “Record” means information that is inscribed on a tangible medium or that
4 is
5 stored in an electronic or other medium and is retrievable in perceivable form.

6 (17) “Secured party” means:

7 (A) a person in whose favor a security interest is created or provided for
8 under a security agreement, whether or not any obligation to be secured is outstanding;

9 (B) a person that is a consignor under [Uniform Commercial Code Article
10 9];

11 (C) a person to which accounts, chattel paper, payment intangibles, or
12 promissory notes have been sold;

13 (D) a trustee, indenture trustee, agent, collateral agent, or other
14 representative in whose favor a security interest is created or provided for; or

15 (E) a person that holds a security interest arising under [Uniform
16 Commercial Code Section 2-401, 2-505, 2-711(3), or 2A-508(5)].

17 (18) “Secured party of record” means the secured party whose name is provided
18 as the name of the secured party or a representative of the secured party in an application for a
19 certificate of title received by the office or, if more than one are indicated, the first indicated in
20 the files of the office.

21 (19) “Security interest” means an interest in a vehicle which secures payment or
22 performance of an obligation. The term includes any interest of a consignor in a vehicle in a
23 transaction that is subject to [Uniform Commercial Code Article 9]. The term does not include

1 the special property interest of a buyer of a vessel on identification of that vessel to a contract for
2 sale under [Uniform Commercial Code Section 2-401], but a buyer may also acquire a security
3 interest by complying with [Uniform Commercial Code Article 9]. Except as otherwise
4 provided in [Uniform Commercial Code Section 2-505], the right of a seller or lessor of a vessel
5 under [Uniform Commercial Code Article 2 or 2A] to retain or acquire possession of the vessel
6 is not a security interest, but a seller or lessor may also acquire a security interest by complying
7 with [Uniform Commercial Code Article 9]. The retention or reservation of title by a seller of a
8 vessel notwithstanding shipment or delivery to the buyer under [Uniform Commercial Code
9 Section 2-401] is limited in effect to a reservation of a security interest. Whether a transaction in
10 the form of a lease creates a security interest is determined by law other than this [act].

11 (20) “Sign” means, with present intent to authenticate or adopt a record, to:

12 (A) make or adopt a tangible symbol; or

13 (B) attach to or logically associate with the record an electronic sound,
14 symbol, or process.

15 (21) “State” means a state of the United States, the District of Columbia, Puerto
16 Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or
17 insular possession subject to the jurisdiction of the United States.

18 (22) “Title brand” means a designation of previous damage, use, or condition that
19 [this [act] or] law other than this [act] requires to be indicated on a certificate of title created by a
20 governmental agency of any jurisdiction.

21 (23) “Transfer of ownership”, means any voluntary or involuntary conveyance of
22 an interest in a vessel[, including the creation of a security interest].
23

1 (24) "Vessel" includes any watercraft used or capable of being used as a means
2 of
3 transportation on water, except the following:

4 (A) A seaplane [on the water] [or other vehicle capable of sustained
5 flight].

6 (B) An amphibious vehicle for which a certificate of title is issued
7 pursuant to [state motor vehicle certificate of title act] [or similar statute of another state].

8 [(C) Watercraft less than [xx] feet in length.]

9 [(D) Watercraft powered solely by [sail], paddle[,] or oars.]

10 [(E) Watercraft less than [xx] feet in length and powered solely by [sail],
11 paddle[,] or oars.]

12 (F) Inflatable watercraft.

13 (G) A surfboard.

14 (H) Watercraft designed to operate only on a permanently fixed course
15 and the movement of which is restricted to or guided on by means of a mechanical device to
16 which the watercraft is attached or by which the watercraft is controlled, or by means of a
17 mechanical device attached to the watercraft itself.

18 (I) A floating structure which is designed and built to be used as a
19 stationary waterborne residential dwelling, which (A) does not have and is not designed to have
20 a
21 mode of power of its own, (B) is dependent for utilities upon a continuous utility linkage to a
22 source originating on shore, and (C) has a permanent, continuous hookup to a shoreside sewage
23 system.

1 (J) Watercraft whose owner is a State or subdivision thereof, which is
2 used principally for governmental purposes, and which is clearly identifiable as such.

3 (K) Watercraft used solely as a lifeboat on another watercraft.

4 (25) “Vessel identification number”, means the number assigned by the office to
5 a vessel pursuant to [33 C.F.R. § 187].

6 (26) “Waters of this state” means any waters within the territorial limits of this
7 state.

8 (b) The following definitions and terms also apply to this [act]:

9 (1) “Agreement”, [UCC Section 1-201(b)(3)].

10 (2) “Collateral”, [UCC Section 9-102(a)(12)].

11 (3) “Debtor”, [UCC Section 9-102(a)(28)].

12 (4) “Lease”, [UCC Section 2A-103(a)(j)].

13 (5) “Lessee”, [UCC Section 2A-103(1)(n)].

14 (6) “Lessee in ordinary course of business”, [UCC Section 2A-103(1)(o)]

15 (7) “Lessor”, [UCC Section 2A-103(a)(p)].

16 (8) “Merchant”, [UCC Section 2-104(1)].

17 (9) “Notice; Knowledge”, [UCC Section 1-202].

18 (10) “Representative”, [UCC Section 1-201(b)(33)].

19 (11) “Sale”, [UCC Section 2-106(1)].

20 (12) “Security agreement”, [UCC Section 9-102(a)(73)].

21 (13) “Seller”, [UCC Section 2-103(1)(o)].

22
23 (14) “Send”, [UCC Section 1-201(b)(36)].

1 (15) “Value”, [UCC Section 1-204].

2 **Reporter’s Note**

3 Paragraph (a)(5) is derived from 33 C.F.R. § 187.7 but does not include a builder’s
4 certificate as a type of certificate of origin. *See* Section 5 Reporter’s Note. This change from the
5 federal definition could present a problem under 33 C.F.R. § 187.303.

6
7 Paragraph (a)(7) is more broad than the comparable definition in 33 C.F.R. § 187.7. That
8 is because there should be no need for the dealer to be engaged in the business of buying vessels;
9 a manufacturer should qualify as a dealer. The bracketed language is derived from the federal
10 definition and may be desired in an effort to comply with 33 C.F.R. § 187.303.

11
12 Paragraphs (a)(10), (12), (17) and (19) are derived from UCOTA § 2(a)(18), (20), (24),
13 and (26), respectively. Each differs from the comparably definition in 33 C.F.R § 187.7 and
14 therefore could also present a problem under 33 C.F.R. § 187.303.

