

Admiralty Committee

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MARITIME LIENS

A “maritime lien” is a lien on a vessel to secure a claim for services to the vessel or for injury by a vessel to a person or property. It arises by operation of maritime law as security for a claim, without requirement for possession, and gives the claimant a special property right in the vessel. It comes into existence when the debt or claim arises and gives the claimant the right to have the vessel sold and the debt paid out of the proceeds of sale.

Section 328.17, Florida Statutes, provides for the nonjudicial sale of undocumented (state licensed) vessels. Under that statute, a vessel may be subject to nonjudicial sale for the nonpayment of licensed commercial marina storage fees, repairs, improvements, or other authorized work on the vessel, including towing and storage charges, after notice to the owner and any title lienors. The sale may not extinguish title liens.

1. **46 U.S.C. Sec. 31326**, provides for sale of a U.S.C.G. documented vessel by order of a U.S. District Court by a civil action *in rem* against the vessel to enforce a preferred mortgage lien or a maritime lien. The procedure is quite cumbersome. It requires a lienor to:
 1. File a Verified Complaint in compliance with Fed.R.Civ.P. 9(h), Supp. R. C(2)(a), and the local admiralty rules of the district court where the vessel is located.
 2. File a Motion for Issuance of a Warrant of Arrest, Supp. R. C(3), accompanied by a proposed order directing Issuance of the Warrant directed to the U.S. Marshal to arrest the vessel and proposed Warrant of Arrest *in rem*.
 3. File a Motion and proposed Order for Appointment of a Substitute Custodian of the vessel to be arrested, accompanied by an Affidavit of Substitute Custodian to provide custodial care for the vessel arrested in substitution for custodial care by the U.S. Marshals Service.
 4. Receive the Order Appointing Substitute Custodian and the Warrant of Arrest issued by the U.S. District Court Clerk.
 5. Deliver the Warrant to the U.S. Marshals Service by noon of the day following issuance, accompanied by U.S. Marshals Form 285, 3 certified copies of the Warrant for Arrest, 3 certified copies of the Order Appointing Substitute Custodian, 2 copies of the Complaint, and a certified copy of the Substitute Custodian Consent and Indemnification Agreement, indemnifying the U.S. Marshals Service for any liability for loss or damage to the vessel or its property.
 6. The vessel is arrested by the U.S. Marshals Service and turned over to the substitute custodian for the duration of the lawsuit or until bonded out, in accordance with Supp.R. E(5)(a)(b) by the vessel's insurer ...OR...Upon Agreement, file a Joint Motion & Stipulation for release of the vessel in accordance with Supp.R. E(5) C ... OR ... file a Motion for Release for the Court to set Bond.
 7. The Defendant(s) file their answer and the lawsuit proceeds to conclusion or settlement.
 8. An interlocutory sale of the vessel is permitted if the cost of keeping the vessel is excessive or disproportionate to the value of the vessel, or if there is an unreasonable delay in securing release of the vessel, per Supp.R. E(9)(a)(i)(A)-(9)(a)(i)(C)