

TO: MMTA Membership

FR: Abandoned Vessel Law Working Group

DT: May 6, 2008

RE: ABANDONED VESSEL LAW IMPLEMENTATION PROCEDURAL SUMMARY

Once again, congratulations to all who participated in securing the successful passage of Abandoned Vessel Legislation sponsored by Boating Caucus Chairman Anthony J. Verga of Gloucester, which was signed into law in recent months by Governor Patrick and goes into effect today. At last the cumbersome legal process has been streamlined for responsible business owners seeking to remove costly and dangerous abandoned boats from their properties.

Since the bill's passage, many MMTA members have contacted the Association with questions concerning implementation of the law. In other words, many of you have asked "What Now?"

In an effort to provide you with a procedural summary of the AV Law we hope will allow you to comfortably move forward with vessel removals, MMTA formed an Abandoned Vessel Working Group* comprised of Association Directors, staff and members. Based upon its interpretation of the law combined with detailed conversations with key staff from the MA Office of Marine Registration & Titling (hereinafter "the Commonwealth" or "Marine Titling"), the AV Working Group has created a *preliminary analysis* for you to use as a guideline for the vessel removal process.

Please be aware that the analysis provided below ***cannot substitute for legal advice in individual situations***. **If you have outstanding concerns, be sure to consult your own counsel to discuss the specific facts of your situation.** This is a new law, the implementation of which will surely have some surprises.

Below is the AV Working Group's understanding of the steps to take so that vessels will be considered by the Commonwealth as "abandoned" under the law ([Chapter 23 of the Acts and Resolves of 2008, amending primarily Chapter 255 of the Massachusetts General Laws](#)). [Sample forms](#) are available to provide you with guidance only. They will be linked throughout this document as well.

Getting Started

You can now avoid court proceedings to dispose of vessels considered abandoned and, in most cases, you won't need a lawyer. However, the option to go to court has been maintained for certain situations, such as when vessel title is contested. No special fees for filing documents under the AV Law have been implemented by the Commonwealth thus far; for the time being the usual titling fee will apply (currently \$25). Please refer to a copy of the law as you read below ([Chapter 23 of the Acts and Resolves of 2008, amending primarily Chapter 255 of the Massachusetts General Laws](#)).

First Steps

(a): Certified mail notice sent to any owner of record of the vessel, at the last known address, of the amount of the lien and proposed disposition or sale of the vessel;

Notice must go to “any” owner of record, even if there is more than one and even if the record owners share common names or addresses. **Send separate notices to each owner of record.**

The Commonwealth agrees with the AV Working Group that the statute text requires “Certified Mail” must be “sent”, not necessarily received, which is consistent with case law on similar subjects

How Do I Insure I Am Sending Notice to the “Last Known Address”?

By the time you consider vessel disposition, you should have determined if the vessel is a Documented Vessel or a State Registered/Titled Vessel. If the vessel is State Registered/Titled, there is no need to contact the Coast Guard for “last known address”. **If the vessel has no known registration numbers, then contacting the Coast Guard would be prudent and, if it is a Documented Vessel, it is necessary** ([AV Request for Title Search Form](#)).

It is also wise to consider the “last known address” as the official, of-record address with either the state or the Coast Guard, *even if this address is different from the one in your own facility records*. To be safe, send Certified Mail notices to all possible addresses you learn of. Such extra steps cost little but could save a lot should any contest involving notice arise ([Sample AV Owner-Lien Holder Notice Letter](#)).

What If the Vessel Is Federally Documented?

Federal Maritime Law trumps state law, but if there are no federal issues, state law applies in dealing with abandoned vessels ([46 CFR 67.91](#)). Ordering an abstract of title will tell you if there is any mortgage or lien holder. If there is a Preferred Ships Mortgage on the vessel or any recent liens, Federal Maritime Law applies. If there are no lien holders or any lien holders that are more than six years old, state law may be used to obtain title to the abandoned vessel.

Note that in the case of an abandoned documented vessel the safest practice would be to obtain title to the vessel before disposal by way of a dumpster! This is a business decision though. If a marina has a boat sitting on its property for 10 years with no signs of the owner and state law has been complied with, a marina would *probably not face any fallout* from failing to take the next step because it is unlikely that someone would come forward to complain. However, the AV Working Group cannot guarantee this.

Should I Also Notice Lien Holders?

Absolutely. When sending notice it is necessary to inquire of the Massachusetts Boat Registration office and, where appropriate, the National Vessel Documentation Center for any lien holder names and last known addresses. Lien holders are considered vessel “owners” requiring notice of the proposed disposition or sale of the vessel. You can use the same form to ask the Commonwealth for all known lien holders as well as the last known owner ([AV Request for Title Search Form](#)).

What If I Can’t Locate Any Owners of Record?

If you are among the unfortunate stuck with a vessel difficult to identify at all, or with conflicting identification information, which may suggest theft or other trouble, you are best served by contacting Chief David Barber (617.626.1611) or Captain George Agganis (617.626.1663) at the Office of Marine Titling to have the vessel inspected prior to proceeding with disposition. A visit by one of their officers

is recommended if there is no proper hull number on the transom. Chief Barber and Captain Agganis assured the AV Working Group there are 100 Environmental Police Officers available for this chore and it should get done without slowing your process, so long as you call in advance and not a few days before sale or other disposition!

What Information Must I Include In the Notice I Send?

“Amount of the lien and proposed disposition or sale” is one of the required items in the notice. “Disposition” can mean to the nearest landfill, if the materials are accepted there; “sale” can mean a private sale, public auction, or reflect intent to keep the vessel.

