

Yacht and Ship Licensing

Study Material



STATE OF CALIFORNIA

DEPARTMENT OF PARKS AND RECREATION

DIVISION OF BOATING AND WATERWAYS

Subjects for Study

SUBJECTS TO STUDY

BROKERS / SALESPERSONS

1. *Documentation of Yachts (Brokers and Salespersons)*
2. *Additional Licensing Information (Brokers and Salespersons)*
3. *Yacht and Ship Brokers Act (Brokers and Salespersons)*
 - » *Harbors and Navigation Code 700-740*
 - » *Code of Regulations, Title 14, Article 8, Codes 7601-7623*
 - » *Section 754 of The Harbors and Navigation Code*
 - » *Unemployment Insurance Code*
 - » *Vessel Lien Sales - Harbors and Navigation Code 500-509 (Brokers Only)*

Documentation of Yachts

SUBJECTS TO STUDY FOR YACHT & SHIP SALESPERSON/BROKER EXAMINATION

The following subjects are suggested for study in preparation of the yacht and ship written examination:

- 1) Knowledge of Yacht and Ship Brokers Act (Harbors and Navigation Code 700-740 & Title 14, Article 8, Code of Regulations) as used in the regulation and licensing of Yacht and Ship Brokers and Salesperson.
- 2) Documentation of vessels by the United States Coast Guard as set forth in the Navigation Laws of the United States and the enclosed U.S. Coast Guard Documentation of Yachts study sheet.
- 3) The Marine Surveyor, Benefits accruing to the purchaser of a vessel using the services of a marine surveyor in selection and purchase of a vessel [See enclosed Department Information Letter, May 15, 1997; contact the Society of Accredited Marine Surveyors (SAMS) at (800) -344-9077, National Association of Marine Surveyors (NAMS) at (800) 822-6267, or NAVTECH US Surveyors Association (USSA) at (800) 245-4425.
- 4) Rules and regulations pertaining to the operations, equipment requirements for vessels and recommended safety equipment's.
- 5) Boat registration under California Vehicle Code.
- 6) Vessel lien sales, Department of Motor Vehicles (See enclosed Harbors and Navigation Code 500-509).
- 7) Fiberglass boats
- 8) County vessel personal property taxes and tax proration (See enclosed section, Title 14, Article 8, Section 7622, California Code of Regulations).
- 9) Knowledge of the California sales and use tax laws relating to administration of the State Board of Equalization (BOE). (Neither reference suggested for purposes of the examination. However, you may contact you BOE office for additional information on the broker's responsibilities in the collection and payment of sales or use taxes from brokerage sales.

Documentation of Yachts

What vessels are required by law to be documented?

Any vessel of at least five (5) net tons which engages in the fisheries, Great Lakes trade, or coastwise trade must be documented, except:

A vessel which does not operate on the navigable waters of the United States. (An example would be a vessel which navigates only on sole state waters.) Such a vessel may be documented if it meets the other requirements for documentation.

A non-self propelled vessel when used within a harbor, in a whole or in part on the rivers or inland lakes of the United States, or in whole or in part on the internal waters or canals of any state.

What requirements must be met before a vessel can be documented?

The owner must be a United States citizen.

The vessel must be five (5) net tons or over.

Vessels which are not required by law to be documented may be documented if the requirements of a. and b. above are met. This includes vessels used exclusively for pleasure and vessels used in foreign trade.

What special markings must a documented vessel have?

The official number, preceded by the abbreviation "NO" will be marked by some permanent method on some clearly visible interior structural part of the hull. The number shall be in block-type arabic numerals not less than three (3) inches in height.

Pleasure vessels will have the name and hailing port of the vessel marked together in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the hull.

Other vessels will have the name of the vessel marked in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the port and starboard bow, and the stem of the vessel. The hailing port of the vessel shall be similarly marked on the stem of the vessel.

The means and materials used to display the name and hailing port shall result in durable markings. A board attached to the vessel with the name and hailing port marked on it is not an acceptable marking.

What is involved in renewing a vessel's document?

All documents are issued by the US Coast Guard and must be renewed annually.

The Coast Guard will mail a renewal notice to the owner of a documented vessel 45 days prior to the expiration of the document. When the renewal notice is completed and returned to the Coast Guard, a color renewal decal is sent to the owner. The decal must be affixed to the document in order to be accepted by an enforcement officer.

Where should the certificate of documentation be kept?

The person in the command of a documented vessel must have the certificate of documentation on board that vessel, except:

Non-self-propelled vessels not engaged in foreign trade,

When the vessel is in storage or out of the water, or,

When the Certificate of Documentation is being submitted to a documentation officer. It may be submitted for various reasons, including change of name, hailing port, or ownership, endorsement of a preferred mortgage, etc.

Are there any fees associated with documenting a vessel?

Yes. There are fees associated with the original documentation and documentation surrender and/or replacement. They are:

When marine documentation is issued to a yacht, the owner shall pay a fee of \$133.

When marine documentation is surrendered or replaced, the owner shall pay a fee of \$50.

When the owner of a vessel has used parts of an existing vessel in construction of that vessel and requests a determination that the vessel is new, he shall pay a fee of \$166.

Miscellaneous Information

A title search on a documented vessel may be initiated by requesting an Abstract of Title from the National Coast Guard Documentation Center.

The bill of sale must be notarized for transactions involving a documented vessel transfer of ownership.

For further information, you may wish to obtain a copy of the regulations which apply to the Vessel Documentation Act. You can obtain a copy from:

Superintendent of Documents
US Government Printing Office
WASHINGTON, D.C. 20402

Additional Licensing Information



ADDITIONAL LICENSING INFORMATION

SUBJECTS: LISTING AGREEMENTS; FIDUCIARY DUTY DEFINED; BROKER SUPERVISION OF TRANSACTIONS OF SALESPERSONS; COMPLAINT RESOLUTION PROCEDURE; SURVEYORS - AVOIDING A CONFLICT OF INTEREST; USE OF SALESPERSONS LICENSE

LISTING AGREEMENTS. The Attorney General's Office informed the Department that "exclusive" listing agreements must have a specific commencement date and a specific expiration date, using calendar time (days, months, year).

Brokers are no longer permitted to use "until sold, exchanged or traded" as an expiration period on "exclusive" listing agreements. Moreover, sellers do not have to cancel their listings by written letter or any type of notice. The expiration date is the date the contract terminates.

Exclusive Listing Agreements signed on June 10, 1997, or after, must comply with this directive. Brokers who have current exclusive listing agreements that do not meet this criteria (and whose exclusive listing agreements were in existence prior to June 10, 1997), will be permitted to "grandfather" these listing agreements into the current compliance requirement that becomes effective on June 10, 1997.

FIDUCIARY DUTY DEFINED. (Excerpted from Black's Law Dictionary). Every licensed broker and salesperson has a fiduciary duty to both buyer and seller, even if one broker holds the listing for the seller, and another broker brings in the buyer.

A fiduciary is a person holding the character of a trustee, or a character like that of a trustee. In this regard, a fiduciary is required to have and to show good faith and honesty and openness with the person who puts his or her trust and confidence in a broker/salesperson.

Such a relationship exists when a buyer or seller gives their faith, confidence and trust, and relies upon the judgement and advice of the broker/salesperson. A person having a fiduciary duty created by this undertaking, acts primarily for the benefit of others.

A "fiduciary relationship" arises whenever confidence is given on one side, and domination and influence result on the other. It exists where there is special confidence given to a broker/salesperson, who in equity and good conscience is bound by such a duty to act in good faith and with due regard to the interests of buyers and sellers.

In a "fiduciary relationship," the law raises the rule that a broker/salesperson may not exert negligent influence or pressure, or take selfish advantage of such trust, or deal with the subject matter of the trust in such a way as to benefit him or herself or prejudice the person who places such faith and confidence in a broker/salesperson.

Brokers/salespersons must exercise their duties with the utmost good faith, fidelity and integrity, and with the full knowledge and consent of the person giving such trust.

In a "fiduciary relationship," brokers/salespersons have a duty that totally prohibits taking advantage of the forgetfulness or negligence of the person who gives a broker/salesperson their trust and

confidence. A breach of fiduciary responsibility would make the licensed broker/salesperson liable for any damage caused by such a breach of duty.

An example of a breach of a broker's fiduciary duty, which would occur through negligence (despite the good intentions of the broker), is as follows:

(a) A seller signs a listing agreement to sell a 1988 vessel and provides the broker with verbal information about the vessel; year, make, model, its features, gear, machinery, equipment, seaworthiness, etc.

(b) From this information, the listing broker creates a specification sheet. The seller even stipulates in writing that all of the information he provided to the broker is true and accurate to the best of his knowledge, and the listing broker then advertises the vessel for sale. Thereafter the vessel is sold.

(c) After the conclusion of the transaction, and after final payment is disbursed and the Certificate of Ownership is given to the buyer, the buyer discovers from the Certificate of Ownership that the vessel is a 1987 – not a 1988. The buyer asks the broker to compensate him for the price difference between the 1987-88 model, claiming the broker was negligent in the way the vessel was represented.

(d) The broker denies any wrong doing, shows the buyer written proof that the seller stipulated that the vessel was a 1988, which proves the broker was "acting in good faith." The broker declines to accept responsibility, suggesting instead that it was the seller who provided the faulty information.

