

THE BUSINESSMAN'S GUIDE TO MARITIME LIENS

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THE BUSINESSMAN'S GUIDE TO MARITIME LIENS

PART I HISTORY AND BACKGROUND OF MARITIME LIENS

UNDERSTANDING LIENS

This book is written for companies and individuals who provide services, loans, equipment and consumable items for boats and ships.

There is a great difference between ordinary liens and maritime liens:

A lien is merely a claim against someone or some property. In the ordinary sense liens are designed to give notice to everyone else dealing with the same person or property that you have a claim that may affect the person or property. This notice is there to protect innocent buyers.

There is a very wide variety of liens. We do not have time or space to discuss all of the types of possible liens. You may be more familiar with UCC liens which are routinely filed in commercial matters; Mechanics Liens which protect people and companies that work on real property and service and possessory liens that arise when someone holds another person's property.

Maritime Liens apply only to claims against a vessel by a person or company that does not own or have legal control of the vessel.

Historically, a vessel on a voyage and not known in a foreign port would have difficulty establishing credit for supplies, fuel, food, etc. Prior to modern communications with immediate banking capabilities, the captain would pledge the vessel itself as security for supplies and services. An important thing to note is that the captain or master of the vessel had and still has the right to pledge the vessel as security along with the owner of the vessel. The ultimate purpose is to encourage maritime commerce and enable companies that might not otherwise provide credit to a ship to do so.

Until about 1910, the maritime lien process would not apply in the vessel's home port. The theory was that the owner being local could provide his own lines of credit with local suppliers and merchants. In 1910 with the passage of the Maritime Lien Act suppliers of services and equipment were afforded protection regardless of whether the vessel was in a home port or not.

There are two avenues of responsibility. First, the ship owner who or through whom supplies, equipment or necessities are ordered for the vessel is liable for their payment. Secondly, the vessel, in Admiralty, is treated as a person. This means that the boat or the ship itself is responsible for the lien claims. Actions

in Admiralty are termed "In Rem", which merely means the thing itself. For the purposes of lien claims the vessel itself must also stand as a responsible party for the claim.

Maritime Liens are strictly construed by the Admiralty Courts to protect innocent purchasers and creditors. A number of rules must be respected which may not seem logical to the ordinary businessman.

1. The claim must be against a ship, boat or vessel which must be "in navigation". A vessel that has been permanently removed from navigation is not subject to a lien. This would be a vessel, on land which no intention of being repaired or launched. A vessel temporarily dry docked for repairs or storage may still be subject to a lien.
2. New vessels under construction are not subject to maritime liens based on the theory that they have never been in navigation. We will discuss how to protect your interest in "new construction" a page 13.
3. The vessel must be under the lawful control of the person ordering supplies or creating a situation that may give rise to a lien. If a thief or pirate who illegally has control of the vessel creates a situation which ordinarily would give rise to a lien, the lien will not apply.
4. The person claiming the lien may NOT have any direct ownership interest in the vessel. This includes partners and joint venturers.
5. The person claiming the lien may NOT be in possession of the vessel. At page 15 we discuss the status of shipyards and repair facilities.

Maritime Liens arise for a variety of different reasons. The Admiralty Courts have determined the priority in which the liens should be paid. The entire lien process is a system in which different rights of the creditors are protected based upon their position in the priority of creditors. The Courts have made a determination that the ship's conduct has a substantial impact on this priority.

Generally, companies dealing in ship supplies, equipment and maintenance fall into a designation as a supplier of "necessaries." The term, "necessaries", refers to any item which is reasonably needed for the venture in which the ship is engaged. The term is very widely interpreted to mean anything that helps the vessel operate including repairs, provisions for passengers and crew, wharfage, air fare for crewmembers, services of a surveyor, documentation services, etc.

The goods or services must be **actually delivered to or use by a specific vessel**. If an owner purchases goods and services which are not designated for a particular vessel, the lien may not attach.

Liens may not be created by agreement. Also attorney fees are not applied as Maritime Liens except in cases where they are provided by contract such as in Ship's Mortgages, etc. There has been a large amount of litigation and legal opinion regarding what actually constitutes a lien. For the purpose of general business, assume that if you provide goods or services to a vessel, in the water, you probably have a right to file your lien.

WHAT IS A MARITIME LIEN?

The concept of maritime liens evolved to make the vessel and vessel owner responsible for debts incurred by the owner for the operation of his ship.

Out of this also evolved a concept that the vessel itself should have responsibility in addition to the responsibility of the owner for expenses that the ship incurred for its operation. Shipping, from its earliest form, involved the outfitting of a ship for commercial operation to harbors distant from its home port. There arose a need for suppliers and crew members to be able to rely on the value of the ship as some security for the work, repairs and equipment provided to the ship. The phrase "In Rem" refers to an action against a non-living entity, in this case the ship itself.

