

- Sec.
 31323. Disclosing and incurring obligations before executing preferred mortgages.
 31324. Retention and examination of mortgages of vessels covered by preferred mortgages.
 31325. Preferred mortgage liens and enforcement.
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SUBCHAPTER III—MARITIME LIENS

31341. Persons presumed to have authority to procure necessities.
 31342. Establishing maritime liens.
 31343. Recording and discharging notices of claim of maritime lien.

HISTORICAL AND REVISION NOTES

Section 101 [102] of H.R. 3105 [became Pub. L. 100-710] revises, consolidates, and enacts certain general and permanent laws of the United States related to commercial instruments and liens and public vessels and goods. It amends subtitle III of title 46, United States Code by striking at the end “Chapters 313, 315—Reserved” and substituting “Chapter 313—Commercial Instruments and Maritime Liens”. Chapter 313 is essentially a codification of the Ship Mortgage Act, 1920 (46 App. U.S.C. 911-984). H.R. 3105 is the second step in the process of enacting laws compiled in title 46 of the Code into positive law. The first step in the codification process began in 1983 when certain general and permanent laws related to vessels and seamen were enacted as subtitle II of the title 46, United States Code.

HOUSE FLOOR STATEMENT

Section 102 of this bill adds a new subtitle III to title 46, which contains a codification of the Ship Mortgage Act, 1920 and other related provisions. A previous version of this codification and the remaining sections of the bill were recently reported by the Merchant Marine and Fisheries Committee in H.R. 3105 (H. Rept. 100-918). The significant additions or changes by this provision to the version of H.R. 3105 reported by the Merchant Marine and Fisheries Committee are explained as follows: [see sections 31305, 31321, 31322, 31325, 31329, 31330, 31343 of this title].

Editorial Notes

AMENDMENTS

2002—Pub. L. 107-295, title II, § 205(a)(2), Nov. 25, 2002, 116 Stat. 2096, substituted “notices of claim of maritime lien” for “liens on preferred mortgage vessels” in item 31343.

1996—Pub. L. 104-324, title XI, § 1113(b)(3), Oct. 19, 1996, 110 Stat. 3970, struck out item 31328 “Limitations on parties serving as trustees of mortgaged vessel interests”.

SUBCHAPTER I—GENERAL

§ 31301. Definitions

In this chapter—

- (1) “acknowledge” means making—

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961;

- (2) “district court” means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

- (3) “mortgagee” means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) “necessaries” includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) “preferred maritime lien” means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage;

- (6) “preferred mortgage”—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office; and

(7) “Secretary” means the Secretary of the Department of Homeland Security, unless otherwise noted.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4739; Pub. L. 111-281, title IX, § 913(a)(2)–(4), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31301(1), (2)	New
31301(3)	46:911(5)
31301(4)	Derived from 46:971-974
31301(5)	46:953(a)
31301(6)(A)	46:922(b)
31301(6)(B)	46:951 (2d par. less proviso)

Section 31301(1) defines the term “acknowledge”. This paragraph makes a substantive change to law to expand the current law by allowing a notarization under State law, a form prescribed by the Secretary, as well as a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

Section 31301(2) defines “district court”. This paragraph makes a substantive change to law by including the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Northern Mariana Islands, the High Court of American Samoa, and other Federal territorial courts as they are established. Under current law, only the district courts of the United States have jurisdiction under the Ship Mortgage Act, 1920.

Section 31301(3) defines “mortgagee” as a person to whom property is mortgaged and the trustee authorized under section 31328 that is designated in the trust agreement.

Section 31301(4) defines “necessaries” to include repairs, supplies, towage, and the use of a drydock and marine railway for a vessel. As in all codifications, the term “includes” means “includes but is not limited to” and, therefore, is not intended to be an exclusive listing of those items that a court has determined or may determine as falling within the meaning of the term “other necessities” as contained in current law. The definition is new, is based on 46 App. U.S.C. 971–974, and makes no substantive change to law.