QUESTION: Was the broker "negligent" even though he acted under the "good faith" belief that the seller gave him accurate information to begin with? Did the broker breach his fiduciary duty to the buyer?

The broker had a duty to examine the Certificate of Ownership document (or a copy of it) before the listing agreement was even signed. How else can the broker know that the property being sold really belongs to the owner? Or otherwise verify the facts stipulated by the seller of the vessel, such as the year, make, and model.

Does a broker have to verify everything? No. The broker can stipulate that (s)he cannot be held liable to verify the accuracy of those things commonly revealed through a survey.

The Department considers it essential for brokers to make full and complete disclosures (to the best of their knowledge) about a vessel and its conditions, and what a broker does not know about a vessel must also be disclosed. Brokers should not rely on the accuracy of all of the information provided by the seller. It is practical to verify that the seller is the actual owner of the vessel during the signing of the listing agreement by simply having the seller show proof of ownership. It may not be practical (geographically) to verify hull or engine identification numbers, especially if the vessel and the broker are in different cities. Nor would the Department expect brokers to do the impossible, or what is not practical. In large measure, common sense and due diligence should apply and a broker/salesperson should always consider the possible side effects of any business practice that may run contrary to a licensee's fiduciary duty, which hinges on disclosure.

In the "example case," the buyer who put his trust and confidence in the broker wound up paying more for a boat than it was actually worth, and was misled in the process, despite the broker's good intentions. And while the broker did not take responsibility for the "mistake" (and blames the seller for it), he still collects his full commission.

BROKER SUPERVISION OF TRANSACTIONS OF SALESPERSONS. For purposes of clarification, the Department expects brokers to supervise the sales transaction of licensed salespersons as these transactions occur, not after they have been completed. This is a broker's duty. Broker supervision assures consumer protection and it also insures that licensed salespersons, especially during their first year as an apprentice, correctly learns the skills and applies the professionalism and ethics expected of all licensees. Licensed salespersons have the same fiduciary duty to their principals as do brokers. For licensing purposes, a salesperson is an agent of the broker and a broker is financially responsible for the wrongful acts of licensed salespersons.

According to the Attorney General's Office, "...the purpose of the Yacht and Ship Brokers Act is to insure the broker's responsibility and answerability as a licensee for acts and omissions of himself and licensed salesmen employed by him when engaged in the performance of activities for which a license is required." The Attorney General's opinion is supported by Section 2338 of the California Civil Code, which reads as follows: "Principal's responsibility for agent's negligence or omission. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal."

A broker's responsibility for the wrongful acts of licensed salespersons does not relieve the salesperson from being held to a standard of accountability, which could include civil penalties, license revocation or suspension.

COMPLAINT RESOLUTION PROCEDURE: The California Yacht Brokers Association (CYBA) has requested, and the Department has agreed, that brokers should be given a copy of the letter of complaint, rather than having the Department paraphrase the allegations, as has been the Department's policy. However, if a complainant asks to remain anonymous: the Department will honor that request during the course of the investigation, and will continue to paraphrase the allegations in the complaint when the broker is first notified that a complaint has been filed. The Department will then ask the broker to open his or her record of the transaction and provide his or her version of what transpired. At the conclusion of the investigation, a copy of the letter of complaint can be released to the licensee against whom the complaint is made, **but the identity of the complaining party and any information that may lead to the identity of the complainant will remain confidential pursuant to the provisions of the Information Practices Act.**

Licensees should also understand that the Department can act upon a telephonic or in person complaint, pursuant to Section 734(b) of the Yacht and Ship Brokers Act (Act). Some brokers have taken exception to the Department's interpretation of the wording in 734(b), and contend that a complaint, in order to be valid, must be in written form before the Department can legally conduct an investigation.

Please note that 734(b) of the Act begins by stating that, "The Department *may* upon its own motion..." The word "*may*" allows the Department the option to determine whether it will or will not conduct an investigation. The words *may upon its own motion* is also sufficient to allow the Department to act upon a non-written complaint. Section 734(b) continues by stating "... and *shall* upon the verified written complaint of any person..." The word "shall" requires the Department to investigate verified written complaints.

SURVEYORS - AVOIDING A CONFLICT OF INTEREST. It is common practice in the industry for a broker to offer a list of surveyors to buyers, which allows buyers to make their own selection if they choose to have a vessel surveyed. Surveyors are not licensed; anyone, with little or no experience can be a "surveyor." During a number of site visits to brokerages, the Department has found that many brokers recommend or offer the name of only one surveyor to a buyer. In order to avoid a "conflict of interest," the Department recommends that brokers offer the buyer a selection list of **at least three (3) marine surveyors** or refer the buyer to a lending institution (who often has a selection list of surveyors), or simply advise buyers to find their own surveyor through other sources (perhaps through a marine or telephone directory), or the National Association of Marine Surveyors (800-822-6267).

USE OF SALESPERSON'S LICENSE NUMBER. The salesperson's license number should be recorded on the Broker-Salesman Relationship Agreement, pursuant to the requirement that such an agreement be in place.

Yacht and Ship Brokers Act

HARBORS AND NAVIGATION CODE

SECTION 700-740

Article 2. Yacht and Ship Brokers

700. Citation of article.

This article shall be known and may be cited as the Yacht and Ship Brokers Act.

701. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

(a) "Broker" means a person who, except as otherwise excluded by Section 710, for compensation or in expectation of compensation, does, or negotiates to do, one or more of the following acts for another or others:

(1) Sells or offers to sell, buys or offers to buy, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of yachts, and who does not own those yachts.

(2) Leases or rents, offers to lease or rent, places for rent, solicits a listing of a yacht for rent, or negotiates the purchase, sale, or exchange of a lease on a yacht, for a rental or lease period of more than 90 consecutive days to any one person or business during any 12-month period, and who does not own that yacht.

(b) "Salesman" refers to a natural person who, except as otherwise excluded by Section 710, for compensation or in expectation of compensation, is employed by a licensed broker to do one or more of the acts set forth in subdivision (a). The term includes "saleswoman" and "salesperson."

(c) "Yacht" or "ship" refers to any vessel 16 feet or more in length and under 300 gross tons used for navigating in water and designed to be propelled by machinery or sail.

702. Public inspection of records.

Except as otherwise provided by law, all records of the department relating to yacht brokers and yacht salesmen shall be open to inspection by the public during regular office hours.

702.5. Electronic records.

Any declaration, license, or other record electronically generated or transmitted pursuant to this article shall meet the requirements of a "record" under Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code.

703. Director's authority.

(a) The director may, in accordance with the State Civil Service Act (commencing with Section 18500 of the Government Code), select, employ, and fix the compensation of such employees as may be necessary properly to administer this article, provided that no employee of the department shall have an interest for financial or other personal gain in the business of a licensed broker as director, stockholder, officer, member, agent, salesman, or employee.

(b) The director may prescribe the duties of all employees.

(c) The director may regulate and control the issuance, denial, suspension, and revocation, both temporary and permanent, of the licenses issued under this article.

(d) The director may perform all other acts and duties necessary for the proper enforcement of this article.

(e) The director may institute proceedings in any court of competent jurisdiction to enforce the provisions of this article by injunction or otherwise.

(f) The director or any member of the department may administer oaths for the purpose of executing this article.

(g) The director may prescribe rules and regulations to carry this article into effect in accordance with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, and may authorize the department to establish

branch offices in such other cities as may be necessary for the proper administration of this article.

704. Advisory function of commission.

In accordance with the provisions of Section 82 of this code, the commission shall advise the department with respect to all matters relating to the administration of this act. The department shall submit any proposed regulations or changes in regulations pertaining to this act for review and comment by the commission prior to enactment.

705. Authenticity of papers as evidence.

(a) The director may adopt a seal and such other device for use by the department as it may desire, which may be used to authenticate all papers and documents required by this article which are under the control of the department.

(b) Copies of all records and papers required by this article which are in the department's office shall be received in evidence in all cases, when certified under the hand and seal of the department, equally and with like effect as the originals.

706. Attorney General as attorney.

The Attorney General shall act as the attorney for the department in all actions and proceedings pursuant to this article and shall render to the department opinions upon all questions of law arising under this article or in its administration.

707. Directory, bulletins and reports.

(a) The department shall publish or cause to be published on or before July 1st of each year a directory of licensed brokers and salesmen and may publish such additional information as it deems expedient. The department may also issue a periodical bulletin concerning affairs arising under the administration of this article.

(b) The department shall submit to the Governor a full and true report of its activities under this article, including a complete statement of receipts and expenditures during the preceding two years. This report shall be a part of the biennial report of the department.

708. Licensing provisions.

(a) No person shall engage in the business of, act in the capacity of, advertise as, or assume to act as a broker or salesperson within this state without first obtaining a license under this article to do so.

(b) Only the person to whom a license is issued may perform or offer to perform any act subject to this article.

(c) No fictitious name shall be used by a broker in the conduct of any business for which a license is required under this article, unless a license bearing that fictitious name has been issued to the broker.

(d) The department shall not issue a license under a fictitious business name which is the same as or similar to the fictitious business name on a license previously issued and in effect.

709. Fraudulent or negligent misrepresentation.

No licensed broker or licensed salesman shall practice any fraud or deceit or make any fraudulent or grossly negligent representation with respect to any act for which a license is required under this article.

