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DEFINITIONS

Section 911. Words and terms used in chapter.—When used in this chapter—

- (1) The term "document" includes registry and enrollment and license;
 (2) The term "documented" means registered or enrolled or licensed under the laws of the United States, whether permanently or temporarily;
 (3) The term "port of documentation" means the port at which the vessel is documented, in accordance with law;
 (4) The term "vessel of the United States" means any vessel documented under the laws of the United States and such vessel shall be held to continue to be so documented until its documents are surrendered with the approval of the board; and
 (5) The term "mortgagee," in the case of a mortgage involving a trust deed and a bond issued thereunder, means the trustee designated in such deed. (June 5, 1920, c. 250, § 30, subsec. B, 41 Stat. 1000.)

RECORDING OF SALES, CONVEYANCES, AND MORTGAGES OF VESSELS OF THE UNITED STATES

921. Sale, conveyance, or mortgage of vessel of United States; record.—(a) No sale, conveyance, or mortgage which, at the time such sale, conveyance, or mortgage is made, includes a vessel of the United States, or any portion thereof, as the whole or any part of the property sold, conveyed, or mortgaged shall be valid, in respect to such vessel, against any person other than the grantor or mortgagor, his heir or devisee, and

a person having actual notice thereof, until such bill of sale, conveyance, or mortgage is recorded in the office of the collector of customs of the port of documentation of such vessel, as provided in subdivision (b) of this subsection.

(b) Such collector of customs shall record bills of sale, conveyances, and mortgages, delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show—

- (1) The name of the vessel;
 (2) The names of the parties to the sale, conveyance, or mortgage;
 (3) The time and date of reception of the instrument;
 (4) The interest in the vessel so sold, conveyed, or mortgaged; and
 (5) The amount and date of maturity of the mortgage, (June 5, 1920, c. 250, § 30, subsec. C, 41 Stat. 1000.)

922. Preferred mortgages.—(a) A valid mortgage which, at the time it is made includes the whole of any vessel of the United States of 200 gross tons and upward, shall in addition have, in respect to such vessel and as of the date of the compliance with all the provisions of this subdivision, the preferred status given by the provisions of subsection M, section 953, if—

- (1) The mortgage is indorsed upon the vessel's documents in accordance with the provisions of this chapter;
 (2) The mortgage is recorded as provided in subsection C, section 921, together with the time and date when the mortgage is so indorsed;

(3) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel;

(4) The mortgage does not stipulate that the mortgagee waives the preferred status thereof; and

(5) The mortgagee is a citizen of the United States.

(b) Any mortgage which complies in respect to any vessel with the conditions enumerated in this subsection is hereafter in this chapter called a "preferred mortgage" as to such vessel.

(c) There shall be indorsed upon the documents of a vessel covered by a preferred mortgage—

- (1) The names of the mortgagor and mortgagee;
 (2) The time and date the indorsement is made;
 (3) The amount and date of maturity of the mortgage; and
 (4) Any amount required to be indorsed by the provisions of subdivision (e) or (f) of this subsection.

(d) Such indorsement shall be made (1) by the collector of customs of the port of documentation of the mortgaged vessel, or (2) by the collector of customs of any port in which the vessel is found, if such collector is directed to make the indorsement by the collector of customs of the port of documentation; and no clearance shall be issued to the vessel until such indorsement is made. The collector of customs of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such indorsement shall be transferred to and indorsed upon the new document by the collector of customs.

(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be indorsed upon the documents of the vessel.

(f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the

payment of a portion of the mortgage indebtedness, the amount of such portion of such payment shall be indorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the United States in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage. (June 5, 1920, c. 250, § 30, subsec. D, 41 Stat. 1000.)

