

State of Alabama



Alabama Law Institute

Uniform Certificate of Title For Vessels Act

November 2013

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Preface

The Alabama Law Institute presents to the Bench and Bar of Alabama, for consideration and constructive criticism the following proposed act.

Currently, all 50 states have a certificate of title law for motor vehicles. These laws vary only slightly with respect to which motor vehicles are covered, and all or almost all of the laws are based on where the vehicle is principally garaged. As a result, there is no significant overlap or duplication of coverage.

In contrast, more than a one-third of states, including Alabama, do not have a certificate of title law for boats and other vessels. The lack of uniformity among states on this issue allows for extensive fraud: title to a stolen vessel can be washed by moving the vessel to a new jurisdiction that either has no titling law or has a statute that does not cover the type of vessel stolen.

Alabama's lack of a titling law for vessels is a particular hardship on owners whose vessel is damaged, destroyed, or lost in a natural disaster. Following such events, residents are often left with difficulty proving ownership of lost or damaged vessels.

The Uniform Certificate of Title for Vessels Act addresses all of these problems. In general, the act covers all vessels at least 16 feet in length and all vessels propelled by an engine of at least 10 horsepower. Exceptions exist for seaplanes, amphibious vehicles for which a certificate of title is issued pursuant to a motor vehicle titling act, watercraft that operate only on a permanently fixed, manufactured course, certain houseboats, lifeboats used on another vessel, and watercraft owned by the United States, a state, or a foreign government.

The act applies if the vessel is used principally on the

waters of Alabama. An owner must apply for a certificate of title. However, no application is required for a federally documented vessel, a foreign documented vessel, a barge, a vessel under construction, or a vessel owned by a dealer.

A title application must include information about the owner or owners, the vessel, and any secured parties. The application must be accompanied by documentary evidence showing the applicant to be an owner of the vessel. Most of the information in the application will then be put on the certificate. The titling office will maintain its records so that searches about vessels can be conducted by the vessel's hull identification number, by the vessel number, or by the owner's name.

The committee was chaired by E.B. Peebles and aided by Professor Bill Henning who served as reporter.

Othni J. Lathram
Director

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UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

SECTION 1. SHORT TITLE. This act may be cited as the Uniform Certificate of Title for Vessels Act.

SECTION 2. DEFINITIONS.

(a) In this act:

(1) “Barge” means a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.

(2) “Builder’s certificate” means a certificate of the facts of build of a vessel described in 46 C.F.R. Section 67.99, as amended.

(3) “Buyer” means a person that buys or contracts to buy a vessel.

(4) “Cancel”, with respect to a certificate of title, means to make the certificate ineffective.

(5) “Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a manufacturer’s certificate or statement of origin and an importer’s certificate or

statement of origin. The term does not include a builder's certificate.

(6) "Certificate of title" means a record, created by the office under this act or by a governmental agency of another jurisdiction under the law of that jurisdiction, that is designated as a certificate of title by the office or agency and is evidence of ownership of a vessel.

(7) "Dealer" means a person, including a manufacturer, in the business of selling vessels.

(8) "Documented vessel" means a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. Section 12105, as amended. The term does not include a foreign-documented vessel.

(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

(11) "Foreign-documented vessel" means a vessel the ownership of which is recorded in a registry maintained by a

country other than the United States which identifies each person that has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.

(12) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(13) “Hull damaged” means compromised with respect to the integrity of a vessel’s hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel’s hull.

(14) “Hull identification number” means the alphanumeric designation assigned to a vessel pursuant to 33 C.F.R. Part 181, as amended.

(15) “Lien creditor”, with respect to a vessel, means:

(A) a creditor that has acquired a lien on the vessel by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition;

(D) a receiver in equity from the time of appointment; or

(E) a person with a lien arising under Ala. Code section 35-11-60.

(16) “Office” means the Alabama State Law Enforcement Agency.

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

(18) “Owner of record” means the owner indicated in the files of the office or, if the files indicate more than one owner, the one first indicated.

(19) “Person” means an individual, corporation, business trust, estate, trust, statutory trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) “Purchase” means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

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

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

(23) “Secured party”, with respect to a vessel, means a person:

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

(B) that is a consignor under Ala. Code Title 7, Article 9A; or

(C) that holds a security interest arising under Ala. Code sections 7-2-401, 7-2-505, 7-2-711(3), or 7-2A-508(5).

(24) “Secured party of record” means the secured party whose name is indicated as the name of the secured party in the files of the office or, if the files indicate more than one secured party, the one first indicated.

(25) “Security interest” means an interest in a vessel which secures payment or performance of an obligation if the interest is created by contract or arises under Ala. Code sections 7-2-401, 7-2-505, 7-2-711(3), or 7-2A-508(5). The term

includes any interest of a consignor in a vessel in a transaction that is subject to Ala. Code Title 7, Article 9A. The term does not include the special property interest of a buyer of a vessel on identification of that vessel to a contract for sale under Ala. Code section 7-2-501, but a buyer also may acquire a security interest by complying with Ala. Code Title 7, Article 9A. Except as otherwise provided in [UCC Section 2-505], the right of a seller or lessor of a vessel under Ala. Code section 7, article 2 or 2A to retain or acquire possession of the vessel is not a security interest, but a seller or lessor also may acquire a security interest by complying with Ala. Code Title 7, Article 9A. The retention or reservation of title by a seller of a vessel notwithstanding shipment or delivery to the buyer under Ala. Code section 7-2-401 is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined by Ala. Code section 7-1-203.

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

(A) make or adopt a tangible symbol; or

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

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) “State of principal use” means the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year.

(29) “Title brand” means a designation of previous damage, use, or condition that must be indicated on a certificate of title.

(30) “Transfer of ownership” means a voluntary or involuntary conveyance of an interest in a vessel.

(31) “Vessel” means any watercraft used or capable of being used as a means of transportation on water, except:

(A) a seaplane;

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

(C) watercraft less than 16 feet in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower;

(D) watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;

(E) a stationary floating structure that:

(i) does not have and is not designed to have a mode of propulsion of its own;

(ii) is dependent for utilities upon a continuous utility hookup to a source originating on shore; and

(iii) has a permanent, continuous hookup to a shoreside sewage system;

(F) watercraft owned by the United States, a state, or a foreign government or a political subdivision of any of them; and

(G) watercraft used solely as a lifeboat on another watercraft.

(32) “Vessel number” means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. Section 12301, as amended.

(33) “Written certificate of title” means a certificate of title consisting of information inscribed on a tangible medium.

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

(1) “Agreement”, Ala. Code section 7-1-201(b)(3).

(2) “Buyer in ordinary course of business”, Ala. Code section 7-1-201(b)(9).

(3) “Conspicuous”, Ala. Code section 7-1-201(b)(10).

(4) “Consumer goods”, Ala. Code section 7-9A-102(a)(23).

(5) “Debtor”, Ala. Code section 7-9A-102(a)(28).

(6) “Knowledge”, Ala. Code section 7-1-202.

(7) “Lease”, Ala. Code section 7-2A-103(1)(j).

(8) “Lessor”, Ala. Code section 7-2A-103(1)(p).

(9) “Notice”, Ala. Code section 7-1-202.

(10) “Representative”, Ala. Code section 7-1-201(b)(33).

(11) “Sale”, Ala. Code section 7-2-106(1).

(12) “Security agreement”, Ala. Code section 7-9A-102(a)(74).

(13) “Seller”, Ala. Code section 7-2-103(1)(d).

(14) “Send”, Ala. Code section 7-1-201(b)(36).

(15) “Value”, Ala. Code section 7-1-204.

(c) The definitions in subsections (a) and (b) do not apply to any state or federal law governing licensing, numbering, or registration if the same term is used in that law.

Official Comment

1. The definition for “barge” in paragraph (a)(1) facilitates an exemption from this act. *See* Section 6(b)(3). Under federal law, barges (non-powered vessels) of 100 tons or less are not required to be documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301. *See also* 33 C.F.R. §§ 173.11, 173.13, 174.11. More important, many existing barges are quite old and records of prior transfers may be difficult to locate or resurrect. For this reason, an owner of a barge is not required to obtain a certificate of title for it.

A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this might include such things as sail boats and row boats, which are intended to be covered by this act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted from compliance with this act under Section 6(b)(3).

2. The definition of “certificate of origin” in paragraph (a)(5) is derived from 33 C.F.R. § 187.7 but does not include a builder’s certificate. The reason for excluding builder’s certificates is that many vessels are covered by both a certificate of origin and a builder’s certificate, and the purposes of this act could be frustrated if the owner could use both documents to title the vessel in two different jurisdictions. If, however, a single document qualifies as both a builder’s certificate and a manufacturer’s certificate or statement of origin, that rationale does not apply and thus that document does qualify as a certificate of origin.

3. The definition of “dealer” in paragraph (a)(7) is more broad than the comparable definition in 33 C.F.R. § 187.7. That is because there should be no need for the dealer to be engaged in the business of buying vessels or to have an established place of business. A shipyard or other manufacturer can qualify as a dealer.