15
16 Paragraph (a)(13) is derived from 33 C.F.R. § 173.3(h) and (I). Greater specificity may
17 be needed to affirm to disaffirm whether mooring constitutes “use.” *Cf. New Hampshire Ins. Co.*
18 *v. Dagon*, 475 F.3d 35 (1st Cir. 2007) (mooring constitutes “use” for the purpose of an
19 insurance policy the excluded coverage for use from November 1 to April 15).

20
21 Subparagraph (A) of paragraph (a)(24) is derived from most state vessel titling statutes.
22 The first bracketed language frequently appears in those statutes but its purpose is unclear. The
23 second bracketed language is offered as a way to distinguish a seaplane that can no longer fly
24 and which is really used for surface transportation.

25
26 Subparagraph (B) is derived from D.C. Mun. Laws, tit. 19, § 1099. Its purpose here is to
27 exclude from the scope of this Act vessels that qualify as motor vehicles for the purposes of a
28 state’s motor vehicle titling law.

29
30 Subparagraphs (C), (D), and (E) are derived from numerous state statutes that limit the
31 type of watercraft for which a certificate of title is required. Several states do not title watercraft
32 less than a designated length, ranging from 8-26 feet. Several do not title non-motor-powered
33 watercraft. And some do not title non-motor-powered watercraft of less than a designated
34 length. These paragraphs are bracketed because, if the Committee chooses to include these
35 exceptions, not all of the exceptions would be needed. In particular, subparagraph (E) is a more
36 narrow alternative to paragraphs (C) or (D).

37
38 Several of the existing state statutes that exclude watercraft of the type mentioned in
39 subparagraphs (C), (D), or (E) do so by listing the type of excluded watercraft (*e.g.*, “canoe” or
40 “kayak”). *See* Idaho Code § 67-7040; Iowa Code § 462A.77(1); Minn. Stat. § 86B.825. Because those
41 terms are undefined, the approach taken here is to identify the excluded watercraft not by
42 undefined type, but by method of propulsion. The term “sail” is bracketed because more states
43 currently exclude human-powered watercraft than exclude sail-powered watercraft.

1 Subparagraph (F) is derived from Iowa Code § 462A.77(1) and S.D. Laws
2 §§ 32-3A-2(5).
3

4 Subparagraph (G) is derived from S.C. Code § 50-23-30.
5

6 Subparagraphs (H) and (I) are derived from Cal. Vehicle Code § 9873. Subparagraph
7 (H) is apparently designed to exclude watercraft used in fixed rides at theme parks.
8 Subparagraph (I) is designed to exclude floating residences that are fixed to the shore.
9 Subparagraph (I) is arguably not necessary, since the residence would not seem to satisfy the
10 flush part of the definition. While the residence floats, it does not appear to be “used or capable
11 of being used as a means of transportation on water.”
12

13 Subparagraph (J) is derived from 33 C.F.R. § 173.11(c). The purposes of a certificate of
14 title act would not seem applicable to government-owned and operated vessels that are readily
15 identifiable as such.
16

17 Subparagraph (K) is derived from 33 C.F.R. § 173.11(d).
18

19 Despite 33 C.F.R. § 187.303, there are no definitions for “documented vessel”, “issuing
20 authority”, or “titling authority”, because those terms are not used in this act. There are,
21 however, definitions for “certificate of documentation” and “office.”
22
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25 **SECTION 3. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF**
26 **TITLE.**

27 (a) In this section, “certificate of title” means a certificate of title created by a
28 governmental agency of any state.

29 (b) The local law of the state under whose certificate of title a vessel is covered governs
30 all issues relating to the certificate of title, from the time the vessel becomes covered by the
31 certificate of title until the vessel ceases to be covered by the certificate of title, even if no other
32 relationship exists between the state and the vessel or its owner.

33 (c) A vessel becomes covered by a certificate of title created in this State when an
34 application for a certificate of title and the fee are received by the office in accordance with this

1 act. A vessel becomes covered by a certificate of title in another state when an application for a
2 certificate of title and the fee are received in that state pursuant to the law of that state.

3 (d) A vessel ceases to be covered by a certificate of title at the earlier of the time the
4 certificate of title ceases to be effective under the law of the state pursuant to which it was
5 created or the time the vessel subsequently becomes covered by another certificate of title.

6 **Reporter's Note**

7 Source: UCC § 9-303.

8 Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a security
9 interest in non-inventory collateral covered by a certificate of title statute is to have the security
10 interest noted on the certificate of title. *See* U.C.C. § 9-311(a)(2), (d). The scope of this rule is
11 greatly affected by Article 9's choice of law rules. Under those rules, the law of the jurisdiction
12 which issued the certificate (or for which an application had been filed) is the law that governs,
13 even if neither the debtor nor the goods are located there. *See* U.C.C. § 9-303. That law
14 continues to control even if the debtor or the goods move, until the certificate expires by its own
15 terms or a new certificate of title is issued by a different state. *Id.*

16
17 These rules should work well with a certificate of title system for vessels that is based on
18 the jurisdiction of principal use. For example, assume that a debtor who has granted a security
19 interest in a vessel applies in State A for a certificate of title for the debtor's vessel. Upon
20 making that application, the law of State A governs (not the law of the debtor's location). If the
21 application includes the required information about the existing security interest, the security
22 interest will be perfected. Now assume the debtor later changes the state of principle use to State
23 B.¹ The law of State B requires the debtor to apply for a certificate of title from State B. If the
24 debtor does not do so, then the law of State A will still govern the perfection of the security
25 interest. As long as the law of State A does not invalidate its certificate of title when the
26 principle use of the vessel changed to State B, the security interest will remain perfected.²

27
28 A slightly different problem can arise when a vessel is constructed. During construction,
29 and before any certificate of title is issued, any security interest would be perfected filing a
30 financing statement in the jurisdiction where the debtor is located, whether the debtor be the
31 builder or its customer. *See* § 9-301(1), 9-310(a). If, before launch, the state certificate of title

¹ Note, the debtor may not even be aware that the State of principle use has changed if the waters used border both State A and State B. That is because mooring apparently does not qualify as "use" for this purpose.

² In other words, while a certificate of *number* becomes invalid when the state of principle use changes, a certificate of *title* must not. *See* comment to Section 4.

1 statute begins to apply to the vessel,³ even though no certificate of title has yet been issued or
2 applied for, then there would potentially be a lapse in perfection. To avoid this problem, the
3 certificate of title act must either: (I) not apply before the application for a certificate is
4 submitted; or (ii) not condition perfection on notation of the lien on the certificate if no
5 certificate has been or could be issued.⁴
6
7
8

9 **SECTION 4. CERTIFICATE OF TITLE REQUIRED.**

10 (a) Except as provided in subsections (b) and (c), the owner of a vessel principally used
11 on the waters of this state shall submit an application to the office for a certificate of title for the
12 vessel within [20 days] of the latter of:

13 (1) the date of any transfer of ownership; or

14 (2) the date the vessel first became principally used on the waters of this
15 state].