710. Exemptions.

The definitions of "broker" and "salesperson," as set forth in Section 701, do not include the following:

(a) A person who directly performs any act subject to this article with reference to a yacht owned by that person or, in the case of a corporation which, through its regular officers receiving no special compensation therefore, performs any act subject to this article with reference to the corporation's yacht.

- (b) Services rendered by an attorney at law in performing duties as an attorney at law.
- (c) Any receiver, trustee in bankruptcy, or other person acting under the order of any court.
- (d) Any transaction involving the sale of property subject to foreclosure of a security interest in a yacht which is conducted only by the holder of the security interest or by a person licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code when liquidating repossessed collateral pursuant to the written request of the holder of the security interest.
- (e) Any transaction involving the sale, lease, or rental of a yacht in excess of 300 gross tons or tenders thereof sold at the same time.
- (f) Any transaction involving the sale, lease, or rental of a new yacht or ship.
- (g) Any transaction in the regular course of business by a wholesale motor vehicle auction subject to regulation by the Department of Motor Vehicles.

711. License required to collect compensation.

No person engaged in the business or acting in the capacity of a licensed broker or salesman within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he was a duly licensed broker or licensed salesman at the time the alleged cause of action arose.

712. Unlicensed persons, prohibitions and violations.

- (a) No licensed broker shall employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this article who is not a licensed broker or salesman licensed under the broker employing or compensating him or her, except that a licensed broker may pay a commission to a broker of another state or country.
- (b) No salesman shall accept compensation for performing any of the acts within the scope of this article from any person other than the broker under whom the salesman is at the time licensed.
- (c) No licensed salesman shall pay any compensation for performing any of the acts within the scope of this article to any broker licensed under this article, except through the licensed broker under whom the salesman is at the time licensed.
- (d) For a violation of any of the provisions of this article, the department may temporarily suspend or permanently revoke the license of the broker in accordance with the provisions of this article.

713. Partnership acting as broker.

Nothing contained in this article shall preclude a partnership from performing acts for which a broker's license is required, provided every partner through whom the partnership so acts is a licensed broker.

714. Deposit and record of funds, neutral escrow depository.

A licensed broker who accepts funds from others in connection with any transaction subject to this article who does not, as soon as possible, place those funds into a neutral escrow depository, shall place the funds into a trust fund account maintained by the broker in some bank or recognized depository and shall retain all the funds in the account until the broker makes a disbursement of the funds in accordance with written instructions from the person entrusting the money. The written instructions shall also set forth the specific purposes for which the broker may use money deposited with him or her. If the broker wishes to use money from the deposit for a purpose not included in the written instructions, the broker shall first obtain the written consent of the person entrusting the money specifically authorizing the use proposed by the broker for the money. The written consent may be given to the broker by a letter or facsimile. A separate record shall be maintained of all moneys received subject to this section and shall further indicate the disposition thereof. Any funds received by a licensed salesperson shall be

delivered by the salesperson to the broker under whom the salesperson is at the time licensed.

As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by any person described by subdivision (a) or (c) of Section 17006 of the Financial Code.

715. Closing statement.

Within one month after the closing of a transaction in which title to a yacht is conveyed from a seller to a purchaser through a licensed broker, the licensee shall provide, or cause to be provided to the seller and purchaser, a closing statement in writing of the selling price thereof, including all charges and credits which shall be itemized, and in the event an exchange of yachts is involved, the information shall include a description of the yachts and amount of added money consideration, if any. The licensee shall affix his or her signature to the closing statement to attest to the facts provided in the closing statement. If the transaction is closed through escrow and the escrow holder renders a closing statement which reveals the information, that shall be deemed compliance with this section on the part of the licensed broker.

716. Transactions, written authorization required and copies.

(a) No broker shall engage in any transaction for which a license is required under this article without first obtaining a signed written authorization to do so from the broker's principal. An authorization to sell shall contain a description of the vessel, including the undocumented vessel's registration number or the name, official number, and home port if the vessel is documented with a federal agency. The written authorization shall also state the type of listing, the gross listing price, the agreed upon commission or other compensation of the broker, and any repairs authorized to be made.

(b) An offer to purchase shall contain the description of the yacht, including the undocumented vessel's registration number or the name, official number and home port if the vessel is documented with a federal agency. The written authorization to purchase shall also state the amount of deposit, terms of the sale, and any contingencies or conditions under which a deposit shall not be returned if the sale is not completed.

(c) When a broker prepares, or there is prepared on behalf of a broker, a written authorization to sell or purchase, the broker shall deliver a copy of the written authorization to the person executing it. Receipt of the copy shall be made on the face of the original written authorization.

717. Application for broker license.

Application for a license as a broker shall be made on forms prescribed by the department and shall be signed by the applicant. The application shall be accompanied by the broker license examination fee.

718. Application for salesman license.

Application for a license as a salesman shall be made on forms prescribed by the department and shall be signed by the applicant and by the employing broker. The application shall be accompanied by the salesman license examination fee.

719. Qualifications.

(a) A person shall be deemed qualified to submit an application for a broker's license if, as shown on the department's records, the person meets all of the following requirements:

(1) Is at least 18 years of age.

(2) Has not been cited for a violation of this article within the preceding two years.

(3) Possesses a working knowledge and understanding of the principles of the yacht brokerage business and profession.

(4) Either has been employed within five years preceding his or her application as a California licensed salesperson for at least one year, has been licensed as a California broker within five years preceding his or her application, has owned and operated a marine business selling new or used yachts for a minimum of three continuous years,

or has been employed as a broker or a yacht salesperson in another state where that employment was a primary occupation for a minimum of three continuous years immediately preceding application for a broker's license in California. Proof of employment as a broker in another state or as an employee of a marine business selling new or used yachts in California shall be in the form of all of the following:

(A) State, if applicable, and federal income tax returns, or a proof of earning statement made by the applicant under penalty of perjury, for the three-year period preceding the filing of the application in California.

(B) If bonded, a statement issued by the applicant's bonding company that no action has been taken against the bond for fraud or gross misrepresentation for the period for which the bond has been issued.

(C) A copy of all business permits, issued by any state, county, or city agency, which, if applicable, includes the fictitious business name ("dba" or "doing business as") under which the applicant conducted a yacht or ship brokerage business or a marine business selling new or used yachts in California for the three-year period preceding application for a California broker's license.

(D) If the applicant conducts a yacht or ship brokerage business in another state that requires broker or salesperson licensing, evidence of a current license issued by that state.

(b) If the applicant is a partnership, then one of the partners of the applicant shall have the foregoing qualifications.

(c) If the applicant is a corporation, then the officer or officers of the corporation to be designated for a license as provided in this article shall have the foregoing qualifications.

720. Proof concerning applicant's reputation.

The department may require proof as it deems advisable concerning the honesty, truthfulness, and good reputation of the applicant for a broker's or salesperson's license or of the officers of any corporation making application before the issuance of a broker's license. For this purpose, the director may call a hearing in accordance with this article, and at the request of the applicant shall call a hearing.

721. Written examination.

(a) In addition to any proof of honesty, truthfulness, and good reputation required of any applicant for a broker's license, the department shall ascertain by written examination that the applicant, and in case of a partnership or corporation applicant for a broker's license that an officer or partner thereof through whom it proposes to act as a yacht broker, has all of the following:

(1) Appropriate knowledge of the English language, including reading, writing, and spelling, and of arithmetical computations common to the yacht brokerage business.

(2) An understanding of the principles of the yacht brokerage business and profession, including an understanding of a certificate of ownership, certificate of number, security agreement, bill of sale, and other documents required to register and number, and to transfer title of an undocumented vessel pursuant to the Vehicle Code.

(3) An understanding that transfer of title of a documented vessel shall be performed in accordance with federal law as administered by the United States Coast Guard.

(4) An understanding of maritime and admiralty liens with respect to vessels and the requirements of the Department of Transportation or other federal agency and the United States Coast Guard with respect to documentation, mortgaging, and transferring of title of documented vessels.

(5) An understanding of agency contracts and of types and kinds of listings and deposit receipts with respect to vessels.

(6) A general knowledge of equipment legally required on a yacht.

(7) A general understanding of the obligations between principal and agent, and of the fiduciary relationship between them, and of business ethics pertaining to the business and profession of yacht brokers and yacht salespersons.

(8) A general knowledge of yachts.

(b) (1) If an applicant fails to pass the required examination, the department shall so notify the applicant, may suggest further study, and, upon payment of the required fee, shall schedule a reexamination.

(2) Notwithstanding paragraph (1), whenever an applicant fails to pass the written examination on the third attempt to do so, he or she shall be prohibited from retaking the examination for a period of six months from the date of taking the third examination.

722. Term of broker's license, renewal.

The license first issued to a broker shall be for a period of one year. Such license may be renewed for periods of two years upon filing of the required application and payment of the required fee.

723. Term of salesman's license, renewal.

The license first issued to a salesman shall be for a period of one year. Such license may be renewed for periods of two years. Applicants for renewal of such licenses shall submit a recommendation of the broker who is to be his employer certifying that the applicant is honest, truthful, and of good reputation. The license of a salesman may be renewed upon filing the required application and payment of the renewal fee.

724. License renewal, expiration, reinstatement, and fees.

(a) An application on the form prescribed by the department for the renewal of a broker or salesman license shall be filed with the department prior to the last day of the period for which a previous license was issued, accompanied by the applicable renewal fee.

