



“Don’t abuse the surveyor” : Some guidelines to Ship Registration.”

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Lawyers are often accused of drowning what would appear to be simple issues in big words and layers of complexity. This being designed to confuse the public and justify a large fee at the end of the issue. In a faint attempt to redeem my profession, I thought I would follow on my suggestions in the previous Professional Skipper magazine (March/April 2005) (The Choice of a Ship's Registry) with an article on some practical and straightforward guidelines on the mechanics of the registry process. Ordinarily this would be a good cure for insomnia, but to those who have struggled through the registration of a vessel, and have had documents turned away from the ship's registry (or company register) these simple steps may be of some assistance.

The departure point is to determine whether it is a new registration that is being sought, or whether it is a transfer of ownership in the vessel (on the same register).

Where it is a new registration, this gives rise to a lengthy due diligence process by the registry who normally have no knowledge of the condition or history of the vessel. Ship's registries are understandably reluctant to accept vessels on their register that have a poor safety record or have things to hide. This is often the case with vessels that engage upon "forum shopping" in that they hop from one flag to another, in order to avoid either prosecution by fisheries authorities, or attachment of the vessel by creditors or for other nefarious (tax avoidance!) purposes. Thus before approaching the registry keep in mind that you will need to assemble the documentation that will give the registry a clear picture of the vessel. This will include the builder's certificate (in some cases), her ownership history, her class and safety records and her present trading pattern. It is useful to include recent photographs of the vessel as these convey a message in themselves. It is particularly important if the vessel is an elderly lady, to be meticulous in these processes, as persuasion will be required to convince the registry, that the vessel is indeed seaworthy, and does not have the potential to embarrass its new flag state, by becoming a pollution statistic. There are a number of useful resources that can be tapped into to determine the history of the vessel. In particular its record of detentions in the region will give the purchaser and the registry a clear picture of whether the vessel has been well maintained or not. The Equasis database and (www.equasis.org) website is a very useful departure point, if the applicant for registration does not have a recent previous history of the vessel. I have found that it is often the case that a purchaser will not be aware of the history of the vessel and does not have access to the previous documentation on the vessel.

Some registries have onerous requirements in establishing the ownership history of a vessel. Others are less scrupulous. On a new registration, some registries reserve themselves the right to track the full history of the vessel from the date of building to the date of registration prior to accepting registration of the vessel. AMSA (the Australian Maritime Safety Authority) for example require that the changes of ownership be evidenced by bills of sale or other documentation. It saves a great deal of frustration, on the part of the registrant (and doubtless the registrar of ships) if the ownership of the vessel is clearly mapped, and documented.

Next the identity of the applicant needs to be clearly spelled out. Once again the Registry needs to know who they are dealing with. In most cases, because of the detailed requirements of the ship registration legislation, company legislation, money laundering legislation and the like it will not suffice to merely have a company sign the forms, and the shareholders to remain anonymous. More often than not, the ship's register (and indeed the company register) will require the individual beneficial owner to identify him or herself and sign Declarations of Ownership. In some cases, (on offshore registers) the company register will require copies of utility bills (phone and electricity bills) to show that the beneficial shareholder is in fact a real person. And it takes a surprising amount of time to get all the paper together.

An applicant would be well advised to have a clear documentary trail, evidencing the ownership of the vessel back to a person, and to ensure that the person concerned (who will

be signing documents) has the necessary authorizations in the form of director's resolutions/powers of attorneys to sign the myriad of documents that will be needed.. Failure to track the chain of authorization, will inevitably lead to documents being rejected.

Original documents are the bane of any lawyer's existence. In our modern world of speedy communications, one would expect that original documents can be circulated quickly and easily, however, I have found that the contrary is often the case. Some ship's registries require the presentation of original documents and others are prepared to process documents on the basis of faxed or scanned documents, with the originals to follow. My rule of thumb, is to ensure that prior to lodging applications for registration, it is worth ensuring that all original documents have been assembled. These include bills of sale, powers of attorney, application forms, builder's certificates, copies of charters, class certificates etc. I find it useful to give a client a checklist to tick off. Where these documents have gone AWOL and cannot be tracked down (often the case), affidavits may need to be lodged (originals of course) explaining the gap in the chain. These "gaps" stand out like a missing teeth and I have found in practice, that there is no point avoiding the issue and hoping that the Registry will ignore the gap. You will be found out, believe me I have tried it! I

Resist the temptation to submit documents to ship's registries in dribs and drabs, and to rather assemble them all (originals of course), and then to lodge applications for registration in a completed form. I have found in practice that most ship's registrars, however, are well aware of the difficulties in obtaining these documents and have a discretion which they can (and do) regularly exercise, in urgent situations.

I have learned the hard way, to avoid a trap of seeking a provisional registration, rather than a full registration. In some cases, provisional registration may be granted to vessels in the absence of certain documents, or, as in the case of New Zealand and Australia, to facilitate the vessel proceeding from a point of purchase to its home port. This merely postpones the inevitable frustration of having to find the missing documents, or to fulfil the outstanding requirements. By the time of the lapse of the period of provisional registration, the ship owner has achieved his aim to get his vessel trading under the new flag and this level of interest in the outstanding requirements has, understandably, waned somewhat.

I indicated earlier in the article that the new registration of the vessel is often the most difficult. New registrations arise from a new building (less complicated) or the purchase of the vessel. The co-ordination of the deletion of the vessel from its former registry (and the discharge of the mortgages on that registry) and the registration of the vessel on the new registry, normally accompanied by the registration of additional mortgages is akin to the conveyancing of a house. Multiple parties that need to be coordinated, money has to change hands, and the banks need to be satisfied that their security position is not compromised. I have found it very useful, in presenting applications to ship's registers, to set out to the registrar the detail of the proposed transaction and the timing thereof and not to spring it upon them at the last minute.

These matters are normally urgent, particularly where a vessel cannot sail in the absence of the required documentation and no good purpose is served by attempting to register a vessel by ambush. The co-ordination of the parties (lawyers representing the banks and others) should be the task of the applicant for registration and not left to the Registry. I have found it useful to set a date that all the parties can work towards. Without a particular date being set, the registration process tends to drag on as documents are sought and the vessel is repaired to get into class.

In all of this, the role of the ship's surveyor and class should not be forgotten and is quite critical. I have found that in addition to the complexities of sourcing original documentation, co-ordinating the sales and deletion of the vessels and others, the thing that most often delays registrations, is outstanding survey requirements. These may be class or MSA requirements and are often quite innocuous. Life rafts, for example that have fallen out of the survey cycle, are a favorite pothole in the road. Another favorite is expired fire extinguishing equipment. Thus, a good guideline is that if you are purchasing a vessel, get the vessel surveyed by the flag state early in the play and attend to the defects noted well in advance of the registration process. And don't abuse the surveyor; it will cost you in the long run.

In conclusion, Registration processes are mechanical but require patience and attention to detail coupled with a good sense of humour.

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