According to the AV Working Group’s discussions with the Commonwealth, you are free to put in your notice that any of these options may be elected on or after 90 days have passed from the last newspaper publication date (discussed below). While it is not necessary to specify exactly which option you plan to select, be careful! **If you are specific in the owners’ notice of exactly how, when and where you will dispose of or sell the vessel, you must stick to this detail or send another notice.**

The bottom line is to keep good records. If the vessel has any chance of having greater value than your lien, or if there are other lien holders, you may be best served with a public auction to protect yourself from future complaints.

What Else Must I Do to Insure Proper Notice?

Several things! Please see statute text and explanations below.

(b): legal notice of the lien and proposed disposition has been posted for three (3) consecutive days in a newspaper of general circulation in the city or town of any owner of record’s last known address

In other words, if the record owner’s address is in Worcester, notice in the *Telegram & Gazette* works fine, but notice in your local paper on the Cape does not. Don’t forget, this goes for every owner of record! One record address may be on the Cape and another may be in the Berkshires. You need not publish notice in every small and large local paper in their location – just one paper of general circulation will do for each owner.

Why Not Just Place Notice in the Statewide Papers?

You can. The Commonwealth has told the AV Working Group that the *Boston Globe* and the *Boston Herald* will be considered “newspapers of general circulation” for all Massachusetts cities and towns. However, these newspapers may charge more than local papers. You may want to consider how many different “last known addresses” for any owners of record you must consider, including lien holders, when you make your choice(s) of newspapers. Be sure to check carefully that any newspapers you choose can run notice **on three (3) consecutive days!** ([Sample AV Legal Notice](#)).

AND

*(c): At least 90 days have passed from the last posting of the legal notice in any owners’ local newspaper **AND** you have not received a reply indicating an ability to satisfy the debt within 90 days of the posted notice.*

What If I Do Hear From An Owner Within 90 Days?

What if you hear from an owner (either a lien holder or the owner of record)? Hopefully, it's with cash in hand. If it is the more common "give me more time" you have a tough call. The statute requires a reply "*indicating an ability*" to satisfy the debt within 90 days. However, the MMTA Working Group recommends that if an owner or lien holder responds to your notice with some payment promise, you may be better off giving the owner or lien holder the chance to meet their proposed payment schedule, and documenting their promise, rather than continuing right away with the abandoned title procedure. This will make any eventual legal objections thereafter more likely to conclude in your favor if you do have to proceed for non-payment even after a promise to pay.

Assume I Have Satisfied the Three Criteria Above. What Next?

Provide Notarized Affidavit to Secure Title: A Notarized Affidavit is required to secure an Abandoned Title Document (detailed below), which you must have for the subsequent sale of the vessel. The Commonwealth tells the AV Working Group it should not take more than a few days to obtain the Title Document provided your Notarized Affidavit is in order.

You'll need to provide the Commonwealth with:

Notarized Affidavit Requirements: the document must indicate the three statutory criteria noted above in (a), (b) and (c) have been met, with copies or originals of the related documents, filed with the Marine Titling Division of the Massachusetts Environmental Police. The Commonwealth has informed the AV Working Group that branch offices should accept the documents, not just Boston, although Chief Barber himself expects to work on the early batches to be sure the procedures are in order, so you may want to note "Attention Chief Barber" on your cover letter.

Additionally, Marine Titling advises the affidavits should be kept "lean", simply listing the requirements of the statute, attesting that each one has been met, and attaching the required documentation. Once you get title, the buyer who purchases the vessel subsequently will then be able to secure new title via the usual existing procedures ([Sample AV Affidavit](#)).

Secure Abandoned Title Document: If the three criteria described in (a), (b) and (c) are met, according to the new law, vessel title is "presumed abandoned" and you the lien holder may get an Abandoned Title Document from the Commonwealth. .

Marine Titling officials have informed the AV Working Group that this title document will not bear any special marking; it will look like any other marine title. However, it is recommended that you keep in your files evidence that you advised any subsequent purchaser about the history of the vessel.

Is This New Law A Money Maker?

In the rare cases where proceeds of sale exist in excess of any liens on the abandoned vessels, you must send the "extra" proceeds to a state fund to be held by the Commonwealth's Department of Conservation & Recreation in the name of the former owner of record for two years. After this time, the funds are available to the Massachusetts Department of Conservation & Recreation for removing from public waterways vessels presumed abandoned. Make checks out to "Commonwealth of

Massachusetts, Department of Conservation & Recreation”, mark the check “Abandoned Vessel” and send it to:

Stephen Scapicchio, Revenue Director
Department of Conservation and Recreation
251 Causeway Street, Suit 600
Boston, MA 02114-2104
tel: 617/626-1322

I Want To Take This Guy or Gal To Court! Can I Still Do That?

Certainly. The new Abandoned Vessel Law just gives you the lien holder more options. The lien holder may proceed through District Court or Superior Court if desired (prior to the law’s passage, lien holders in this predicament could only proceed through Superior Court).

Any Other Tips I Should Know About?

- Holding vessel viewings? Get a signed Liability Release before anyone boards the vessel.
- Disputing with other lien holders? Best to seek counsel and avoid navigating the new AV law as your means of allowing you to dispose of or sell the vessel.
- Auction or sell “as is”, with express disclaimers and disclosures.

| * Thanks to the MMTA Abandoned Vessel Working Group (Maritime Attorney David S. Smith; MMTA Director Marie Hayward; MMTA members Alex Russo of Russo Marine and David Jenson of Marina Bay; MMTA staff Nathalie Grady, MMTA Public Affairs Director and Jamy B. Madeja, Esq., MMTA Government Relations and Legal Counsel). Attorney David Smith was also the author of a presentation on Abandoned Vessel Law at the January, 2008 MMTA Education Conference (see www.boatma.com) Attorney Jamy Madeja helped author the new statute and is in regular contact with the Commonwealth on MMTA’s behalf during its implementation.

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