TAMPA POLICE DEPARTMENT
DERELICT VESSEL
INFORMATION AND RIGHTS PACKET

I. BACKGROUND

The Tampa Police Department, in partnership with other State and local agencies, is committed to protecting and conserving the local waterways of this state to ensure the safety of the community and preserve our natural resources and wildlife. Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the Florida Wildlife Commission's (FWC) Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer. The state's waterways are regulated to ensure boating safety for residents and visitors. This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.

A vessel operator in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed. Vessel owners and operators must maintain safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted. Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent. It is unlawful to store, leave, or abandon any derelict vessel in this state.

At-Risk Vessels

Neglected or deteriorating vessels may not occupy the waters of this state. A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.
- Section 327.4107, F.S., allows a law enforcement officer to determine that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted structure or mooring.

Vessels that are found at risk of dereliction three or more times for the same condition within 18 months are abandoned property and declared a public nuisance.

Vessels Declared to be a Public Nuisance

If a vessel is declared at risk of becoming derelict under the same condition three or more times within an 18-month period, and if the determination results in dispositions other than acquittal or dismissal, the vessel is declared to be a public nuisance. A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.

A vessel that is declared to be a public nuisance and threatens navigation, or is a danger to the environment, property, or persons, may be relocated, removed, stored, destroyed, or disposed of by the FWC or other law enforcement. When a derelict vessel or a vessel declared to be a public nuisance through the process described above is located on the waters of the state, a law enforcement officer shall place a notice on the vessel in a form substantially similar to the one provided by statute. Law enforcement officers may dispose of derelict vessels or vessels declared to be a public nuisance.

Abandoned Vessels

"Abandoned property" means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner. If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel. The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal. Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property. Additional time provided for an owner or responsible party to remove a derelict vessel from the waters of this state, or to repair and remedy the vessel's derelict condition in the event of an accident or event, does not apply if the vessel was already derelict.

Removal of Derelict Vessels

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration. Section 823.11, F.S., addresses the treatment of derelict vessels. Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons. The FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.
The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.

Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring

It is a first-degree misdemeanor to store, leave, or abandon a derelict vessel in Florida. Violations are punishable by imprisonment of no more than one year and a fine of up to $1,000. Further, such violation is punishable by a civil penalty of up to $75,000 per violation per day. Each day during any portion of which the violation occurs constitutes a separate offense.

An owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- $100 for a first offense;
- $250 for a second offense occurring 30 days or more after a first offense; and
- $500 for a third offense occurring 30 days or more after a previous offense. An owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:
- $50 for a first offense;
- $100 for a second offense; and
- $250 for a third offense.

Any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of $500 and no more than 60 days of imprisonment.

II. INFORMATION RELATED TO A DERELICT VESSEL DETERMINATION

If you have received notice by way of a sticker on your vessel or a notification letter, then you have a right to administrative hearing on the determination that your vessel is derelict.

If you have been identified as the last known owner or responsible party for the above-described vessel, which the Tampa Police Department (TPD) has determined to be derelict as defined in section 823.11, Florida Statutes, you may request a hearing within the specified time frame.

The facts upon which TPD has made the determination that the vessel is derelict has been provided to you by way of mail.

Sections 376.15 and 823.11, Florida Statutes, make it unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel on the public waters of the State.

Subsection 705.101(3), Florida Statutes, defines all derelict vessels as abandoned property. Sections 376.15, 705.103, and 823.11, Florida Statutes, authorize law enforcement to remove or cause to be removed any derelict vessel from the public waters of the State and to destroy it. All costs incurred by law enforcement or authorized agents in the removal of the derelict vessel are recoverable against the owner or responsible party thereof.

In accordance with the above legislative mandate, TPD hereby requires and orders the last known owner or party responsible for this vessel to remove it from the public waters of the State immediately or to provide proof that legal transfer of the vessel's ownership occurred prior to the date of the notice. Failure to do so will result in criminal charges, pursuant to sections 376.16 and 823.11, F.S.

Furthermore, if the vessel is not removed from the public waters of the State, TPD intends to remove or cause the removal of this derelict vessel, and the vessel will be destroyed.

The determination that this vessel is derelict may affect your interests. As such, you have the right to request an administrative hearing. An explanation of your rights is provided . If you choose to do so, please complete and return the Election of Rights and the Petition for Administrative Proceeding forms which can be found at: https://www.tampa.gov/police/info/vessel-safety. Failure to make any election in this matter within twenty-one (21) days from the date of the notice shall be considered a waiver of your right to a hearing.

III. EXPLANATION OF RIGHTS RE: TAMPA POLICE DEPARTMENT DERELICT VESSEL DETERMINATION

If your substantial interests are or will be determined by the Tampa Police Department's action or proposed action stated in the notice, you may make any one of the following elections on the attached Election of Rights form and file the form within twenty-one (21) days from the date of the notice. If you so choose, please return the completed Election of Rights form with the enclosed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code, to the address listed on the Election of Rights form.

1. If you wish to contest the agency action or proposed action, but do not dispute any of the issues of material fact set forth in the notice, you may request an informal proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes. In the event that your request for an informal proceeding is granted, you will be given the opportunity to either simply present a written statement challenging the grounds upon which the Tampa Police Department has chosen to justify its action or inaction or present evidence in mitigation.

   Any request for an informal proceeding in this matter should be made by checking the space marked as 1 on the Election of Rights form and filing the completed and signed form with the Tampa Police Department within twenty-one (21) days from the date of the notice. In making such a request, you must include with the completed and signed Election of Rights form either the completed and signed Petition for Administrative Proceeding form completed in accordance

with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code. Additionally, your request must include a copy of the notice of agency action or proposed action being challenged.

2. If you wish to contest agency action or proposed action and you dispute one or more of the issues of material fact as set forth in the notice, you may request a formal hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If there is a disputed issue of material fact and your request is otherwise complete, an administrative law judge shall be furnished pursuant to Sections 120.569 and 120.57(1), Florida Statutes. A petition shall be dismissed if it fails to state disputed issues of material fact, it otherwise is not in substantial compliance with the requirements of 28-106.201(2) FAC, or it has been untimely filed.

   Any request for a formal hearing in this matter should be made by checking the space marked as 2 on the Election of Rights form and filing the completed and signed form with the Tampa Police Department within twenty-one (21) days from the date of the notice. In making such a request, you must include with the completed and signed Election of Rights form either the completed and signed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code. Additionally, your request must include a copy of the notice of agency action or proposed action being challenged.

3. If you do not wish to contest the agency action or proposed action, you may indicate this by checking the space marked as 3 on the Election of Rights form and filing the completed and signed form with the Tampa Police Department. If you make this election, you do not need to include the completed and signed Petition form.

   Failure to make any election in this matter, as provided above, within twenty-one (21) days from the date of the notice, shall be considered a waiver of your rights to any administrative proceeding as provided in either 1 or 2, above.

   Mediation is not an available alternative with respect to this action or proposed action.

For questions concerning the Derelict Vessel process, please call TPD Legal Unit at (813) 276-3769.