

CHAPTER 3**Registration of Vessels, Mortgages and Liens****SECTIONS**

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Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 301. Obligation to register.

- (1) All vessels 12 meters and over which are wholly owned by Qualified Persons, if not registered under the laws of another nation, shall be registered in the Federated States of Micronesia.
- (2) All vessels 12 meters and over entering or operating within the waters of the Federated States of Micronesia shall be duly registered either in accordance with the laws of the Federated States of Micronesia or another nation.
- (3) An owner or master of any vessel who knowingly allows the vessel to enter the waters of the Federated States of Micronesia or operate within such waters, unless the vessel is duly registered in accordance with the laws of the Federated States of Micronesia or another nation, commits a civil offense and shall be liable to a fine not exceeding \$50,000. The burden of proof shall lie on the owner or master of the vessel to demonstrate that the vessel is duly registered.
- (4) A vessel may be detained until the master of the vessel produces its Certificate of Registry.

(5) In addition to any other penalties, continued violation of this section shall be grounds for the vessel to be forfeited to the National Government.

Source: PL 10-76 § 15.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Case annotation: Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

§ 302. Qualifications for vessel registration.

(1) For the purposes of this title, a Qualified Person is:

(a) a person who is a citizen of the Federated States of Micronesia, or a corporation which is established in accordance with the laws of the Federated States of Micronesia or any of its States, wholly owned by citizens, whose principal place of business is in the Federated States of Micronesia;

(b) a person holding a current and valid foreign investment permit duly issued by the National Government to operate a vessel in interstate or international commerce who or which has its principal place of business in the Federated States of Micronesia; or

(c) the National and State Governments of the Federated States of Micronesia and their instrumentalities.

(2) The Registrar shall require the production of satisfactory documentary evidence demonstrating that the owner is a Qualified Person and the vessel meets the requirements for registration.

(3) Ownership of any share of a vessel by a person who is not a Qualified Person shall constitute cause for removal of the vessel from the Register and forfeiture to the National Government.

(4) A vessel which has ceased to meet the requirements for registration under this chapter shall be struck off the Register.

(5) Any person who is not a Qualified Person who purports to be a Qualified Person for the purpose of registering a vessel under this title commits a national offense punishable by a fine not exceeding \$100,000 or imprisonment of not more than one year, or both.

Source: PL 10-76 § 16; PL 10-137 § 1; PL 14-89 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 303. Declaration of Qualified Person.

A person shall not be registered as owner of a vessel unless the person has filed a Declaration of Qualified Person with the Registrar, declaring:

- (1) that the person is a Qualified Person;
- (2) that no person other than a Qualified Person has any interest in the vessel; and
- (3) in the case of a vessel to be purchased, that the person to be named as the transferee in the bill of sale is a Qualified Person.

Source: PL 10-76 § 17.

§ 304. Status of ownership if not a Qualified Person.

- (1) If a person who is not a Qualified Person:

(a) acquires any ownership interest in a Registered Vessel other than by purchase and does not transfer that interest to a Qualified Person or become a Qualified Person within 90 days, that interest shall be struck off the Register;

(b) purchases any ownership interest in a Registered Vessel and within 90 days does not remove the vessel from the Register or become a Qualified Person, that interest shall be null and void and shall not be registered under this title.

- (2) Where equity demands, the Secretary shall have discretion to extend any time period set forth in this section.

Source: PL 10-76 § 18; PL 10-137 § 2.

§ 305. Voluntary registration of other vessels wholly owned by Qualified Person(s).

Vessels which are not required by this title to be registered in the Federated States of Micronesia, but are wholly owned by Qualified Persons and not registered in any other nation, may be registered in accordance with this title.

Source: PL 10-76 § 19.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 306. Continuation of registration.

Vessels which were duly registered in the Federated States of Micronesia before the date on which this Act became law shall be deemed to be registered under this title.

Source: PL 10-76 § 20.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Editor's note: PL 10-76 took effect April 1, 1998.

§ 307. Liability of owners.

(1) Where a person has an undisclosed and unregistered ownership interest in a Registered Vessel and another person is registered as owner, both shall be subject to all pecuniary penalties imposed on the owners of vessels, and proceedings may be taken against either or both of them, with or without joining the other of them.