(b) Every license not renewed in accordance with subdivision (a) shall expire at midnight of the last day of the period for which it was issued and shall immediately be returned to the department. The license may thereafter be reinstated only upon the filing of an application therefor, accompanied by the payment of the renewal fee required by this article, together with a penalty equal to 50 percent of the renewal fee. No examination shall be required for the reinstatement of a license which has expired solely for nonpayment of the renewal fee as required by this subdivision, subject to Section 726.

(c) An application for reinstatement of a license which has expired pursuant to subdivision (b) shall be executed under penalty of perjury. The department may refuse to grant reinstatement if the applicant after the expiration of the license has performed any act or participated in any transaction for which a license is required by this article or, during the period, has committed any offense or performed any act which would be cause for the suspension or revocation of a license under this article. However, the department shall not refuse to grant reinstatement unless written notice of the grounds of the refusal is mailed or delivered to the applicant.

(d) A salesman's license which expires other than pursuant to subdivision (b) and under conditions beyond the control of the salesman may be reinstated with another broker on payment of the transfer fee and the renewal fee if applicable and without penalty.

(e) All fees charged and collected under this article shall be paid by the department at least once a month, accompanied by detailed statement, into the State Treasury to the credit of the Harbors and Watercraft Revolving Fund.

(f) All fees charged and collected under this article and paid into the State Treasury are continuously appropriated to carry out the provisions of this article and shall be paid in the manner provided by law.

(g) The department may establish a revolving fund in an amount that it may determine subject to the approval of the director.

725. Temporary licenses.

Temporary licenses may be issued to salespersons under the following conditions:

- (a) The licenses shall be issued for a period not to exceed 60 days and only one license shall be issued to each applicant.
- (b) An application shall be filed for a temporary license and for a permanent license and at the same time the applicant shall pay all the prescribed fees.
- (c) The application shall be in the form and upon the conditions required by the department as provided in this article with respect to a permanent salesperson's license.
- (d) On or before the expiration date of the temporary license, the licensee shall take a written examination for a permanent license. If, without a valid excuse, the licensee fails to appear for the examination at the time prescribed, the examination fee shall be forfeited. In the event of failure to pass the required examination, the department shall notify the applicant, may suggest further study, and upon payment of fees, shall schedule a reexamination.
- (e) The applicant shall be at least 18 years of age.

726. Failure to renew, requirements for new license.

- (a) A person who fails to renew his license within two years after its expiration may not renew it pursuant to Section 724. Such person may apply and obtain a new license, in which case all of the provisions hereof shall apply as if such person were applying for a license for the first time.
- (b) In the event a salesman's license expires only because that salesman procured a broker's license or a broker's license expires only because that broker procured a salesman's license, either former license may be reinstated under the provisions of Section 724 within two years of the expiration of the latter license.

727. Certificate of convenience.

The department may issue a certificate of convenience to the executor or administrator of the estate of a deceased broker, or if no executor or administrator has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the widow or other heir otherwise entitled to conduct the business of the deceased, permitting such person to act as a broker in the conduct of the business of the estate for a period of 90 days from and after the date of death pending, but not later than, disposal of the business unless such person qualifies by examination for and obtains a permanent broker's license. The department may extend the certificate of convenience beyond the 90 days on the showing of a just and reasonable cause.

728. Corporation licenses.

- (a) Every license issued to a corporation entitles one officer thereof on behalf of the corporation to engage in the business of broker without the payment of any further fee and such officer shall be designated in the application of the corporation for a license. When a broker's license is issued to a corporation, if it desires any of its officers other than the officer designated by it in the application as provided in this section to act under its license as a broker, it shall procure an additional broker's license to so employ each of such additional officers. For each officer other than the officer so designated through whom the corporation engages in the business of broker, the appropriate original or renewal fee shall be paid in addition to the fee paid by the corporation.
- (b) Each officer of a corporation through whom it is licensed to act as a broker is, while so employed under such license, a licensed yacht broker, but licensed only to act as such for and on behalf of the corporation as an officer.
- (c) An officer of a corporation licensed to act as a broker on behalf of the corporation who desires also to act as a broker or salesman under this article on his own behalf shall procure a separate license in accordance with the provisions of this article.
- (d) The department may deny, suspend, or revoke the broker's license of a corporation as to any officer acting under its license without revoking the license of the corporation. Every corporation making application for a license under this article shall furnish the department with a resolution of its board of directors giving the name of the officer or officers who shall act for and on behalf of the corporation.

(e) Every corporation licensed under the provisions of this article may by resolution of its board of directors substitute another officer for the one named in the corporation license, provided the person to be substituted qualifies as provided for in this article for a broker's license and the corporation pays the appropriate original, renewal, or transfer fee as set forth in this article.

729. Partnership licenses.

(a) Every license issued to a partnership entitles one partner thereof on behalf of the partnership to engage in the business of yacht broker without the payment of any further fee and such partner shall be designated in the application of the partnership for a license.

(b) When a broker's license is issued to a partnership if the partnership desires any partner or partners other than the partner designated by it as provided in this section to act under its license as a broker, the partnership shall procure an additional broker's license for each of such additional partner or partners. For each partner other than the partner designated through whom the partnership engages in the business of yacht broker, the appropriate original or renewal fee shall be paid in addition to the fee paid by the partnership.

(c) Each partner of a partnership is licensed to act as a broker while such a partner under such license is a licensed broker, but is licensed only to act as such for and on behalf of the partnership.

(d) A partner of a partnership licensed to act as a broker on behalf of the partnership who desires also to act as a broker or salesman under this article on the partner's own behalf shall procure a separate license in accordance with the provisions of this article.

(e) The department may deny, suspend, or revoke the broker's license of a partnership as to any partner acting under its license without revoking the license of the partnership.

(f) Every partnership making an application for a license under this article shall set forth in the application the name of the partner who is to act under the license for and on behalf of the partnership.

(g) Every partnership licensed under the provisions of this article may substitute another partner for the one named in the partnership license provided the person to be substituted qualifies as provided for in this article for a broker's license and the partnership pays the appropriate original, renewal, or transfer fee as set forth in this article.

729.5. Limited liability company.

(a) Any limited liability company licensed by the department as a yacht broker on July 1, 2001, in order to continue to be licensed after that date, shall apply to the department in the form of an individual, partnership, or corporation for a broker's license on or before the expiration date of its existing license.

(b) On or before February 1, 2001, the department shall provide notice of the requirements imposed by subdivision (a) to any limited liability company licensed by the department.

730. Surety bond, action on bond, new bond.

(a) Before any broker's license shall be issued or renewed by the department for any applicant, the applicant shall procure, file, and maintain with the department a good and sufficient bond in the amount of fifteen thousand dollars (\$15,000) with a corporate surety duly licensed to do business within the State of California, and conditioned that the applicant shall not practice any fraud or deceit or make any fraudulent or grossly negligent representations that will cause a monetary loss to any person for whom the broker acts under this article.

(b) If any person suffers any loss or damage by reason of any fraud or deceit practiced on that person or any fraudulent or grossly negligent representation made to that person by a licensed broker or the broker's sales personnel acting for the broker on the broker's behalf or within the scope of the employment of the sales personnel, which fraud, deceit, or fraudulent or grossly negligent representation is practiced or made with respect to any act of the broker or the sales personnel for which a license

is required under this article, that person has a right of action against the broker, the sales personnel, the surety upon the broker's bond, or the deposit held by the department in accordance with Section 731. If any action is commenced upon the bond, the surety thereunder and the licensed yacht broker with respect to whom the bond has been issued shall immediately notify the department of the action.

(c) If an action is commenced on the bond of a licensed broker, the department may require the filing of an additional bond, and immediately upon the recovery in any action on the bond, the broker described therein shall file a new bond. Failure to file an additional bond within 15 days after notification that an additional bond is required by reason of action against the bond or after recovery on a bond constitutes a failure to comply with this article, in which case the license of the licensed broker whose bond has been canceled or on whose bond recovery has been made may be suspended.

(d) If a broker's bond is canceled for a reason other than an action being commenced upon it, a new bond shall be filed by the broker. Failure to file a new bond within 30 days after notification that a new bond is required because a previous bond has been canceled constitutes a failure to comply with this article, in which case the license of the licensed broker whose bond has been canceled may be suspended.

731. Alternative bond requirement.

(a) A cash deposit given instead of the bond required by Section 730 shall be held by the department during the life of the license and for a period of four years after the expiration of the license.

(b) If an action is commenced on the cash deposit of a licensed broker pursuant to subdivision (a), the department may require the filing of an additional cash deposit, and immediately, upon the recovery in any action on the deposit, the broker described therein shall file a new cash deposit, equal to the amount specified in the action or recovery, but no greater than the amount specified in subdivision (a) of Section 730, whichever is less. Failure to file an additional cash deposit within 30 days after notification that an additional cash deposit is required by reason of an action filed against the cash deposit, or after the recovery on a cash deposit, shall constitute a failure to comply with this article, in which case the department may suspend the license of the licensed broker whose cash deposit has been acted on, or where a cash deposit recovery has been made.

732. Denial of application, suspension, or revocation.

The department may deny an application or temporarily suspend or permanently revoke the license of a broker or a salesperson at any time if the licensee, while a broker or salesperson, in performing or attempting to perform any of the acts within the scope of this article, has committed any of the following acts:

(a) Makes any substantial misrepresentation, including a false advertisement or an omission of relevant facts upon which any person has relied.