923. Certified copies of mortgage; exhibition.—The collector of customs upon the recording of a preferred mortgage shall deliver two certified copies thereof to the mortgagor who shall place, and use due diligence to retain, one copy on board the mortgaged vessel and cause such copy and the documents of the vessel to be exhibited by the master to any person having business with the vessel, which may give rise to a maritime lien upon the vessel or to the sale, conveyance, or mortgage thereof. The master of the vessel shall, upon the request of any such person, exhibit to him the documents of the vessel and the copy of any preferred mortgage of the vessel placed on board thereof. (June 5, 1920, c. 250, § 30, subsec. E, 41 Stat. 1001.)

924. Prior and subsequent maritime liens on mortgaged vessel.—The mortgagor (1) shall, upon request of the mortgagee, disclose in writing to him prior to the execution of any preferred mortgage, the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, that is known to the mortgagor, and (2), without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have indorsements in respect thereto made upon the documents of the vessel, any contractual obligation creating a lien upon the vessel other than a lien for wages of stevedores when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, or for salvage, including contract salvage, in respect to the vessel. (June 5, 1920, c. 250, § 30, subsec. F, 41 Stat. 1002.)

925. Record of notice of claim of lien on mortgaged vessel; discharge of lien.—(a) The collector of customs of the port of documentation shall upon the request of any person, record notice of his claim of a lien upon a vessel covered by a preferred mortgage, together with the nature, date of creation, and amount of the lien, and the name and address of the person. Any person who has caused notice of his claim of lien to be so recorded shall, upon discharge in whole or in part of the indebtedness, forthwith file with the collector of customs a certificate of such discharge. The collector of customs shall thereupon record the certificate.

(b) The mortgagor upon a discharge in whole or in part of the mortgage indebtedness, shall forthwith file with the collector of customs for the port of documentation of the vessel, a certificate of such discharge. Such collector of customs shall thereupon record the certificate. In case of a vessel covered by a preferred mortgage, the collector of customs at the port of documentation shall (1) indorse upon the documents of the vessel, or direct the collector of customs at any port in which the vessel is found, to so indorse, the fact of such discharge, and (2) shall deny clearance to the vessel until such indorsement is made. (June 5, 1920, c. 250, § 30, subsec. G, 41 Stat. 1002.)

926. Conditions precedent to record; interest on preferred mortgage.—(a) No bill of sale, conveyance, or mortgage shall be recorded unless it states the interest of the grantor or mort-

gagor in the vessel, and the interest so sold, conveyed, or mortgaged.

(b) No bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge thereof, shall be recorded unless previously acknowledged before a notary public or other officer authorized by a law of the United States, or of a State, Territory, District, or possession thereof, to take acknowledgment of deeds.

(c) In case of a change in the port of documentation of a vessel of the United States, no bill of sale, conveyance, or mortgage shall be recorded at the new port of documentation unless there is furnished to the collector of customs of such port, together with the copy of the bill of sale, conveyance, or mortgage to be recorded, a certified copy of the record of the vessel at the former port of documentation furnished by the collector of such port. The collector of customs at the new port of documentation is authorized and directed to record such certified copy.

(d) A preferred mortgage may bear such rate of interest as is agreed by the parties thereto. (June 5, 1920, c. 250, § 30, subsec. H, 41 Stat. 1002.)

927. Inspection of and copies from records; fees.—Each collector of customs shall permit records made under the provisions of this chapter to be inspected during office hours, under such reasonable regulations as the collector may establish. Upon the request of any person the collector of customs shall furnish him from the records of the collector's office (1) a certificate setting forth the names of the owners of any vessel, the interest held by each owner, and the material facts as to any bill of sale or conveyance of, any mortgage covering, or any lien or other incumbrance upon, a specified vessel, (2) a certified copy of any bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel, or (3) a certified copy as required by subdivision (c) of subsection H, section 926. The collector of customs shall collect a fee for any bill of sale, conveyance, or mortgage recorded, or any certificate or certified copy furnished, by him, in the amount of 20 cents a folio with a minimum charge of \$1. All such fees shall be covered into the Treasury of the United States as miscellaneous receipts. (June 5, 1920, c. 250, § 30, subsec. D, 41 Stat. 1002.)