(2) This section does not apply to holders of maritime liens or to a mortgagee, except a mortgagee in possession or control of a vessel.

Source: PL 10-76 § 21.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 308. Ports of Registry.

The Secretary may designate Ports of Registry by regulation.

Source: PL 10-76 § 22.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 309. Registrar and Register.

(1) The Registrar shall be appointed by the Secretary, and shall keep the Register and any instruments required to be deposited with the Registrar.

(2) The Register shall be open to public inspection during normal business hours.

(3) Extracts from the Register and copies of the instruments shall be obtainable from the Registrar upon payment of the fee prescribed in regulations.

Source: PL 10-76 § 23.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 310. Recording of particulars in Register.

(1) A bill of sale, conveyance, mortgage, assignment of mortgage, or the transfer of any interest in any Registered Vessel shall not be valid with respect to such vessel against any person other than the grantor or mortgagor, his or her heirs or devisees and persons having actual notice thereof, until the instrument evidencing such transaction is recorded in the Register.

(2) The Registrar shall record in the Register the particulars contained in the instruments as soon as they are received.

(3) The Registrar shall also record in the Register:

- (a) the name of the vessel;
- (b) the names and addresses of the parties;
- (c) the time and date of receipt of the instrument;
- (d) the interest in the vessel transferred or affected;
- (e) the amount and date of maturity of any mortgage; and

(f) any other information prescribed by regulation.

(4) After the Registrar has recorded the particulars of the instruments deposited in the Register, the Registrar shall file the original documents in a separate file for each vessel.

Source: PL 10-76 § 24; PL 10-137 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Case annotations: The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

§ 311. Application for Registration.

An Application for Registration under this title shall be made by the owner in accordance with the regulations.

Source: PL 10-76 § 25.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 312. Tonnage Certificate.

(1) Before registration under this title, a vessel must be inspected by a qualified Surveyor appointed by the Secretary, who shall be authorized to ascertain the tonnage of the vessel and issue a tonnage survey report.

(2) On receipt of a tonnage survey report the Principal Surveyor shall, on payment of the prescribed fee, issue a Tonnage Certificate.

Source: PL 10-76 § 26.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 313. Marking.

(1) A vessel shall not be registered under this title unless it is marked permanently and in accordance with the regulations.

(2) Any person who conceals, removes, alters, defaces or obliterates any mark on any vessel commits a civil offense, and shall be liable to a fine not exceeding \$10,000.

Source: PL 10-76 § 27.

§ 314. Improper description of vessel in required documentation or marking.

An owner or master of a Registered Vessel who permits the vessel to be described by a name other than its registered name in required documentation or marking, commits a civil offense, and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 28.

§ 315. Entries in the Register.

(1) Entries in the Register shall be made in accordance with the regulations.

(2) No vessel may be registered under this title by the same name as a vessel already registered.

Source: PL 10-76 § 29.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 316. Change of ownership.

(1) Where a Registered Vessel is sold, conveyed or otherwise transferred to a Qualified Person, the vessel shall be transferred by a bill of sale in the prescribed form and executed by the transferor and the transferee and, in the

case of a corporation, by affixing the corporate seal.

(2) Where an interest in a Registered Vessel changes ownership, the owner shall, within ten days after such change, register the vessel in accordance with the Vessel Registration Regulations, and a new Certificate of Registry shall be issued, provided the vessel still qualifies for registration.

Source: PL 10-76 § 30.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 317. Recording of bills of sale.

(1) A bill of sale or related document transferring an interest in a Registered Vessel or any other instrument related thereto shall not be recorded in the Register unless it states the interest of the grantor in the vessel and the interest sold or conveyed.

(2) Upon payment of the prescribed fee, the Registrar shall record the documents in subsection (1) of this section in the order of their receipt and sign each document stating the time and date that each was received.

Source: PL 10-76 § 31.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 318. Certificate of Registry.

(1) When all the prescribed requirements for registration have been met with respect to a vessel, the Registrar shall issue a Certificate of Registry.

(2) The Certificate of Registry shall contain an accurate description of the vessel and list any and all ownership interests in the vessel.

(3) The Certificate of Registry shall be kept on board the vessel.