(b) Makes a false warranty of a character likely to influence, persuade, or induce any person with whom business is transacted under this article.

(c) Engages in a continued and flagrant course of misrepresentation or makes false warranties whether or not relied upon by another person.

(d) Acts for the buyer and seller in a transaction without full disclosure of that fact to the buyer and seller and their written consent, except in the case where the selling broker is not the listing broker.

(e) Commingles the money or other property of his or her principal with that of his or her own or uses it for any purpose other than that for which it was entrusted, when the yacht involved in the transaction is not his or her own.

(f) Disburses or uses entrusted money for purposes other than those specifically authorized by Section 714.

(g) Uses coercive or oppressive methods for the purpose of obtaining business or of procuring a listing or participating in a transaction.

(h) Quotes prices different from the gross listing prices without the consent of the seller.

- (i) Engages in any other conduct constituting fraud or dishonest dealings, either with respect to his or her principal or other persons.
- U) Permits his or her name to be used for the purpose of assisting any person who is not a licensed broker or salesperson to evade this article.
- (k) Demonstrates negligence or incompetence in performing any act for which he or she is required to hold a license.
- (l) As a broker licensee, fails to exercise reasonable supervision over the activities of his or her salespersons, or, as the person designated by a corporate or partnership licensee, fails to exercise reasonable supervision and control over the activities of the corporation or partnership for which a yacht and ship broker's license is required.
- (m) Fails to act in accordance with, or disregards, his or her fiduciary duty toward a principal.
- (n) Violates any provisions of Section 708, 712, 714, 715, 716, 730, or 731, or the rules and regulations of the department implementing this article.

733. Additional grounds for denial, suspension, or revocation.

The department may deny an application or may suspend or revoke the license of a yacht broker or yacht salesperson who, within four years immediately preceding, has committed any of the following acts:

- (a) Has procured a license under this article for himself or herself or another by fraud, misrepresentation, or deceit.
- (b) Has been convicted of a felony or any crime involving moral turpitude.
- (c) Has withheld information from the department that he or she at any time has been convicted of a felony or any crime involving moral turpitude.
- (d) Knowingly authorizes, directs, connives, or aids in the publication, advertisement, distribution, or circulation of any material false statements or misrepresentation concerning his or her business or any transaction under this article.
- (e) Has acted or conducted himself or herself in a manner that would warrant the denial of his or her application for a broker's or salesperson's license pursuant to Section 720.

734. Hearings and investigations.

- (a) The department shall not deny, suspend, or revoke a license granted under this article without a hearing, except the department may suspend a license without a hearing for failure of a broker to maintain a bond as specified in subdivision (d) of Section 730, or for failure of a broker to make available to the department, for inspection, any records, as set forth in Section 735.1.
- (b) The department may upon its own motion, and shall upon the verified written complaint of any person which sets forth facts which could be grounds for the denial, suspension, or revocation of a license pursuant to this article, investigate the actions of any broker or salesman whether or not licensed.
- (c) The suspension, expiration, or revocation by operation of law of a license issued by the department, or its surrender, whether voluntary or not, does not deprive the department of its authority, during the period in which the license may be renewed, reinstated, or reissued, to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law, to enter an order suspending or revoking the license, or to take any action against the licensee on any other ground provided by law.
- (d) A broker whose license has been suspended pursuant to subdivision (a) for failure to make records available to the department for inspection, may request that an expedited hearing be held within 30 days of the suspension before an administrative law judge to appeal the suspension. Upon a showing of good cause to reinstate the license, the broker's license shall be reinstated. If no good cause is found, the broker's license may be revoked.
- (e) (1) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding under this article, the department may request the administrative law judge to direct a licensee found to have committed a violation or violations of

change, such license shall be immediately returned to the department.

(c) Every salesman's license shall remain in the control of the broker by whom the salesman is employed until the license is canceled or until he leaves the employment of the broker. Immediately upon the salesman's withdrawal from the employment of the broker, such broker shall return such salesman's license to the department for cancellation and shall notify the department of the exact date of termination.

(d) Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the department may be issued without charge to such licensee, which card shall be evidence that the licensee is duly licensed pursuant to this article. When any broker to whom a card is issued ceases for any reason to be licensed as a broker, the card issued to such broker shall be mailed or delivered by the broker to the department for cancellation. When any salesman to whom a card is issued ceases to be a salesman for any reason, the card issued to him shall be mailed or delivered to the department for cancellation.

735.1. Records retention, availability.

A licensed broker shall retain, for four years, copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed or obtained by the broker in connection with a transaction for which a broker's license is required. These records shall be made available to the department for inspection upon request. If the records have not been made available within 30 days of a request by the department, the department may subpoena the requested records. If the records have not been made available within 14 days from the requested day of production on the subpoena, and the director determines that the public may be at risk if the broker continues to be licensed, the department may suspend the broker's license pursuant to Section 734.

735.2. Electronic record and digital signature.

The department shall accept any electronic record or electronic or digital signature created, generated, sent, communicated, received, or stored by electronic means on or after January 1, 2000. A "digital signature" means a signature that complies with the regulations adopted by the Secretary of State relating to digital signatures.

736. Fee schedule.

The department shall charge and collect the fees prescribed by this article in accordance with the following schedule:

- (a) Two hundred dollars (\$200) for each original broker's license.
- (b) Seventy-five dollars (\$75) per year for the renewal of an original broker's license.
- (c) One hundred dollars (\$100) for each original salesperson's license.
- (d) Fifty dollars (\$50) per year for the renewal of an original salesperson's license.
- (e) Twenty-five dollars (\$25) for a salesperson's temporary license.
- (f) Twenty-five dollars (\$25) for each license obtained by a broker for a branch office and for each renewal thereof.
- (g) Ten dollars (\$10) for each transfer of a salesperson's license for each change of employment.
- (h) Ten dollars (\$10) for each duplicate license.
- (i) Ten dollars (\$10) for each substitution of a name in the license of a corporation or a partnership.
- (j) Ten dollars (\$10) for the granting of each certificate of convenience under Section 727.
- (k) Twenty-five dollars (\$25) for each examination.
- (l) A criminal records investigation fee, collected for both a salesperson's and broker's license, in an amount determined by the Department of Justice, or by any other state or federal custodian of criminal records from which the department has requested information concerning an applicant's criminal record, not to exceed the amount needed to reimburse the department for conducting the criminal records investigation.

this article to pay a sum not to exceed the reasonable costs of the investigation, prosecution, and enforcement of the case.

For purposes of this paragraph, "reasonable costs" shall include, but not be limited to, all of the following:

(A) Attorney, paralegal, and investigator fees and costs, including salary, travel, and other expenses attributable to hours expended on the case by employees of the office of the Attorney General and the department.

(8) Witness fees, travel, and other expenses paid to or in connection with witnesses to facilitate their attendance and testimony at the disciplinary proceeding or to facilitate their appearance at a deposition, by video or by other means.

(C) Fees and costs attributable to expert review, including, but not limited to, laboratory analysis, physical examination, and psychological examination, whether by an independent expert or a staff member of the department.

(D) Administrative expenses attributable to case preparation and presentation, including, but not limited to, exhibit preparation and document copying, postage, telephone calls, word processing, whether by an independent contractor or a staff member of the department, and costs for obtaining certified public documents.

(2) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(3) A declaration under penalty of perjury of the actual costs, or a good faith estimate of costs if the actual costs are not available, signed by the director, and containing sufficient information by which the administrative law judge can determine the costs incurred in connection with the matter and the reasonableness of the costs, shall be prima facie evidence of reasonable costs of investigation, prosecution, and enforcement of the case.

(4) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to paragraph (1). The department may reduce or eliminate the award of any costs by the administrative law judge, and may request the administrative law judge to reconsider his or her decision if the proposed decision does not make a finding on costs as requested pursuant to paragraph (1).

(5) Where an order for recovery of costs is made and timely payment is not made as directed, the department may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the department may have as to any licensee to pay costs.

(6) In any action for recovery of costs, proof of the department's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(7) The department shall not renew or reinstate the license of any licensee who does not pay all of the costs ordered under this section.

(8) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Harbors and Watercraft Revolving Fund.

(9) Nothing in this section shall preclude the department from including the recovery of the costs of investigation, prosecution, and enforcement of a case in any stipulated settlement.

735. Broker's offices.

(a) Every broker shall maintain a definite place of business in this state as his principal office and may establish other branch offices throughout the state. Every broker maintaining more than one place of business within this state shall procure an additional license for every branch office maintained by him. Every broker shall keep the department informed at all times of the address of his principal and branch offices and any changes of address.

(b) Every broker's license shall be prominently displayed in the broker's principal office. The license for each branch office, if any, of such broker shall be prominently displayed in such branch office. Every salesman's license shall be prominently displayed in the principal office or branch office of the broker in which the business of such salesman is transacted. When a broker or any branch office to which a license was issued, for any reason ceases to be licensed, or when there is a name or address

737. Proceedings, hearings, judicial review.

(a) The proceedings and hearings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, including the right of judicial review as provided for in Section 11523 of the Government Code.

