



# LA Marine

## Avoiding the pitfalls of buying a second hand boat

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**Many people often dream of purchasing a yacht or motor cruiser and as a first step will peruse the pages of boating magazines or online brokers to find that perfect boat.**

However, our experience as marine lawyers suggests that certain basic fundamental precautions are not always followed. More disturbingly, even some brokers are failing to adhere to such procedures, leaving the vulnerable buyer to pick up the pieces of a rocky transaction. This article focuses on the common problems and aims to give the buyer a safety check list prior to realising their dream.

### Mortgages

A buyer will often obtain a marine mortgage to facilitate the purchase of a boat. Lenders usually secure their interest by registering a charge against the boat on the UK Ships Register so that a public record is kept. The charge not only tells the world at large that the boat has a registered mortgage but also that the lender has a priority interest, which ranks above most other claims over the boat. This usually means that the lender is legally entitled to take possession of the boat if the registered owner defaults on the mortgage.

Buyers should therefore ensure that they are satisfied that the boat is free from encumbrances by demanding that the vendor discharges the mortgage prior to completion of the sale in order to avoid the boat being re-possessed in the event that the vendor defaults on their mortgage. A transcript of the register showing that the mortgage has been discharged should be obtained. Experience dictates that a mere undertaking from the vendor/broker is not usually sufficient in all circumstances.

### Surveys and deposit

It is usually advisable to have a pre-purchase survey undertaken so that the buyer is satisfied by the condition of the vessel before agreeing to proceed. It is standard industry practice for a deposit to be paid to take the

boat off the market and for a survey to take place thereafter. If a 'material' defect is discovered upon survey (one that affects the function and/or price of the boat) the buyer can either renegotiate the price or pull out of the purchase and the deposit will be refunded. Buyers need to be aware however that minor problems, not considered to be 'material' defects, could mean that the deposit is forfeited if they withdraw from the sale at that stage. Steps should therefore be taken to negotiate more favourable terms for the refunding of the deposit if possible. In the current economic climate the buyer should also consider paying the deposit into a secure account; possibly a dedicated client account with the broker or even held in escrow by solicitors.

### VAT and title documentation

Buyers need to be aware that if they intend to sail their boat outside of UK waters evidence of VAT status should be kept onboard at all times. Too often we hear of stories of customs officers boarding boats and demanding evidence of VAT payment and detaining the boat if it cannot be produced. If an owner is unable to show that VAT has been paid on the boat he may have to pay an on the spot fine or even make an immediate payment of VAT, or its local equivalent, at the rate applicable in the country of detention.

The customs offices will also require evidence of ownership by requesting to see the Certificate of Registry or SSR certificate. This document should be kept onboard and shows the registered owner's details and the official number of the boat.

### Registration

After the purchase of the boat, the new owner should consider whether to register the boat in their name. Although registration is not

compulsory in the UK it does provide certain benefits. If the boat is already registered in the name of the seller then the purchaser should either register the transfer of ownership from the previous owner or insist that the seller deletes the vessel from the register.

### Part exchange

If the purchase of a new boat is to be funded with a part exchange, it is advisable for the buyer to make certain that title and possession of the old boat is not transferred to the dealer until such time that the new boat is transferred to the buyer. There is a risk that the old boat could be sold beforehand without the sale of the new boat concluding (or happening at all) thereby leaving the buyer exposed. This has happened in unfortunate cases where the dealer has become insolvent and the buyer has little recovery as against the innocent third party purchaser of the old boat.

### Summary

The buyer needs to be aware that the purchase of a second hand boat is not as straightforward as it may first appear and there are a number of issues that need to be considered before the boat is safely in the hands of the new owner.

It is therefore worthwhile for a buyer to engage the services of a marine lawyer to oversee the purchase and to review the boat's title and VAT documents before they enter into the agreement. The lawyer will also be able to negotiate with the broker and vendor on the purchaser's behalf thereby giving them the requisite peace of mind and to avoid any future disputes. After all, the very purpose of a boat purchase is to provide that peaceful retreat. Why not therefore ensure that the purchase itself is plain sailing from the outset?



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**LA Marine is the specialist shipping and marine law team of Lester Aldridge LLP, providing expert advice and practical solutions to both the commercial shipping and leisure marine industries.**

LA Marine deals with all aspects of maritime law, including collisions, charterparty issues, bill of lading disputes and demurrage claims together with more general topics such as breach of contract, surveyors' negligence and personal injury claims.

LA Marine offers expertise in non-contentious matters such as sale and purchase contracts, charter agreements and marina/port developments. It also offers a fixed fee yacht registration service and has considerable experience in defending MCA prosecutions.

## Shipping and Trade

- Bunkering Issues
- Cargo Damage, Shortage and other Bill of Lading Claims
- Casualty Investigations including Collision, Salvage & Towage Claims
- Charterparty and Contract of Carriage Issues
- Criminal Proceedings and MCA Prosecutions
- Debt Recovery Actions and Vessel Arrests
- Road Transit and Through Carriage Claims
- Sale, Purchase and Registration
- Shipbuilding and Repair
- Passenger and Crew Injury Claims

## Yachting and Marine Industries

- Contracts and Agreements
- Collision and Salvage
- Crew Agreements
- Criminal Proceedings and MCA Prosecutions
- Debt Recovery and Arrest
- Finance and Mortgages
- Inland Waterways
- Insurance Disputes
- Marina Developments and Disputes
- Personal Injury and Loss of Life Claims
- Registration
- Sale of Goods issues
- Survey and Repair Disputes
- VAT status

## Clients

LA Marine's substantial and varied client base includes yacht insurance companies, leading P&I Associations, marine finance companies, vessel owners and operators (including cruise lines, ferry operators, yacht charter companies, container lines and freight companies), overseas law firms and private individuals.

The team is recognised as one of the top marine law practices outside London and has forged a respected profile in the market.

Members of the team also provide a variety of seminars to clients and professional bodies worldwide.

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