16 (b) No application for a certificate of title need be submitted for a vessel that is covered
17 by a [valid] certificate of documentation.

18 (c) No application for a certificate of title need be submitted for a vessel acquired by a
19 dealer for resale.

20 (d) The office shall not issue, transfer, or renew a certificate of number for a vessel
21 unless the office has issued a certificate of title for the vessel or an application for a certificate of
22 title for the vessel has been submitted to the office.
23

³ There is a potentially important difference in phrasing between the choice-of-law rule in § 9-303 and the perfection rule in § 9-311(a)(2). Section 9-303 makes the issuing jurisdiction the governing law only from the moment the application for the certificate is filed. In contrast, § 9-311(a)(2) changes the method of perfection whenever the goods become “subject to” the applicable certificate of title statute.

⁴ Cf Wash. Rev. Code § 88.02.070(1) (“Security interests in vessels subject to the requirements of this chapter . . . shall be perfected only by indication upon the vessel’s title certificate”).

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Reporter's Note

Sources: Loosely from Ill. Comp. Stat. ¶ 45/3A-1; NASBLA Model Act for Vessel Titling §§ 3, 4, 6.

Federal law currently prohibits any person from operating a covered vessel unless the State in which the vessel is principally used has issued a certificate of number for the vessel. 33 C.F.R. § 173.15. For this purpose, covered vessels include almost all motorized watercraft. *See* 33 C.F.R. §§ 173.11, 173.13. Certificates of number are used in connection with the Coast Guard's Vessel Identification System. That system is designed to collect information about vessels. In particular, States are required to report casualties to numbered vessels. *See* C.F.R. Part 174, Subpart C.

A certificate of number must include a good deal of information about the vessel to which it applies, including the vessel's length, year of manufacture, propulsion method, and, if one exists, hull identification number. 33 C.F.R. § 174.19. A certificate of number must also include the name and address of the vessel's owner. 33 C.F.R. § 174.19(a)(4), (5).

It is important to understand that even though one of the objectives of the Vessel Identification System is to combat theft, a certificate of number is *not* the equivalent of a certificate of title. Certificates of number are not required to identify lienors. They cannot be valid for more than three years. *See* 33 C.F.R. § 174.27. *See also* 33 C.F.R. § 173.79 (certificate of number issued by the Coast Guard expires three years after issuance); § 174.19(a)(2) (certificate of number must state its expiration date). And, they become invalid immediately upon the owner's sale of the vessel or 60 days after the state of principal use changes. 33 C.F.R. § 173.77(b)(2), (d). In short, a certificate of number is not designed to function as a record of who has ownership rights in the vessel.

At least on a theoretical level, there need be no necessary correlation between a certificate of number and a certificate of title. Indeed, there is no necessary reason why the issuing state needs to be the same. While certificates of number are governed by the state of principal use, a uniform certificate of title act for vessels could choose any jurisdiction with minimum contacts as the one whose law governs. Thus, the act could provide that the jurisdiction where a vessel is moored or the jurisdiction in which its owner resides is the one that should issue the certificate of title. Similarly, there is no logical reason why the governing law would have to change or a new certificate of title would have to be issued merely because the owner or the vessel moved. Although historical practice is the contrary, the law could provide that only a change in ownership (including the creation or satisfaction of a security interest) would be something that would require issuance of a new certificate of title. Indeed, there is much to recommend such an approach. The more frequently that the certificate needs to be changed and the more jurisdictions involved in the process, the more likely it is that a mistake will be made.

However, Coast Guard regulations provide that “[a] State must require that all vessels required to be numbered in the State . . . be titled only in that state, if that state issues titles to

1 that class of vessels.” 33 C.F.R. § 187.304. In other words, because a new certificate of *number*
2 must be issued when the State of principle use changes, the owner must also be required to apply
3 for a new certificate of *title*. In short, titling must follow numbering. As indicated in my
4 memorandum to the Committee of June 11, 2009, State compliance with these regulations is not
5 mandatory. However, if a state’s titling law is certified by the Coast Guard as complying with
6 these regulations, then security interests perfected pursuant to that titling law can qualify as a
7 “preferred mortgage” under 46 U.S.C. § 31322(d). Therefore, assuming the Committee
8 continues to wish to draft uniform legislation that qualifies for such certification, then the
9 governing law for the purposes of titling will have to be and vary with the State of principle use.

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13 **SECTION 5. APPLICATION FOR CERTIFICATE OF TITLE.**

14 (a) Except as otherwise provided in Sections 17 and 18, only the owner of a vessel may
15 apply for a certificate of title covering the vessel.

16 (b) An application for a certificate of title must be signed by the applicant and contain:

- 17 (1) the applicant’s name, street address, and, if different, address for receiving
18 first class mail delivered by the United States Postal Service;
- 19 (2) the names of all other owners of the vessel;
- 20 (3) the principal residence of at least one owner;
- 21 (4) the social security number or taxpayer identification number of each owner;
- 22 (5) the hull identification number for the vessel;
- 23 (6) a description of the vessel as required by the office, including:
- 24 (A) the name of the manufacturer, builder, or make;
- 25 (B) the model year, manufacture year, or year built;
- 26 (C) the overall length of the vessel;
- 27 (D) the vessel type;
- 28 (E) the hull material;
- 29 (F) the propulsion type; and

1 (G) the engine drive type[, if any].

2 (7) an indication of all security interests in the vessel known to the applicant,
3 including the name and mailing address of the secured party or a representative of the secured
4 party;

5 (8) any title brand known to the applicant and, if known, the jurisdiction whose
6 governmental agency created the title brand;

7 (9) if the application is made in connection with a transfer of ownership, the
8 transferor's name, physical address and, if different, address for receiving first class mail
9 delivered by the United States Postal Service, the sales price if any, and the date of the transfer.

10 (c) In addition to the information required in subsection (b), an application for a
11 certificate of title may contain electronic communication addresses of the owner or the
12 transferor.

13 (d) Except as otherwise provided in Section 17, 18, 19, or 20, the application must be
14 accompanied by:

15 (1) a certificate of title created by a governmental agency of any jurisdiction
16 covering the vessel, which has been executed to the applicant or which identifies the applicant as
17 owner of the vessel;

18 (2) a certificate of documentation covering the vessel, which has been executed
19 to
20 the applicant or which identifies the applicant as owner of the vessel; or

21 (3) if there is neither a certificate of title created by a governmental agency of
22 any
23 jurisdiction covering the vessel nor a certificate of documentation covering the vessel, all

1 existing certificates of origin covering the vessel which are known to the applicant and which
2 identify the applicant as owner of the vessel.

3 (e) Any certificate of title, certificate of documentation, or certificate of origin submitted
4 in connection with an application is part of the application and must be indicated in the files of
5 the office.