4. The definition of “hull damaged” in paragraph (a)(13) deals with the obligation of an owner or insurer to brand the title. *See* Section 10(a), (c). Paragraph (a)(13) does not exhaustively list the types of casualties that can compromise the integrity of a vessel’s hull; it merely describes some of the events that can do so. A qualifying casualty need not be an event of nature; vandalism and terrorism can compromise the integrity of a vessel’s hull. However, damage resulting from routine operation is not something that makes a vessel hull damaged. Similarly, “the sinking of a vessel in a manner that creates a significant risk that the integrity of the vessel’s hull has been compromised” is not something that occurs merely because the vessel is swamped during its normal operation. The distinction between “sinking” and “swamping” is a matter of buoyancy. A vessel sinks when it loses sufficient buoyancy to settle below the surface of the water. A vessel is swamped when it is filled with water but retains sufficient buoyancy to remain on or at the surface.

Once a vessel is hull damaged, it remains hull damaged for branding purposes even though it is repaired. Thus, for example, if a vessel is sunk in a manner that creates a significant risk that the integrity of the vessel’s hull has been compromised, the vessel remains damaged even after it is raised and repaired. As a result,

the brand “hull damaged” is indelible. A branded vessel remains branded forever. *See* Section 7 comment 4.

5. Paragraph (a)(16) defines “office” to be the office that creates certificates of title for vessels. The office need not be the same authority in the state that issues numbers for vessels pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.

6. Paragraph (a)(29) defines “title brand” to include any designation of damage, use, or physical condition that must by law be indicated in a certificate of title. This act provides for only one title brand: “hull damaged.” *See* Sections 2(a)(13) and 10. However, other brands created under the law of another state may need to be noted on a certificate issued under this act. *See* Sections 7(b)(9), 9(a)(7).

7. Paragraph (a)(30) should be read in conjunction with paragraph(a)(17). Only an owner has an ownership interest, and thus an ownership interest refers to the legal title of an owner. An ownership interest does not include an equitable or beneficial ownership interest. It also does not include a security interest or the interest of a lessee in a lease. There can, however be multiple owners, and a transfer of the interests of one, some, or all of them would be a transfer of ownership.

8. The definition of “vessel” in paragraph (a)(31) differs slightly from the similar definition in 33 C.F.R. Section 187.7, due principally to the exclusions in subparagraphs (a)(31)(B) through (G). These exclusions are based on the determination that the purposes of this act would not be served by requiring a certificate of title for the types of watercraft described. This determination has no relevance to the state laws and regulations regarding vessel numbering, and pursuant to subsection (c), these exclusions do not apply to such laws and regulations. The exclusions should not present a problem under 33 C.F.R. Section 187.304 because that regulation permits states to exempt classes of watercraft from its certificate of title statute.

Subparagraphs (A) and (B) of paragraph (a)(31) serve the same purpose: they exclude from the scope of this act vessels that

are covered by some other titling law, such as the Federal Aviation Act or a state's motor vehicle certificate of title act.

Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft for which a certificate of title is required. Several states do not title watercraft less than a designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft. And some do not title non-motor-powered watercraft of less than a designated length. This act follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in length are covered and all vessels propelled by an engine of at least 10 horsepower are covered. Only those vessels that are both less than 16 feet in length and not mechanically powered by an engine of at least 10 horsepower are excluded from coverage under this act by virtue of subparagraph (C). For this purpose, it does not matter whether the engine is inboard or outboard.

Subparagraph (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry attached to a cable because, even with the cable, the ferry does not operate on a manufactured course. Subparagraph (E) excludes non-powered floating residences that are fixed to the shore. Most such residences would fail to satisfy the initial language in the definition, in that they are not "used or capable of being used as a means of transportation on water." Nevertheless, to avoid any confusion they are expressly excluded.

9. Vessels are defined to consist solely of certain types of watercraft. Accordingly, nothing in this act deals with fishing licenses or other intangible rights or property appurtenant to a vessel. *See* Section 15 comment 7.

10. The statement in subsection (c) that the definitions that follow "do not apply to any state or federal law governing licensing, numbering, or registration if the same term is used in that law" makes clear that the definitions used here do not apply to other laws relating to vessels. This is due, in part, to the fact that the definition of "vessel" in paragraph (a)(31) differs from the definition in 33 C.F.R. § 187.7, one of the regulations relating to the Vessel Identification System. Accordingly, the limiting

language in subsection (c) is intended to make it clear that the definition of “vessel” in this Section applies solely to this act, and is not relevant to a state’s participation in the VIS.

Alabama Comment

Paragraphs (A) through (D) of the definition of “lien creditor” in subsection (15) set forth the definition of the term as found in Ala. Code section 7-9A-102(a)(52). Paragraph E adds to that definition a person having a lien on a watercraft pursuant to Ala. Code section 35-11-60. Under Section 24(a), the rights of a secured party as against a lien creditor are governed by the provisions of Alabama’s Uniform Commercial Code. Section 24(a) further provides that, for purposes of the application of the provisions of the Uniform Commercial Code, “lien creditor” has the meaning provided in this act. Thus, under Ala. Code sections 7-9A-201 and 7-9A-317(b)(2) a secured party with a perfected security interest in a vessel has priority over a person with a lien on a watercraft pursuant to Ala. Code section 35-11-60.

SECTION 3. APPLICABILITY. Subject to Section 28, this act applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before January 1, 2016.

SECTION 4. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY. Unless displaced by a provision of this act, the principles of law and equity supplement its provisions.

Official Comment

This section is consistent with UCC Section 1-103(b). In addition, like the UCC, this act should be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing certificates of title;
- (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) to make uniform the law among the various jurisdictions.

This act should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as well as with the act as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

SECTION 5. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF TITLE.

(a) The local law of the jurisdiction under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the jurisdiction and the vessel or its owner.

(b) A vessel becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the office in accordance with this act or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

Official Comment

Source: UCC Section 9-303.

1. This section provides which state's law governs a certificate of title. It is the law of the jurisdiction that created the certificate of title, from the moment the application is delivered to the titling office until such time as the vessel becomes covered by another certificate, which would typically occur when an application is delivered to the titling office of a different state or the vessel becomes a documented vessel.

2. There is no conflict between this section and Section 6, which requires the owner of a vessel to apply for a certificate of title in the state of principal use. Section 6 imposes a requirement on the owner. This section provides which state's law governs a certificate.

Example 1: Owner has a vessel for which this state is the state of principal use. Owner applies for and receives a certificate of title for the vessel from the titling office of another state. Owner has failed to comply with Section 6. Nevertheless, the law of the issuing state governs all issues relating to the certificate of title.

3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a security interest in non-inventory collateral covered by a certificate of title statute is through compliance with the certificate of title act. *See* UCC Section 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9's choice of law rules. Under those rules, the law of the jurisdiction which created the certificate (or in which an

application had been filed) is the law that governs, even if neither the debtor nor the goods are located there. *See* UCC Section 9-303. That law continues to control even if the debtor or the goods move, until the certificate expires by its own terms or a new certificate of title is applied for in a different state. *Id.*

These rules should work well with this act, which provides that the governing law is the law of the jurisdiction of principal use.

Example 2: Owner, who is not a dealer and who has granted a security interest in a vessel, applies in State A for a certificate of title for the vessel. Upon delivering that application to the titling office, the law of State A governs perfection and the effect of perfection, regardless of whether the debtor is located in State A. If the application includes the required information about the existing security interest, the security interest will be perfected.

Example 3: Same facts as Example 2 but State B later becomes the state of principal use. The law of State B requires the debtor to apply for a certificate of title from State B. If the debtor does not do so, then the law of State A will continue to govern the perfection of the security interest. As long as the law of State A does not invalidate its certificate of title when the principal use of the vessel changed to State B, the security interest will remain perfected.

4. Nothing in this section defers to the law of a foreign country. Thus, if a vessel titled in this state becomes a foreign-documented vessel, the law of this state continues to govern. This is true even though the office is required to and does cancel the certificate of title. *See* Section 8 comment 2.

Example 4: Owner, who is not a dealer and who has granted a security interest in a vessel, applies in State A for a certificate of title for the vessel. The application includes the required information about the existing security interest, with the result that the security interest thereby becomes perfected. The vessel subsequently becomes a foreign-documented vessel. The law of State A continues to govern, even if the office cancels the

certificate of title. As a result, the security interest remains perfected.

SECTION 6. CERTIFICATE OF TITLE REQUIRED.

(a) Except as otherwise provided in subsections (b) and (c), the owner of a vessel for which this state is the state of principal use shall deliver to the office an application for a certificate of title for the vessel, with the applicable fee, not later than 20 days after the later of:

- (1) the date of a transfer of ownership; or
- (2) the date this state becomes the state of principal

use.

(b) An application for a certificate of title is not required for:

- (1) a documented vessel;
- (2) a foreign-documented vessel;
- (3) a barge;
- (4) a vessel before delivery if the vessel is under construction or completed pursuant to contract; or
- (5) a vessel held by a dealer for sale or lease.

(c) The office may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to the requirements of 46 U.S.C. Section 12301, as amended, unless the office has created a certificate of title for the vessel or an application for a certificate of title for the vessel and the applicable fee have been delivered to the office.

Official Comment

Paragraph (b)(3) provides that no application for a certificate of title is required for barges or for vessels under construction. This is because many old barges are not federally documented and the records necessary to title them may be unavailable or costly to obtain. *See* Section 2 comment 1. Accordingly, if no application for a certificate of title for such a vessel has been delivered to the office, the perfection of a security interest in the vessel is governed by UCC Article 9, not by this act. However, if an owner does apply for a certificate of title for the vessel, perfection must be through compliance with this act. *See* Section 15 comment 1.

