

minated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff.

Subsection (e) provides that, in a civil action *in rem*, the court may appoint a receiver and authorize operation of the vessel. When directed by the court, a United States marshal may take possession—even if the vessel is in the possession of or under the control of a person claiming a possessory common law lien. This subsection makes a substantive change to law by allowing the court to retain *in rem* jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located.

#### HOUSE FLOOR STATEMENT

Subsection (c) of this section clarifies that the district courts have original jurisdiction for a civil action under subsection (b) of this section, and exclusive jurisdiction in the case of vessels documented or to be documented under chapter 121 of title 46.

#### Editorial Notes

##### AMENDMENTS

2008—Subsec. (b)(3)(B). Pub. L. 110-181 amended Pub. L. 109-304, §15(30). See 2006 Amendment note below.

2006—Subsec. (b)(3)(B). Pub. L. 109-304, §15(30), as amended by Pub. L. 110-181, substituted “section 56101 or 56102 of this title” for “section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)”.

2002—Subsec. (d)(1)(B). Pub. L. 107-295, §205(b)(1), substituted “an unexpired notice of a claim” for “a notice of a claim”.

Subsec. (f)(1). Pub. L. 107-295, §205(b)(2), substituted “an unexpired notice of a claim” for “a notice of a claim”.

1998—Subsecs. (b)(1), (3), (c). Pub. L. 105-383 inserted “a vessel titled in a State,” after “chapter 121 of this title.”

1996—Subsec. (b). Pub. L. 104-324, §1124(a)(1), substituted “mortgagee may” for “mortgage may” in introductory provisions.

Subsec. (b)(1). Pub. L. 104-324, §1124(a)(2)(A), substituted “preferred” for “perferred”.

Subsec. (b)(3). Pub. L. 104-324, §1124(a)(2)(B), (3), added par. (3).

Subsec. (f). Pub. L. 104-324, §1124(b), added subsec. (f).

1989—Subsecs. (b), (c). Pub. L. 101-225 amended subsecs. (b) and (c) generally. Prior to amendment, subsecs. (b) and (c) read as follows:

“(b) On default of any term of the preferred mortgage, the mortgagee may enforce the preferred mortgage lien in—

“(1) a civil action in rem for a documented vessel or a vessel to be documented under chapter 121 of this title;

“(2) a civil action in personam in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness; and

“(3) a civil action against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness.

“(c) The district courts have original jurisdiction of a civil action brought under subsection (b) of this section. However, for documented vessels or vessels to be documented under chapter 121 of this title, this jurisdiction is exclusive of the courts of the States for a civil action under subsection (b)(1) of this section.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-181 effective as if included in the enactment of Pub. L. 109-304, see section

3529(b)(2) of Pub. L. 110-181, set out as a note under section 3205 of this title.

##### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-295, title II, §205(e), Nov. 25, 2002, 116 Stat. 2096, provided that: “This section [see Tables for classification] shall take effect January 1, 2003.”

##### EFFECTIVE DATE

Section effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as a note under section 31301 of this title.

##### CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104-324, title XI, §1124(c), Oct. 19, 1996, 110 Stat. 3981, provided that: “The amendments made by subsections (a) and (b) [amending this section] may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section [Oct. 19, 1996] to enforce claims for outstanding indebtedness secured by mortgaged vessels.”

#### § 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

(a) When a vessel is sold by order of a district court in a civil action *in rem* brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under chapter 537 of this title, has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under chapter 537 of this title, the preferred mortgage lien is subordinate to a maritime lien for necessities provided in the United States.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4746; Pub. L. 103-160, div. A, title XIII, §1360, Nov. 30, 1993, 107 Stat. 1816; Pub. L. 109-304, §15(31), Oct. 6, 2006, 120 Stat. 1704.)