6 (f) The office may require that an application for a certificate of title be accompanied by:

7 (1) payment of all taxes and fees payable by the applicant under the law of this
8 state in connection with the acquisition or use of a vessel; or

9 (2) evidence of payment of the tax or fee.

10 **Reporter's Note**

11 Sources: UCOTA § 9; 33 C.F.R. §§ 187.101, 187.317.

12
13 Unlike motor vehicles, which have only one title source document prior to titling (a
14 manufacturer's statement of origin), a vessel can have two: a manufacturer's statement or
15 certificate of origin and a builder's certificate. Because there is no ready way for the titling
16 office to know – unless informed by the applicant – if there is both a manufacturer's certificate
17 and a builder's certificate for the same vessel, and because a manufacturer's certificate should
18 exist even if there is a builder's certificate, this act generally ignores builder's certificates. *See*
19 Section 2(a)(5).
20
21

22
23 Not all of the information submitted will appear on the certificate of title. For example,
24 the principal residence of an owner and each owner's social security number or taxpayer
25 identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear on the
26 certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 7.
27

28 **SECTION 6. CREATION AND CANCELLATION OF CERTIFICATE OF** 29 **TITLE.**

30 (a) Unless an application for a certificate of title is rejected under subsection (c),
31 the office shall create a certificate of title upon receipt of an application that complies with

1 Section 5 and payment of all taxes and fees.

2 (b) Upon request of the secured party of record, the office shall create a written
3 certificate of title or, if the office is authorized to do so, an electronic certificate of title. If no
4 security interest is indicated in the files of the office, the owner of record may have the office
5 create a written certificate of title or, if the office is authorized to do so, an electronic certificate
6 of title. If no request is made by an owner of record or secured party, the office may create a
7 written certificate of title or, if authorized to do so, an electronic certificate of title.

8 (c) The office may reject an application for a certificate of title only if:

9 (1) the application does not comply with Section 5;

10 (2) the application does not contain documentation sufficient for the office to
11 determine whether the applicant is entitled to a certificate of title for the vessel;

12 (3) there is a reasonable basis for concluding that the application is fraudulent or
13 would facilitate a fraudulent or illegal act; or

14 (4) the application does not comply with law of this state other than this act.

15 (d) If the office has created a certificate of title, it may cancel the certificate of title only
16 if it could have rejected the application under subsection (c), it is required to cancel the
17 certificate of title under another provision of this act, or the [U.S. Coast Guard has informed the
18 office that]

19 the vessel has become covered by a certificate of documentation. [The office shall provide an
20 opportunity for a hearing at which the applicant and any other interested party may present
21 evidence in support of or opposition to the cancellation. The office shall serve the notice of the
22 opportunity in person or send it by first class mail delivered by the United States Postal Service
23

1 to the applicant, the owner of record, and all secured parties indicated in the files of the office. If
2 the applicant or any other interested party requests a hearing not later than [10] days after
3 receiving the notice, the office shall hold the hearing not later than [20] days after receiving the
4 request].

5 **Reporter's Note**

6 Sources: UCOTA § 10; Ind. Code § 9-31-2-9.
7

8
9 Subsection (c) is derived in part from Indiana law and is intended to permit the office to
10 reject an application if the applicant does not provide sufficient proof of ownership.
11

12 Subsection (d) includes a provision allowing the office to cancel a certificate of title for a
13 vessel that becomes federally documented.
14

15 Some states have laws that require the applicable office to cancel a motor vehicle
16 certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or
17 failure to maintain the vehicle in a mechanically fit manner. It is unknown if any of these laws
18 apply to vessels but in any event this section does not permit cancellation for any of these
19 reasons. Cancelling the vessel's registration (*i.e.* license to use) for such failures would seem far
20 more appropriate than cancelling its certificate of title. Moreover, nothing in the Coast Guard
21 regulations authorizes cancellation for any of these reasons, and therefore authorizing
22 cancellation for any of those reasons in this act might jeopardize the goal of allowing security
23 interests perfected pursuant to this act to qualify as a "preferred mortgage" under 46 U.S.C.
24 § 31322(d).

25 26 **SECTION 7. CONTENTS OF CERTIFICATE OF TITLE.**

27 (a) A certificate of title must contain:

- 28 (1) the date the certificate of title was created;
- 29 (2) the name of all owners of the vessel;
- 30 (3) the vessel identification number;
- 31 (4) all of the information listed in Section 5(b)(6);
- 32 (5) except as otherwise provided in Section 21(b), the name and address of any

1 secured party of record and an indication of whether there are additional security interests
2 indicated in the files of the office or on a record created by a governmental agency of any
3 jurisdiction and submitted to the office;

4 (6) all title brands covering the vessel, including brands previously indicated on a
5 certificate of title created by a governmental agency of any jurisdiction, which are known to the
6 office; and

7 (b) Nothing in this act precludes an office from noting on a certificate of title the name
8 and address of a secured party that is not a secured party of record.

9 (c) An indication of a title brand on a certificate of title may consist of an abbreviation,
10 but not a symbol, and must identify the jurisdiction that created the title brand or the jurisdiction
11 that created a certificate of title created by a governmental agency of any jurisdiction that
12 indicated the title brand. If the meaning of a title brand is not easily ascertainable or cannot be
13 accommodated on the certificate of title, the certificate of title may state: “Previously branded in
14 [insert the particular jurisdiction that created the title brand or whose certificate of title
15 previously indicated the title brand].”

16 (d) If a vessel was previously registered in a jurisdiction other than a state, the office
17 shall indicate on the certificate of title that the vessel was registered in that jurisdiction.

18 (e) A certificate of title must contain a form that the owner may sign in order to execute
19 the certificate.

20 **Reporter’s Note**

21 Sources: UCOTA § 11; 33 C.F.R. § 187.317.
22

23
24 The Drafting Committee may wish to consider adding to the list of required information
25 in subsection (a) the number for the vessel on the “certificate of number,” which the state is to
26 generate pursuant to 33 C.F.R Part 173.

1 **SECTION 8. OTHER INFORMATION.**

2 (a) The office may accept a submission of information relating to a vessel for indication
3 in the files of the office, even if the requirements for a certificate of title, an application for a
4 certificate of title, or a termination statement have not been met.

5 (b) A submission of information under this section, to the extent practicable, must
6 include the information required by Section 5(b) for an application for a certificate of title.

7 (c) The office may require the submission of information relating to a vessel required for
8 payment of taxes and fees for issuance or renewal of registration.

9 (d) The office may require a person submitting information under this section to provide
10 a bond in a form and amount determined by the office. A bond must provide for indemnification
11 of any secured party or other interested party against any expense, loss, or damage resulting from
12 indication of the information in the files of the office.