Paragraph (b)(4) reflects the dual judgments that it is unnecessary for a certificate of title to be issued for a vessel under construction, even if the vessel is in the water for testing, and that requiring a certificate of title for such a vessel would undermine the efficacy of common financing arrangements. *See also* Section 15(g) (regarding perfection of a security interest in a vessel described in paragraph (b)(3) or (4)). Because Paragraph (b)(5) exempts dealers from having to apply for a certificate of title, paragraph (b)(4) is most relevant when the owner of the vessel is the buyer for whom the vessel is being constructed.

Paragraph (b)(5) provides that no application for a certificate of title is required for a vessel held by a dealer for sale or lease. This language, which is found in many certificate of title

statutes and which is consistent with UCC Section 9-311(d), covers a vessel that a dealer is holding for sale or lease, but does not cover a vessel that the dealer is no longer holding because it is actually leased. Thus, a vessel that is the subject of a lease, whether a long-term transaction that may resemble a sale or a short-term charter, must be titled. In contrast, Section 15(g)(1) excludes from the perfection requirements of this act not only those vessels held by a dealer for sale or lease, but also vessels actually leased by a dealer in the business of selling vessels.

SECTION 7. APPLICATION FOR CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Sections 10, 15, 19, 20, 21, and 22, only an owner may apply for a certificate of title.

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

(1) the applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;

(2) the name and mailing address of each other owner of the vessel;

(3) the social security number or taxpayer identification number of each owner;

(4) the hull identification number for the vessel or, if none, an application for the issuance of a hull identification number for the vessel;

(5) the vessel number for the vessel or, if none issued by the office, an application for a vessel number;

(6) a description of the vessel as required by the office, which must include:

(A) the official number for the vessel, if any, assigned by the United States Coast Guard;

(B) the name of the manufacturer, builder, or maker;

(C) the model year or, if none, the year in which the manufacture or build of the vessel was completed;

(D) the overall length of the vessel;

(E) the vessel type;

(F) the hull material;

(G) the propulsion type;

(H) the engine drive type, if any; and

(I) the fuel type, if any;

(7) an indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;

(8) a statement that the vessel is not a documented vessel or a foreign-documented vessel;

(9) any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;

(10) if the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;

(11) if the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price, if any, and the date of the transfer; and

(12) if the vessel previously was registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.

(c) In addition to the information required by subsection (b), an application for a certificate of title may contain an electronic communication address of the owner, transferor, or secured party.

(d) Except as otherwise provided in Section 19, 20, 21, or 22, an application for a certificate of title must be accompanied by:

(1) a certificate of title signed by the owner shown on the certificate and which:

(A) identifies the applicant as the owner of the vessel; or

(B) is accompanied by a record that identifies the applicant as the owner; or

(2) if there is no certificate of title:

(A) if the vessel was a documented vessel, a record issued by the United States Coast Guard which shows the vessel is no longer a documented vessel and identifies the applicant as the owner;

(B) if the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or

(C) in all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the office identifies the applicant as the owner.

(e) A record submitted in connection with an application is part of the application. The office shall maintain the record in its files.

(f) The office may require that an application for a certificate of title be accompanied by payment or evidence of payment of fees and taxes payable by the applicant under law of this state other than this act in connection with the application or the acquisition or use of the vessel. If a provision of this act places a duty on the office on delivery to it of an application for a certificate of title and the applicable fee and the office requires that the application be accompanied by payment or evidence of payment of fees and taxes payable by the applicant under law of this state other than this act, the office is not required to carry out its duty in the absence of such payment or evidence of payment.

Official Comment

Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.103, 187.317.

1. Not all of the information submitted will appear on the certificate of title. For example, the principal residence of an owner and each owner's social security number or taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 9.

2. Paragraph (b)(5) implicitly requires that a hull identification number be issued for the vessel if the vessel does not already have one, as an imported antique might not. If the state agency that issues hull identification numbers is not the titling office, the applicant may, if the titling office permits, submit to the titling office a copy of the application for a hull identification number and evidence that the application has been submitted to the applicable state agency.

3. Federal regulations provide guidance on the terms to be used in describing the vessel type, hull material, propulsion type, engine drive type, and fuel type pursuant to Section 7(b)(6)(E)–(I). *See* 33 C.F.R. §§ 187.103, 187.317.

4. If the applicant knows that the vessel is hull damaged, paragraph (b)(10) requires the applicant to disclose the fact in the application. For this purpose, once a vessel is hull damaged, it remains hull damaged even though it is repaired. *See* Section 2 comment 4.

5. Subsection (e) imposes a duty on the office to maintain permanently any record submitted with an application. For example, if an applicant includes a certificate of origin in connection with the application, the office must maintain the certificate. This will facilitate a later decision by the owner to seek federal documentation of the vessel. Nothing in subsection (e) specifies the manner in which the office must maintain a record submitted with an application. Therefore, if the office is authorized to maintain records in electronic, photographic, or similar form, the office may maintain either the original or an image of the record. Section 11 imposes additional duties on the office.

6. Two versions of a sample application form follow. The first uses the terms currently authorized by the U.S. Coast Guard for the information required by subparagraphs (a)(6)(E)–(I). The second uses the revised terms that the Coast Guard has proposed. *See* 75 Fed. Reg. 25137, 25149 (May 7, 2010). Both versions contain a place for the applicant to list the state of principal use. Section 7 does not require that the state of principal use be identified on the application but a state may nevertheless wish to

provide a place for it on the form as a means of alerting applicants that this is something to consider and affects in which state they should apply for a certificate. Both version of the application form also request the date of birth of the owner or owners. Section 7 does not require this information but a state may wish to request it on the application form for law enforcement purposes and as means – other than the social security number – of differentiating among people with the same name.

Parts 5, 6, 7, and 8 of the form are illustrative of things a state may or may not wish to include on its application form. Section 7 does not require that states verify the hull identification number, request information about trade-in vessels, or include on the application anything relating to taxes or fees.

[Suggested Forms Omitted]

Alabama Comment

Ordinarily, if there is no certificate of title for a vessel that was neither a documented nor a foreign-documented vessel, an application for a certificate of title will be accompanied by a certificate of origin or a bill of sale as provided in subsection (d)(2)(C). In some instances, however, an applicant may, for a valid reason, have neither a certificate of origin nor a bill of sale, and the subsection authorizes the office to accept in lieu thereof another record that to the satisfaction of the office identifies the applicant as the vessel's owner. Of course, nothing prevents the office from rejecting an application accompanied by a certificate of title or a bill of sale that appears not to be authentic, and asking the applicant for further proof of ownership.

SECTION 8. CREATION AND CANCELLATION OF CERTIFICATE OF TITLE.

(a) Unless an application for a certificate of title is rejected under subsection (c) or (d), the office shall create a certificate for

the vessel in accordance with subsection (b) not later than 20 days after delivery to it of an application that complies with Section 7 and the applicable fee.

(b) If the office creates electronic certificates of title, the office shall create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the office create a written certificate.

(c) Except as otherwise provided in subsection (d), the office may reject an application for a certificate of title only if:

(1) the application does not comply with Section 7;

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

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

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

(d) The office shall reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

(e) The office may cancel a certificate of title created by it only if the office:

(1) could have rejected the application for the certificate under subsection (c);

(2) is required to cancel the certificate under another provision of this act; or

(3) receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

(f) The office shall provide an opportunity for an administrative review at which the owner and any other interested party may present evidence in support of or opposition to cancellation of a certificate of title. The office shall serve all owners and secured parties indicated in the files of the office with notice of the opportunity for an administrative review. Service must be made personally or by mail through the United States Postal Service, properly addressed, postage paid, return receipt requested. Service by mail is complete on deposit with the United States Postal Service. The office by rule may authorize service by electronic transmission if a copy is sent on the same day by first-class mail or by a commercial delivery company. If not later than 30 days after the notice was served, the office receives a request

for an administrative review from an interested party, the office shall hold the review not later than 20 days after receiving the request.

Official Comment

1. Paragraph (c)(3) permits the office to reject an application if there is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate of title would facilitate a fraudulent or illegal act. Such a basis may exist if, for example, the ownership disclosed and documented in the application is contradicted by information obtained by the office through use of the Vessel Identification System.

2. Cancellation of a certificate of title does not, by itself, change the law governing the certificate or render unperfected a security interest perfected pursuant to this act. *See* Section 5 comment 4; Section 15 comment 3.

3. Some states have laws that require the applicable office to cancel a motor vehicle certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or failure to maintain the vehicle in a mechanically fit manner. This Section does not permit cancellation for any of these reasons. Canceling the vessel's registration (*i.e.* license to use) for such failures would seem far more appropriate than canceling its certificate of title.

SECTION 9. CONTENT OF CERTIFICATE OF TITLE.

(a) A certificate of title must contain:

(1) the date the certificate was created;

(2) the name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the office;

(3) the mailing address of the owner of record;

(4) the hull identification number;

(5) the information listed in Section 7(b)(6);

(6) except as otherwise provided in Section 15(b), the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the office; and

(7) all title brands indicated in the files of the office covering the vessel, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the office.