The courts have defined a maritime lien as a non-possessory right of a non-owner to enforce a claim against the ship and all of its appurtenances and have it sold to pay the debt incurred. The U.S. law for this is generally found under the "Commercial Instruments and Maritime Lien Act" (46 USC Sections 31305). The issue is whether you rely on the credit of the vessel for the services provided.

In more general terms a lien is the right of any person or company that provides maritime services to the ship to recovery those debts with enforcement against the vessel which could ultimately result in having the U.S. Marshal sell the ship to the highest bidder at auction and the funds from the sale then going to pay the debts of the ship in a proscribed order.

WHAT DEBTS ARE ELIGIBLE TO BE FILED?

By far the most common lien is for what are generally called "Necessaries". Necessaries are things that are required for the ship for the voyage. This will include such things as:

- a. repairs
- b. pilotage
- c. provisions for the crew
- d. provisions for the passengers
- e. food and liquor for passengers on a yacht
- f. dockage and wharfage
- g. towage
- h. advertising

- i. uniforms
 - j. cigarettes
 - k. surveyor's services
 - l. transportation for crew members
 - m. preparation of documentation for the vessel
 - n. insurance premiums
1. Crew wages include wages to the captain or master of the vessel. This may also include Longshoremen employed by the ship.
 2. Salvage claims against the vessel.
 3. Tort liens for personal injury or death.
 4. Miscellaneous other claims including taxes, penalties for forfeiture for violation of Federal Law.

WHO MAY FILE A MARITIME LIEN?

You may file or claim a lien if you or your company sells and delivers goods or services at the request of any person lawfully in possession of the yacht or ship, or its owner or agent.

A subcontractor working at the request of a shipyard may not be entitled to a lien unless the shipyard as general contractor had authority to bind the vessel. Ordinarily, a shipyard contract for repair should entitle the shipyard to act as the owner's agent for subcontracting work. If you are a subcontractor, you should discuss this with the shipyard or general contractor before work begins.

Another issue that may arise is whether the goods or supplies sold were delivered to the ship or yacht. Your invoice should always have the name of the vessel as well as the name of the owner. When the equipment or goods are delivered to someone else for delivery to the yacht or ship, you may not be entitled to a lien. Delivery to the vessel is of paramount importance.

Direct dealing with the owner, the captain or someone in charge of the vessel is a pre-requisite to being entitled to a lien. If the vessel is under a charter or mortgage that prohibits the incurring of liens by the captain or owner, he must inform you prior to the time that you provide your goods or service. In that case you should deal only in a "cash and carry" basis with the vessel.

WHO CANNOT FILE A LIEN?

1. The owner
2. A part owner
3. Joint venturer in ownership
4. Anyone in a fiduciary relationship to the owner

WHEN SHOULD THE LIEN BE FILED?

A lien may be filed at any time after the goods or services are provided. A lien arises as a matter of law at the time the service or goods are provided.

As a matter of practice, if you are not paid when the amount is due, you should give notice of Intent to File Lien and if payment is not received, then file a Claim of Lien against the vessel.

Under United States law, maritime liens need not be filed with the United States Office of Vessel Documentation to be effective. The purpose of filing is to give notice to the owner and anyone else that a claim is being made. These "so called" secret liens may sit unnoticed until the vessel is sold or arrested by other parties. At that time these liens may be presented at court.

The disadvantage of this practice is that the vessel may be sold or mortgaged without notice of your claim and the bank or new buyer will not make payment to you.

If your lien is on file, the bank or buyer will see it when a title opinion is done and the old owner will be required to satisfy the lien prior to selling the vessel. It is to your advantage to file the lien as soon as possible.

HOW LONG CAN I WAIT TO FILE THE LIEN?

Your claim will be affected by several things. Most states have a Statute of Limitations which requires that certain claims be brought within a set number of years. Once you pass that period your claim may be invalid. If you have filed your Lien, this statute may or may not apply according to the jurisdiction.

If a court determines that you waited an unreasonable length of time to bring your claim, you may have waived your rights and the claim will be dismissed. The court ordinarily looks to the State Statute of Limitations to determine the length of time appropriate to the claim.

If your lien claim is on file with the Office of Documentation, it may be cheaper to pay your claim than to file an action in Federal Court to remove it.

WHERE ARE MARITIME LIENS FILED?

The United States Coast Guard, Office of Vessel Documentation is the official registry of titles, mortgages and liens for ships and yachts documented under the U.S. Flag. They do not handle liens against State-registered vessels.

The USCG Office of Vessel Documentation is located at:

National Vessel Documentation Center
792 T.J. Jackson Drive
Falling Waters, WV 25419-9502
Telephone: 800-799-8362 / 304-271-2400
Fax: 304-271-2415

DO DIFFERENT LIENS HAVE PRIORITY OF PAYMENT?

Yes, liens are paid subject to a variety of rules, if they are paid by order of a United States Admiralty Court.