13 (e) A submission of information under this section and its indication in the files of the
14 office is not a certificate of title, an application for a certificate of title, or a termination
15 statement and does not provide a basis for transferring or determining ownership of a vessel.

16 **Reporter’s Note**

17 Source: UCOTA § 13.
18

19
20 **SECTION 9. MAINTENANCE OF AND ACCESS TO FILES.**

21 (a) For each record relating to a certificate of title submitted to the office, the office
22 shall:
23

24 (1) ascertain or assign the vessel identification number for the vessel;

25 (2) indicate in the files of the office the vessel identification number and all the

1 information submitted with the application pursuant to Section 5(b) to which the record relates,
2 including the date [and time] the record was delivered to the office;

3 (3) maintain the file for public inspection subject to subsection (d); and

4 (4) index the files of the office so as to be accessible as required by subsection
5 (b).

6 (b) The office shall indicate in the files of the office the information contained in all
7 certificates of title created under this act. The files of the office must be accessible by the vessel
8 identification number for the vessel covered by the certificate and any other indexing method
9 used by the office.

10 (c) To the extent known to the office, the files of the office maintained under this section
11 relating to a vessel must indicate all title brands and the name or names of any secured party and
12 claimant to ownership of the vessel and include stolen-property reports.

13 [(d) Except as otherwise provided by law of this state other than this act, the information
14 required under Section 7 is a public record. Whether other information in the files of the office
15 is made available to the public is governed by law of this state other than this act.]

16 **Reporter's Note**

17 Source: UCOTA § 14.

18 Subsection (d) makes the information on the certificate of title a public record. It does
19 not make the information in the application a public record. Therefore, nothing in this Act
20 requires that the social security or taxpayer identification numbers of the owners, which is
21 required by Section 5(b)(4), be made public.
22

1 Source: UCOTA § 15.

2
3 **SECTION 11. EFFECT OF CERTIFICATE.** A certificate of title is prima facie
4 evidence of the facts appearing on it.

5 **Reporter's Note**

6 Source: Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 9(d).

7 This provision may not be necessary. Its purpose is to give some effect to the certificate
8 of title without making it conclusive as to who has rights to the titled vessel. That purpose may
9 be adequately – and more clearly – served by the provisions of Sections 13, 14, and 15.

10
11
12
13 **SECTION 12. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE;
14 JUDICIAL PROCESS.** A certificate of title created by a governmental agency of any
15 jurisdiction does not by itself provide a means to obtain possession of a vessel. Garnishment,
16 attachment, levy, replevin, or other judicial process against the certificate of title is not effective
17 to determine possessory rights with respect to the vessel. However, this act does not prohibit
18 enforcement of a security interest in, levy on, or foreclosure of a statutory or common-law lien
19 on a vessel under law of this state other than this act. The absence of an indication of a statutory
20 or common-law lien on a certificate of title does not invalidate the lien.

21
22 **Reporter's Note**

23 Source: UCOTA § 12.

24
25 **SECTION 13. TRANSFER.**

1 (a) Upon sale of a vessel covered by a certificate of title, a person authorized to execute
2 the certificate of title, as promptly as practicable and in compliance with this act and law of this
3 state other than this act, shall sign and deliver the certificate to the buyer or deliver to the office a
4 signed certificate of title or [a] [an authenticated] record evidencing transfer to the buyer of a
5 vessel covered by an electronic certificate of title. The buyer of a vessel covered by a certificate
6 of title has a specifically enforceable right to require the seller to execute the certificate of title to
7 the buyer or deliver to the office a signed certificate of title or other record evidencing the
8 transfer.

9 (b) Execution of a certificate of title created by a governmental agency of any
10 jurisdiction satisfies subsection (a).

11 (c) As between the parties to a transfer and their assignees and successors, a transfer of
12 ownership is not rendered ineffective by a failure to execute a certificate of title as provided in
13 this section. However, except as otherwise provided in Section 14(b) and (c), 15, 16, or 17, a
14 transfer of ownership without execution of a certificate of title is not effective as to other persons
15 claiming an interest in the vessel.

16 (d) Before an agreement to transfer ownership by an electronic certificate of title is made
17 or any consideration for the transfer is paid, and before a record evidencing the transfer is
18 executed to the transferee or delivered by the transferor to the office, the transferor shall deliver
19 to the transferee a signed record containing the information required by Section 5(b)(6), and the
20 transferee shall deliver to the transferor a signed record acknowledging receipt of the
21 information. The transferee has a specifically enforceable right to receive this information
22 before any consideration is paid. The record delivered to the office must indicate that these
23 requirements have been met.

1 (e) After execution of the certificate of title and delivery of possession of the vessel to
2 the transferee, the transferor is not liable as owner for any damages resulting from operation of
3 the vessel thereafter even if the transferee fails to apply for a new certificate of title reflecting the
4 transfer.

5 **Reporter's Note**
6

7 Source: UCOTA § 16.
8

9
10 **SECTION 14. RIGHTS OF PURCHASERS GENERALLY.**

11 (a) A purchaser of a vessel has the protections afforded by [Uniform Commercial Code
12 Sections 2-403(1), 2A-304(1), and 2A-305(1)].

13 (b) A buyer in ordinary course of business or lessee in ordinary course of business of a
14 vessel has the protections afforded by [Uniform Commercial Code Sections 2-403(2),
15 2A-304(2), and 2A-305(2)], even if the certificate of title is not executed to the buyer or lessee.

16 (c) A purchase of a leasehold interest is subject to [Uniform Commercial Code Section
17 2A-303].

18 (d) Except as otherwise provided in Section 13, the rights of other purchasers of vessels
19 and of lien creditors are governed by [Uniform Commercial Code Articles 2, 2A, [6,] 7, and 9].

20 **SECTION 15. RIGHTS OF PURCHASERS AGAINST SECURED PARTIES.**

21 (a) Except as otherwise provided in this section or Section 14(b), a transferee of
22 ownership takes subject to:

23 (1) a security interest in the vessel indicated on a certificate of title; and

24 (2) if the certificate of title contains a statement that the vessel is or may be

1 subject to security interests not indicated on the certificate of title, a security interest not so
2 indicated.

3 (b) If, while a security interest in a vessel is perfected by any method under the law of
4 any jurisdiction, the office creates a certificate of title that does not indicate the vessel is subject
5 to the security interest or contain a statement that it may be subject to security interests not
6 indicated on the certificate, a buyer of the vessel, other than a person in the business of selling or
7 leasing goods of that kind, takes free of the security interest if the buyer:

8 (1) gives value in good faith, receives possession of the vessel, and obtains
9 execution of the certificate of title; and

10 (2) does not have knowledge of the security interest in the vessel.