(b) This act does not preclude the office from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

(c) For each title brand indicated on a certificate of title, the certificate must identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title

brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: “Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand).”

(d) If the files of the office indicate that a vessel previously was registered or titled in a foreign country, the office shall indicate on the certificate of title that the vessel was registered or titled in that country.

(e) A written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form must include a certification, signed under penalty for making an unsworn falsification to authorities pursuant to Ala. Code section 13A-10-109, as amended, that the statements made are true and correct to the best of each owner’s knowledge, information, and belief.

(f) A written certificate of title must contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

(g) A written certificate of title must contain a form for a secured party to indicate release of its security interest.

SECTION 10. TITLE BRAND.

(a) Unless subsection (c) applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, if the damage occurred while that person was an owner of the vessel and the person has notice of the damage at the time of the transfer, the owner shall:

(1) deliver to the office an application for a new certificate that complies with Section 7 and includes the title brand designation “Hull Damaged”; or

(2) indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

(b) Not later than 20 days after delivery to the office of the application under subsection (a)(1) or the certificate of title under subsection (a)(2), the office shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(c) Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, the insurer shall deliver to the office an application for a new certificate that complies with Section 6 and includes the

title brand designation “Hull Damaged”. Not later than 20 days after delivery of the application to the office, the office shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(d) An owner of record that fails to comply with subsection (a), a person that solicits or colludes in a failure by an owner of record to comply with subsection (a), or an insurer that fails to comply with subsection (c) is subject to an administrative penalty of \$1,000.

Official Comment

1. Subsection (a) imposes only on the owner of record a duty to brand the title of a hull-damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore unlikely to apply to a dealer because a dealer typically will not have title transferred into the dealer’s name for the relatively short period that the dealer owns the vessel. *Cf.* Section 6(b)(5) (exempting dealers from having to apply for a certificate of title). Subsection (a) is also unlikely to apply to a secured party. In contrast, subsection (d) applies to any person that “solicits or colludes in a failure to comply with subsection (a),” and thus might conceivably apply to dealer or secured party acting in collusion with the owner of record to avoid compliance with subsection (a).

2. Subsection (c) places the branding obligation on an insurer when the insurer is transferring an ownership interest in a hull-damaged vessel. The insurer need not be the owner of record for subsection (c) to apply. Moreover, it does not matter whether the ownership interest being transferred belongs to the insurer or the insured. Subsection (c) therefore applies when the insurer pays off on the insurance claim and takes ownership of the vessel for salvage purposes and also applies when the insurer facilitates a sale

of the damaged vessel for the insured. However subsection (c) applies only to insurers acting in their capacity as insurers. It does not apply to an insurance company that acquires a vessel for unrelated business purposes only to later discover that the vessel is hull damaged.

3. An application for a new, branded certificate of title under subsection (a) or (c) must comply with Section 7. This in turn requires, among other things, that the existing, unbranded certificate be delivered to the office. *See* Section 7(d).

4. Following the creation of a certificate of title under subsection (b) or (c), the office must deliver the new certificate pursuant to Section 12(a).

SECTION 11. MAINTENANCE OF AND ACCESS TO FILES.

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

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

(2) maintain the hull identification number and all the information submitted with the application pursuant to Section 7(b) to which the record relates, including the date and time the record was delivered to the office;

(3) maintain the files for public inspection subject to subsection (e); and

(4) index the files of the office as required by subsection (b).

(b) The office shall maintain in its files the information contained in all certificates of title created under this act. The information in the files of the office must be searchable by the hull identification number of the vessel, the vessel number, the name of the owner of record, and any other method used by the office.

(c) The office shall maintain in its files, for each vessel for which it has created a certificate of title, all title brands known to the office, the name of each secured party known to the office, the name of each person known to the office to be claiming an ownership interest, and all stolen-property reports the office has received.

(d) Upon request, for safety, security, or law-enforcement purposes, the office shall provide to federal, state, or local government the information in its files relating to any vessel for which the office has issued a certificate of title.

(e) Except as otherwise provided by the law of this state other than this act, the information required under Section 9 is a public record. The information provided under Section 7(b)(3) is not a public record.

Official Comment

Subsection (e) makes the information on the certificate of title a public record. It does not make the information in the application a public record. Therefore, nothing in this act requires that the social security or taxpayer identification number of the owner or owners, which under Section 7(b)(3) must be included in the application, be made public.

The duties imposed by this Section are in addition to those imposed by Section 7(e).

SECTION 12. ACTION REQUIRED ON CREATION OF CERTIFICATE OF TITLE.

(a) On creation of a written certificate of title, the office promptly shall send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the files of the office. On creation of an electronic certificate of title, the office promptly shall send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the files of the office. The office may send the record to the person's mailing address or, if indicated in the files of the office, an electronic address.

(b) If the office creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate. The office shall maintain in the files of the office the date and time of cancellation.

(c) Before the office creates an electronic certificate of title, any written certificate for the vessel must be surrendered to the office. If the office creates an electronic certificate, the office shall destroy or otherwise cancel the written certificate for the vessel which has been surrendered to the office and maintain in the files of the office the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the office shall indicate on the face of the certificate that it has been canceled.

SECTION 13. EFFECT OF CERTIFICATE OF TITLE. A certificate of title is prima facie evidence of the accuracy of the information in the record that constitutes the certificate.

Official Comment

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

This section does not make a certificate of title conclusive evidence of the ownership of a vessel. Instead, this section makes a certificate of title merely prima facie evidence of ownership. In litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is sufficient to prove ownership of a vessel unless someone comes forward with admissible evidence to the contrary. A certificate of title shifts both the burden of production and the burden of persuasion to anyone challenging the information on a written certificate or the information constituting an electronic certificate of title.

**SECTION 14. EFFECT OF POSSESSION OF
CERTIFICATE OF TITLE; JUDICIAL PROCESS.**

Possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel. This act does not prohibit enforcement under law of this state other than this act of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of a security interest, statutory lien, or common-law lien on a certificate does not invalidate the security interest or lien.

SECTION 15. PERFECTION OF SECURITY INTEREST.

(a) Except as otherwise provided in this section or Section 28, a security interest in a vessel may be perfected only by delivery to the office of an application for a certificate of title that identifies the secured party and otherwise complies with Section 7. The security interest is perfected on the later of delivery to the office of the application and the applicable fee or attachment of the security interest under Ala. Code section 7-9A-203.

(b) If the interest of a person named as owner in an application for a certificate of title delivered to the office is a security interest, the application sufficiently identifies the person as a secured party. Identification on the application for a certificate of a person as owner is not by itself a factor in determining whether the person's interest is a security interest.

(c) If the office has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the office of an application, on a form the office may require, to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include:

- (1) the name of the owner of record;

(2) the name and mailing address of the secured party;

(3) the hull identification number for the vessel; and

(4) if the office has created a written certificate of title for the vessel, the certificate.

(d) A security interest perfected under subsection (c) is perfected on the later of delivery to the office of the application and all applicable fees or attachment of the security interest under Ala. Code section 7-9A-203.

(e) On delivery of an application that complies with subsection (c) and payment of all applicable fees, the office shall create a new certificate of title pursuant to Section 8 and deliver the new certificate or a record evidencing an electronic certificate pursuant to Section 12(a). The office shall maintain in the files of the office the date and time of delivery of the application to the office.

(f) If a secured party assigns a perfected security interest in a vessel, the receipt by the office of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest against creditors of and

transferees from the original debtor. A purchaser of a vessel subject to a security interest which obtains a release from the secured party indicated in the files of the office or on the certificate takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the files of the office or on the certificate.

(g) This section does not apply to a security interest:

(1) created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is a dealer;

(2) in a barge for which no application for a certificate of title has been delivered to the office; or

(3) in a vessel before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to the office.

(h) This subsection applies if a certificate of documentation for a documented vessel is deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with 46 U.S.C. Section 31321, the security interest is and remains perfected until the earlier of four months after

cancellation of the certificate or the time the security interest becomes perfected under this act.

(i) A security interest in a vessel arising under Ala. Code sections 7-2-401, 7-2-505, 7-2-711(3), or 7-2A-508(5) is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before the debtor obtains possession the security interest is perfected pursuant to subsection (a) or (c).

(j) A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in Ala. Code section 7-9A-315.

(k) A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in Ala. Code section 7-9A-316(d).

Official Comment

Source: UCOTA Section 26; UCC Sections 9-311(b), 9-505(a).

1. Section 6(b)(3) provides that no application for a certificate of title is required for barges or for vessels under construction. Paragraphs (g)(2) and (3) of this section are corollaries to Section 6(b). They provide that a security interest in such a vessel is to be perfected under other law if no application for a certificate of title for the vessel has been delivered to the office. However, if an owner does apply for a certificate of title

for the vessel, perfection must be through compliance with this section.

2. Subsection (d) provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee. This rule operates in conjunction with UCC Section 9-311(b), which provides that compliance with this act is the equivalent of filing a financing statement. Collectively, they allow for a security interest to attain priority under such rules as Section 9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the security agreement is authenticated and a financing statement is filed), Section 9-317(e) (giving a perfected purchase-money security interest priority over a judicial lien if a financing statement is filed within 20 days of when the debtor receives possession), and Section 9-324(a) (giving a perfected purchase-money security interest priority over a conflicting security interest if a financing statement is filed to perfect the purchase-money security interest within 20 days of when the debtor received possession).

