

UCOTVA, what's it good for?

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UCOTVA, the shortened name for the Uniform Certificate of Title for Vessels Act, was developed by the Uniform Law Commission (ULC) to establish a certificate of title system for boats and other watercraft. Although all 50 states and the territories have boat numbering systems that comply with the federal regulations, there is far less uniformity with respect to state certificate of title laws for undocumented vessels.

It might help to draw an analogy between UCOTVA and the Certificate of Title (COT) laws for motor vehicles. COT laws, which have been enacted in every state and territory, vary only slightly and in nearly every instance require a motor vehicle to be titled in the state where it is principally garaged. As a result of this one uniform standard, there is no significant overlap or duplication of coverage relative to the administration of the motor vehicle COT laws or the taxation of motor vehicles.

In contrast, only 70 percent of the states and territories title watercraft, and few do so with identical scope, application and requirements. First, they do not all cover the same types of vessels, with many making their own distinctions based on size and propulsion. Second, the disparate statutes establish different jurisdictional requirements for titling, with some based on where the vessel is principally used, others where the boat is principally moored, or still others, where the owner resides. This creates significant gaps and duplication in coverage between states.

In addition, the states without titling laws make room for extensive fraud. For example, a stolen watercraft's title can be "washed" by moving the watercraft to a different state that either has no titling law or has a law that does not cover the subject watercraft. But, as more states enact UCOTVA, these gaps will narrow and eventually disappear.

UCOTVA was approved in July 2011 by the Uniform Law Commission, which develops

model laws that states then enact to facilitate interstate commerce. The universal use of the ULC's uniform acts has, for example, made it possible to have seamless cross-state banking transactions. ULC laws are so well vetted by top legal authorities that they typically garner broad support within state governments.

Charting new territory

The vessel titling act is a bit different because UCOTVA charts new territory; it presents states that do not have mandatory titling an entirely new way of regulating boat ownership. Because of this, its benefits far outweigh the effort it may take to enact it.

The uniform act was written because ULC commissioners, who are all appointees from either the legislative or executive branches of their respective states, believed boaters, law enforcement officers, and marine-related businesses needed a seamless, uniform network of state boat titling laws. By sharing most of the same language and requirements, states can expedite loans, provide for simple and verifiable interstate transfers of ownership, and improve the recovery and identification of stolen vessels.

The commissioners apparently were right, because UCOTVA has been endorsed by the National Association of State Boating Law Administrators (NASBLA), National Marine Manufacturers Association (NMMA), BoatUS, National Maritime Association, Marine Bankers Association, and many other key parts of the marine industry.

Virginia took the lead in 2013 as the first state to replace its existing titling law with UCOTVA. As one of many supporters who lobbied in support of its passage, I hope to draw upon my experience to provide talking points that boating law administrators (BLAs) can use to, hopefully, be advocates with legislators and agency administrators, and in turn learn more about the Act.

Why support UCOTVA?

UCOTVA should be enacted in every state because it will:

- **Simplify and improve the identification of stolen vessels**

Standardized language removes many of the ambiguities found in current state laws. UCOTVA provides a standard for dealing with those who fail to title, and the process for correcting errors on the title certificate. While NMMA recently established a requirement that all its boat builder members submit vessel identification information to the National Insurance Crime Bureau, uniform titling laws would provide additional access to ownership information that will greatly benefit those who need to identify and return stolen vessels.

- **Improve consumer protection**

Only a few states require boat sellers to alert buyers if a boat has been structurally damaged, sunk or salvaged. This means that buyers may unwittingly purchase a vessel that has hidden structural damage and that may have even been written off as a total loss by insurers, and is therefore unseaworthy and unsafe. This is a particular problem after a hurricane or other natural disaster in which hundreds of recreational boats are damaged and sunk. Owners and insurers often sell the damaged boats for salvage at auction to unscrupulous buyers who make cosmetic repairs and then re-sell the boats without disclosure of the wreckage to unsuspecting boaters.