11 (c) A buyer in ordinary course of business takes free of a security interest in the vessel,
12 including a security interest indicated on a certificate of title, created by the buyer's seller, even
13 if the security interest is perfected, the buyer knows of its existence, and the certificate of title
14 was not executed to the buyer. A lessee in ordinary course of business takes its leasehold
15 interest free of a security interest in the vessel, including a security interest indicated on a
16 certificate of title, created by the lessee's lessor, even if the security interest is perfected, the
17 lessee knows of its existence, and the certificate of title was not executed to the lessee. This
18 subsection does not affect a security interest in a vessel in the possession of the secured party
19 under [Uniform Commercial Code Article 9].

20 (d) If, while a security interest in a vessel is perfected by any method under the law of
21 any jurisdiction, the office creates a certificate of title that does not indicate that the vessel is
22 subject to the security interest or contain a statement that it may be subject to security interests
23 not indicated on the certificate of title, the security interest is subordinate to a conflicting

1 security interest in the vessel which is perfected after creation of the certificate of title and
2 without the conflicting secured party's knowledge of the security interest.

3 (e) A security interest is indicated on an electronic certificate of title if it is indicated in
4 the record of the certificate of title maintained by the office.

5 **Reporter's Note**

6 Source: UCOTA § 19.
7
8
9

10 **SECTION 16. EFFECT OF OMISSION OR INCORRECT INFORMATION.**

11 (a) Except as otherwise provided in this section, a certificate of title or other record
12 required or authorized by this act is effective even if it contains incorrect information or does not
13 contain required information.

14 (b) In addition to any rights provided under Section 14 or 15, if a certificate of title or
15 other record required or authorized by this act is seriously misleading because it contains
16 incorrect information or omits required information, a purchaser of the vessel to which the
17 record relates takes free of any interest that would have been indicated in the record if the correct
18 or
19 omitted information had been indicated, to the extent that the purchaser gives value in reasonable
20 reliance on the incorrect information or the absence of the omitted information.

21 (c) Except as otherwise provided in subsection (d), a description of a vessel, including
22 the vessel identification number in a certificate of title or other record required or authorized by
23 this act which otherwise satisfies this act is not seriously misleading, even if not specific and
24 accurate, if the description reasonably identifies the vessel.

1 (d) With respect to a security interest or other interest indicated in the files of the office
2 and not indicated on a written certificate of title, a failure to indicate the information specifically
3 or accurately is not seriously misleading if a search of the files of the office using the correct
4 vessel identification number or other required information, using the office’s standard search
5 logic, if any, would disclose the security interest or other interest.

6 **Reporter’s Note**

7
8 Source: UCOTA § 20.

9
10 **SECTION 17. TRANSFER BY SECURED PARTY’S TRANSFER STATEMENT.**

11 (a) In this section, “secured party’s transfer statement” means a record signed by the
12 secured party of record stating:

13 (1) that the owner of record has defaulted on an obligation to the secured party of
14 record;

15 (2) that the secured party of record is exercising or has exercised post-default
16 remedies with respect to the vessel;

17 (3) that, by reason of the exercise, the secured party of record has the right to
18 transfer the rights of the owner of record;

19 (4) the name and last known mailing address of:

20 (A) the owner of record;

21 (B) the secured party of record; and

22 (C) any other purchaser;

23 (5) any other information required by Section 5(b); and

1 (6) that the certificate of title is an electronic certificate of title, or that the
2 secured
3 party does not have possession of the written certificate of title created in the name of the owner
4 of record, or that the secured party is delivering the written certificate of title to the office with
5 the secured party's transfer statement.

6 (b) Completion and delivery to the office of a secured party's transfer statement, and
7 payment of all applicable taxes and fees, entitles the secured party to the creation of a certificate
8 of title showing the secured party of record or other purchaser as the owner of record. Unless the
9 secured party's transfer statement is rejected by the office for a reason set forth in Section 6(c),
10 the office shall:

11 (1) accept the secured party's transfer statement;

12 (2) amend the files of the office to reflect the transfer;

13 (3) cancel the certificate of title created in the name of the owner of record listed
14 in the secured party's transfer statement, whether or not the certificate of title has been delivered
15 to the office;

16 (4) create a new certificate of title indicating the secured party of record or other
17 purchaser as the vessel's owner of record; and

18 (5) deliver the new certificate of title pursuant to Section 10.

19 (c) The creation of a certificate of title under subsection (b) is not of itself a disposition
20 of the vessel and does not of itself relieve the secured party of its duties under [Uniform
21 Commercial Code Article 9].

22 **Reporter's Note**

23 Source: UCOTA § 21.
24

1 **SECTION 18. TRANSFER BY OPERATION OF LAW.**

2 (a) In this section:

3 (1) “By operation of law” means pursuant to a law or judicial order affecting
4 ownership of a vessel:

5 (A) on account of death, divorce or other family law proceeding, merger,
6 consolidation, dissolution, or bankruptcy;

7 (B) through the exercise of the rights of a lien creditor or a person having
8 a statutory or common law lien or other nonconsensual lien; or

9 (C) through other legal process.

10 (2) “Transfer-by-law statement” means a record signed by a transferee stating
11 that, by operation of law, the transferee has acquired or has the right to acquire the ownership
12 interest of the owner of record and containing:

13 (A) the name and mailing address of the owner of record and the
14 transferee and the other information required by Section 5(b);

15 (B) documentation sufficient to establish the transferee’s interest or right
16 to acquire the ownership interest of the owner of record; and

17 (C) a statement that:

18 (i) the certificate of title is an electronic certificate of title;

19 (ii) the transferee does not have possession of the written
20

21 certificate of title created in the name of the owner of record; or

22 (iii) the transferee is delivering the written certificate of title to the
23 office with the transfer-by-law statement.

1 (b) If a transfer-by-law statement is delivered to the office with all taxes and fees and
2 documentation satisfactory to the office as to the transferee's ownership interest or right to
3 acquire the ownership interest of the owner of record, unless it is rejected by the office for a
4 reason set forth in Section 6(c), the office shall:

5 (1) accept delivery of the transfer-by-law statement;

6 (2) promptly send notice to the owner of record and to all persons indicated in the
7 files of the office as having an interest, including a security interest, in the vessel that a transfer-
8 by-law statement has been delivered to the office;

9 (3) amend the files of the office to reflect the transfer;

10 (4) cancel the certificate of title created in the name of the owner of record
11 indicated in the transfer-by-law statement, whether or not the certificate has been delivered to the
12 office;

13 (5) create a new certificate of title, indicating the transferee as owner of record;

14 and

15 (6) deliver the new certificate of title.

16 (c) This section does not apply to a transfer of an interest in a vessel by a secured party
17 under [Uniform Commercial Code Article 9] or Section 17.