The general priority of claims or liens is as follows from first to last priority:

1. Expenses of justice (If a lawsuit has been filed and the vessel seized. This will include all the expenses of the ship while under the Marshal's control.)
2. Seamen's wages and money due for maintenance and cure.
3. Salvage claims against the vessel.
4. Tort liens for accidents resulting in injury or death relating to the vessel.
5. Pre-mortgage liens for necessities. (Goods and services provided before a mortgage was filed against the vessel.)
6. Preferred Ship's Mortgages
7. Liens for necessities filed after a mortgage was already on file.
8. State created liens
9. Liens for Penalties under federal law.
10. Preferred non-maritime liens including tax liens.

RECOMMENDED BUSINESS PROCEDURES FOR SMALL BUSINESS OPERATORS

Assuming you are a small business operator providing supplies, equipment or repair services to a customer, there are a number of things that you can do to improve your chances of collecting for your work.

DEALING WITH YOUR CUSTOMER

If you are providing goods or services on credit or billing for future payment, have the customer provide you with a copy of the vessel title document. Under United State Coast Guard rules, it must be carried on the vessel at all times. This document will provide you with the correct name and address of the registered owner of the vessel. It will also tell you if the vessel is privately owned or owned by a corporation. The name of the vessel and official number of the vessel should appear on every invoice. Form 1 is a Personal Guaranty Form that may be used (See FORMS SECTION beginning on page 20).

If the owner cannot or will not provide you with this ownership information, you can obtain it directly from the USCG web site.

Today, many yachts and ships are owned by privately-held corporations. These corporations are designed to shield the owner from liability due to his vessel. If you determine that a vessel is corporately owned and you have a claim against it, it may be possible for the owner to avoid your claim. To avoid this, you should determine the safe level of debt to allow your customer to incur before you require from him a personal guaranty of the corporate debt. This level should be high enough so as not to increase your paper work load, but low enough so that you would not face a tremendous financial set back if you are unable to collect the debt.

HOW DO OWNERS USE CORPORATIONS AND LLC's TO AVOID DEBT?

A corporation or LLC is a business organization that is designed to shield the personal assets of the owners of the company. When properly used and administered these types of business ownership are legal, useful and provide many advantages to the individuals involved.

A corporation is organized by filing articles of incorporation with the Secretary of State who then issues a corporate charter. As long as the company pays its taxes and annual fees it will continue to be in business.

LLC's are Limited Liability Companies. They are easier and cheaper to set up than a general corporation and also easier to administer. To a large extent they receive the same protection and rights as a corporation. The tax advantage for an LLC is that the income is taxed personally to the owners of the company.

Corporations are administered through their corporate officers. Generally this will be a president, vice-president, secretary and treasurer. A corporation may consist of one individual. The corporate structure protects the individual owner as long as all of the business is conducted solely in the corporate name.

LLC's are managed by a Managing Member or a person designated by the LLC as the Managing Officer.

It is also very common for the vessel to be held by a corporation or LLC which is entirely separate from the corporation or LLC operating the vessel. The purpose of this is to create a wall of protection between the company operating the vessel and the company owning the vessel. It is very common practice now that private yachts are held in LLC's for tax purposes.

When dealing with a corporation or LLC you can very easily check their current status with the Secretary of State of California by going to this web site and entering the name of the company: <http://kepler.sos.ca.gov/>.

Most states have a similar website for the Secretary of State. The information you will get will tell you if the company is currently in good standing with the Secretary of State and who their registered agent is. This information does NOT tell you if they are a good credit risk.

Assume that your corporate or LLC customer incurs debts to you of \$5,000.00. You properly file your claim and foreclose on the vessel only to discover that the vessel is mortgaged for more than it is worth or that everyone in the harbor has filed a lien against the vessel before you did. The funds received from the sale must pay off the mortgage before your lien and you may receive nothing even though you have incurred expenses foreclosing on the vessel.

Since the corporation's only asset was the vessel and it has now been sold, you may be left with no one else to sue and never collect on your debt.

However, if you require a personal guaranty when the vessel is corporately owned, you may choose not to even sue the vessel, but to sue the on the personal guaranty in Small Claims Court or Superior Court. A personal guaranty is a promise to pay the debt when it becomes due, regardless of the status of the corporate owner. **You should never do business with a small corporation without having a personal guaranty from the individual owner.** Form No. 1 is a Request for Open Account with you and a Personal Guaranty of Payment.

On any significant account you should also have the corporation or LLC authorize the transaction in writing.

It is also important to realize that most vessels that have a mortgage on them have a provision within the mortgage that no liens may be attached to the vessel. Typically under the terms of the mortgage the captain or owner must inform you of this restriction before you give him credit. If there is a notice posted on the vessel or if you have actual notice of this restriction, your lien will become junior to the mortgage and reduce your chance of recovery.

WHY IS THE FIRST PREFERRED SHIP'S MORTGAGE SO IMPORTANT?

Usually when a yacht or ship is being purchased, the bank or lending institution financing the transaction requires that they be in the first position, if the vessel is foreclosed for any reason. To do this, they require that a title opinion show that all liens and claims against the vessel have been paid.

