

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 necessities 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.

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”.

§ 31327. Forfeiture of mortgage 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.

[§ 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