3. Because a security interest in a vessel covered by a certificate of title issued by the office is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, cancellation of the certificate does not affect perfection under this act.

4. Because subsection (a) requires delivery of an application that complies with Section 7, an application that fails to so comply, and which the office rightfully rejects pursuant to Section 8(c) or (d), will not be effective to perfect. *See* UCC Section 9-516 & cmt. 3.

5. Subsection (h) provides a temporary period of automatic perfection for a security interest in a vessel coming out of federal documentation. The purpose of this subsection is to facilitate the decision by the owner of and creditors with a security interest in a vessel to surrender the certificate of documentation and apply for a certificate of title. Without at least a temporary period of perfection, secured parties might risk being unperfected for the

interval between surrender of the certificate of documentation and delivery to the titling office of an application for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for perfection of a security interest in a documented vessel to continue – indefinitely – upon surrender of the document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be unnecessary. However, it remains unclear whether federal law truly does provide for continuous and indefinite perfection of what, in that situation, would be a secret lien. In the event it does not, subsection (h) provides a temporary period of perfection.

Subsection (h) provides a temporary period of automatic perfection for a security interest in a vessel coming out of federal documentation only if this state's law governs perfection of the security interest. *See* UCC Section 9-301.

6. Subsection (j) permits a security interest in a vessel to be perfected pursuant to UCC Section 9-315. Under UCC Section 9-315(a)(2), a security interest attaches to a vessel that is identifiable proceeds of other collateral. Pursuant to subsections (c) and (d) of UCC Section 9-315, if the security interest in the original collateral was perfected, the security interest in the vessel will also be perfected. However, in most cases, such perfection will lapse after 20 days unless before then the security interest is perfected pursuant Section 15(a) of this act. That is because, unless Section 15(g) applies, a security interest in a vessel cannot be perfected by filing a financing statement. *Cf.* UCC Section 9-315(d).

7. Nothing in this act deals with whether a security interest in a vessel also attaches to fishing licenses or other rights or property appurtenant to the vessel. Similarly, nothing in this act deals with perfection of a security interest in fishing licenses or other rights or property appurtenant to a vessel. *See* Section 2 comment 9.

SECTION 16. TERMINATION STATEMENT.

(a) Except as provided in subsection (b), a secured party indicated in the files of the office as having a security interest in a vessel shall deliver a termination statement to the office and, on request of the owner of record in a signed record, shall deliver a copy of the termination statement to the owner of record, by the earlier of:

(1) 20 days after the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(2) if the vessel is consumer goods, 30 days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or

(b) If a written certificate of title has been created and delivered to a secured party, the secured party may comply with the requirements of subsection (a) by signing the release form on the certificate and delivering the certificate to the office or to the owner of record no later than the date required by subsection (a).

On request of the owner of record, a secured party that delivers a written certificate with a signed release form to the office shall, not later than the date required by subsection (a), deliver a copy of the certificate showing the signed release form to the owner of record. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party shall deliver a termination statement to the office as required by subsection (a) and shall deliver to the office with the statement an application for a replacement certificate meeting the requirements of Section 22 and the applicable fee.

(c) On delivery to the office of a termination statement under subsection (a) or (b), or on delivery of a written certificate of title with a signed release form to the office or the owner of record under subsection (b), any security interest to which the statement or certificate relates ceases to be perfected. If the security interest to which the statement relates was indicated on the certificate, the office shall create a new certificate and deliver the new certificate or a record evidencing an electronic certificate pursuant to Section 12(a). The office shall maintain in its files the date and time of delivery to the office of a termination statement or written certificate with a signed release form.

(d) A secured party that fails to comply with this section is liable to the owner of record for a penalty in the amount of \$500. Nothing in this subsection precludes the owner of record or another owner from recovering damages under law of this state other than this act.

Official Comment

Source: UCOTA Section 27; UCC Sections 2-715(2), 9-513.

Subsection (c) requires the office, upon delivery of a termination statement, to create a new certificate of title if the security interest to which the termination statement applies was indicated on the existing certificate of title. This will be the situation whenever the secured party was the secured party of record. It will also be the case if the security interest was otherwise listed on the certificate of title or the certificate indicated the existence of other unlisted security interests and the termination statement relates to the only unlisted security interest. *See* Section 9(a)(6). In creating a new certificate of title, the office shall comply with section 8(a) with respect to timing and with Section 8(b) in determining whether to create a written certificate of title or an electronic certificate of title.

If a termination statement delivered to the office relates to the security interest of the secured party of record, and one or more other security interests in the vessel are indicated in the files of the office, there will now be a new secured party of record. The new secured party of record will be the secured party whose security interest was first communicated to the office and for which no termination statement has been filed.

The limitation on damages in subsection (d) to those of which the secured party had reason to know is derived from UCC Section 2-715(2), and is a principle long applicable to claims arising in contract. *See Hadley v. Baxendale*, 156 Eng. Rep. 145

(Ex. Ct. 1854). However, it is a limitation not expressed in Article 9, *see* U.C.C. § 9-625, perhaps because a secured party's failure to comply with Article 9 duties is regarded as something closer to a tort than to a breach of contract. *Cf.* U.C.C. § 9-625 cmt. 3 (indicating that principles of tort law would supplement the claim with respect to a secured party's breach of the peace during repossession). Indeed, a secured party's failure to comply with this Section would give rise to a claim very like one for slander of title, a tort. Of course, tort remedies are also subject to various limitations, including the requirement of proximate cause and the economic loss doctrine (the latter of which may not be applicable to defamation actions). However, the limitation expressed in subsection (d) is not consistent with the traditional tort limits. [With regard to this paragraph, *see* Alabama Comment to Section 16, paragraph 2.]

Alabama Comment

1. Unlike the uniform version of this act, Alabama requires that a written certificate of title contain a form for a secured party to indicate release of its security interest. *See* Section 9(g). Subsections (b) and (c) of this section have been adapted from the uniform version to accommodate the use of the release form.

2. Alabama's version of subsection (d) differs significantly from the uniform provision in that it does not contain the "reason to know" limitation. However, a claim based on a contract theory would be subject to ordinary contract principles, such as the limitation on consequential damages represented by cases following *Hadley v. Baxendale* and by the mitigation principle. Likewise, a claim based in tort, such as a claim for slander of title, would be subject to ordinary tort principles.

SECTION 17. TRANSFER OF OWNERSHIP.

(a) On voluntary transfer of an ownership interest in a vessel covered by a certificate of title, the following rules apply:

(1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the transferor shall sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor's compliance with this paragraph. A secured party does not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement.

(2) If the certificate of title is an electronic certificate of title, the transferor shall sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.

(3) The transferee has a right enforceable by specific performance to require the transferor comply with paragraph (1) or (2).

(b) The creation of a certificate of title identifying the transferee as owner of record satisfies subsection (a).

(c) A failure to comply with subsection (a) or to apply for a new certificate of title does not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise

provided in Section 18, 19, 23(a), or 24, a transfer of ownership without compliance with subsection (a) is not effective against another person claiming an interest in the vessel.

(d) A transferor that complies with subsection (a) is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

Official Comment

Source: UCOTA Section 16.

1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers of ownership of a vessel covered by a certificate of title.

Subsection (a) requires the transferor to facilitate the creation of a new certificate of title by either signing and delivering the existing written certificate of title or authenticating and delivering a record evidencing the transfer of ownership with respect to a vessel covered by an electronic certificate of title. By referring to a “transfer of ownership,” subsection (a) applies to gifts as well as sales. It also covers a transfer of ownership by fewer than all of the owners, such as when only one of several joint owners sells or gifts its interest. Subsection (a) does not apply to the creation of a lease or security interest because neither of those transactions involves a “transfer of ownership.”

If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor’s compliance with subsection (a). However, if the person in possession is a secured party, this duty may be limited by the terms of the security agreement. For example, a secured party could refuse to surrender the certificate pending payment of the secured obligation, if the security agreement so provides.

2. Subsection (a) requires the signature on the certificate of title of only the owner whose ownership interest is being transferred. A state that wishes to require the signature of all owners indicated in the files of the office may do so by regulation.

3. This act is supplemented by otherwise applicable law, for example the law of agency. *See* Section 4. Therefore the obligations and rights recognized in this section can be exercised by authorized representatives of the transferor and transferee.

4. Subsection (c) makes clear that a transfer of ownership is effective between the parties thereto even if the transferor does not fulfill its duty to facilitate the creation of a new certificate of title identifying the transferee as an owner and even if no application for a new certificate of title is delivered to the office. This is consistent with the fact that a certificate of title is *prima facie* evidence, but not conclusive evidence, of ownership. *See* Section 13. A transfer effective between the parties would also be effective between and binding on their successors.

Subsection (c) also clarifies that a transfer of ownership of a vessel, even though effective between the parties, may not be effective against third parties claiming an interest in the vessel if the certificate of title continues to identify the transferor as owner. *See* Sections 23 or 24, *e.g.*, with respect to the rights of a good faith purchaser for value or a buyer in ordinary course of business.