(b) In addition to any other disciplinary action and in lieu of a separate action in civil court, the department, as part of a disciplinary hearing conducted by an administrative law judge, may impose a civil penalty as provided in Section 739.

738. Violations.

(a) Each violation of a section or subdivision of a section of this article, excepting Section 709, is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), provided that a violation committed willfully and with knowledge of the provisions of the violated section or subdivision is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(b) Each violation of Section 709 is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

739. Civil penalties.

Any person who violates any provision of this article, or any regulation adopted pursuant to this article, is liable for a penalty in an amount not less than one hundred dollars (\$100) and not to exceed one thousand five hundred dollars (\$1,500) for each separate violation. The penalties provided in this section are in addition to the remedies or penalties available under all other laws of this state. Every civil or administrative action brought under this article at the request of the director shall be brought by the Attorney General in the name of the people of the State of California, in any court of competent jurisdiction, or through the Office of Administrative Hearings pursuant to Section 737, except that, when the civil action is to be filed in a small claims court, the director may bring the action.

The amount of penalty that is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of the violation upon the implementation of the purposes and provisions of this article. Any sum that is recovered under this section shall be deposited in the State Treasury to the credit of the Harbors and Watercraft Revolving Fund.

740. Statute of limitations.

Any action taken in the enforcement of this article shall be commenced within three years of the department's discovery of the facts constituting the grounds for that action.

**DEPARTMENT OF PARKS AND RECREATION
DIVISION OF BOATING AND
WATERWAYS TITLE 14, ARTICLE 8**

Yacht and Ship Broker Licenses

7601. General Definitions.

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases, and references appearing in this Chapter shall have meanings as ascribed herein.

(a) An "exclusive listing" is a written agreement between the owner of a vessel and a broker which provides that the commission is due the broker named in the contract if the boat is sold, traded, or exchanged within the time limit which must be specified in the contract by the said broker, by any other broker, or by the owner.

(b) An "open listing" is a written agreement between the owner of a vessel and a broker which authorizes the broker to negotiate the sale, trade, or exchange of the vessel, but reserves to the owner the right, without incurring a liability for the payment of a commission to said broker, to negotiate the sale, trade, or exchange of said vessel himself, or to enter into open listing agreements with other brokers respecting said vessel.

(c) "Advertising" is any written or printed communication or oral communication made in accordance with a text or outline that has been reduced to written form which is published for the purpose of inducing persons to sell or purchase a product or use a service.

(d) An "applicant" is a person applying to the Department of Boating and Waterways for a license.

(e) The "Act" is the Yacht and Ship Brokers Act and regulations pertaining thereto.

(f) The "Code" is the Harbors and Navigation Code.

(g) The "Director" is the Director of the Department of Boating and Waterways.

(h) The "Department" is the Department of Boating and Waterways.

(i) An "examination" is an examination to qualify for any license issued under authority of the Yacht and Ship Brokers Act.

(j) A "license" is any license issued under authority of the Yacht and Ship Brokers Act.

(k) The "licensee" is a licensed broker or salesman.

(l) A "permanent license" is a Yacht and Ship Broker's or Salesman's License originally issued for one year and renewable for one or two years, as opposed to a salesman's temporary license issued for sixty days.

(m) The "Yacht and Ship Brokers Act" is Chapter 5 of Division 3, Article 2 of the Code.

(n) "Consummated" means that buyer and seller shall have a signed purchase agreement, which agreement shall contain all the conditions of the sale, and said conditions have been met.

(o) "Completed" means all the conditions of the purchase agreement have been met and the bill of sale has been passed from seller to buyer.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 701, Harbors and Navigation Code.

7602. Advertising.

(a) Advertising of any service for which a license is required under the provisions of the Yacht and Ship Brokers Act shall disclose the name of the business as shown on the required license.

(b) In addition to the name of the broker on signs or in advertising, the words "licensed yacht broker," "yacht broker," "ship broker," or "boat broker," or "brokerage" in each such context may be used to indicate that the broker is a licensed yacht broker.

(c) No person, firm, or corporation may use any of the designations set forth in subdivision (b) hereof unless duly licensed under the Yacht and Ship Brokers Act, or otherwise exempted by law.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 708, Harbors and Navigation Code.

7603. Investigative Authority.

(a) The department may, with reasonable cause to suspect that a person or business is acting in the capacity of a broker, investigate that person or business to ascertain whether a license is or is not required.

(b) The department shall have authority to investigate and take lawful action deemed advisable with regard to complaints against brokers or salesmen acting only in a capacity for which they must be licensed.

(c) Any person, including a partnership or corporation purchasing used yachts for resale or taking yachts intrade for resale, shall transfer actual title to any such yacht into his name, or have in his possession, subject to inspection by the department, a good and sufficient bill of sale or other fit evidence of title if such person or firm wishes to claim exemption from licensing requirements of the Yacht and Ship Brokers Act.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703, 706, 720, 732, 733 and 734, Harbors and Navigation Code.

7604. Trust Accounts.

(a) In the absence of the broker, a licensed salesman authorized in writing by the broker, or other persons authorized by this section to make withdrawals from trust accounts, shall make deposits to trust accounts pursuant to section 714 of the Harbors and Navigation Code. Withdrawals shall not be made from a trust account maintained as provided by section 714 of the Harbors and Navigation Code except upon the signature of at least one of the following:

(1) The broker;

(2) A salesman, or group of salesmen jointly who are in the employ of the broker and who have been authorized in writing by the broker to make withdrawals from such trust accounts. The broker shall not authorize more than one salesman or group of salesmen at any one time to make such withdrawals;

(3) Where the licensee is a corporation, any corporate officer who may be designated in writing by the corporation.

(b) Every broker required to maintain such trust fund account shall keep records of all funds deposited therein, which records shall clearly indicate the date and from whom he received the money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction.

(c) Failure to maintain a trust fund account when required, and to deposit trust funds received promptly in said account, may be construed to be commingling, in violation of section 732, subsection (e) of the Harbors and Navigation Code.

(d) Upon request, the above-written authorization shall be made available to the department for its inspection.

(e) A check received from the offeror may be held uncashed by the broker

until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offerer has written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(f) In these circumstances if the offerer's check was held by the broker in accordance with subdivision (e) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account or into the hands of the offeree if offerer and offeree expressly so provide in writing not later than the next business day following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

NOTE: Authority cited; Section 703, Harbors and Navigation Code. Reference: Sections 714 and 716, Harbors and Navigation Code.

7605. Shared Listings.

If a broker intends to or does share a listing with other brokers, he must obtain authorization in writing from his principal to do so in his authorization to sell (listing agreement).

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 716, Harbors and Navigation Code.

7606. Fees.

In addition to license examination fees required by Sections 717 and 718 of the Harbors and Navigation Code to accompany applications for licenses, all other appropriate fees prescribed by Section 736 shall accompany such applications.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 736, Harbors and Navigation Code.

7606.1. Time Periods for Processing Yacht and Ship Broker, Salesman, and Associated Licenses.

(a) The Department shall notify the applicant, in writing, within 10 days from receipt of application, that the application is complete, or that the application is deficient, and what specific information is required.

(b) The Department shall then process the completed application for license(s), as required by Sections 717, 718, 722, 723, 724, 725, 727, 728, 729, and/or 735, Harbors and Navigation Code, and reach a decision to issue a license within 30 to 90 days, the median being 60 days.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 724, Harbors and Navigation Code; and Section 15376(a)-(c), Government Code.

7607. Written Examination.

An applicant who fails to appear for a scheduled written examination without notifying the Department prior to the exam date shall forfeit the examination fee and be required to pay an additional exam fee prior to taking any subsequent examination.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 721, Harbors and Navigation Code.

7608. Broker Qualifications.

(a) In addition to those persons specified in Section 719 of the Harbors and Navigation Code, if an individual can show that department records are incorrect, and he can, in fact, prove that he has been employed as a licensed Yacht and Ship Broker or Salesman for at least one year within the preceding

five years, such applicant shall be deemed qualified to take the Yacht Broker's examination for a Yacht and Ship Broker's License.

(b) In addition to applicants described in Section 719(d), every applicant for a broker's or salesman's license and every person entitled to act in the capacity of a broker on behalf of a corporation or partnership shall be at least 18 years of age.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 719, Harbors and Navigation Code.

7609. License Reinstatement.

Application for reinstatement of a license shall be on a form furnished by the department and must be accompanied by the appropriate fees.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 726 and 736, Harbors and Navigation Code.

7610. License Renewal (Failure to) Penalties.

(a) (Reserved)

(b) Any licensee who has failed to notify the department of a change of address, business structure, or in the case of a salesman, employing broker prior to renewal of license, and who does not submit the proper fee or fees for such change along with his renewal application and whose renewed or changed license is delayed beyond the expiration date of the license all or partly because of such failure, shall be subject to the penalty for reinstatement under provisions of Section 724(b) of the Harbors and Navigation Code.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 722, 723, 724, 726 and 738, Harbors and Navigation Code.

7611. Temporary Salesman's License.

(a) For purposes of Section 719(a) of the Harbors and Navigation Code, experience while holding a temporary license as a salesman shall not be considered as partial experience necessary to qualify for a broker's license.

(b) In the event a salesman having the only temporary license permitted by subsection 725(a) of the Harbors and Navigation Code does not obtain a permanent license, and two years have passed since the expiration date of such temporary license, the department may issue another temporary license, pursuant to provisions of subsection 726(a) of the Harbors and Navigation Code.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 719, 725 and 726, Harbors and Navigation Code.