This mortgage is generally referred to as the First Preferred Ship's Mortgage. Typically, it will have priority over subsequently filed liens. There are exception regarding crew wages and certain other liens that will have a priority status.

These mortgages require that they be posted on the vessel and that the owner make everyone doing business with the ship aware that the mortgage prevents them from filing a claim or lien that would be superior to the mortgage. Most

owners do not post the mortgage nor tell their suppliers of the prohibition. This results in substantial litigation.

The mortgage will have priority over post liens for necessities, but will be junior to pre-mortgage liens for necessities, crew wages, torts liens and salvage and general average liens.

Mortgages are for general debt of the owner and must follow certain rules and be filed with the National Vessel Documentation Center. Mortgages generally provide for payment of attorney fees and costs which are enforceable from the sale of the vessel. Mortgages must be in good faith. This means that a sham or phony mortgage even if properly filed will not protect the owner and vessel from subsequent liens.

A prudent bank will also make a determination to the extent possible, that all un-filed liens and claims are satisfied. This is to your advantage as you will see later.

If you or anyone else files a lien and tries to have the vessel sold to pay its debts, the bank will, except for specific exceptions, receive first payment.

Until January 1, 2003, the U.S. Coast Guard Documentation Office would not record a lien **unless** there was a First Preferred Mortgage on file. If there were no mortgages on the vessel, the Coast Guard would refuse to file your lien and you had to file a lawsuit to arrest the yacht or ship and collect the debt. The *Maritime Security Act of 2003* has changed the law to allow the Coast Guard to accept and file liens regardless of whether there is a mortgage on file against the vessel. This is a major change in the application of the use of liens to collect your debts.

One good aspect of the Admiralty Law is that, except for your attorney fees, the costs of the arrest, storage and sale will be deducted from the sales price. So you may still put a great deal of pressure on the owner to pay your bill.

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PART II FILING A MARITIME LIEN

HOW TO FILE

The first step should be to send to the owner a Notice of Intent to File a Maritime Lien (Form 2). This should be sent by registered mail. After January 1, 2003 notice to the owner, any one holding a mortgage, as well as anyone who has filed a lien is required prior to the filing of your lien.

If the customer does not respond, then you should file a lien. Before filing your maritime lien form, obtain an **Abstract of Title** on the vessel from the United States Coast Guard from the website: <http://www.uscg.mil/hq/cg5/nvdc/>.

You will need the Vessel Name and Official number for the form. Generally, they will reply by fax within 48 hours with an Abstract of Title. A printed copy will be mailed to you. Be sure to check the NVDC website which is coming in line with many on-line services.

The abstract will show you all filing activity on the vessel since it was commissioned. You particularly want to look for any mortgage and the name of the bank. Also note how many other liens, if any, are filed and the amount. You may assume that many of those will be superior to yours, so you must decide if it is worth the effort to arrest the vessel.

To file the lien, complete a Notice of Claim of Lien form (Form 3) with all required information. You must mail a copy of the notice to every person listed on the Abstract of Title who has an unsatisfied claim, lien or mortgage

Send a photocopy of this lien with the Notice of Maritime Lien to Debtor cover letter (Form 5) to the owner by registered mail.

Also, send a photocopy of the lien and Notice to Mortgage Holder cover letter (Form 6) to the bank or financing institutions listed on the Abstract of Title.

The original notice should be sent to the documentation office with a check in the amount of \$8.00 per page payable to the USCG Office of Vessel Documentation. Attach the two copies (2) of the Lien Form and the check to the cover letter (Form 4) and mail it to:

National Vessel Documentation Center
792 T.J. Jackson Drive
Falling Waters, WV 25419-9502
Telephone: 800-799-8362 / 304-271-2400
Fax: 304-271-2415

The Coast Guard will file your lien. They will then stamp a copy of the lien. Within 10 days, they will return a copy of the lien to you with a "Filed" stamp showing the book and page where it is filed or a computer transaction number.

Most First Preferred Ship's Mortgages require that the owner not allow any liens to be filed against the vessel. The refusal of the owner to pay the debt and prevent the lien from being filed may be a violation of the terms of his mortgage on the vessel and bring him into default.

If at any time prior to a Marshal's auction of the vessel the owner pays your debt in full, you must file a Satisfaction of Lien Claim (Form 7) with the Documentation Office. The usual procedure is for the debtor to pay the debt and simultaneously have you provide him with the notarized Satisfaction for him to file. In any event the form must be filed with the Documentation Office.

ENFORCEMENT OF THE LIEN

If the owner is unable or unwilling to pay the debt and satisfy the lien you have two courses of action:

1. You may do nothing and wait to see if he attempts to sell the yacht or ship or if anyone else starts a foreclosure proceeding. In either case you should be notified by the new buyer or by the attorneys foreclosing the ship. Your filed lien is public notice of your claim.
2. Or, you may arrest the vessel in the United States District Court, Admiralty Division and have it sold to satisfy the debt.