5. Subsection (d) deals with any rule of law that assesses damages or imposes a fee or penalty on an owner of a vessel solely because of the person's ownership interest. Thus, for example, if applicable law makes the owner of a vessel liable for property taxes, environmental contamination caused by the vessel, or for damages caused when the vessel escapes its mooring, an owner who complies with subsection (a) will not be liable for any such taxes assessed, contamination occurring, or damages caused after that compliance.

SECTION 18. EFFECT OF MISSING OR INCORRECT INFORMATION. Except as otherwise provided in Ala. Code section 7-9A-337, a certificate of title or other record required or authorized by this act is effective even if it contains incorrect information or does not contain required information.

Official Comment

Sources: UCOTA Section 20, UCC Sections 9-338, 9-506.

1. This section states the general rule that a certificate of title remains effective even if it contains errors or omissions. As a result, the certificate remains prima facie evidence of the information in record that constitutes the certificate of title. *See* Section 13.

Example 1: The office creates a certificate of title that transposes two of the digits in the hull identification number for the vessel. The certificate remains effective regardless whether the applicant or the office made the error and regardless whether the files of the office contain the same error.

Example 2: The office creates a certificate of title that misspells the name of the owner of record. The certificate remains effective regardless whether the applicant or the office made the error and regardless whether the files of the office contain the same error.

2. Because this section applies not only to a certificate of title, but also to any “other record required or authorized by this act,” the section applies to an application for a certificate of title. This rule must be read in conjunction with Section 15(d), which provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, and UCC Section 9-311(b), which provides that compliance with this act is the equivalent of filing a financing

statement. Thus, delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, even if the application contains an error or omission, constitutes compliance with this act and is the equivalent of filing a financing statement.

Collectively, these rules ensure that a security interest noted in an application for a certificate of title delivered to the office pursuant to Section 7 or 15 is perfected despite any error in the *certificate*. To determine whether the security interest is perfected if the *application* has an error or omission, one must refer to the rules of Article 9 regarding the efficacy of financing statements. *See* UCC Sections 9-506, 9-516, 9-520.

For example, a filed financing statement is effective to perfect even if it contains a minor error that is not seriously misleading. *See* UCC Section 9-506. For this purpose, a failure to describe some collateral would be seriously misleading as to omitted collateral. An error in the debtor's name on a financing statement could also be seriously misleading because searches are based on the debtor's name and an error in that name may cause the filed financing statement not to be disclosed. However, an error in the secured party's name or address cannot be seriously misleading. Section 9-506 cmt. 2.

The same rule applies under this act. Thus, an error in the secured party's name or address imposes no burden on someone seeking to identify who has an ownership interest or security in a titled vessel. As a result, such an error does not render the security interest unperfected. *See In re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name for secured parties on certificates of title was not seriously misleading and did not render security interests unperfected).

Example 3: Secured Party's name is misspelled in the application for a certificate of title delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of title. The security interest is perfected.

However, application of the seriously misleading standard in UCC Section 9-506 to applications for a certificate of title must

take into account the different manner in which searches for perfected security interests are conducted. In particular, whereas searches for financing statements are based on the debtor's name, searches relating to vessels covered by a certificate of title are ordinarily based on the hull identification number. *See* Section 25(d). Accordingly, whereas an error in a debtor's name on a filed financing statement may prevent the financing statement from being disclosed in response to a proper search request, an error in the name of the owner of record is unlikely to prevent a searcher from discovering the existence of a perfected security interest in a vessel covered by a certificate of title. *See In re Laursen*, 391 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor's first name on certificate of title for vehicle did not render security interest unperfected because certificates of title are indexed by vehicle identification number, not by name).

Example 4: Owner's name is misspelled in the application for a certificate of title delivered to the office. As a result, Owner's name is also misspelled on the certificate of title. The application identifies Bank as a secured party. The security interest is perfected.

Even an error in the description of the vessel will not render a security interest unperfected. Although search requests can be processed using the hull identification number, *see* Section 25(d), an error in the hull identification number on the certificate of title cannot really deceive the searcher. If the error existed solely on a written certificate of title but not in the files of the office, a search under the correct number would yield all the relevant information. If the error existed both on the certificate of title and in the files of the office, then a search using the correct hull identification number would yield nothing. Anyone seeking to acquire an interest in such a seemingly untitled vessel after such search should conduct further investigation.

The same method of analysis applies to applications that the office rejects. If rejection was authorized under Section 7, then a security interest noted in the application will not be perfected by delivery of the application to the office. *See* UCC Section 9-516(b). If, however, rejection was not authorized under Section 7, then delivery of the application, together with payment of the

applicable fee, will perfect a security interest identified in the application. *See* UCC Section 9-516(a), (c). The priority of that security interest may, however, be affected by the office's rejection of the application. *See* Section 24(a); UCC Section 9-516(c). Similarly, errors in the application might affect the priority of a security interest. *See* UCC Sections 9-338, 9-520(c).

3. This section makes UCC Section 9-337 applicable to certificates of title created under this act. Thus, if the office creates a certificate of title that fails to indicate a security interest that was identified in the application for the certificate, a buyer or secured party who relies on the clean certificate may take free or obtain priority.

Example 5: Lender's security interest is identified in the application for a certificate of title delivered to the office. The office creates a certificate of title that fails to indicate Lender's security interest. Lender's security interest is perfected. *See* Section 15. However, a buyer, other than buyer in the business of selling goods of that kind, who gives value and receives delivery of the vessel without knowledge of Lender's security interest takes free of the security interest. Similarly, a security interest perfected after creation of the certificate of title and without knowledge of Lender's security has priority over Lender's security interest.

Example 6: Owner delivers to the office an application for a certificate of title for a vessel. The application identifies Lender as a secured party but misstates the hull identification number for the vessel. Lender's security interest is perfected. Owner later offers to sell the vessel to Buyer. Buyer requests a search using the vessel's correct hull identification number. The office responds that it has no record relating to that hull identification number. Buyer insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner delivers to the office a new application for a certificate of title. The new application does not disclose Lender's security interest. Office issues a certificate of title for the vessel that does not indicate Lender's security interest. Lender's security interest remains perfected. However, Buyer may take free of Lender's security interest pursuant to UCC Section 9-337(1).

SECTION 19. TRANSFER OF OWNERSHIP BY SECURED PARTY'S TRANSFER STATEMENT.

(a) In this section, "secured party's transfer statement" means a record signed by the secured party of record stating:

(1) that there has been a default on an obligation secured by the vessel;

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

(3) that, by reason of the exercise, a transferee has acquired the ownership interest of an owner;

(4) the name of the owner whose ownership interest has been acquired by the transferee;

(5) the name and last-known mailing address of the owner of record and the secured party of record;

(5) the name of the transferee;

(6) other information required by Section 7(b); and

(7) one of the following:

(A) that the certificate of title is an electronic certificate;

(B) that the secured party does not have possession of the written certificate of title created in the name of the owner of record; or

(C) that the secured party of record is delivering the written certificate of title created in the name of the owner of record to the office, with the release form signed, with the transfer statement.

(b) Unless the office rejects a secured party's transfer statement for a reason stated in Section 8(c), not later than 20 days after delivery to the office of the statement and the applicable fee the office shall:

(1) accept the statement;

(2) amend its files to reflect the transfer; and

(3) if the name of the owner whose ownership interest has been transferred is indicated on the certificate of title:

(A) cancel the certificate;

(B) create a new certificate substituting the name of the transferee for the name of the owner; and

(C) deliver the new certificate or a record evidencing an electronic certificate pursuant to Section 12(a).

(c) An application under subsection (a) or the creation of a certificate of title under subsection (b) is not by itself a disposition of the vessel and does not by itself relieve the secured party of its duties under Ala. Code Title 7, Article 9A.

Official Comment

Source: UCOTA Section 21.

A secured party could be “the transferee” within the meaning of paragraph (a)(5) if the secured party either purchases the vessel at a disposition pursuant to UCC Section 9-610 or accepts the vessel in full or partial satisfaction of the debt pursuant to UCC Section 9-620.

SECTION 20. TRANSFER BY OPERATION OF LAW.

(a) In this section:

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

(A) because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(B) through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or

(C) through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a vessel.

(b) A transfer-by-law statement must contain:

(1) the name and last known mailing address of the owner of record and the transferee and the other information required by Section 7(b);

(2) documentation sufficient to establish the transferee’s ownership interest or right to acquire the ownership interest;

(3) a statement that:

(A) the certificate of title is an electronic certificate of title;

(B) the transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the transferee is delivering the written certificate to the office with the transfer-by-law statement; and

(4) except for a transfer described in subsection (a)(1)(A), evidence that notification of the transfer and the intent to

file the transfer-by-law statement has been sent to all persons indicated in the files of the office as having an interest, including a security interest, in the vessel.

(c) Unless the office rejects a transfer-by-law statement for a reason stated in Section 8(c) or because the statement does not include documentation satisfactory to the office as to the transferee's ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under the law of this state other than this act in connection with the statement or with the acquisition or use of the vessel, the office shall:

(1) accept the statement;

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

(3) if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:

(A) cancel the certificate even if the certificate has not been delivered to the office;

(B) create a new certificate indicating the transferee as owner;

(C) indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and

(D) deliver the new certificate or a record evidencing an electronic certificate.

(d) This section does not apply to a transfer of an interest in a vessel by a secured party under Ala. Code Title 7, Article 9, Part 6.

Official Comment

Source: UCOTA Section 22.

Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted pursuant to judicial order. It includes a sale following governmental seizure of a vessel and a sale under 46 U.S.C. Section 31326.

SECTION 21. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Section 19 or 20, if the office receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a

transfer of ownership or a termination statement, the office may create a new certificate under this section only if:

(1) all other requirements under Sections 7 and 8 are met;

(2) the applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;

(3) the applicant provides the office with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the files of the office as having an interest, including a security interest, in the vessel, at least 45 days have passed since the notification was sent, and the office has not received an objection from any of those persons; and

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

(b) The office may indicate in a certificate of title created under subsection (a) that the certificate was created without submission of a signed certificate or termination statement. Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel is delivered to the office not later than one year after creation of the certificate, on request in a form and manner required by the office, the office shall remove the indication from the certificate.

(c) Before the office creates a certificate of title under subsection (a), the office may require the applicant to post a bond. The bond may not exceed twice the value of the vessel as determined by the office. The bond must be in form, amount, and term required by the office and provide for indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or damage, including reasonable attorney's fees and costs, but not including incidental or consequential damages, resulting from creation or amendment of the certificate.

SECTION 22. REPLACEMENT CERTIFICATE OF TITLE.

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

(b) An applicant for a replacement certificate of title must sign the application, and, except as otherwise permitted by the office, the application must comply with Section 7. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

(c) A replacement certificate of title created by the office must comply with Section 9 and indicate on the face of the certificate that it is a replacement certificate.

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

Official Comment

When creating a replacement certificate of title, the office must comply with subsection (c) regardless of whether it creates a written certificate of title or an electronic certificate of title. No matter the format, the replacement certificate of title must be designated on its face as a replacement.

SECTION 23. RIGHTS OF PURCHASER OTHER THAN SECURED PARTY.

(a) A buyer in ordinary course of business has the protections afforded by Ala. Code sections 7-2-403(2) and 7-9A-320(a) even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

(b) Except as otherwise provided in Sections 17 and 24, the rights, with respect to a vessel, of a purchaser that is not a buyer in ordinary course of business are governed by Ala. Code Title 7.

Official Comment

1. Subsection (a) is a specific application of the general rule principle stated in subsection (b) and is designed to overrule the line of cases ruling that the buyer must obtain or apply for a new certificate of title identifying the buyer as the owner.

2. Subsection (b) incorporates the provisions of UCC Sections 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value” is defined in UCC Section 1-204.

Example 1: Scoundrel buys a vessel from Owner and a new certificate of title is created identifying Scoundrel as owner of record. In connection with the transaction, Scoundrel deceived Owner as to Scoundrel’s identity, with the result that the transaction is voidable by Owner. *See* UCC Section 2-403(1). Before Owner takes any action, Scoundrel sells the vessel for value to Buyer, who applies for a new certificate of title. If Buyer purchased the vessel in good faith, Buyer acquires good title to the vessel. *See* UCC Section 2-403(1).

4. Compliance with this act is generally not relevant to an owner’s rights against a grantor or someone else up the chain of title; it is relevant only to the owner’s rights against someone down the chain of title (*e.g.*, someone else who subsequently acquired rights from the grantor).

However, in some circumstances, the failure of a purchaser to ensure that an application is delivered to the office for a certificate of title that indicates purchaser’s interest in the vessel may prevent the purchaser from qualifying as a good faith purchaser. “Good faith” is defined in Section 2(b)(11) to include observance of reasonable commercial standards of fair dealing. While it may be customary for a buyer in ordinary course of business – that is, a person buying from a dealer – to buy a vessel without seeing or obtaining the existing certificate of title, this is not customary for a purchase from a non-dealer. Thus a buyer who buys a vessel outside the ordinary course of business and without execution of the certificate of title may not be observing reasonable commercial standards of fair dealing and may not qualify as a good faith purchaser.

Example 2: Same facts as Example 1, except that through inadvertence no application is delivered to the office for a certificate of title indicating Buyer’s ownership of the vessel. Buyer’s failure to have a new certificate of title created means that Buyer may lose ownership of the vessel to a subsequent transferee from Scoundrel. *See* Section 17(c). However, Buyer’s failure to

have a new certificate of title created does not suggest a lack of fair dealing toward Owner, and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.

Example 3: Same facts as Example 2, except that Buyer suspects that Scoundrel may have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an effort to make it more difficult for any prior owner to identify Buyer and Buyer's interest in the vessel. Buyer does not qualify as a good faith purchaser and therefore does not obtain good title to the vessel under UCC Section 2-403(1).

5. Subsection (a) applies the "entrustment" rule of UCC Section 2-403(2) to vessels, even if no application to have the buyer's interest noted on the certificate of title is ever delivered with the office.

Example 4: Owner, whose interest in a vessel is indicated on the certificate of title, brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary course of business. Buyer acquires Owner's rights to the vessel. This result follows even though Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title, and no application for a new certificate of title is delivered to the office.

Example 5: Same facts as Example 4, except that subsequently Owner purports to sell the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title and delivers it to Purchaser. Even though there was no compliance with Section 17(a) in connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to the vessel. See Section 17(c), which is made expressly subject to Section 23(a). The result would be the same if Owner purported to grant Purchaser a security interest in the vessel.

SECTION 24. RIGHTS OF SECURED PARTY.

(a) Subject to subsection (b), the effect of perfection and nonperfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by Ala. Code Title 7. For purposes of the application of the provisions of Ala. Code Title 7, lien creditor has the meaning provided by this act.

(b) If, while a security interest in a vessel is perfected by any method under this act, the office creates a certificate of title that does not indicate that the vessel is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate:

(1) a buyer of the vessel, other than a person in the business of selling or leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel; and

(2) the security interest is subordinate to a conflicting security interest in the vessel that is perfected under

Section 15 after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

Official Comment

Because perfection of a security interest in a vessel held as inventory for sale or lease by a person engaged in the business of selling goods of that kind is not governed by this Act, *see* Section 15(g)(1), subsection (b) of this Section has no application to such a security interest. Therefore, if a security interest in a vessel is perfected by filing and the office creates a certificate of title that neither indicates the security interest nor notes that the vessel may be subject to security interests not so noted, a buyer of the vessel cannot take free of the security interest under this Section. If such a buyer qualifies as a buyer in ordinary course of business, the buyer will take free of the security interest under Section 23(a) and U.C.C. Section 9-320(a). If the buyer does not qualify as buyer in ordinary course of business, say perhaps because the buyer acquired the vessel in total or partial satisfaction of a preexisting money debt, the buyer will take subject to the perfected security interest. *See* U.C.C. Section 9-201(a).

Alabama Comment

The definition of "lien creditor" in Section 2(15) of this act includes a person having a lien on a watercraft pursuant to Ala. Code section 35-11-60. *See* Alabama Comment to Section 2. Under subsection (b) of this section, the rights of a lien creditor are governed by the provisions of Alabama's Uniform Commercial Code. The subsection further provides that, for purposes of the application of those provisions, "lien creditor" has the meaning provided in this act. Thus, under Ala. Code sections 7-9A-201 and 7-9A-317(b)(2) a secured party with a perfected security interest in a vessel has priority over a person with a lien on a watercraft pursuant to Ala. Code section 35-11-60.

SECTION 25. DUTIES AND OPERATION OF OFFICE.

(a) The office shall retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title.

(b) The office shall retain in its files all information regarding a security interest in a vessel for at least 10 years after the office receives a termination statement regarding the security interest. The information must be accessible by the hull identification number for the vessel and any other methods provided by the office.

(c) If a person submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, the office shall send to the person an acknowledgment showing the hull identification number of the vessel to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the hull identification number and be delivered by means authorized by the office.

(d) The office shall send or otherwise make available in a record the following information to any person that requests it and pays the applicable fee:

(1) whether the files of the office indicate, as of a date and time specified by the office, but not a date earlier than three days before the office received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel:

(A) identified by a hull identification number designated in the request;

(B) identified by a vessel number designated in the request; or

(C) owned by a person designated in the request;

(2) with respect to the vessel:

(A) the name and address of any owner as indicated in the files of the office or on the certificate of title;

(B) the name and address of any secured party as indicated in the files of the office or on the certificate, and the effective date of the information; and

(C) a copy of any termination statement indicated in the files of the office and the effective date of the termination statement; and

(3) with respect to the vessel, a copy of any certificate of origin, secured party transfer statement, transfer-by-law statement under Section 20, and other evidence of previous or current transfers of ownership.

(e) In responding to a request under this section, the office may provide the requested information in any medium as determined by the office. On request, the office shall send the requested information in a record that is self-authenticating under Alabama Rule of Evidence 902(1).

Official Comment

Subsection (a) requires the office to maintain the evidence used to establish certain information but does not dictate how the office must maintain that evidence. Therefore the office may, if permissible under applicable law and its own rules and regulations, maintain the evidence in electronic or digitized form.

Except as provided in subsection (a) or (b), the office should retain information about previous owners of a vessel or information on a previous certificate of title for a vessel pursuant to the state's records retention law or the office's record retention policy.

An existing or new owner of a vessel covered by a certificate of title may wish to have the vessel become a documented vessel. To accomplish this, the owner will need a

certified copy of the a certificate of origin or other documents previously submitted to the office with an application for a certificate of title. Subsection (e) facilitates this by requiring the office to provide those documents in a form that the owner needs. *Cf.* Section 7(e) (requiring the office to maintain either the original or the image of documents submitted with an application for a certificate of title).