7612. Salesman's License, Transfer of Restrictions on Employment.

(a) A temporary license to act as a salesman will be issued only to an applicant who has valid employment as such salesman with a duly licensed broker.

(b) A salesman's license or temporary salesman's license shall become inoperative upon the termination of such salesman's employment by a licensed broker, or upon the suspension or revocation of the employing broker's license. However, such salesman's license may be transferred to another licensed broker upon the holder's request. Such request for transfer must be accompanied by an application, as prescribed by the department, in writing executed by the new broker and the appropriate fee.

(c) No salesman shall associate himself with more than one broker concurrently.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 719, 725 and 726, Harbors and Navigation Code.

7613. Corporation and Partnership Licenses.

(a) A broker's license issued to a corporation or partnership shall disclose the name and license number of the corporation or partnership, along with the name of the officer or partner entitled to act on behalf of the corporation or partnership. Additional licenses issued to other officers or partners acting on behalf of the corporation or partnership only shall disclose the name and license number of the corporation or partnership, followed by the name of such additional officers or partners. In the event the corporation or partnership is dissolved, all licenses disclosing the name and number of the corporation or partnership become invalid.

(b) In the event a licensed partner of a partnership, who is also licensed as a broker on his own behalf while acting on behalf of the partnership, violates any provision of the Yacht and Ship Brokers Act or regulations pertaining thereto, which is grounds for suspension or revocation of a license, both licenses may be suspended or revoked, and if necessary, either or both bonds attached. If such licensed partner, while acting on his own behalf commits such violation, his licenses to act on his own behalf and on behalf of the partnership are both subject to such suspension or revocation, and if necessary, his bond is subject to attachment.

(c) In the event a licensed officer of a corporation, who is also licensed as a broker on his own behalf while acting on behalf of the corporation, violates any provision of the Act or regulations pertaining thereto which is grounds for suspension or revocation of a license, both licenses may be suspended or revoked, and if necessary, either or both bonds attached. If such licensed officer of a corporation, while acting on his own behalf commits such violation, his licenses to act on his own behalf and on behalf of the corporation are both subject to such suspension or revocation and his bond is subject to attachment.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 728 and 729, Harbors and Navigation Code.

7614. Broker's Bond or Deposit.

(a) The Yacht and Ship Broker's Bond Endorsement used shall be of the form prescribed and provided by the department.

(b) The department may not release its interest in a cash deposit made pursuant to section 731 of the Harbors and Navigation Code until a surety bond, dated to include the period for which the cash deposit was made, is filed with the department.

(c) The period required by subsection (b) will not exceed four years.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 730 and 731, Harbors and Navigation Code.

7615. Coercive and Oppressive Methods.

It shall constitute coercive and oppressive methods within the meaning of Section 732, subsection (g) of the Harbors and Navigation Code, if a licensee who is also the owner, operator, or otherwise in charge of a landing pier or mooring place:

(a) Exacts or demands all or part of a broker's fee or commission from the sale by the owner or any other licensed broker or salesman of any yacht or boat moored at said landing pier or mooring place solely because said yacht or boat was or is moored at such pier or landing place;

(b) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by an owner of a boat or yacht for the reason that said boat or yacht is listed for sale with another licensee;

(c) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by the purchaser of a boat or yacht moored at

such landing pier or mooring place because another licensee had made the sale of such boat or yacht.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 732 and 733, Harbors and Navigation Code.

7616. Definite Place of Business.

A definite place of business shall mean premises owned, rented, or leased by the broker which premises shall be locatable at a street address or road intersection and/or slip number, if applicable. A post office box and/or telephone number shall not be considered a definite place of business.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 735,

7617. Branch Offices.

(a) Any broker who regularly transacts business at a location other than his established principal office, or who employs other brokers or salesmen to do so shall be deemed to be maintaining a branch office at such location.

(b) A temporary exhibit of less than three weeks duration at a county or state fair or an organized boat or sport show shall not be deemed a branch office.

(c) If a broker uses more than one fictitious business name at the same location, a separate branch office license shall be obtained in addition to the current principal or branch office license at that location.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 708 and 735, Harbors and Navigation Code.

7618. Identification Card.

(a) A broker's identification card shall be issued only to the person named on the license, and there shall also appear on such card the name of the corporation, partnership or association which he represents. The broker to whom such identification card is issued shall place his signature thereon.

(b) A salesman's identification card shall be issued only to a licensed salesman, and shall bear the name of the employing licensed broker. The salesman shall place his signature thereon.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 735, Harbors and Navigation Code.

7619. Broker-Salesman Relationship Agreement.

Every broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties. Signed copies of the agreement shall be retained by the parties thereto, and shall be available for inspection by the department or its designated representative on request.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 703, Harbors and Navigation Code

7620. Retention of Records.

A licensed broker shall retain for four years copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by him or obtained by him in connection with a transaction for which a Yacht and Ship Broker's License is required. Upon request, these records shall be made available to the Department for their inspection.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703, 714, 715 and 716, Harbors and Navigation Code.

7621. Government Office.

When the holder of a Yacht and Ship Broker or Salesman's License is required to relinquish his license to assume an office in local, state, or federal government, he may have it reinstated at any time within six months of termination of his service in such office upon payment of the appropriate renewal fee.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 724, Harbors and Navigation Code.

7622. Property Taxes.

Any agreement between a buyer and seller of a yacht negotiated by a broker to prorate personal property taxes for a twelve-month period shall specify the applicable tax year and the date of the commencement of such twelve-month period, and shall clearly state the actual amounts payable by the seller and buyer.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703 and 716, Harbors and Navigation Code.

7623. Offers.

(a) The licensee must present or cause to be presented to the owner of the vessel any offer to purchase received prior to the completion of a sale, unless expressly instructed by the owner not to present such an offer.

(b) A licensee shall not present competing offers to purchase a vessel to the owner in such manner as to induce the owner to accept an offer which will provide the greatest compensation to the licensee, without regard to the benefits, advantages, and/or disadvantages to the owner.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 709 and 716(c), Harbors and Navigation Code.

SECTION 754 OF THE HARBORS AND NAVIGATION CODE

754. (a) Every keeper of a storage facility shall keep a written record of every vessel subject to registration with the Department of Motor Vehicles which is stored therein for compensation for a period longer than 12 hours. (b) The record shall contain the name and address of the person storing the same and a brief description of the vessel including its builder and builder's hull number. (c) All records shall be open to inspection by any peace officer.

TJNEEMPLOYMENT INSURANCE CODE

650. "Employment" does not include services performed as a real estate, mineral, oil and gas, or cemetery broker or as a real estate, cemetery or direct sales salesperson, or a yacht broker or salesman, by an individual if all of the following conditions are met: (a) The individual is licensed under the provisions of Chapter 19 (commencing with Section 9600) of Division 3 of, or Part 1 (commencing with Section 10000) of Division 4 of, the Business and Professions Code, Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code, or is engaged in the trade or business of primarily in person demonstration and sales presentation of consumer products, including services or other intangibles, in the home or sales to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, for resale by the buyer or any other person in the home or otherwise than from a retail or wholesale establishment. (b) Substantially all of the remuneration (whether or not paid in cash) for the services performed by that individual is directly related to sales or other output (including the performance of services) rather than to the number of hours worked by that individual. (c) The services performed by the individual are performed pursuant to a written contract between that individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to those services for state tax purposes.

Vessel Lien Sales

**CALIFORNIA BOATING LAW
HARBORS AND NAVIGATION CODE 500-509**

Article 4 .. Boaters Lien Law

Citation. This article shall be known and may be cited as the "Boaters Lien Law"

500. Definitions. As used in this article:

(a) "Department" means the Department of Motor Vehicles or any successor agency thereto which registers vehicles.

(b) "Mail" means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(c) "Services" means the making of repairs or performing labor upon or to, and the furnishing of supplies or materials for, any vessel or any trailer used in connection with a vessel.

(d) "Storage" means the safekeeping, mooring, berthage, wharfage, or anchorage of a vessel and the providing of parking space for any trailer used in connection with the vessel.

(e) "Vessel" means every description of watercraft, other than a seaplane on the water or a floating home, used or capable of being used as a means of transportation on the water and required to be registered, excluding any vessel which has a valid marine document issued by the United States or any agency thereof. For the purposes of this article, "vessel" includes any trailer used in connection with the vessel which is in the possession of the lienholder at the time the lien arises.

501.3. Time of notice. The time a notice or statement is given or sent, unless otherwise expressly provided, means the time a written notice to a person is deposited in the United States mails; or the time any other written notice is personally delivered to the recipient.

501.5. Other laws affected. The possessory vessel lien procedures described by the provisions of this article shall supersede any local ordinance and shall provide the exclusive means of enforcing these liens. Nothing in this article shall be construed as affecting any maritime lien cognizable under any federal law.

502. Effective time, amount, and elimination of lien. (a) Except as provided in Article 1.5 (commencing with Section 410) of Chapter 1 of Division 3, every person has a lien dependent upon possession of the vessel for the compensation to which he or she is legally entitled for services rendered to or storage of any vessel subject to registration with the Department of Motor Vehicles. The lien shall arise at the time a written statement of lien is sent to the registered owner of the vessel which specifies the charges for services or storage rendered and states that the vessel is subject to sale pursuant to the California Boater's Lien Law.