(4) The Certificate of Registry is not a document which transfers title in a vessel and shall not be subject to detention except as is provided in subsection (6) of this section.

(5) Any owner or master who knowingly uses or allows the use of a Certificate of Registry for any purpose which would mislead or deceive or have the tendency to mislead or deceive any other person, commits a civil offense and shall be liable to a fine not exceeding \$50,000.

(6) Surrender of certificate.

(a) Any person who holds a Certificate of Registry shall surrender it on demand to the person entitled to its custody for the lawful navigation of the vessel, to the Registrar, or to any other person entitled by law to require its delivery.

(b) Any person who fails to comply with this subsection commits a civil offense and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 32.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Case annotation: Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

§ 319. Provisional Certificate of Registry.

(1) Where a vessel is acquired outside the Federated States of Micronesia by a Qualified Person, the Registrar may issue a Provisional Certificate of Registry.

(2) The owner or master of a provisionally Registered Vessel shall, within ten days after the arrival of the vessel in the Federated States of Micronesia, deliver the Provisional Certificate of Registry to the Registrar.

(3) The Registrar may only issue a Certificate of Registry after the vessel has fully complied with all the requirements of the Vessel Registration Regulations.

Source: PL 10-76 § 33.

§ 320. Alterations.

Where a Registered Vessel is so altered that the Tonnage Certificate or the description of the vessel contained in the Register is no longer accurate, the owner shall register the alteration within seven days after completion of the alteration.

Source: PL 10-76 § 34.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 321. Duty to provide information to Registrar.

The owner of any Registered Vessel who is directed in writing by the Registrar to provide information concerning the vessel or its owners shall comply within ten days.

Source: PL 10-76 § 35.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 322. Notification of vessel loss or destruction.

The owner of a Registered Vessel shall immediately notify the Registrar in writing if the vessel is lost or destroyed, or any owner ceases to be a Qualified Person.

Source: PL 10-76 § 36.

§ 323. Liabilities of unregistered vessels.

Where a vessel is required to be registered but is not, the vessel, its owners and master shall:

- (1) not be entitled to any benefits, privileges, advantages or protections enjoyed by Registered Vessels;
- (2) not be relieved of obligations under this title and regulations by reason of the fact that the vessel is not registered;
- (3) remain liable for the payment of all dues, fees, fines or other charges, for forfeiture, and for punishment for offenses in the same manner as if the vessel were registered.

Source: PL 10-76 § 37.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 324. Recording of mortgages.

- (1) A Registered Vessel may be made security for a loan or other financial obligation by way of a mortgage in the prescribed form.
- (2) A mortgage shall not be recorded in the Register unless it states the interest of the mortgagor in the vessel

and the term and conditions of the mortgage on the vessel.

- (3) Upon payment of the prescribed fee, the Registrar shall record mortgages in the order of their receipt and sign each mortgage stating the time and date that each was received.
- (4) The Registrar shall endorse on the Certificate of Registry of the vessel covered by the mortgage:
- (a) the names of the mortgagor and mortgagee;
 - (b) the amount and date of maturity of the mortgage; and
 - (c) the time and date the mortgage was recorded.

Source: PL 10-76 § 38; PL 10-137 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Case annotations: The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 60 (Truk 1989) (reversed in Appellate Division at 4 FSM R. 367, 376) (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under art. XI, § 6(a) of the Constitution. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 367, 376 (App. 1990).

§ 325. Recording of notices of claim of lien.

(1) The Registrar shall upon the request of any person record in the Register notice of such person's claim to a lien on a Registered Vessel, supported by credible documentary evidence, together with the nature, date of creation, and amount of the lien and the name and address of the person.

(2) Any person who has caused notice of a claim of lien to be so recorded shall, upon discharge of the indebtedness, forthwith file a certificate of such discharge with the Registrar, who shall record the discharge of the indebtedness giving rise to the lien.

Source: PL 10-76 § 39.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 326. Priority of maritime liens and mortgages.

(1) All claims secured by maritime liens on any Registered Vessel shall take priority over all registered mortgages and charges which have been duly recorded by the Registrar in the Register, and no other claim shall take priority over such maritime liens or over such mortgages or charges.