PENALTIES

941. Failure of master to exhibit documents; unlawful acts by mortgagor; liability of collector of customs.—(a) If the master of the vessel willfully fails to exhibit the documents of the vessel or the copy of any preferred mortgage thereof, as required by subsection B, the board of local inspectors of vessels having jurisdiction of the license of the master, may suspend or cancel such license, subject to the provisions of sections 431 to 434, inclusive.

(b) A mortgagor who, with intent to defraud, violates any provision of subsection F, section 924, and if the mortgagor is a corporation or association, the president or other principal executive officer of the corporation or association, shall upon conviction thereof be held guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than two years, or both. The mortgaged indebtedness shall thereupon become immediately due and payable at the election of the mortgagee.

(c) If any person enters into any contract secured by, or upon the credit of, a vessel of the United States covered by a preferred mortgage, and suffers pecuniary loss by reason of the failure of the collector of customs, or any officer, employee, or agent thereof, properly to perform any duty required of the collector under the provisions of this chapter, the collector of customs shall be liable to such person for damages in the amount of such loss. If any such person is caused

any such loss by reason of the failure of the mortgagor, or master of the mortgaged vessel, or any officer, employee, or agent thereof, to comply with any provision of subsection E or F, section 923 or 924, or to file an affidavit as required by subdivision (a) of subsection D, section 922, correct in each particular thereof, the mortgagor shall be liable to such person for damages in the amount of such loss. The district courts of the United States are given jurisdiction (but not to the exclusion of the courts of the several States, Territories, Districts, or possessions) of suits for the recovery of such damages, irrespective of the amount involved in the suit or the citizenship of the parties thereto. Such suit shall be begun by personal service upon the defendant within the limits of the district. Upon judgment for the plaintiff in any such suit, the court shall include in the judgment an additional amount for costs of the action and a reasonable counsel's fee, to be fixed by the court. (June 5, 1920, c. 250, § 30, subsec. J, 41 Stat. 1003.)

FORECLOSURE OF PREFERRED MORTGAGES

951. Lien of preferred mortgage; foreclosure; jurisdiction; procedure.—A preferred mortgage shall constitute a lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel. Upon the default of any term or condition of the mortgage, such lien may be enforced by the mortgagee by suit in rem in admiralty. Original jurisdiction of all such suits is granted to the district courts of the United States exclusively. In addition to any notice by publication, actual notice of the commencement of any such suit shall be given by the libellant, in such manner as the court shall direct, to (1) the master, other ranking officer, or caretaker of the vessel, and (2) any person who has recorded a notice of claim of an undischarged lien upon the vessel, as provided in subsection G, section 925, unless after search by the libellant satisfactory to the court, such mortgagor, master, other ranking officer, caretaker, or claimant is not found within the United States. Failure to give notice to any such person, as required by this subsection, shall not constitute a jurisdictional defect; but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit. Suit in personam for the recovery of such damages may be brought in accordance with the provisions of subdivision (c) of subsection J, section 941. (June 5, 1920, c. 250, § 30, subsec. K, 41 Stat. 1003.)

952. Receiver in foreclosure; possession by marshal.—In any suit in rem in admiralty for the enforcement of the preferred mortgage lien, the court may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of any person claiming a possessory common-law lien. (June 5, 1920, c. 250, § 30, subsec. L, 41 Stat. 1004.)

953. Preferred maritime lien; priorities; other liens.—(a) When used hereinafter in this chapter, the term "preferred maritime lien" means (1) a lien arising prior in time to the recording and indorsement of a preferred mortgage in accordance with the provisions of this chapter; or (2) a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage.