The decision to arrest the vessel should be purely economic. The costs of hiring an Admiralty Attorney to arrest the ship and manage the litigation through the auction may range from several thousand dollars up to more than the ship is worth. In addition to a retainer paid to the attorney, you must put a certain sum of money on deposit with the United States Marshal to cover his expenses and the expenses of docking and taking care of the yacht or ship while it is in custody. The Marshal's deposit usually ranges between \$3,000.00 and \$5,000.00 depending on the jurisdiction.

Once the ship or yacht is arrested, no one is allowed on the vessel without permission of the Marshal. The period of arrest may last from a few days up to many years, depending on how quickly the case may be resolved.

The owner may post a bond to cover your claim and expenses and have the vessel released.

Depending on the jurisdiction, you may find an attorney who will take your case on a contingency basis and take up to 1/3 of the claim as his fee.

The difficulty and expertise required for this type of action is beyond the ability of most lay persons. Consult with a knowledgeable admiralty attorney before starting the action to determine the best course of action to take.

The action consists of:

Filing a complaint in the appropriate United States District Court and obtaining an order of Arrest of the Vessel from the District Judge or U.S. Magistrate.

Once the Arrest Order is obtained, you must make arrangements with the United States Marshal to execute the order and physically take possession of the vessel. Ordinarily the marshal's office has contracted with a local facility to impound vessels for them.

The marshal will require that the costs of the arrest and initial impounding be paid in advance and additional sums deposited to cover other expenses.

The marshal will then actually board the vessel, place a "keeper" or officer on board and have the vessel towed into an impound where it will be kept. Generally no one is allowed on board the vessel other than the designated impound personnel.

The costs of the arrest, impound and maintenance will be the first payments made if the vessel is sold. If the owner wishes to recover his vessel must pay those expenses or post a bond sufficient to cover the claim and expenses outstanding.

This becomes a very expensive and difficult procedure but one that ultimately results in your being paid for your goods and services.

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PART III STATE LIENS

DEALING WITH STATE LIENS AND CLAIMS

There are a variety of situations in which Federal maritime liens will not necessary either apply or be the best course of action.

VESSELS UNDER CONSTRUCTION

A vessel being built is not "in navigation" and consequently, maritime liens will not apply. This becomes a very real problem for companies providing goods and services as well as for financing institutions providing the funding for the project.

The Uniform Commercial Code provides a very simple lien process by which you may secure your interest in vessel under construction. By filing a UCC-1 form listing the creditors and Debtors you can protect your priority during the construction process.

The courts have held that a mortgage may be perfected against an incomplete vessel under construction. However, unless the vessel has been titled there may not exist the mechanism to establish the mortgage. It is to the creditor's advantage to file the UCC-1 against the whole of the vessel under construction with an agreement by the owner to convert the loan into a First Preferred Ship's Mortgage upon the titling of the vessel.

VESSELS IN YOUR POSSESSION

In many instances, a vessel may be delivered to you for repairs or storage. Where you have lawful possession of the vessel you may assert a possessory lien. In California Vessel liens of more than \$1,500 are handled through the Department of Motor Vehicles. There are a number of lien companies that will handle these lien sales for you and file all the require notices. Appendix A is the California DMV publication with the required information.

SALVOR & SALVAGE CLAIMS

Salvage is an action for an award against a vessel which was rescued from a maritime peril. It may be pure salvage in which there is no prior agreement as to compensation or contract salvage in which there is some type of agreement.

Pure salvage gives rise to a Maritime Lien but not to any claim of ownership. The ownership remains with the titled owner subject only to an award to the salvor. The salvor only has the right to hold the vessel until he can file an "In Rem" action against it.

The court will make an award based upon a number of factors including the value of the property saved; the skill and damage experienced by the salvor; time and expenses involved among other factors.

In "pure salvage" unless the salvor successfully saves the vessel, he will not be compensated. This is typically a "no cure, no pay" condition.

Contract salvage is based upon an agreement between the owner and the salvage company. Typically under those conditions, the salvage company performs its work at an agreed rate or under agreed conditions to which both parties are bound. Under contract salvage, success may not be a requirement.

Contract salvage agreements are subject to review by the court as to the amount and conditions under which the agreement was made.

In salvage cases, the salvor may apply to the Court for an award of attorney fees required to compel the owner to comply with the agreement.

Professional salvors occupy a unique place in the Admiralty Courts due to their importance in preventing bad situation from become disasters.

HOW YOUR LIEN MAY BE LOST

The fact that you have filed your lien with the proper authorities will not guarantee that it will not be extinguished.

The filing of the lien is only the first step. However, in many cases it will be sufficient to protect your interest and force payment of your claim.

The lien may be lost if you do not seek to enforce it within a reasonable time or if the State's statute of limitation on the claim expires.

In California the following statutes of limitation apply:

- Open Account: 2 years (no writing)
- Open Account: 4 years (reduced to writing)
- Written Contract: 4 years
- Domestic Judgment: 10 years (renewable at 10)
- Foreign Judgment: 10 years (commencing with judgment debtor's commencement of CA residence.)