(2) Each of the following claims against the owner, demise charterer, manager or operator of a Registered Vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the crew in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

(3) (a) The maritime liens set out in subsection (2) of this section shall rank in the order listed, PROVIDED HOWEVER, that maritime liens securing claims for reward for the salvage of a vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the salvage operations giving rise to the salvage claims were performed;

(b) Where a claim for reward for the salvage of a vessel is recorded in the Register, the maritime liens set out in each of subsections (a), (b), (d) and (e) of subsection (2) of this section shall rank *pari passu* as among themselves.

(4) The maritime liens securing claims for reward for the salvage of a vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

(5) (a) The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien;

(b) Claimants holding maritime liens may not be subrogated to the compensation payable to the

owner of the vessel under an insurance contract.

(6) A maritime lien shall be extinguished after a period of one year, unless extended by an order of the Supreme Court.

(7) Where there is more than one mortgage recorded in the Register in respect of the same vessel, the mortgagees shall, notwithstanding any expressed, implied, or constructive notice, be entitled in priority one over the other according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself.

(8) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of recording of the mortgage, notwithstanding that the bankrupt or insolvent mortgagor had, at the time of the insolvency, the vessel in his possession, order or disposition.

(9) Any such registered mortgage shall have priority over any right, claim, or interest in the vessel of the other creditors of the bankrupt or any trustee or assignee on their behalf.

Source: PL 10-76 § 40.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

An earlier recorded mortgage has priority over one recorded later according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

The question of mortgage priority is important because if a ship has to be sold either as forfeiture or to satisfy its or its owner's debts, the mortgagees will be paid from the proceeds according to their priority. A mortgagee with a higher priority will thus be paid in full before a subsequent mortgagee with a lower priority is paid one cent. The priority of the mortgages should be immediately apparent because they will all be recorded on the same Certificate of Registry. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

No principle of law prohibits a lender from securing with a mortgage a sum less than the full amount of what it has lent. It merely does so at its own risk. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

To permit a registered ship mortgage to hold priority for an additional \$100,000 over its registered amount would destroy the statutory

scheme created by Congress and one of the goals of the ship registry system that all ownership interests be recorded on the ship's Certificate of Registry, and would also hinder another purpose and goal enhancing the ability of ship owners to obtain needed financing. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 333-34 (Pon. 2001).

A mortgagee cannot assert that its registered mortgage has priority over a subsequent mortgagee for a principal amount greater than the principal amount registered. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 334 (Pon. 2001).

When there is more than one registered mortgagee of the same vessel, a subsequent mortgagee cannot apply to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 334 (Pon. 2001).

If a judgment creditor were attempting to levy execution on an FSM-registered vessel, the competing priorities are regulated by statute based on whether, and when, the security interest had been properly recorded. *UNK Wholesale, Inc. v. Robinson*, 11 FSM R. 361, 365 (Chk. 2003).

§ 327. Mortgages in default.

(1) A mortgagee of a Registered Vessel shall not by reason of the mortgage be deemed to be the owner of the vessel, nor shall the mortgagor be deemed to have ceased to be the owner of the vessel.

(2) On default of any term of a mortgage, a mortgagee may enforce a claim for outstanding indebtedness secured by the mortgaged vessel in a civil action *in personam* in the Supreme Court against the mortgagor, maker, co-maker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness.

(3) In the event of default of the mortgage, the registered mortgagee shall be entitled to recover the amount due under the mortgage by applying to the Supreme Court for an order, directing that the mortgaged vessel, or any share therein, be sold by tender or at a public auction, and that the proceeds of the sale be used to satisfy:

- (a) the expenses of conducting the sale;
- (b) the amount outstanding to the mortgagee under the mortgage; and
- (c) the amount outstanding to subsequent mortgagees, with the balance being distributed to the mortgagor.

(4) Upon receiving an application from the mortgagee for the order mentioned in subsection (3) of this section, the Supreme Court may set a date for a hearing concerning the default of mortgage.

(5) The mortgagee shall cause notice to be personally served on the mortgagor and any subsequent mortgagees, but if such required notice cannot be personally served, then an application may be made to the Supreme Court providing for the date of the hearing to be publicized on at least one radio station at the location of mortgagor and subsequent mortgagees and by any other means having wider circulation, and such shall be considered to be service of adequate notice on the parties.