18 **Reporter's Note**

19 Source: UCOTA § 22.
20

1 **SECTION 19. APPLICATION FOR TRANSFER OF OWNERSHIP OR**
2 **TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.**

3 (a) Except as otherwise provided in Section 17 or 18, upon receiving either an
4 application that includes an indication of a transfer of ownership or a termination statement that
5 is not accompanied by submission of a signed certificate of title, the office may create or amend
6 a certificate of title under this section only if:

7 (1) all other requirements under Sections 5 and 6 are met;

8 (2) the applicant has provided an affidavit stating facts that indicate the applicant
9 is entitled to a transfer of ownership or termination statement;

10 (3) at least 45 days before the office creates or amends the certificate of title, the
11 office has sent notice of the application to all persons having an interest in the vessel as indicated
12 in the files of the office and no objection from any of those persons has been received by the
13 office; and

14 (4) the applicant submits any other information required by the office to evidence
15 the applicant's ownership or right to termination the security interest, and the office has no
16 credible information indicating theft, fraud, or any undisclosed or unsatisfied security interest,
17 lien, or other claim to an interest in the vessel.

18 (b) Unless the office determines, by any reasonable method, that the value of the vessel
19 is

20 less than [\$x,000], before creating or amending the certificate of title, the office may require an
21 applicant under subsection (a) to post a bond or provide an equivalent source of indemnity or
22 security. The bond, indemnity, or other security must be in a form prescribed by the office and
23 provide for indemnification of any owner, purchaser, or other claimant for any expense, loss,

1 delay, or damage, including reasonable attorney's fees and costs but not consequential damages,
2 resulting from creation or amendment of the certificate of title, but may not exceed twice the
3 value of the vessel as determined by the office.

4 (c) If the office has not received a claim for indemnity within one year after creation or
5 amendment of the certificate of title under subsection (a), upon request in a form and manner
6 specified by the office, the office shall release any bond, indemnity, or other security.

7 (d) The office may indicate in a certificate of title created or amended under subsection
8 (a) that the certificate of title was created without submission of a signed certificate of title or
9 termination statement. If no credible information indicating theft, fraud, or any undisclosed or
10 unsatisfied security interest, lien, or other claim to an interest in the vessel has been delivered to
11 the office within one year after creation of the certificate of title, upon request in a form and
12 manner specified by the office, the office shall remove the indication from the certificate of title.

13 **Reporter's Note**

14 Source: UCOTA § 33.
15

16
17 **SECTION 20. REPLACEMENT CERTIFICATE OF TITLE.**

18 (a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise
19 becomes unavailable or illegible, the secured party of record or, if there is no secured party
20 indicated in the files of the office, the owner of record may apply for and, by furnishing
21 information satisfactory to the office, obtain a replacement certificate of title in the name of the
22 owner of record.

23 (b) An application for a replacement certificate of title must be submitted in a record

1 signed by the applicant and, except as otherwise permitted by the office, must comply with
2 Section 5.

3 (c) Unless it has been lost, stolen, or destroyed or is otherwise unavailable, the existing
4 written certificate of title must be submitted to the office with an application for a replacement
5 certificate of title.

6 (d) A replacement certificate of title created by the office must comply with Section 7
7 and indicate on the face of the certificate of title that it is a replacement certificate of title.

8 (e) If a person receiving a replacement certificate of title subsequently obtains
9 possession of the original written certificate of title, the person shall promptly destroy the
10 original written certificate of title.

11 **Reporter's Note**

12 Source: UCOTA § 24.
13
14

15 **SECTION 21. PERFECTION OF SECURITY INTEREST.**

16 (a) Except as otherwise provided in subsection (b), (d), or (e), a security interest in a
17 vessel may be perfected only by submitting an application for a certificate of title that identifies
18 the secured party or a representative of the secured party and that otherwise complies with
19 Section 5. The security interest is perfected upon the later of [receipt] [acceptance] of the
20 application by the office or attachment of the security interest under [Uniform Commercial Code
21 Section 9-203].

22 (b) For the purposes of subsection (a), if the interest of the person named as owner[,
23 lessor, consignor, or bailor,] in an application for a certificate of title delivered to the office is a
24 security interest, the application sufficiently identifies the person as secured party. The

1 identification of a person as owner[, lessor, consignor, or bailor] on the application for a
2 certificate of title is not of itself a factor in determining whether the person's interest is a security
3 interest.

4 (c) If a secured party assigns a perfected security interest in a vessel, the receipt by the
5 office of a statement providing the name of the assignee or its representative as secured party is
6 not required in order to continue the perfected status of the security interest against creditors of
7 and transferees from the original debtor. However, a purchaser of a vessel subject to a security
8 interest which obtains a release from the secured party indicated in the files of the office or on
9 the certificate of title takes free of the security interest and of the rights of a transferee if the
10 transfer is not indicated either in the files of the office or on the certificate of title.

11 (d) This section does not apply to a security interest in a vessel created by a person
12 during any period in which the vessel is inventory held for sale or lease by the person or is leased
13 by the person as lessor if the person is in the business of selling goods of that kind.

14 (e) A security interest in a vessel is perfected to the extent provided in [Uniform
15 Commercial Code Section 9-316(d)]. A secured party may also perfect a security interest by
16 taking possession of a vessel only pursuant to [Uniform Commercial Code Sections 9-313(b) and
17 9-316(d)].

18 [(f) For the purposes of [Uniform Commercial Code Article 9, Part 3], perfection of a
19 security interest in a vessel pursuant to subsection (a) is the equivalent of perfection of a
20 security interest through filing a financing statement.]

21
22
23 **Reporter's Note**

24
25 Source: UCOTA § 26; UCC § 9-311(b).

1 All of the references in UCOTA to a “security-interest statement” have been deleted.
2 Instead, this act treats the creation of a security interest as a transfer of an ownership interest, *see*
3 Section 2(a)(23), and thus as something for which an application for a new or amended
4 certificate should be made. The Committee should consider whether this approach adequately
5 protects secured parties. If the a security interest in a vessel is perfected under the law of a state
6 – whether by titling or by filing – and the vessel thereafter becomes subject to this act in a new
7 state, the security interest will remain perfected even if the debtor fails to have the security
8 interest noted on the certificate of title issued by the new state. *See* subsection (e); U.C.C.
9 § 9-316(d). However, the secured party would be vulnerable to the rights of a subsequent
10 purchaser. *See* U.C.C. § 9-337.

11
12 Subsection (f) is derived f rom UCC § 9-311(b). It is suggested for inclusion here to
13 avoid any issue about which act controls. It is intended to affirm the application of such rules as
14 § 9-317(e) (giving priority to a perfected PMSI over a judicial lien if the PMSI is perfected
15 within 20 days of when the debtor receives possession) and reject such cases as *In re Roser*,
16 2009 WL 1973507 (D. Colo. 2009).

