

ABA Section of Business Law

SUMMER 2009

Subcommittee on Maritime Financing

David McL. Williams, Chair

Mark J. Buhler, Vice Chair

The Subcommittee will be meeting at the ABA Annual Meeting in Chicago, on

Sunday, August 2, 2009

1:00 PM until 2:30 PM

Topics for discussion at our August 2, 2009 meeting will include:

- (1) Report on Drafting Committee on Certificate of Title Act for Boats, National Conference of Commissioners on Uniform State Laws (ULC).

The ULC has recently convened a Drafting Committee on Certificates of Title for Boats. Currently, approximately 34 states (including the District of Columbia) require that boats be titled, while 16 are non-title states. Mississippi is an optional title state. The National Association of Boating Law Administrators has previously drafted a model law for boat titling but the laws of many titling states do not follow it. The US Coast Guard has promulgated regulations for boat titling pursuant to the Vessel Identification System (VIS), but 21 years after enactment, the VIS is still not yet implemented. Boats are now numbered by all 50 states in accordance with federal law but the lack of uniformity in boat titling and lack of coordination with vessel documentation creates difficulties for boat financing. A report on the work of the ULC Drafting Committee now underway will be presented with Subcommittee input requested.

- (2) Discussion of Offshore Registration and Financing of Foreign Flag Yachts.

Larger yachts are often registered offshore for a wide variety of reasons. A duly executed foreign mortgage on a foreign flag vessel duly registered in a public registry under the foreign laws may qualify as a "preferred mortgage" in federal *in rem* foreclosure proceedings. Discussion will address the foreign registries most often used with considerations from the point of view of both owner and lender.

- (3) Report on Legislative Initiative, Preferred Mortgage Liens on Vessels Under Construction to be Documented Under US Flag.

Much vessel newbuilding in the US is financed in 2 stages, a construction loan during the period of construction and permanent financing secured by a “preferred mortgage” after documentation has occurred. Difficulties and potential risks attend the timing of the transition between the financings. A legislative initiative to avoid these risks by permitting construction financing to achieve the priority of a preferred mortgage under US flag will be presented.

- (4) Report on Legislative Initiative, Surrender of State Boat Title for US Documented Vessels.

For many years US vessel documentation laws have required that any certificate of title issued by a state for a documented vessel be surrendered in accordance with regulations prescribed by the Secretary, but more than a decade later, no regulations have yet been prescribed. A legislative initiative in process to address the matter will be discussed.

- (5) Report on Revisory Initiative, Vessel Documentation, CG form 1258.

The Coast Guard has considered revision of its Application for Vessel Documentation, CG form 1258, from time to time. Recent discussions have addressed certain aspects of the form designed to prevent or help avoid fraud and clarify the transition upon documentation of a vessel between financing secured under state law and preferred mortgage financing. Possible initiatives will be presented.

- (6) Other topics of interest to the Subcommittee may be addressed as well, time permitting. These may include recent legislative amendments to accommodate lease financing or a discussion of fractional yacht ownership. Persons interested in specific additional presentation topics are asked to contact the Subcommittee Chair or Vice Chair:

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