(6) Where the Supreme Court has found the mortgage to be in default, it may order the forced sale of the vessel, or any share therein, and for this purpose the Supreme Court shall appoint a person as an Officer of the Court to conduct the sale and distribute the proceeds in accordance with the order.

(7) An Officer of the Court shall not be liable for any act or omission in conducting the sale or distributing the proceeds if acting in good faith.

(8) Where more than one person is registered as mortgagee of the same vessel, a subsequent mortgagee shall not make an application to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court.

(9) Where a vessel has been sold in accordance with subsection (6) of this section, the Supreme Court shall, by order, vest ownership of the vessel in the purchaser, which order shall be recorded in the Register by the Registrar.

Source: PL 10-76 § 41.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: Case annotations found throughout this title may refer to the earlier provisions of the National Maritime Act of 1993 that was repealed by PL 10-76, the National Maritime Act, 1997. These annotations are retained for reference purposes as some of the language of the National Maritime Act, 1997 is similar to the language of the former National Maritime Act of 1993.

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 60 (Truk 1989) (Reversed in Appellate Division at 4 FSM R. 367, 376) (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under art. XI, § 6(a) of the Constitution. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 367, 376 (App. 1990).

§ 328. Notice of action to enforce mortgage.

- (1) Actual notice of a civil action brought in the Supreme Court to enforce a mortgage shall be personally served on:
- (a) the owner, master or individual in charge of the vessel or his agent for service of process;
 - (b) a subsequent mortgagee of an undischarged mortgage recorded under this chapter; and
 - (c) any person who has recorded a maritime lien on the vessel.

(2) Personal service of notice is not required if, after search satisfactory to the Supreme Court, persons entitled to such notice have not been found in the Federated States of Micronesia.

Source: PL 10-76 § 42.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 329. Operation of vessel pending disposition.

When a civil action has been commenced in the Supreme Court:

(1) the Court may appoint and authorize a person to manage and operate the mortgaged vessel but shall retain *in rem* jurisdiction over the vessel even if the vessel operates outside the Federated States of Micronesia; and

(2) the Court may request the Attorney General to direct the national police or other authorized officer to take possession of a mortgaged vessel even if the vessel is in the possession of or under the control of a person claiming a possessory lien.

Source: PL 10-76 § 43.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotation: The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 463 (App. 1996).

§ 330. Continuation of mortgagee's interest.

(1) The interest of a mortgagee in a Registered Vessel shall not be terminated by a forfeiture of the vessel for a violation of any of the laws of the Federated States of Micronesia, unless the mortgagee authorized, consented or conspired to effect the illegal act, failure, or omission which constituted such violation.

(2) In the event of forfeiture resulting in a forced sale of the vessel by tender or public auction, the proceeds of the sale shall be used to satisfy:

- (a) the expenses of conducting the sale;
- (b) the amount outstanding to the mortgagee under the mortgage; and
- (c) the amount outstanding to subsequent mortgagees.

(3) Any remaining balance from the proceeds of the sale shall not be paid to the mortgagor, but shall be paid into the General Fund of the Federated States of Micronesia.

Source: PL 10-76 § 44.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 331. Transfer of mortgage.

(1) A registered mortgage of a vessel may be transferred to any person by registration of an instrument of transfer of that mortgage in the prescribed form.

(2) On the production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument relates, the Registrar shall register the transfer by making an entry of the transfer in the Register, and endorse and sign the mortgage and the instrument of transfer to the effect that the entry has been made and stating the date and time of making the entry.

Source: PL 10-76 § 45.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 332. Discharge of mortgage.

The mortgagee, upon a complete discharge of the mortgage indebtedness, shall forthwith file a Certificate of Discharge of Mortgage duly executed by the mortgagee, his successors or assigns, with the Registrar, who shall forthwith record the discharge of the mortgage.

Source: PL 10-76 § 46.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 333. Status of mortgage on foreign vessel.

In addition to a mortgage made under this chapter, any mortgage or similar charge created as security on any foreign vessel duly and validly executed and registered in accordance with the laws of the nation where the vessel is registered, may be enforced in the Supreme Court if the vessel is in the waters of the Federated States of Micronesia.

