

**TITLE 46 - SHIPPING****Subtitle III - Maritime Liability****CHAPTER 313 - COMMERCIAL INSTRUMENTS AND MARITIME LIENS****SUBCHAPTER II - COMMERCIAL INSTRUMENTS****§ 31325. Preferred mortgage liens and enforcement**

- (a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.
- (b) On default of any term of the preferred mortgage, the mortgagee may—
- (1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;
  - (2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—
    - (A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and
    - (B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and
  - (3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness, if—
    - (A) the remedy is allowed under applicable law; and
    - (B) the exercise of the remedy will not result in a violation of section 56101 or 56102 of this title.
- (c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.
- (d) (1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—
  - (A) the master or individual in charge of the vessel;
  - (B) any person that recorded under section 31343 (a) or (d) of this title an unexpired notice of a claim of an undischarged lien on the vessel; and
  - (C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.
- (2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.
- (3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.
- (e) In a civil action brought under subsection (b)(1) of this section—

- (1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and
  - (2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.
- (f)
- (1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded an unexpired notice of a claim of an undischarged lien on the vessel under section 31343 (a) or (d) of this title before notice of the proposed transfer is given to the Secretary.
  - (2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.
  - (3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4745; Pub. L. 101–225, title III, § 303(4), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title XI, § 1124(a), (b), Oct. 19, 1996, 110 Stat. 3980; Pub. L. 105–383, title IV, § 401(c)(5)–(7), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 107–295, title II, § 205(b), Nov. 25, 2002, 116 Stat. 2096; Pub. L. 109–304, § 15(30), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 110–181, div. C, title XXXV, § 3529(b)(1)(B), Jan. 28, 2008, 122 Stat. 603.)

### Historical and Revision Notes

Revised section	Source section (U.S. Code)
31325(a)	46:951 (1st sentence)
31325(b)(1)	46:951 (2d sentence)
31325(b)(2)	46:954(a)
31325(b)(3)	New
31325(c)	46:951 (3d sentence)
31325(d)	46:951 (4th to 6th sentences)
31325(e)	46:952 (1st, 2d sentences)

Section 31325 provides for the enforcement of a preferred mortgage lien.

Section 31325 (a) makes a “preferred mortgage” a lien on the vessel in the amount of the mortgage indebtedness secured by the vessel outstanding at foreclosure. This subsection makes no substantive change to law.

Section 31325 (b) provides that, on default of any term, the mortgagee may enforce the preferred mortgage lien in a civil action in rem, or in personam in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This subsection makes a substantive change to law by allowing a nonadmiralty civil action to be brought against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This change allows an action to be brought even when the vessel is outside U.S. jurisdiction. This section will also allow the action to be brought against the comaker or guarantor of the mortgage.

Section 31325 (c) provides for original and exclusive jurisdiction by a district court, to the exclusion of the courts of a State for civil actions brought in rem. It also provides for original jurisdiction for civil actions brought in personam in admiralty and civil actions brought under subsection (b)(3). This subsection makes a substantive change to law by broadening the jurisdiction to courts in the territories, as defined in section 31301, as well as giving original jurisdiction to the district courts in nonadmiralty civil actions brought to enforce the preferred mortgage lien.

Subsection (d) provides that actual notice of a civil action in rem to enforce a maritime lien must be given in a manner directed by the court to the master, individual in charge of the vessel, to any person that recorded a notice of a claim of an undischarged lien, and, for the first time, to the mortgagee of a mortgage filed with the Secretary. This notice is not required if, after a search is made that is satisfactory to the court, the person entitled to notice is not found in the United States. Failure to give notice does not affect the court's jurisdiction. However, the mortgagor is still liable to the person not notified for damages in the amount of that person's interest in the vessel that was terminated by the civil action in rem, and a civil action may still be brought to recover the amount of the terminated 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.

### 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.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

“(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.”

#### **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.”

#### **Construction of 1996 Amendments**

Section 1124(c) of Pub. L. 104–324 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.”