(b) Upon the sale of any mortgaged vessel by order of a district court of the United States in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all preexisting claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of subsection L, section 952, shall be held ter-

minated and shall thereafter attach, in like amount and in accordance with their respective priorities, to the proceeds of the sale; except that the preferred mortgage lien shall have priority over all claims against the vessel, except (1) preferred maritime liens, and (2) expenses and fees allowed and costs taxed, by the court. (June 5, 1920, c. 250, § 30, subsec. M, 41 Stat. 1004.)

954. Suits in personam in admiralty on default.—(a) Upon the default of any term or condition of a preferred mortgage upon a vessel, the mortgagee may, in addition to all other remedies granted by this chapter, bring suit in personam in admiralty in a district court of the United States, against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such vessel or any deficiency in the full payment thereof.

(b) This chapter shall not be construed, in the case of a mortgage covering, in addition to vessels, realty or personalty other than vessels, or both, to authorize the enforcement by suit in rem in admiralty of the rights of the mortgagee in respect to such realty or personalty other than vessels. (June 5, 1920, c. 250, § 30, subsec. N, 41 Stat. 1004.)

TRANSFERS OF MORTGAGED VESSELS AND ASSIGNMENT OF VESSEL MORTGAGES

961. Surrender of documents; termination of mortgagee's interest; sale of mortgaged vessel.—(a) The documents of a vessel of the United States covered by a preferred mortgage may not be surrendered (except in the case of the forfeiture of the vessel or its sale by the order of any court of the United States or any foreign country) without the approval of the board. The board shall refuse such approval unless the mortgagee consents to such surrender.

(b) The interest of the mortgagee in a vessel of the United States covered by a mortgage, shall not be terminated by the forfeiture of the vessel for a violation of any law of the United States, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation.

(c) Upon the sale of any vessel of the United States covered by a preferred mortgage, by order of a district court of the United States in any suit in rem in admiralty for the enforcement of a maritime lien other than a preferred maritime lien, the vessel shall be sold free from all preexisting claims thereon; but the court shall, upon the request of the mortgagee, the libellant, or any intervenor, require the purchaser at such sale to give and the mortgagor to accept a new mortgage of the vessel for the balance of the term of the original mortgage. The conditions of such new mortgage shall be the same, so far as practicable, as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgagee shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall be held diminished in the amount of the new mortgage indebtedness.

(d) No rights under a mortgage of a vessel of the United States shall be assigned to any person not a citizen of the United States without the approval of the board. Any assignment in violation of any provision of this chapter shall be void.

(e) No vessel of the United States shall be sold by order of a district court of the United States in any suit in rem in admiralty to any person not a citizen of the United States. (June 5, 1920, c. 250, § 30, subsec. O, 41 Stat. 1004.)

MARITIME LIENS FOR NECESSARIES

971. Persons entitled to lien.—Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized

by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel. (June 5, 1920, c. 250, § 30, subsec. P, 41 Stat. 1005.)

972. Persons authorized to procure repairs, supplies, and necessities.—The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessities for the vessel. The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel. (June 5, 1920, c. 250, § 30, subsec. Q, 41 Stat. 1005.)

973. Notice to person furnishing repairs, supplies, and necessities.—The officers and agents of a vessel specified in subsection Q, section 972, shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this chapter shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor. (June 5, 1920, c. 250, § 30, subsec. R, 41 Stat. 1005.)

974. Waiver of right to lien.—Nothing in this chapter shall be construed to prevent the furnisher of repairs, supplies, towage, use of dry dock or marine railway, or other necessities, or the mortgagee, from waiving his right to a lien, or in the case of a preferred mortgage lien, to the preferred status of such lien, at any time, by agreement or otherwise; and this chapter shall not be construed to affect the rules of law existing on June 5, 1920, in regard to (1) the right to proceed against the vessel for advances, (2) laches in the enforcement of liens upon vessels, (3) the right to proceed in personam, (4) the rank of preferred maritime liens among themselves, or (5) priorities between maritime liens and mortgages, other than preferred mortgages, upon vessels of the United States. (June 5, 1920, c. 250, § 30, subsec. S, 41 Stat. 1005.)

