

UCC FILINGS AGAINST "VESSELS" MAY NOT HOLD WATER



Most secured creditors are aware that in order to obtain a perfected security interest in the personal property of a debtor, a financing statement must be filed with the official, usually a county clerk, specified in the state's statutes. Some creditors, however, are surprised to learn that such a filing may not be effective when the personal property in which a secured creditor is seeking to obtain a security interest is a "documented vessel." Where the collateral in question is a documented vessel, the secured creditor must comply with federal statutory requirements regarding the filing of its documents.

A documented vessel is a vessel such as a ship, boat, barge, or floating dredge, with respect to which documents of ownership have been registered with the United States

Secretary of Transportation. In order to qualify for documentation, the vessel must have a water displacement of at least five net tons. If a vessel has been documented with the Secretary of Transportation or an application for documentation has been filed, no bill of sale, conveyance, mortgage, assignment or related instrument, such as a security agreement and financing statement, will be valid against third parties without actual notice of the transaction. However, an unrecorded or improperly recorded bill of sale, conveyance, mortgage, assignment or related instrument will be valid against the grantor, mortgagor, or assignor, or any person having actual notice of the conveyance, mortgage, assignment or related instrument. Generally, to be enforceable under the federal scheme, necessary documentation must be filed with the Officer-In-Charge at the United States Coast Guard office where the home port papers of the vessel are recorded. The instrument must (1) identify the vessel; (2) provide the name and address of each party to the instrument; (3) if a mortgage against the vessel, provide the amount of the obligation that is or may become secured by the mortgage, excluding interest, expenses, and fees; (4) state the interest of the grantor, mortgagor, or as-

signor in the vessel; (5) state the interest sold, conveyed, mortgaged or assigned; and (6) be signed and acknowledged.

Because there is not an abundance of case law interpreting the relationship of the federal statutes to state Uniform Commercial Code statutes, it is strongly recommended that a secured creditor, in addition to complying with the federal requirements, also prepare security agreements and file financing statements in compliance with state Uniform Commercial Code law. If UCC filings serve no other purpose in such cases, they may give notice to parties ignorant of federal requirements. □

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