

Great Lakes Banker

MAGAZINE



November, 2017 • Volume 2 • Number 11

**The Branch is Dead!
Good thing Thompson Phelan
Group didn't close up shop when
that news was spreading.**

This Month Featuring....

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...and So Much More!

Boat Lending: Avoid That Sinking Feeling

BY JAMES Y. STEWART, ESQ., KOTZ SANGSTER WYSOCKI P.C.

Unlike vehicles, where each of the 50 states have enacted a relatively uniform certificate of title statute, which includes a means of ownership and lien recordation, not all states have titling for vessels. Moreover, for those that do, there is currently no uniformity. Today there are 34 states and the District of Columbia with vessel titling acts. Unfortunately, there is little uniformity among the various states. To remedy this situation, in 2011, the National Conference of Commissioners on Uniform State Laws proposed a Uniform Certificate of Title for Vessels Act. Similar to vehicles, the proposed uniform act addresses ownership and lien perfection, but it has only been passed by two states (Virginia and Connecticut).

Without such uniformity, how is ownership of a recreational vessel determined? Is it the same as real

estate, where records are typically kept at the Register of Deeds office; or is it the same as vehicles, where titles are maintained at the Secretary of State or Department of Motor Vehicles; or is it the same as airplanes, where a federal registration occurs with the Federal Aviation Administration?

Which system of ownership and lien perfection should be considered relies on many factors, including:

- **Size of vessel**
- **State of principal use**
- **Use of the vessel**
- **Lender's preference**

Smaller boats are registered in their state of principal use. All 50 states have some form of vessel registration assigning a unique number to the vessel. If the state of principal use is also a Title State (a state with a title act for vessels), the

smaller boat will also be titled. The title will include a notation on the Certificate of Title of any liens on the vessel.

Non-title states still require registration of the vessel with the state; however, the state does not provide a title nor allow for lien recordation. For these states, in order to perfect its lien, the lender must record a uniform commercial code financing statement, the same as is used to protect other types of collateral. Since the collateral is easily movable from state-to-state and from non-title state to titled or non-titled state, this type of lien perfection can often be problematic and may lead to fraud. Fortunately, most of the states with the largest number of boat registrations are title states.

Larger recreational vessels are unique, since they can be registered/titled locally, or federally registered



with the United States Coast Guard. Federal registration is called documentation, as the United States Coast Guard will issue the owner a certificate of documentation. The owner may proceed under state law or obtain federal registration with the United States Coast Guard. To be eligible for United States Coast Guard documentation, a recreational vessel must be at least 5 net tons (about 27 feet) and, with certain exceptions, must be owned by a United States citizen.

Often the lender is the party requiring that a vessel be documented with the United States Coast Guard. One important reason for this requirement is that the lender is then able to obtain a Preferred Ship Mortgage on the vessel. A Preferred Ship Mortgage is only available on a documented vessel and is preferred since it has

priority over certain Maritime Liens (other than Preferred Maritime Liens). In admiralty law, a Maritime Lien is a privileged claim upon maritime connected property, such as a vessel, for services rendered to, or the injuries caused by that property. A Preferred Maritime Lien includes a Maritime Lien for services performed before a Preferred Ship Mortgage is filed. [A further description of Maritime Liens and Preferred Maritime Liens is beyond the scope of this article.]

In other words, the recording of a Preferred Ship Mortgage provides the lender a higher priority than a lien created under the state titling act. For example, under federal law, a marina or repair yard providing "necessaries" to a vessel is granted Maritime Lien against the vessel which may be enforced in federal court. The Maritime Lien of the

marina would take priority over a state lienholder noted on a title, but would not take priority over a Preferred Ship Mortgage filed with the Coast Guard prior to providing the necessaries. This protection may be important for vessels which travel from state-to-state, where the lender may not know about repairs or necessaries supplied to the vessel.

As a lender, the majority of loans will likely be for smaller vessels. Lenders should already be familiar with the state registration and titling, if applicable, system. However, if loaning against larger vessels, it will benefit the lender to seek assistance of a documentation service, maritime consultant or maritime counsel.

James Y. Stewart leads the Maritime and Recreational Boating Practice Group at Kotz Sangster. He has spent over 30 years in yacht financing, vessel documentation and the collection of maritime liens, including preferred ship mortgages. Jim's practice areas include general corporate and business law, formations of corporations and joint ventures, mergers and acquisitions, contracts, shareholder agreements, commercial law and real estate. A frequent speaker on issues relating to recreational boating and maritime lending, he also serves as General Counsel to both the Michigan Boating Industries Association and the National Marine Lenders Association. Jim is rated AV-Preeminent by Martindale-Hubbell, signifying that he has been recognized by his peers throughout the legal community for the highest level of skill and integrity. Contact Jim at: jstewart@kotzsangster.com or (313) 259-8751.

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