The only way to enforce the lien is to file suit in the United States District Court and arrest the vessel.

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PART IV WHEN DO YOU NEED LEGAL ASSISTANCE?

Maritime Liens and claims vary from very simple to very complex. Maritime Law concerning the rights of a lien claimant has changed as statutory law and conditions have required.

The filing of the lien is the first step and in many cases will result in your being paid for your goods or services. It will also protect you in terms of priority in relationship to other claims and rights asserted against the vessel.

However, as was shown in an earlier section, if the owner refuses to pay and if you do not assert your rights by arresting the vessel you may lose your right to compensation.

Typically, ships and boats change hands with some regularity. The purchaser of a boat against which a lien has been filed takes the boat with that claim attached. Banks and finance companies generally will not finance a vessel until all liens and claims have been satisfied. Therefore you stand a very good chance of being paid even if you do nothing.

If, however, the vessel is not sold or refinanced, your lien may just sit in the file and never be paid.

If you, the owner flatly refuses to pay and the company financing the vessel does not pressure the owner to clear up the lien and there does not appear to be a chance the vessel will be sold in the near future, then you should contact a Maritime or Admiralty attorney and discuss how to resolve the claim.

OBTAINING LEGAL ASSISTANCE

Many attorneys who are familiar with this type of practice will take lien claims on a contingent fee basis. This means that the attorney will take as his fee between 25% and 33 1/3% of the recovery if the case is successful. If the case is unsuccessful there will be no attorney fee.

You can expect to be required to pay the costs of the suit if litigation is required. An experienced attorney can advise you as to the best course of action if you are near the statute of limitations or if it is an especially complicated matter.

TYPICAL PLAN OF ACTION

Most Maritime and Admiralty attorneys will advise a course of action similar to the following:

1. He will either file the lien for you or confirm that it is filed correctly.
2. Also, he will obtain an abstract of title to determine the chances of recovering against the vessel.
3. He will make a demand for payment from the vessel owner.
4. Depending upon the value of the boat or ship, the attorney may recommend filing a civil action directly against the owner rather than arresting the vessel.
5. If the attorney elects to file in Federal Court, he will name both the owner and the ship as defendants. This will result in the vessel be boarded and arrested by the U.S. Marshal and the boat being impounded for the duration of the action.
6. The attorney will need from you all of your invoices, work orders, correspondence and all other written documents. If you have photos or any other evidence you should make copies for the attorney. Also make a list of names, addresses and phone numbers of everyone who worked on the project or was in any way involved. This will expedite the process.
7. The attorney generally will provide you with a written evaluation of your case and the prospects of a recovery.
8. If the case is taken on a contingent fee basis, you will sign a contingent fee agreement with the attorney.
9. You should anticipate that a Federal Court action involving the arrest of the vessel may take from three months to a year to resolve.

MARITIME LIENS & BUSINESS

The lien process is just one tool you should consider in the overall management of your business. Knowing your customer and dealing in a forthright manner is a prerequisite for success in business.

Always keep good written records and good communications with your customer. Before you start extending credit for goods and services make a realistic determination of how far in debt you actually will trust your customer.

Many times, requiring a reasonable deposit and periodic payments will prevent the account from becoming a serious danger to your financial condition.

APPENDIX A

Harbors and Navigation Code

Possessory Liens on Vessels

- 503 (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to the provisions of this section for any vessel with a value determined to be over one thousand five hundred dollars (\$1,500). A fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vessel is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:
- (1) A description of the vessel, including make, hull identification number, and state of registration, to the extent available.
 - (2) The names and addresses of the registered and legal owners of the vessel, if ascertainable from the registration certificate within the vessel, and the name and address of any person whom the lienholder knows or reasonably should know claims a proprietary interest in the vessel.
 - (3) A statement of the amount of the lien and the facts which give rise to the lien. The statement shall include, as a separate item, an estimate of any additional storage costs accruing pending the lien sale.
- (b) Upon receipt of an application made pursuant to subdivision (a), the department shall within 15 days thereafter do the following:
- (1) Notify the vessel registry agency of a foreign state of the pending lien sale, if the vessel bears indicia of registration in that state.
 - (2) By mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.
 - (3) A vessel registration stop order or title transfer stop order shall be applied by the department at the time the lien claimant requests authorization to conduct the sale.
 - (4) Notify the applicant of any outstanding property tax lien on the vessel of which the department has been notified pursuant to subdivision (b) of Section 3205 of the Revenue and Taxation Code. The notice required by this paragraph shall identify the county in which any outstanding lien is held.
- (c) The notice required pursuant to subdivision (b) shall include all of the following statements:
- (1) An application has been made with the department for authorization

