



Liens – a Recap for Shipping Interests!

A lien is a form of security right, recognised under English law which is imperative to all shipping interests whether you are a financier, shipbuilder, owner, charterer, shipper, receiver, freight forwarder or warehouseman.

In short, it is a right created by operation of law or contract allowing a party to hold or take possession of, another parties' assets until that party meets a certain obligation such as, payment of the debt owed. It is not always necessary to have possession of the asset or a contractual agreement for a lien to be enforceable.

There are a few key types of lien:

Statutory Lien – prescribed by legislation giving a party a right to possess an asset until a debt has been paid.

Common Law/Possessory Lien – prescribed to a party in lawful possession of another party's asset allowing that party to retain possession until a debt has been satisfied. There is no right of sale and a lien will not automatically exist if ownership transfers to a third party.

Example: a shipbuilder's lien for repairs – the builder is in possession of the ship and has incurred expenditure. The lien permits the builder to retain possession until the shipowner satisfies payment.

Equitable Lien – inferred by a court in respect of a party's equitable interest in an asset. Possession is not required and the parties need not have agreed to create a lien.

Maritime Lien – created by law at the time a cause of action arises. It operates "in rem", attaches to the ship, survives a change of ownership and ranks ahead of a ship mortgage. Possession is not required and it conveys a right of arrest. The key types of maritime lien currently recognised under English Law are:

1. Wages of master and crew;
2. Masters disbursements;
3. Collision damage;
4. Salvage remuneration.

A “foreign maritime lien” (recognised in another jurisdiction) will only be enforceable if it falls within one of the categories above.

Contractual Lien – must be created as an express term of contract. It may extend a Statutory/Common Law/Possessory Lien to include a right of sale. It is the most robust form of lien provided the clause is comprehensively drafted and the contract enforceable.

Example: A shipowner's contractual lien over sub-freight. If the charterer fails to make full and timely payment of hire/freight, the lien activates and the owner assumes priority for payment over unsecured creditors.

A lien does not need to be registered with Companies House as it is not a charge. However, contractual liens can be akin to a charge so caution should be exercised – it may be appropriate to register in some circumstances.