

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

| <i>Revised section</i> | <i>Source section (U.S. Code)</i> |
|------------------------|-----------------------------------|
| 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.

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

Table with 2 columns: Revised section, Source section (U.S. Code). Row 1: 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

Table with 2 columns: Revised section, Source section (U.S. Code). Row 1: 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.

Editorial Notes

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).

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.