

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

trustee can sell the vessel. Many documented vessels have no national defense utility, such as recreational vessels and fishing vessels. Therefore, both of these restrictions can be waived by the Secretary. As previously discussed, these waivers can be on a case-by-case basis or with a blanket waiver.

Section 31329(d) prohibits a trustee from operating the vessel without the approval of the Secretary.

Section 31329(e) voids any sale that is done contrary to this section.

HOUSE FLOOR STATEMENT

Under section 31329(d) a vessel may be operated by the trustee only with the approval of the Secretary. Under current law a vessel may be documented by a trust if all of the members of the trust are citizens of the United States. If the trust buying the vessel at the court sale includes foreign investors, the vessel cannot be documented. The Committee intends in this section that the vessel will only be “operated” in a maintenance manner, but not in a commercial service.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-281 substituted “Secretary of Transportation” for “Secretary”.

2006—Subsec. (a)(1). Pub. L. 109-304, §15(32)(A), substituted “section 12103” for “section 12102”.

Subsec. (b)(2). Pub. L. 109-304, §15(32)(B)(i), substituted “chapter 563 of this title” for “section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242)”.

Subsec. (b)(3). Pub. L. 109-304, §15(32)(B)(ii), substituted “sale to a person not a citizen of the United States under section 12132 of this title” for “sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883)”.

1996—Subsec. (f). Pub. L. 104-324 added subsec. (f).

§ 31330. Penalties

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title; or

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title; or

(C) files with the Secretary a mortgage made not in good faith.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104-324, title XI, §1113(b)(2), Oct. 19, 1996, 110 Stat. 3970; Pub. L. 111-281, title IX, §913(a)(1), (d), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31330(a) .....	46:941(b) (1st sentence)
31330(b) .....	New
31330(c) .....	46:941(b) (1st sentence)

Section 31330(a) provides for criminal penalties for not disclosing obligations, incurring contractual obligations in violation of section 31323(b), and filing a mortgage made not in good faith. This subsection makes a substantive change to law by adding civil penalties and by making it a crime to record with the Secretary of Transportation a mortgage made not in good faith with the intent to hinder an existing or future creditor of the mortgagor or a lienor of the vessel. This is done since the affidavit of good faith has been eliminated from the elements of a preferred mortgage.

Section 31330(b) adds criminal and civil penalties for violating the sale and trust requirements under sections 31328 and 31329. It also makes a vessel and its equipment involved in those violations subject to seizure by the Government.

Section 31330(c) makes the president or chief executive officer of a corporation or association liable as a mortgagor for the penalties under this section.

HOUSE FLOOR STATEMENT

Subsection (a) of this section adds criminal and civil penalties for a preferred mortgagor’s failure to carry out certain requirements under chapter 313 of title 46 (as enacted by this Act).

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111-281, §913(d)(1)(A), inserted “or” after semicolon.

Subsec. (a)(1)(C). Pub. L. 111-281, §913(d)(1)(B), substituted “Secretary.” for “Secretary; or”.

Pub. L. 111-281, §913(a)(1), struck out “of Transportation” after “Secretary”.

Subsec. (a)(1)(D). Pub. L. 111-281, §913(d)(1)(C), struck out subpar. (D) which read as follows: “with intent to defraud, does not comply with section 31321(h) of this title.”

Subsec. (a)(2)(B) to (D). Pub. L. 111-281, §913(d)(2), inserted “or” at end of subpar. (B), substituted “faith.” for “faith; or” at end of subpar. (C), and struck out subpar. (D) which read as follows: “does not comply with section 31321(h) of this title.”

1996—Subsec. (b). Pub. L. 104-324 struck out “31328 or” before “31329” in pars. (1) to (3).

SUBCHAPTER III—MARITIME LIENS

§ 31341. Persons presumed to have authority to procure necessities

(a) The following persons are presumed to have authority to procure necessities for a vessel:

- (1) the owner;
- (2) the master;
- (3) a person entrusted with the management of the vessel at the port of supply; or
- (4) an officer or agent appointed by—
  - (A) the owner;
  - (B) a charterer;
  - (C) an owner pro hac vice; or
  - (D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessities for the vessel.