975. State statutes superseded.—This chapter shall supersede the provisions of all State statutes conferring liens on vessels, in so far as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of dry dock or marine railway, and other necessities. (June 5, 1920, c. 250, § 30, subsec. T, 41 Stat. 1006.)

MISCELLANEOUS PROVISIONS

981. Existing mortgages not affected.—This chapter shall not apply (1) to any existing mortgage, or (2) to any mortgage hereafter placed on any vessel under an existing mortgage, on June 5, 1920, so long as such existing mortgage remains undischarged. (June 5, 1920, c. 250, § 30, subsec. U, 41 Stat. 1006.)

982. Books for collectors of customs.—The Secretary of Commerce is authorized and directed to furnish collectors of customs with all necessary books and records, and with certificates of registry and of enrollment and license in such form as provides for the making of all indorsements thereon re-

quired by this chapter. (June 5, 1920, c. 250, § 30, subsec. V, 41 Stat. 1006.)

983. Rules and regulations by Secretary of Commerce.—The Secretary of Commerce is authorized to make such regulations in respect to the recording and indorsing of mortgages covering vessels of the United States, as he deems necessary to the efficient execution of the provisions of this chapter. (June 5, 1920, c. 250, § 30, subsec. W, 41 Stat. 1006.)

984. "Ship Mortgage Act."—Section 30, Act of June 5, 1920, chapter 250, may be cited as the "Ship Mortgage Act, 1920." (June 5, 1920, c. 250, § 30, subsec. A, 41 Stat. 1000.)

Chapter 26.—PROVISIONS SUPPLEMENTARY TO NAVIGATION LAWS AND THE SHIP MORTGAGE ACT.

Sec.

1011. Port of documentation.

1012. Record at home port.

1013. Conveyances and other instruments and acts validated.

1014. Navigation laws and Ship Mortgage Act amended.

Section 1011. Port of documentation.—Whenever in the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920, chapter 25 of this title, the words "port of documentation" are used they shall be deemed to mean the "home port" of the vessel, except that the words "port of documentation" shall not include a port in which a temporary document is issued. (Feb. 16, 1925, c. 235, § 4, 43 Stat. 918.)

1012. Record at home port.—No bill of sale, conveyance, mortgage, assignment of mortgage, or hypothecation (except bottomry), which includes a vessel of the United States or any portion thereof shall be valid in respect to such vessel against any person other than the grantor or mortgagor, his heirs or devisees, and any person having actual notice thereof, until such bill of sale, conveyance, mortgage, assignment of mortgage, or hypothecation is recorded in the office of the collector of customs at the home port of such vessel. Any bill of sale or conveyance of the whole or any part of a vessel shall be recorded at the home port of such vessel as shown in her new document. (Feb. 16, 1925, c. 235, § 2, 43 Stat. 918.)

1013. Conveyances and other instruments and acts validated.—All conveyances and mortgages of any vessel or any part thereof, and all documentations, recordations, indorsements, and indexing thereof, and proceedings incidental thereto made or done, prior to February 16, 1925, are declared valid to the extent they would have been valid if the port or ports at which said vessel has in fact been documented from time to time had been the port or ports at which it should have been documented in accordance with law; and this section is declared retroactive so as to accomplish such validations; *Provided*, That nothing herein contained shall be construed to deprive any person of any vested right. (Feb. 16, 1925, c. 235, § 3, 43 Stat. 918.)

1014. Navigation laws and Ship Mortgage Act amended.—All such provisions of the navigation laws of the United States and of the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920, chapter 25 of this title, as are in conflict with sections 18, 1011, 1012, and 1013, are amended to conform herewith. (Feb. 16, 1925, c. 235, § 5, 43 Stat. 918.)

SHIPPING BOARD

See Title 46, SHIPPING.

SMITHSONIAN INSTITUTION

See Title 20, EDUCATION.

SNUFF

Excess tax; see Title 20, INTERNAL REVENUE.