(b) Notwithstanding subdivision (a), no lien provided by this section for storage or service provided upon the request of any person other than the legal owner as shown on the registration certificate of the vessel shall be valid against the interest of the legal owner to the extent that the lien exceeds one thousand five hundred dollars (\$1,500) unless the person performing the storage or service obtains the consent of the legal owner to the amount of the excess. The legal owner may limit his or her consent to a specified dollar amount or period of time. The lien claimant shall give actual notice in

writing, prior to exceeding that amount, either by personal service or by registered mail to the legal and registered owner or owners as named and at the addresses as shown on the registration certificate, on a standard form provided by the department, containing a description of the storage or services, or both, a description and registration number of the vessel, the name of the registered owner or owners, the dollar amount or rate of the charges for the storage or services, and a statement in boldface type that, with respect to storage charges, consent of the legal owner shall be presumed unless the legal owner notifies the lien claimant within 15 days of receipt of the request for consent that he or she declines to consent to the storage. The lien claimant shall notify the legal owner as shown on the registration certificate of the vessel, by certified mail, that the vessel is subject to sale pursuant to the California Boater's Lien Law and that the lien claimed exceeds one thousand five hundred dollars (\$1,500).

(c) Notwithstanding subdivision (b), any claim for the cost of services may exceed the estimate given therefor by an amount not in excess of 10 percent thereof and the lien of the lien claimant shall be valid against the legal owner to the full amount of such excess to the same extent as would be a lien for the original estimate.

(d) With respect to claims for storage charges, a legal owner shall be presumed to consent to storage charges if he or she fails to respond to the request for consent set forth in subdivision (b) within 15 days after receipt thereof, such response to be addressed to the lien claimant at the address stated in the request for consent. In addition, consent in all cases is presumed for the 30-day period immediately following the giving of the request for consent notice.

(e) The legal owner may, upon declining consent, remove the vessel from the lien claimant only upon satisfying the lien of the lien claimant.

(f) Any lien arising under this section shall be extinguished, and no lien sale shall be conducted unless, 60 days after the lien arises, the lienholder does either of the following:

(1) Applies to the department for an authorization to conduct a lien sale.

(2) Files an action on the claim in court.

(g) Nothing in this section shall impair any rights or remedies which are otherwise available to the lien claimant against the registered owner under any other provisions of law.

503. Authorization to conduct lien sale of vessels valued at more than \$1,500.

(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.

(8) 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.

504. Lien sale procedures for vessels valued at \$1,500 or less. (a) For vessels with a value determined to be one thousand five hundred dollars (\$1,500) or less, the department shall promptly furnish the lienholder with the names and addresses of the registered and legal owners of record.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send by mail, with return receipt requested, a completed notice of pending lien sale form, a blank declaration of opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, to any other person known to have a proprietary interest in the vessel, and to the department.

(c) 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.

(d) All notices shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vessel, including make, identification number, and state of registration, to the extent available.

(2) The specific date, exact time, and place of sale, which shall be set not less than 35 days, but not more than 60 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vessel and any other person known to have an interest in the vessel.

(4) All of the following statements:

(A) The amount of the lien and the facts that 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) The person has a right to a hearing in court.

(C) If a court hearing 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 the notice of pending lien sale was mailed.

(D) If the declaration of opposition is signed and returned, the lienholder will be allowed to sell the vessel only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant.

(E) 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.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(e) If the department receives the completed declaration of opposition within the time provided, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 20 days of the notice and judgment is subsequently entered in favor of the lienholder or the

declarant subsequently releases his or her interest in the vessel.

(f) Service on the declarant by mail 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. If the lienholder has attempted service upon the declarant by that method at the address shown on the declaration of opposition and the mail has been returned unclaimed, the lienholder may proceed with the sale.

505. Release of owner's interest. (a) A registered or legal owner of a vessel may release any interest in the vessel after the lien has arisen. The release shall be dated when signed and a copy shall be given at the time the release is signed to the person releasing the interest.

(b) The release shall be in at least 12-point type and shall contain all of the following information in simple, nontechnical language:

(1) A description of the vessel, including the make, the identification number, and the state of registration, to the extent available.

(2) The names and addresses of the registered and legal owners of record with the department, to the extent available.

(3) A statement of the amount of the lien and the facts which give rise to the lien.

(4) A statement that the person releasing the interest understands that (i) he or she has a legal right to a hearing in court prior to any sale of the vessel to satisfy the lien and (ii) he or she is giving up the right to appear to contest the claim of the lienholder.

(5) A statement that (i) the person releasing the interest gives up any interest he or she may have in the vessel and (ii) he or she is giving the lienholder permission to sell the vessel.

(c) The release required by this section shall be filed with the department in connection with any transfer of interest in a vessel following a lien sale.

505.5. Unlawful practices. (a) Whenever the lien upon any vessel is lost by reason of the loss of possession through trick, fraud, or device, the repossession of the vessel by the former lienholder claimant revives the lien, but a lien so revived is subordinate to any right, title, or interest of a person under a sale, transfer, encumbrance, lien, or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.

(b) It is a misdemeanor for a person to obtain possession of a vessel or any part of the vessel subject to a lien pursuant to the provisions of this chapter by trick, fraud, or device.

(c) It is a misdemeanor for a person claiming a lien on a vessel to knowingly violate this article.

(d) A person found guilty of a misdemeanor violation of subdivision (b) or (c) shall be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail not to exceed six months, or both that fine and imprisonment.

506. Vessel available for inspection. No lien sale shall be undertaken pursuant to Section 503 or 504 unless the vessel has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

506.5. Owner redemption of vessel. Within 10 days after the sale of any vessel pursuant to the provisions of Section 503 or 504, the legal or registered owner may redeem the vessel upon the payment of the amount of the lien, all costs and expenses of the lien, together with interest on that sum at the legal rate from the due date thereof until the repayment. If the vessel is not redeemed, all lien sale documents required by the department to effect transfer of title shall then be completed and delivered to the buyer.

507. Fair market value declaration. (a) Except as provided in subdivision (b), at the time a lienholder applies to the department to conduct a sale under Section 504, the lienholder shall submit with the application a declaration by a licensed yacht and ship broker of the fair market value of the described vessel at a specific date within 30 days of that submission. The opinion need not be based upon a marine survey, but shall be based on a physical inspection of the vessel. No cause of action shall lie against the declarant on account of the opinion given.

(b) The declaration specified in subdivision (a) is not required if a public agency removes an abandoned vessel, or arranges, by contract, for the removal of the vessel, from a highway or from public or private property.

(1) For lien sale purposes, the public agency which removed the vessel, or arranged for the removal, shall determine if the estimated value of the vessel that has been ordered removed or stored is one thousand five hundred dollars (\$1,500) or less.

(2) If the public agency fails or refuses to determine the estimated value of the vessel within three days after the date of removal of the vessel, the lienholder or the lienholder's agent shall determine, under penalty of perjury, if the estimated value of the vessel that has been ordered removed or stored is one thousand five hundred dollars (\$1,500) or less.

507.5. Distribution of proceeds of sale. The proceeds of a vessel lien sale shall be disposed of as follows:

(a) The amount necessary to discharge the lien and the actual cost of selling the vessel shall be paid to the lienholder. Actual cost of sale shall include any fees charged by the department, publication fees, postage and service of notices, whether incurred as a result of a sale or redemption by the registered or legal owner without a sale. The actual cost of sale shall not exceed one hundred dollars (\$100) for a vessel without a trailer and one hundred twenty-five dollars (\$125) for a vessel with a trailer, exclusive of the charges of the department.

(b) The balance, if any, shall be forwarded to the department within 15 days of any sale. Within 30 days thereafter, the department shall send notice of the receipt of the funds, if the amount thereof exceeds ten dollars (\$10), to the legal and registered owners at the most current addresses shown in the department's records.

(c) Any person claiming an interest in the vessel may file a claim with the department for any portion of the funds forwarded to the department pursuant to subdivision (b). Upon determination of the department that the claimant is entitled to a portion of those funds, the department shall pay any entitled amount which does not exceed the balance of the funds remaining on deposit with the department that pertain to the vessel. The department shall not honor any claim unless the claim has been filed within three years of the date the funds were received. At the end of each fiscal year the department shall deposit in the Harbors and Watercraft Revolving Fund all funds held by it for which no claim was filed within the three-year period.

508. Requirements for assignment of lien. A lien provided for in this article for repairs, labor, supplies, or materials for, or for storage or safekeeping of, a vessel may be assigned by written instrument accompanied by delivery of possession of the vessel subject to the lien, and the assignee may exercise the rights of a lienholder as provided in this article. A lienholder assigning a lien as authorized in this section shall at the time of assigning the lien give written notice of the assignment either by personal delivery or by certified mail, to the registered and legal owners of the vessel, indicating the name and address of the person to whom the lien is assigned.

508.5. Department forms. All forms required pursuant to this article shall be prescribed by the department. Language used in the notices and declarations shall be simple and nontechnical.

509. Personal property. No lien shall attach to any personal property in or on the vessel except that which is carried on the vessel for lifesavings, safety, mooring, and operating purposes. Personal property not subject to lien shall be given to the registered owner or the owner's authorized agent upon demand.