- to conduct a lien sale and the department has placed a vessel registration stop order or title transfer stop order on the vessel.
- (2) Each person to whom notice is sent pursuant to subdivision (b) is entitled to a hearing in court if that person so desires.
 - (3) If a hearing in court is desired, a declaration of opposition, signed under penalty of perjury, is required to be signed and returned to the department within 15 days of the date that the notice required pursuant to subdivision (b) was mailed.
 - (4) If the declaration of opposition is signed and returned to the department, the lienholder will be allowed to sell the vessel only if he or she obtains a court judgment or a subsequent release from the declarant.
 - (5) If a court action is filed, the declarant will be served by mail with legal process in the court proceedings at the address shown on the declaration of opposition and may appear to contest the claim.
 - (6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.
- (d) If the department receives the declaration of opposition in the time provided, the department shall notify the lienholder within 16 days of the receipt of the declaration of opposition that a lien sale shall not be conducted unless the lienholder files an action in court within 60 days of the notice. A lien sale of the vessel shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vessel.
- (e) Service of legal process on the declarant, with return receipt requested signed by the declarant or an authorized agent of the declarant at the address shown on the declaration of opposition, shall be effective. Return of a declaration of opposition shall constitute consent by the declarant to service of legal process for the desired court hearing upon him or her in the foregoing manner. Notwithstanding subdivision (d) of Section 415.3 of the Code of Civil Procedure, if the lienholder has attempted service upon declarant by that method at the address shown on the declaration of opposition and the mail has been returned unclaimed, the department shall promptly authorize the sale.
- (f) Upon receipt of authorization to conduct the lien sale, the lienholder shall do all of the following:
- (1) At least 10 days, but not more than 30 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vessel is located. If there is no newspaper published in the county, notice shall be given by posting a notice of sale form in three of the most public places in the area in which the vessel is located and at the place where the vessel is to be sold for 10 consecutive days prior to and including the day of the sale.

- (2) Send a notice of pending lien sale 20 days prior to the sale, but not counting the day of sale, by mail with return receipt requested, to each of the following:
 - (A) The registered and legal owners of the vessel, if registered in this state.
 - (B) All persons known to have an interest in the vessel.
 - (C) The department.

- (g) Upon receipt of the notice, the department shall mark its records and thereafter notify any person having a proprietary interest in the vessel that there is a pending lien sale and that title will not be transferred until the lien is satisfied or released.

- (h) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, hull identification number, and state of registration, if available, and the specific date, exact time, and place of sale.

(Amended Ch. 940, Stats. 1994. Effective January 1, 1995.)

FORMS SECTION

**REQUEST FOR OPEN ACCOUNT OR CREDIT ON CORPORATE ACCOUNT
& PERSONAL GUARANTY OF PAYMENT**

VESSEL NAME: _____
OFFICIAL NUMBER: _____
COMPANY OWNER: _____

For value received, the undersigned, jointly and severally if more than one person, hereby guarantee absolutely and unconditionally prompt payment for all goods and services provided by _____ (Your company's name and address) and agrees to pay all costs of collection, legal expenses and attorney's fees for the enforcement of this Guaranty if reasonably required. Undersigned does hereby waive present, protest, demand, notice of dishonor or default by the registered owner of the vessel and guarantors. The undersigned further states that there are no restrictions on the liability of the vessel for goods and services provided.

Signed this, the ____ day of _____, 20 ____.

Please sign and print full name and address below:

PRINT NAME: _____
SIGNATURE: _____
ADDRESS: _____

FORM 2 – NOTICE OF INTENT TO FILE MARITIME LIEN
(Prepared on your company letterhead)

Date:

To: Vessel Owner

Re: Vessel Name:
Official Number:

NOTICE OF INTENT TO FILE MARITIME LIEN

Dear Sir:

Please be advised that we have contacted you numerous times concerning the outstanding balance on your account in the amount of \$_____.

Unless payment in full is received within seven (7) days of this notice, we will file with the United States Coast Guard Office of Documentation a Notice of Lien in the amount of \$_____.

This lien will become a claim against the above-named vessel and may subject it to being seized by the United States Marshal and sold to satisfy this claim. In addition, your failing to resolve this matter and permitting the filing of this lien may be in violation of the terms and conditions contained in your ship's mortgage.

This matter requires your immediate attention.

Sincerely,

Your Name or Business Name

NOTICE OF CLAIM OF LIEN

NAME OF VESSEL: _____
 VESSEL OFFICIAL NUMBER: _____
 NAME OF CLAIMANT: _____
 ADDRESS OF CLAIMANT: _____

 AMOUNT OF CLAIM: _____
 DATE OF WHICH CLAIM AROSE: _____

NATURE OF CLAIM OF LIEN:
(Describe briefly. May be itemized invoice numbers, dates, amount and nature of charge.)