##### HISTORICAL AND REVISION NOTES

| Revised section   | Source section (U.S. Code) |
|-------------------|----------------------------|
| 31326(a) .....    | 46:953(b), 961(c)          |
| 31326(b)(1) ..... | 46:953(b)                  |
| 31326(b)(2) ..... | 46:951 (2d par. proviso)   |

Section 31326(a) provides for a court-ordered sale to enforce a preferred mortgage lien or a maritime lien and the priority of claims. When a mortgaged vessel is sold by court order in a civil action *in rem*, any prior claim in the vessel is terminated—including any possessory common law lien. This subsection makes a substantive change to law by making the process the same for maritime liens as was provided for preferred mortgage liens. This eliminates the requirement for making a new mortgagee for a court sale to enforce a maritime lien. This section also broadens the jurisdiction to courts in the territories, as defined in section 31301.

Section 31326(b)(1) provides that each of these terminated claims attaches, in the same amount and priority, to the proceeds of sale—except that the preferred mortgage lien always has priority over these other claims. However, the preferred mortgage lien is still subordinated to expenses and fees allowed by the court, costs imposed by the court, and any preferred maritime liens. This may include statutory fees such as the fee of the United States Marshal under 28 U.S.C. 1921. Except for broadening its coverage under subsection (a), this makes no substantive change to law.

Section 31326(b)(2) provides in the case of a foreign vessel, the preferred mortgage lien is also subordinated to a maritime lien for necessaries performed or supplied for the vessel in the United States. “Provided” has been substituted for “provided or supplied” for consistency in usage. Except for broadening its coverage under subsection (a), this paragraph makes no substantive change to law.

#### Editorial Notes

##### AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–304, §15(31)(A), substituted “chapter 537 of this title,” for “title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.).”

Subsec. (b)(2). Pub. L. 109–304, §15(31)(B), substituted “chapter 537 of this title” for “title XI of that Act.”

1993—Subsec. (b)(1). Pub. L. 103–160, §1260(1), inserted “, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)” after “preferred mortgage lien”.

Subsec. (b)(2). Pub. L. 103–160, §1360(2), inserted “whose mortgage has not been guaranteed under title XI of that Act” after “foreign vessel”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 31301 of this title.

#### § 31327. Forfeiture of mortgagee interest

The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

(Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4746.)

##### HISTORICAL AND REVISION NOTES

| Revised section | Source section (U.S. Code) |
|-----------------|----------------------------|
| 31327           | 46:961(b)                  |

Section 31327 provides for forfeiture of the mortgagee's interest if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation that caused forfeiture of the vessel. This section makes no substantive change to law.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 31301 of this title.

#### [\$ 31328. Repealed. Pub. L. 104–324, title XI, § 1113(b)(1), Oct. 19, 1996, 110 Stat. 3970]

Section, Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4746, related to limitations on parties serving as trustees of mortgaged vessel interests.

#### § 31329. Court sales of documented vessels

(a) A documented vessel may be sold by order of a district court only to—

- (1) a person eligible to own a documented vessel under section 12103 of this title; or
- (2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

- (1) the vessel must be held by the mortgagee for resale;
- (2) the vessel held by the mortgagee is subject to chapter 563 of this title; and

(3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title.

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary of Transportation.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

(Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104–324, title XI, §1118, Oct. 19, 1996, 110 Stat. 3973; Pub. L. 109–304, §15(32), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111–281, title IX, §913(c), Oct. 15, 2010, 124 Stat. 3017.)

##### HISTORICAL AND REVISION NOTES

| Revised section | Source section (U.S. Code) |
|-----------------|----------------------------|
| 31329           | 46:961(f)                  |

Section 31329 sets out certain restrictions on the court sale of a documented vessel.

Section 31329(a) restricts the sale only to a person eligible to own a documented vessel under section 12102 of title 46 or to the mortgagee, which may be a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel.

Section 31329(b) sets out conditions on the sale to a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel. First, the vessel must be held by the trustee for resale. Second, while being held for resale, the vessel is subject to requisition or purchase during a national emergency under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242). And third, the sale of the vessel to the trustee is not a sale foreign within the terms of the First Proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

Section 31329(c) requires a person that is eligible to document the vessel that purchases a vessel from the court to document the vessel. This subsection also requires the person purchasing the vessel from the trustee to document it, thereby restricting to whom the