Section 31301(5) defines “preferred maritime lien” to mean a lien on a vessel that arises before a preferred mortgage was filed under section 31321 of this title for damages arising out of maritime tort, stevedore wages, crew wages, general average, and salvage. The definition is new and is based on 46 App. U.S.C. 953(a). The only substantive change to law made by this paragraph is to change the effective date from the day the preferred mortgage is recorded and endorsed to when it is filed. This change is in keeping with other changes with regard to filing. The term “duly and validly” that is in existing law is not used because it is unnecessary. An instrument that is not “duly and validly” executed is not executed under the laws of the foreign country. This makes no substantive change to law.

Section 31301(6)(A) defines “preferred mortgage” to mean a mortgage that meets the requirements of section 31322. This clause makes no substantive change to law.

Section 31301(6)(B) defines “preferred mortgage” to also mean a mortgage on a documented foreign vessel that is preferred under sections 31325 and 31326 for purposes of enforcement of the outstanding mortgage indebtedness. Preference is only granted if the mortgage is executed under the laws of a foreign country, registered under those laws in a public register at the port of registry or at a central office. The use of the word “established” in place of “created” in the current law or “effective” as used in the treaties is not intended to make any substantive change to law. The only substantive changes to law made by this clause are the elimination of the exemption of foreign vessels of less than 200 gross tons, and clarification of the rule of interpretation that if a vessel is registered in one country, but is permitted to fly temporarily the flag of another country (such as through a demise charter), it is the law of the country in which the ownership of the vessel is documented that is used to determine when a mortgage attains preferred status.

Editorial Notes

AMENDMENTS

2010—Par. (7). Pub. L. 111–281 added par. (7).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 100–710, title I, §107, Nov. 23, 1988, 102 Stat. 4752, provided that:

“(a) This title [see Tables for classification] and amendments made by this title take effect on January 1, 1989. However, sections 31321 and 31322 of title 46 (as enacted by section 102 of this Act), United States Code (as sections 31321 and 31322 [probably should be 31322] apply to vessels for which an application for docu-

mentation has been filed), take effect on January 1, 1990.

“(b) An instrument filed before January 1, 1989, but not recorded before that date, is deemed to comply with section 31321 of title 46, United States Code, if it is in substantial compliance with the provisions in that section that had corresponding requirements under the law on December 31, 1988. However, the mortgage may not become a preferred mortgage until the vessel is documented.

“(c) This title and the amendments made by this title do not affect the validity of any instrument filed or recorded before January 1, 1989, if there was a corresponding requirement under the law on December 31, 1988.

“(d) An instrument filed or recorded before January 1, 1989, is deemed to comply with any new requirement under chapter 313 of title 46, United States Code (as enacted by section 102 of this Act), affecting the validity of that instrument.

“(e) Section 102 of this Act and amendments made by that section [enacting former section 30101 and sections 31301 to 31309, 31321 to 31330, and 31341 to 31343 of this title and provisions set out as a note preceding section 2101 of this title] do not affect any civil action filed before January 1, 1989.

“(f) Section 104(b) of this Act and the amendments made by section 104(b) of this Act [amending section 808 of the former Appendix to this title] do not apply to any change in control resulting from, or which may at any time result from, any proposed plan of reorganization filed under the United States bankruptcy laws prior to the date of enactment of this Act [Nov. 23, 1988], except that transactions undertaken as a result of such a plan shall continue to be governed by section 9 of the Shipping Act, 1916 ([former] 46 App. U.S.C. 808) [see 46 U.S.C. 56101, 57109], as it existed prior to the date of enactment of this Act, to the extent that such section 9 would have governed such transactions.”

§ 31302. Availability of instruments, copies, and information

The Secretary shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

(Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4740; Pub. L. 111–281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31302(1)	46:927 (1st sentence)
31302(2)	46:927 (2d sentence)
31302(3)	New

Section 31302(1) makes all instruments filed for recording or recorded with the Secretary of Transportation available for public inspection. The only substantive change to law made by this subsection is the inclusion of instruments filed for recording, which is in keeping with the new requirements on filing of instruments made in section 31321.

Section 31302(2) requires the Secretary to provide the public with a certified copy of the material made available to the public under subsection (a). This subsection makes no substantive change to law.

Section 31302(3) requires the Secretary, on request, to issue a certificate containing the information included