SECTION 26. FEES.

(a) There shall be a fee of fifty dollars (\$50) for processing and issuing the required documents and performing the other duties required by this act in connection with each of the following transactions:

(1) an application for a certificate of title;

(2) an application for a replacement certificate of title;

(3) an application for a transfer of ownership by operation of law using a transfer-by-law statement;

(4) an application for a transfer of ownership using a transfer statement;

(5) an application for a transfer of ownership without a certificate of title, transfer-by-law statement, or transfer statement; and

(6) a search request, including upon request the certification required by 11(e).

(b) There shall be no fee for processing a termination statement or a statement merely providing the office with the name of a secured party's assignee.

(c) Each county licensing official shall serve as an agent of the office for the purpose of receiving a document specified in subsection (a) or (b), collecting a fee as provided for by subsection (a), and forwarding the document and any fee to the office. A fee of fifteen dollars (\$15) shall be paid to the judge of probate for a transaction specified in subsection (a). There shall be no fee for a transaction specified in subsection (b).

(d) The office may designate as its agent a dealer or financial institution located in this state for the purpose of preparing an application for a certificate of title and collecting the fee provided for by subsection (a), and forwarding the application and fee to the office. An agent acting under this subsection may charge a fee of no more than five dollars (\$5) for its services.

Alabama Comment

The generic term "county licensing official" is used in subsection (c) because the official that fulfills the duties described in the subsection varies from county to county. In many counties,

the duties are performed by the judge of probate, but in other counties they may be performed by, for example, a revenue commissioner.

SECTION 27. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 28. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 29. EFFECTIVE DATE; TRANSITION RULES; SAVINGS CLAUSE.

(a) This act takes effect on January 1, 2016.

(b) Except as provided in subsection (c), this act applies to any vessel for which this state is the state of principal use on or after January 1, 2016.

(c) Except as provided in subsection (d), the provisions of this act do not apply to a vessel as to which construction has been completed as of December 31, 2015.

(d) Notwithstanding subsection (c), the owner of a vessel that is 26 feet or more in length and to which subsection (b) applies may voluntarily apply for a certificate of title as provided in Section 6, in which case the provisions of this act apply to the vessel for all purposes when the application for a certificate of title is delivered to the office and thereafter.

(e) The rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before the date the provisions of this act became applicable to the vessel and would be subject to this act if it had been entered into or created on or after the date the provisions of this act became applicable to the vessel, remain valid on and after the date the provisions of this act became applicable to the vessel.

(f) This act does not affect an action or proceeding commenced before the date the provisions of this act became applicable.

(g) Except as otherwise provided in subsection (i), a security interest in a vessel that is enforceable immediately before the date the provisions of this act became applicable to the vessel and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act.

(h) A security interest in a vessel perfected immediately before the date the provisions of this act became applicable to the vessel remains perfected until the earlier of:

(1) the time perfection would have ceased under the law under which the security interest was perfected; or

(2) three years after the date the provisions of this act became applicable to the vessel.

(i) This act does not affect the priority of a security interest in a vessel if immediately before the date the provisions of this act became applicable to the vessel the security interest is enforceable and perfected, and that priority is established.

Official Comment

Sources: ULC Drafting Rule 603; UCOTA Section 31; UCC Section 9-703.

1. Subsection (h) limits the duration of perfection for security interests perfected by possession or filing. The effect of subsections (g) and (h) is summarized by the following chart.

**Effect on Security Interest in Vessel
For Which State Enacting UCOTA-V Is the State of Principal
Use**

		Effect on Security Interest of Enactment
Governing Law Was Law of State Enacting UCOTA-V	Had a COT law that applied	None. If perfected under old law, remains perfected. If unperfected under old law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under old law (presumably by filing or possession), remains perfected until earlier of three years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	
Governing Law Was Law of State Different from State Enacting UCOTA-V	Had a COT law that applied	None immediately. If perfected under other state's COT law, remains perfected until perfection would have ceased. If unperfected under other state's law, remains unperfected. No change in priority.
	Had a COT law	None immediately. If perfected under other state's law (presumably by filing or possession), remains perfected until earlier of

		Effect on Security Interest of Enactment
	that did not apply	three years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	

The analysis of perfection must begin with U.C.C. § 9-303. If a COT covering the collateral has been issued or applied for, the law of that jurisdiction governs. U.C.C. § 9-303(b), (c). The next step is to go to that jurisdiction’s U.C.C. § 9-311. That jurisdiction’s version U.C.C. of § 9-311(a)(2) will indicate that perfection is governed by the COT statute.

If no application has been filed or COT issued, then the law where the debtor is located governs (or the law where the collateral is located if a security interest is perfected by possession). The next step is to go to that jurisdiction’s U.C.C. § 9-311. If that jurisdiction has a COT statute that applies, then U.C.C. § 9-311(a)(2) will require compliance with that COT statute. If the vessel is subject to the certificate of title statute in another jurisdiction, then U.C.C. § 9-311(a)(3) will require compliance with that other jurisdiction’s COT statute. *Compare* U.C.C. § 9-311(a) (referring to property “subject to” a certificate-of-title statute) *with* U.C.C. § 9-303(a)-(c) (indicating that the governing law is the law of the jurisdiction issuing a certificate of title that “cover[s]” the goods).

Through this multi-step process, the choice-of-law rules in Article 9 always point to the law of the same jurisdiction.

Scenario 1: Perfected by filing in State A (where debtor is located). Now governed by UCOTA-V in State A. Under law of State A, the security interest remains perfected until the earlier of three years after effective date of State A’s UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A,

whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State A. This is true even if, during that time, the owner applies for a certificate of title under this act and fails to list the security interest in the application. As a result, the secured party has, in general, three years to make sure that its interest is noted on the certificate of title in order to maintain perfection. Of course, if during this time, a certificate of title is issued that fails to identify the security interest, a purchaser may take priority over or take free of the security interest pursuant to U.C.C. § 9-337.

Scenario 2: Perfected by filing in State A (where debtor is located). Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 28, the security interest remains perfected until the earlier of three years after effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State B. This is true even if the application for a certificate of title in State B and fails to list the security interest in the application. However, a purchaser may benefit from U.C.C. § 9-337.

If no application for a certificate of title is applied for in State B, then the law of State A continues to govern. State A's U.C.C. § 9-311(a)(3) will now look to State B. Because of the operation of Section 28 of State B's UCOTA-V, perfection will continue until the earlier of three years after the effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State B.

Scenario 3: Perfected by compliance with certificate of title statute in State A. Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 28, the security interest remains perfected until the earlier of three years after effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, the secured party will have three years to have the security interest noted on a certificate of title issued by State B. However, because State A's certificate of title statute will no longer govern, perfection will have lapsed under the law of State A, and thus the secured party has no grace period for perfection. If the security interest is noted on the application for the certificate of title filed in State B, which is likely if it was noted on the surrendered State A certificate, the security interest will be perfected under Section 15. If the security interest is not noted on the application filed in or certificate issued by State B, the security interest will be unperfected.

If no application for a certificate of title is applied for in State B, then pursuant to U.C.C. § 9-303 the law of State A continues to govern. State A's U.C.C. § 9-311(a)(2) will continue to look to the certificate of title law of State A. Consequently, the security interest remains perfected as long as State A's certificate of title law continues to apply.

2. Pursuant to subsection (h), a secured party whose security interest is perfected by a filed financing statement will generally have three years to perfect pursuant to this act. Perfection under this act requires that the owner apply for a certificate of title and that the application note the security interest. *See* Sections 7 and 15. If the owner fails to make such an application, the secured party may face the prospect of becoming unperfected. However, a well-drafted security agreement will require the debtor to assist the secured party in perfecting the security interest or in maintaining perfection. Moreover, in the security agreement the debtor may have appointed the secured party to act as the debtor's agent or attorney in fact for this purpose. In such a case, the secured party would be authorized to apply for a certificate of title.

Alabama Comment

1. Subsections (b) through (d) limit the application of this act to the following cases only: 1) vessels as to which construction is completed after December 31, 2015, and as to which Alabama is the state of principal use; 2) vessels as to which construction is completed prior to January 1, 2016, if the state of principal use on that date was a state other than Alabama and after that date Alabama becomes the state of principal use; and 3) vessels for which a voluntary application is made under subsection (d).

2. The words “immediately before” in subsection (g) do not mean that perfection must first have been accomplished at any particular point in time; rather, they mean that the security interest was perfected under prior law at the moment the provisions of this act became applicable to the vessel to which the security interest attached. For example, assume that a secured party perfects a security interest by filing a financing statement with an effective life of five years on July 1, 2013, and this act becomes applicable to the vessel when the owner of the vessel voluntarily applies for a certificate of title under Section 6 on October 1, 2017. The security interest is perfected “immediately before” this act became applicable to the vessel and is perfected under this act.

3. Voluntary certification under subsection (d) is available for certain vessels as to which construction was completed prior to December 31, 2015. The limitation to vessels that are 26 feet or more in length corresponds with vessels that are designated Class 3 or Class 4 for purposes of registration.

SECTION 30. REPEALS. The following acts and parts of acts are repealed:

[add legislative note]