

Admiralty Law

Exposure to foreclosure

BY MARK ERCOLIN
Waterfront News Law Columnist

It's impossible to have a conversation about Florida's economic health without mentioning "foreclosure." There's now an estimated backlog of 90,000 home foreclosure cases on Broward's court's docket, and it probably won't get any better during the summer. Florida's Supreme Court has even set up a special program to conduct mediations on home foreclosures to help expedite some of the state's pile-up.

Needless to say, foreclosures have become as much of an issue in the boat-owning community as in the home-owning equivalent. In some ways, boat foreclosures can be even more vexing due to the potential legal complexities in holding paper on a vessel. Legal schemes controlling liens and mortgages on a vessel are very different from those used in land law.

First, liens on a vessel are based on a special system that ranks priorities, including "preferred maritime liens," generally listed as court custodianship, pure salvage, crew wages, maritime torts, and cargo loss based on mishap.

What follows these liens is usually referred to as "necessaries," which generally grants a lien against a vessel for goods delivered and labor performed for the benefit of the vessel (e.g., think marina repairs, hardware installations, dockage, and food supplies).

Another confusing feature of all these liens is that within their designated "classes," priorities are based on the concept of "first in - last out, meaning that the most recent lien against a vessel in a particular category has priority for collection over earlier liens — the exact opposite of land law.

Now, you might notice that I have

not yet mentioned the priority placement of a boat mortgage. Under traditional maritime law, boat mortgages were not considered a maritime lien and were therefore among the lowest of priorities.

Pressure from financial institutions changed this policy around the turn of the 20th century. Congress created a statute recognizing vessel mortgages as maritime liens with priority rights, providing the transaction met certain conditions. The vessel had to remain a U.S.-documented vessel and the institution holding the mortgage had to file it in appropriate fashion with the U.S. Coast Guard. Once this criteria was met, the lender would have what is known as a preferred ship's mortgage.

Although a preferred ship's mortgage will not have priority over other preferred maritime liens (i.e. salvage, seamen wages, maritime torts, etc.), it will have priority over the class of liens called necessities — dockage, marina bills, etc. — which can afford quite a bit of protection to the lender.

Even with these protections, lenders may not find the system to their complete liking. The lender will not be protected from liens against the vessel that were incurred before the filing of the mortgage with the U.S. Coast Guard. This can be particularly problematic since traditional maritime liens do not require public filing before they can be enforced.

Further, the perfecting of a preferred ship's mortgage does not specifically give the lender a possessory right against the vessel. The lender can put language in the mortgage allowing the vessel to be taken upon a default and even sold.

However this by itself will not expunge any other liens, nor give a new purchaser clear title. To give clear title,

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Dead Reckoning

Roger, not 10 four, out

BY BOB E. SHERMAN
Waterfront News Columnist

A VHF radio is probably one of the most important items you can have on your boat. And yet it is not "required equipment." However if you have one onboard, you're required by law to monitor channel 16

Visual distress signals — which can be used if you have no radio or are out of radio range — are also required. Among them: the orange distress flag, measuring at least 3 feet x 3 feet with a black square and ball on an orange background. It must also be marked with an indication that it meets U.S. Coast Guard requirements.

I heard a story about a boater stranded off the coast while fishing. He had a fixed mount VHF but his battery was dead and he had no bars left on his cell phone. Luckily, he did have an orange flag that he waved frantically until authorities arrived.

Upon closer inspection, it became obvious that it was actually a Miami Hurricane flag. Before calling a tow service, law enforcement officials issued a ticket for carrying a flag that did not meet USCG requirements. Maybe the officer was a Gators fan.

The VHF radio signal works on a line-of-sight basis. So the higher your antenna and that of the receiving vessel or station, the greater the range. VHF radios for recreational vessels are limited to 25 watts of output. To boost your range, you need to raise your antenna.

Handhelds operate at 5 or 6 watts max. Climbing the mast while holding a handheld is not advisable. All my friends who signed my cast will attest to this.

It's easy to forget that the VHF works like a party line — everyone can listen to your call. You can be fined for misuse of the radio from false Mayday calls to using

profanity. Channel 16 is for calling another station and emergencies.

That's why it's important to make your contact and switch to a working channel. You should also adjust the power output based on the range required. If you are calling the Hollywood bridge, there's no need for boaters in West Palm to hear you.

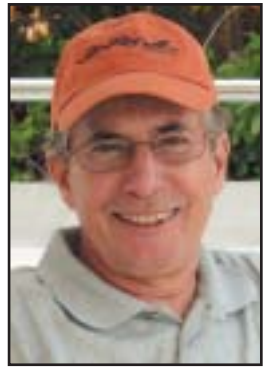
When I'm in Hallandale I often hear calls to bridges on the Miami River or the New River in Fort Lauderdale. It's unlikely that all the calls I hear are from sailboats with the antenna on top of a 110-foot mast. So they're operating on full power when it is unnecessary. In addition to annoying me, it ties up a channel that may be needed in an emergency.

Luckily, he did have an orange flag that he waved frantically until authorities arrived.

Recreational boaters can use four channels for communication: 68, 69, 71, and 72. They are all designated as non-commercial. Channel 68 is also designated for marinas and yacht clubs, which apparently are not as commercial as a tow company. Several marinas in Fort Lauderdale use 68. In any case these channels are not meant for endless chatter. This is why cell phones were invented.

Proper party line etiquette should be used at all times. For example, if the channel is in use, don't start talking until the other conversation is finished or switch to another channel.

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