Under UCOTVA's "branding" provision, if the integrity of a vessel's hull has been compromised by damage, the owner or insurer must, prior to selling the watercraft, either note this problem on the certificate of title or apply for a new certificate that indicates that the watercraft is "hull damaged" (i.e.,

“branded”). Failure to comply with this law carries a civil or administrative penalty. Branding is never lifted, just as a CARFAX report always notes that a car was in a severe wreck even after it has been repaired.

● **Clarify where a boat should be titled**

UCOTVA requires that a vessel be titled in the state where it is principally used. An owner has 20 days to apply for a title after moving the vessel to another state. A uniform situs provision clarifies where a watercraft is to be titled, and therefore, where it is to be taxed.

● **Help bankers provide for competitive loans for boat purchasers**

The U.S. Coast Guard is using UCOTVA’s provisions as a benchmark for its regulatory revisions for state title certification. In practice, this means that perfected bank loans made in any state that has adopted UCOTVA would be accorded the status of a preferred ship mortgage under federal law. No existing titling law has been approved by the U.S. Coast Guard for such status. A preferred ship mortgage is readily available for documented vessels. UCOTVA gives banks granting loans on vessels not eligible for documentation the same protection they have for loans made for larger boats.

● **Meet today’s legal standards**

All states and territories presently titling watercraft adopted their acts prior to the major revision to Article 9 of the Uniform Commercial Code that relates to security interests – that is, a lender’s interest in a vessel as collateral for a loan. All states have now enacted these UCC revisions, but watercraft titling laws have not kept pace. It is often difficult, if not impossible, to harmonize a state’s titling law with its laws governing sales of vessels and security interests in vessels. So, when financial disputes arise, interpreting the laws of two states can be maddeningly complex. This increases the transactional costs for both buyers and sellers of watercraft.

● **Ease administrative burdens**

Ambiguities found in many state titling laws regarding the effect of the title, the consequence of a failure to title, or the effect of errors on the title certificate are either removed or avoided by the enactment of UCOTVA.

These are only a few of the many advances UCOTVA offers to a state enacting its provisions. To read the Act, visit www.uniformlaws.org and click on “Acts,” then on “Certificate of Title for Vessels Act.” Even better, feel free to telephone the Uniform Law Commission’s Legislative Counsel for UCOTVA, Ben Orzeske, at 312.450.6621.

Why is UCOTVA supported by NASBLA, boat manufacturers, financiers, and insurers? For the same reasons it should get the support of every state. Enactment of UCOTVA can only make the purchase of a watercraft easier. Bankers who have had a part in writing the Act believe it can make boat loans easier to get, especially for those without stellar credit, and possibly less expensive. A major factor in determining the rate of interest on any loan is risk. UCOTVA can provide banks with more assurance they will be the first in line to receive whatever proceeds come from the sale of a repossessed boat.

The Great Recession and the flat recovery of the past several years has hurt everyone who relies upon the revenue that boating provides – including state agencies that depend on registration fees for part of their budget. If loans become easier to get, more boats will be

sold and registered, resulting in more boats being counted in federal revenue allocations.

UCOTVA is a “win/win” for all, especially the boating public. Because of title branding, the public will know that the purchase of their dream boat will not lead to disaster because the vessel has had cosmetic repairs that disguise structural damage or flooding.

For states currently titling watercraft, the enactment of UCOTVA will be less of a challenge. Virginia’s transition already is underway, so its Department of Game and Inland Fisheries, that administers the titling and registration of watercraft, would be an excellent source of information for those considering supporting UCOTVA for their state. The challenges will be greater in states that do not already title boats. Nevertheless, as the former head of a state agency, I would not have let an opportunity such as initiating UCOTVA pass me by. I especially would have fought to keep titling and registration responsibilities within the same agency. Administering UCOTVA fits with the agency registering recreational vessels.

So, get out there and fight for its passage. *