17
18 It may be desirable to provide for a temporary perfection period for security interests in a
19 documented vessel perfected under federal law upon surrender of the certificate of
20 documentation. Even if the Coast Guard were to require the secured party’s consent to surrender
21 of the certificate of documentation, federal law would apparently cease governing immediately,
22 *see* 46 U.S.C. § 31322(e)(1), and without some temporary period of perfection, perfection might
23 well lapse. Even if the security interest were re-perfected shortly thereafter pursuant to this act,
24 the security interest would be vulnerable to avoidance as a preference. *See* 11 U.S.C. § 547.
25 Such a temporary perfection rule could apply to all security interests or could be limited to those
26 perfected under subsection (a) proper to the issuance of the certificate of documentation.

27
28 **SECTION 22. TERMINATION STATEMENT.**

29 (a) A secured party indicated in the files of the office as having a security interest in a
30 vessel shall deliver to the office and, upon the debtor’s request, to the debtor, a signed
31 termination statement if there is no obligation secured by the vessel subject to the security
32 interest and no commitment to make an advance, incur an obligation, or otherwise give value
33 secured by the vessel.

34 (b) A secured party indicated in the files of the office as having a security interest in a
35 vessel shall deliver a signed termination statement to the debtor or the office upon the earlier of:

1 (1) [30] days after there is no obligation secured by the vessel and no
2 commitment to make an advance, incur an obligation, or otherwise give value secured by the
3 vessel; or

4 (2) [14] days after the secured party receives a signed demand from an owner and
5 there is no obligation secured by the vessel subject to the security interest and no commitment to
6 make an advance, incur an obligation, or otherwise give value secured by the vessel.

7 (c) If a written certificate of title has been created and delivered to a secured party and a
8 termination statement is required under subsection (a), the secured party, within the time
9 provided in subsection (b), shall deliver the written certificate of title to the debtor or the office
10 with the termination statement. If the written certificate is lost, stolen, mutilated, or destroyed or
11 is otherwise unavailable or illegible, the secured party shall deliver with the termination
12 statement, within the time provided in subsection (b), an application for a replacement certificate
13 of title meeting the requirements of Section 20.

14 (d) Upon the delivery of a termination statement to the office pursuant to this section,
15 any indication of the security interest on the certificate of title to which the termination statement
16 relates ceases to be effective. The files of the office must indicate the date [and time] of delivery
17 of the termination statement to the office.

18 (e) A secured party is liable for damages in the amount of any loss caused by its failure
19 to comply with this section and for the reasonable cost of an application for a certificate of title
20 under Section 5 or 20.

21 **Reporter's Note**

22 Source: UCOTA § 27.
23
24

1 **SECTION 23. DUTIES AND OPERATION OF FILING OFFICE.**

2 (a) The files of the office must indicate all information regarding a security interest in a
3 vessel, including any termination statement received by the office under Section 22, until least
4 [10] years after the office receives a termination statement regarding the security interest. The
5 information must be accessible by the vessel identification number for the vessel and any other
6 indexing methods provided by the office.

7 (b) The office shall send to a person that submits a record to the office, or submits
8 information that is accepted by the office, and requests an acknowledgment of the filing or
9 submission, an acknowledgment showing the vessel identification number of the vessel to which
10 the record or submission relates, the information in the filed record or submission, and the date
11 [and time] the record was received or the submission accepted. A request under this section
12 must contain the vessel identification number and be delivered by means authorized by the
13 office.

14 (c) The office shall send or otherwise make available in a record the following
15 information to any person that requests it:

16 (1) whether the files of the office indicate, as of a date [and time] specified by the
17 office, but not a date earlier than [three] business days before the office received the request, any
18 certificate of title, security interest, or termination statement that relates to a vessel identified by
19 a vessel identification number designated in the request; and

20 (2) the name of the owner of record;

21 (3) the name and address of any secured party indicated in the files of the office
22 or on the certificate of title, and the effective date of any such information; and

23 (4) any termination statement indicated in the files of the office and the effective

1 date of the termination statement.

2 (d) In responding to a request under this section, the office may communicate the
3 requested information in any medium. However, if requested, the office shall send the requested
4 information in a record that is self-authenticating under [cite applicable rule of evidence].

5 (e) The office shall comply with this section at the time and in the manner prescribed by
6 the rules of the office but shall respond to requests under this section not later than [two]
7 business days after the office receives the request.

8 **Reporter’s Note**

9
10 Source: UCOTA § 28.

11
12 If the Drafting Committee wishes to amend Section 7(a) to require that the certificate of
13 title also list the number for the vessel on the “certificate of number,” then it may wish to also
14 amend Section 23(c) to permit searches by the number on the certificate of number.

15
16 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

17 applying and construing this uniform act, consideration must be given to the need to promote
18 uniformity of the law with respect to its subject matter among states that enact it.

19
20 **Reporter’s Note**

21
22 Source: ULC Drafting Rule 601.

23
24
25
26 **SECTION 25. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL**
27 **COMMERCE ACT.** This act modifies, limits, and supersedes the federal Electronic Signatures
28 in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify,

1 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic
2 delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section
3 7003(b)).

4 **Reporter's Note**

5 Source: ULC Drafting Rule 603.
6

7
8 **SECTION 26. SAVINGS CLAUSE.**

9 (a) Except as otherwise provided in this section, this act applies to any transaction,
10 certificate of title, or record involving a vessel, even if the transaction, certificate of title,
11
12 or record was entered into or created before the effective date of this act.

13 (b) A transaction, certificate of title, or record that was validly entered into or created
14 before the effective date of this act and would be subject to this act if it had been entered into or
15 created on or after the effective date of this act, and the rights, duties, and interests flowing from
16 the transaction, certificate of title, or record remains valid after the effective date of this act.

17 (c) This act does not affect an action or proceeding commenced before the effective date
18 of this act.

19 (d) A security interest that is enforceable immediately before the effective date of this
20 act
21 and would have priority over the rights of a person that becomes a lien creditor at that time is a
22 perfected security interest under this act.

23 (e) This act does not affect the priority of a security interest in a vessel if immediately

1 before the effective date of this act the security interest is enforceable and perfected, and that
2 priority is established.

3 **Reporter's Note**

4
5 Sources: ULC Drafting Rule 603; UCOTA § 31.

6

7 **SECTION 27. REPEALS.** The following acts and parts of acts are repealed:

8 [add legislative note]

9 **Reporter's Note**

10
11 Source: UCOTA § 32.

12

13 **SECTION 28. EFFECTIVE DATE.** This act takes effect

14 **Reporter's Note**

15
16 Source: ULC Drafting Rule 604.