Source: PL 10-76 § 47.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 334. Disclosure of liens and priority.

(1) Where the owner of a Registered Vessel has received a service or the vessel has caused loss of life or personal injury giving rise to a claim which creates a maritime lien against the vessel, the lien holder may require the Registrar to record the lien against the vessel in the Register.

(2) Irrespective of whether the maritime lien is registered in accordance with subsection (1) of this section, the person who provided the service or who has suffered injury, or the next of kin or executor of the estate of the person who has lost his or her life as a result of the action of the vessel or any other lien holder having a claim against a vessel can exercise that lien against the vessel while it is owned by the original debtor.

(3) A maritime lien against a Registered Vessel shall not be enforceable against the vessel subsequently purchased by a bona fide purchaser for value without notice unless it has been recorded in the Register.

(4) The failure of a lien holder to register a maritime lien against a Registered Vessel shall not prejudice the claim against the vessel owner who received services or whose vessel caused damage giving rise to the lien in the first instance.

(5) A mortgagor, before executing a mortgage in respect of a Registered Vessel, shall disclose to the mortgagee in writing the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, which is known to the mortgagor.

(6) After the execution of such mortgage and before the mortgagee has had a reasonable time to record it and have proper endorsements made upon the Certificate of Registry of the vessel, the mortgagor, without the consent of the mortgagee, shall not incur any contractual obligation creating a lien upon the vessel, having priority over a mortgage other than liens for wages of the crew of the vessel or for salvage.

(7) A mortgagor, including an officer, director, agent or employee of a company which owns a vessel, the financing of which is secured by a mortgage, commits a civil offense, and shall be liable to a fine not exceeding \$200,000, where such mortgagor:

(a) with intent to defraud, fails to disclose the existence of any prior mortgage, maritime lien, or other obligation or liability upon the vessel; or

(b) with intent to defraud, incurs any contractual obligation giving rise to a lien before the mortgagee has had a reasonable time to record the mortgage.

(8) Upon commission of any civil offense set forth in subsection (7) of this section the mortgage indebtedness shall become immediately due and payable at the election of the mortgagee.

Source: PL 10-76 § 48; PL 10-137 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 335. Necessaries.

(1) Any person who furnishes stores, provisions, fuel, towage, repairs, use of dry dock or marine railway, or other necessities, to any foreign or domestic vessel upon the order of the owner or person authorized by the owner, shall have a maritime lien on the vessel which shall:

(a) subject to sections 334 and 338 of this chapter, follow the vessel notwithstanding any change of ownership, registration or flag;

(b) in case of assignment or subrogation of the claim secured by a maritime lien on the vessel, entail the simultaneous assignment of or subrogation to such a maritime lien;

(c) be extinguished at the expiration of the lesser period of either:

(i) six months from the time when the claims secured thereby arose unless, prior to the expiration of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or

(ii) 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is made in accordance with this chapter;

(d) rank after the maritime liens set out in section 326 of this chapter and also after registered mortgages or charges recorded in accordance with this chapter.

(2) The owner, owner's agent, master or any person to whom the management of the vessel is entrusted, shall be presumed to have authority from the owner to procure such necessities.

(3) This section shall not confer a lien when persons providing the services referred to in subsection (1) of this section know, or by exercise of reasonable diligence should have ascertained, that because of the terms of a charter party, agreement of sale of the vessel, or for any other reason, the person ordering necessities was without authority to bind the vessel.

Source: PL 10-76 § 49.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Case annotations: Supplies and service that are necessities when provided to a vessel give rise to maritime liens. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 3 (Pon. 1993).

A general agent is not barred from obtaining a maritime lien. Obtaining the lien depends on whether the supplies and services furnished the vessel are necessities, not on the contractual relation. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 3 (Pon. 1993).

Necessaries are defined as those things reasonably needed in the business of the vessel. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 3 (Pon. 1993).

To be entitled to a maritime lien a provider of necessities must rely on the credit of the vessel. General maritime law presumes that a provider of necessities relies on the credit of the vessel. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 3 (Pon. 1993).

A contract provision for a line of credit that was never filled in as to amount and never funded cannot overcome presumption that a supplier of necessities relied on credit of vessel. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 4 (Pon. 1993).