□ □ □ □ □ □ □ □ □ □

DECLARATION BY CLAIMANT

The undersigned declares under penalty of perjury that:

The information contained in this notice is true and correct to the best of his knowledge, information and belief. That the undersigned has sent by U.S. mail a copy of this notice:

Vessel Name: _____
 Vessel Official No.: _____
 Date: _____
 Signature of Claimant: _____
 Print Name of Claimant: _____
 Capacity if other than individual: _____

***** This document must be notarized *****
 See next page for Notary Public Form

NOTARY PUBLIC

State of _____
County or Judicial District _____

On this date the individual above personally appeared before me and acknowledged that this instrument was signed and sealed as a free and voluntary act and deed for the uses and purposes therein mentioned. _____ who proved to me on the basis of satisfactory evidence to

Dated _____

Notary Public Signature _____

Affix Notary Seal

If required, date commission expires: _____

FORM 4 - COVER LETTER TO BE SENT WITH NOTICE OF CLAIM FORM 3
(Prepared on your letterhead)

Dated:

U.S.C.G. Office of Vessel Documentation
792 T.J. Jackson Drive
Falling Waters, WV 25419-9502

Re: Notice of Claim of Lien
My check in the amount of \$8.00 in full payment of filing fee

Dear Sirs:

Please return one duly stamped copy of the lien to me after filing. Thank you for your assistance.

Best regards,

Your Name or Business Name

Enclosed: Lien Form (2 copies)
Check: \$8.00

FORM 5 - NOTICE OF MARITIME LIEN TO CUSTOMERS
(Prepared on your letterhead)

Dated:

To: Customer / Debtor

Re: Vessel Name
Official Number

NOTICE OF MARITIME LIEN

Dear Sir:

Please be advised that we have filed a lien with the United States Coast Guard Office of Vessel Documentation against the above-entitled vessel in the amount of \$_____. A copy of the duly-filed and registered lien is attached to this letter.

We have also notified all lien holders listed by the U.S. Coast Guard of this action and of our intent to pursue this lien as a lien superior to all other claims.

This lien may subject your vessel to being seized by the United States Marshal and being sold at public auction to the highest bidder. This matter requires your immediate attention.

Sincerely,

Your Name or Company Name

Copy to: Bank holding mortgage

FORM 6 - NOTICE TO MORTGAGE HOLDER
(Prepared on your letterhead)

Date:

To: Bank holding first mortgage on vessel

Vessel Name:
Official Number:
Registered Owner

NOTICE OF INTENT TO FILE MARITIME LIEN

Dear Sirs:

This is to advise you that we have filed a Maritime Lien, a copy of which is attached to this letter, against the vessel and owner listed above. We have repeatedly attempted to resolve this matter with the owner, but have been unsuccessful.

This lien may result in the vessel being seized by the United States Marshal and being sold at auction to the highest bidder. It is our opinion that our lien is superior to the mortgage lien claimed by your bank. The purpose of this letter is to give you fair notice of our intent to collect our lien which may result in the vessel being arrested and sold to your detriment.

If you have any questions, please contact me.

Sincerely,

Your Name or Business Name

Enclosed: Lien Copy of Letter to Vessel Owner

ABOUT THE AUTHOR

Michael E. Vaughn



Mike Vaughn, who is the owner and operator of the Maritime Law Center, is an attorney practicing in Huntington Beach, California.

He graduated from the University of North Carolina at Chapel Hill both for his undergraduate and law degrees. He is licensed to practice law both in the states of California and North Carolina. He has been actively involved in the practice of law since 1971.

Mr. Vaughn's article, "Subchapter T & K Regulations Regarding Small Passenger Vessels", was published in The Coast Guard Journal of Safety at Sea Proceedings of the Marine Safety Council (January-March 2002 Issue).

He is also the author of many books and handbooks, including:

- North Carolina Legal Procedures (1975)
- California Expert Witness Directory (1985)
- Ship Acquisition and Sale Handbook (1993)
- The Business of Yachting & Shipping (2014)
- The Businessman's Guide to Maritime Liens (2014)
- How to Bareboat Charter Your Yacht (2014)
- How to Document Your Boat with the U.S. Coast Guard (2014)
- Yacht & Ship Broker Forms Book (2014)

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*These books are being updated for 2014.

OTHER BOOKS CURRENTLY AVAILABLE FROM
Mike Vaughn's
Maritime Law Center
www.martimelawcenter.com

The Business of Yachting & Shipping (2014)

Price: \$19.95 Email

Yacht & Ship Broker Forms Book (2014)

Price: \$19.95 Email

How to Bareboat Charter Your Yacht (2014)

Price: \$19.95 Email

The Businessman's Guide to Maritime Liens (2014)

Price: \$19.95 Email

How to Document Your Boat with the U.S. Coast Guard (2014)

Price: \$19.95 Email

Maritime Law Deskbook – Hardbound (Updated annually)

Price: \$210.00**

To purchase these books via PayPal, please see the Book Store section on our website: www.martimelawcenter.com.



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Visit our website and purchase on-line through PayPal. Usually within 24-hours, the book may be downloaded immediately or will be e-mailed to you in Adobe Acrobat Format. If you do not have the Adobe Acrobat Reader in your computer, you may get a FREE copy at www.adobe.com.

*These books are being updated for 2014.

**This is a hardbound book and will be shipped to you directly from the Publisher.

Date: March, 2014