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 408 (Yap 2005).

A requirement for a true bareboat charter is that the charterer selects his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not technically a "bareboat" charter. Of these three varieties of charter parties, the demise charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned and supplied by the charterer as well. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 408 (Yap 2005).

The legal test of a demise charter is whether the owner of the vessel completely and exclusively relinquished possession, command and navigation to the demisee. A demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 408-09 (Yap 2005).

The owner's fundamental obligation under the demise charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the charter's beginning; subsequent to delivery the vessel's seaworthiness is the charterer's

responsibility unless otherwise stated. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 409 (Yap 2005).

The demise charterer's basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting ordinary wear and tear. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 409 (Yap 2005).

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 409 (Yap 2005).

§ 336. Waiver of maritime lien for necessities.

This chapter shall not prevent a person who holds a maritime lien for necessities for stores, provisions, fuel, towage, repairs, use of dry dock or marine railway, or other necessities, from waiving the right to a lien against the vessel at any time, by agreement or otherwise.

Source: PL 10-76 § 50.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 337. Arrest of vessels.

(1) A Registered Vessel may be arrested in respect of default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the Register.

(2) Where sufficient evidence is provided to the Supreme Court to warrant the arrest of a Registered Vessel, the Court may issue an order for the arrest of the vessel.

(3) A vessel which has been arrested may only be released by an order of the Court if sufficient security has been provided in the amount and form satisfactory to the claimant; or, if the sufficiency and form is disputed, the Supreme Court may order that security be provided in an amount which shall not exceed the value of the vessel.

(4) Upon application of the owner the Court may, in its discretion, as a condition for the arrest of the vessel, impose upon the claimant the obligation to provide security of a kind and for an amount on such terms as the Court deems appropriate and for any loss which may be incurred by the owner or defendant as a result of the arrest.

(5) Where sufficient security cannot be obtained by the owner as guarantee for the payment of the maritime lien or mortgage, the lien holder or mortgagee shall file an application with the Supreme Court for an order for the forced sale of the vessel.

Source: PL 10-76 § 51.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory

provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotation: The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 463 (App. 1996).

In an admiralty case, the court must review the verified complaint and supporting papers to determine whether the conditions for an *in rem* action appear to exist. If the court finds a sufficient basis, it may then issue an order authorizing the clerk to issue an order authorizing the vessel's arrest. *Meninzor v. M/V Caroline Voyager*, 15 FSM R. 97, 99 (Pon. 2007).

The release of vessels from arrest is governed by Supplemental Admiralty and Maritime Rule E(6), and if the parties are unable to stipulate to the amount and nature of the security, the court must fix the principal sum of the bond at an amount sufficient to cover the plaintiff's claim fairly stated with accrued interest. If the plaintiffs' claim "fairly stated" exceeds the vessels' value, the amount of the bond needed to release the vessels would be limited to the vessels' value, and, if the vessels' value exceeds that of the plaintiffs' claim, the bond amount would be the amount of the plaintiffs' claim "fairly stated" with accrued interest. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 545 (Yap 2009).

For a court to determine the amount of a plaintiff's claim "fairly stated," the court can consider affidavits and look behind the complaint to ascertain the amount actually in controversy. For a plaintiff's claim to be "fairly stated," it must only be arguable. This is because "any ultimate recovery against the *res* itself [the vessel] is limited to the amount of the bond; therefore it is prudent to err on the high side. Thus, in making a preliminary assessment of plaintiff's damages claim, the court should be satisfied that the plaintiff's claims are not frivolous, but it should not require the plaintiff to prove its damages with exactitude. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 545-46 (Yap 2009).

Factual disputes that a trial would resolve need not be resolved to set a bond for an arrested vessel; the court need only conclude that the plaintiffs' claims are not frivolous and are arguable. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 546 (Yap 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 546 (Yap 2009).

When, without prejudging who will ultimately prevail and to what extent, the plaintiffs' claim appears arguable; the amount is "fairly stated" for the purpose of setting a bond for an arrested vessel. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 546, 546 (Yap 2009).

Whenever security is taken for the release of an arrested vessel, the court may, on motion and hearing, for good cause shown, increase or reduce the amount of security given. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 547 (Yap 2009).

§ 338. Forced sale of vessels.

(1) In the event of a forced sale of a Registered Vessel or a foreign vessel, the claimant shall, prior to the forced sale of the vessel, ensure that notice is provided to:

- (a) the Registrar or the registrar in the nation of the vessel's registration;
- (b) all holders of registered mortgages or charges;
- (c) all holders of maritime liens; and
- (d) the registered owner of the vessel.

(2) Such notice shall be provided at least 30 days prior to the forced sale, and shall contain the particulars concerning the forced sale as well as the proceeding leading to the forced sale.

(3) All registered mortgages or charges, except those assumed by the purchaser with the consent of the holders, and all maritime liens and other encumbrances of whatsoever nature attached to the vessel at the time of the forced sale shall cease to be attached to the vessel provided that:

- (a) at the time of the sale, the vessel is within the jurisdiction of the Supreme Court; and
- (b) the sale has been effected in accordance with this chapter.

(4) The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of the sale. Such costs and expenses include the costs for the upkeep of the vessel, the master and crew as well as wages, repatriation, social insurance contributions payable on behalf of the master and crew, and other sums and costs referred to in section 326 of this chapter incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with this chapter to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, any residue of the proceeds shall be paid to the owner and shall be freely transferable.

(5) If at the time of the forced sale the vessel is in the possession of a builder or of a repairer who, under the laws of the Federated States of Micronesia enjoys a right of retention, such builder or repairer shall surrender possession of the vessel to the purchaser, but shall be entitled to obtain satisfaction of his claim out of the proceeds of the sale after the satisfaction of the claims of holders of maritime liens.

(6) When a vessel has been the object of a forced sale, the Registrar shall, in accordance with the order of the Supreme Court and at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in subsections (3)(a) and (b) of this section have been complied with.

(7) Where the vessel is a Registered Vessel, the Registrar shall delete all registered mortgages or charges except those assumed by the purchaser, issue a Certificate of Deletion for the purpose of new registration, and shall, if the purchaser is a Qualified Person and wishes to register the vessel in the Federated States of Micronesia, proceed in accordance with the requirements of the Vessel Registration Regulations to have the vessel registered in the Register under the name of the purchaser as the new owner.

(8) The order of the Supreme Court shall provide that any proceeds of the forced sale are actually available and freely transferable.

Source: PL 10-76 § 52.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fmsupremecourt.org/>.

The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: Interlocutory sales of arrested vessels are allowed 1) if the property that has been attached is perishable or liable to injury by being detained in custody pending the action, or 2) if the expense of keeping the property is excessive or disproportionate, or 3) if there is unreasonable delay in securing the release of the property. The plaintiffs need only demonstrate that one of these three conditions is present to justify the vessels' interlocutory sale. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 633, 634-35 (Yap 2009).

Where there is no evidence that the vessels are currently deteriorating or liable to injury and where the defendants have unsuccessfully sought the vessels' release through a letter of undertaking and made a good faith attempt to modify the proposed letter to satisfy the plaintiffs' and the court's concerns but were unable to, resulting in a court denial, the four months' delay in the vessels' release cannot yet be considered unreasonable, especially when the defendants, not the plaintiffs, are currently bearing the expenses of keeping the vessels. The request for an interlocutory sale of the arrested vessels will thus be denied without prejudice, but, if the vessels' release is not obtained, there will come a time when the delay will be considered unreasonable and the vessels' interlocutory sale could be ordered. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 633, 635-36 (Yap 2009).

§ 339. Designation of owner; communications and service of process.

(1) Where a Registered Vessel is owned by more than one person, one owner shall be designated owner.

(2) Communications from the Government may be sent to and service of legal process may be made on the owner at the address on file with the Registrar. Any communication to the owner shall be deemed to be a communication to all owners.

Source: PL 10-76 § 53.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 340. Regulations governing maritime liens and mortgages.

The Secretary may promulgate regulations relating to maritime liens and mortgages, taking into account the provisions of the MLM Convention.

Source: PL 10-76 § 54.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

Cross-reference: The statutory provisions on Administrative Procedures are found in title 17 of this code. The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.