

# Florida

## Department of Highway Safety and Motor Vehicles

### *Division of Motorist Services*

PROCEDURE	SUBJECT:	
<b>TL-02</b>	<b>POWER OF ATTORNEY</b>	
<b>DESCRIPTION AND USE:</b>		
<p>THIS PROCEDURE PROVIDES INFORMATION AND INSTRUCTIONS TO ASSIST TAX COLLECTOR EMPLOYEES, LICENSE PLATE AGENTS, AND THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES IN IDENTIFYING REQUIREMENTS FOR A POWER OF ATTORNEY WHEN DISCLOSING A MOTOR VEHICLE ODOMETER READING, TRANSFERRING OWNERSHIP, OR PLACING A LIEN AGAINST A MOTOR VEHICLE, MOBILE HOME, OR VESSEL</p> <p>I. PROVISIONS OF LAW:</p> <p><a href="#"><u>Section 117.107(12), Florida Statutes</u></a>, provides that a notary public may not notarize a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction.</p> <p><a href="#"><u>Sections 319.225(6)(a) and (b), Florida Statutes</u></a>, provide that if the certificate of title is physically held by a lienholder or has been lost or destroyed, a transferor may give a power of attorney to his or her transferee for purposes of odometer disclosure and provide for the content and use of such powers of attorney. The department shall not require the signature of the transferor to be notarized on the form; however, in lieu of notarization, the form shall include an affidavit with the following wording: Under penalty of perjury, I declare that I have read the forgoing document and that the facts stated in it are true.</p> <p><a href="#"><u>Chapter 709, Florida Statutes</u></a>, provides for the use of powers of attorney.</p> <p><a href="#"><u>Section 709.2105(2), Florida Statutes</u></a>, states: A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in s. 695.03.</p> <p><a href="#"><u>Section 709.2106(1), Florida Statutes</u></a>, states that a power of attorney executed on or after October 1, 2011, is valid if its execution complies with s. 709.2105.</p> <p><a href="#"><u>Section 709.2106(5), Florida Statutes</u></a>, states: Except as otherwise provided in the power of attorney, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.</p>		
<i>Revisions to this Procedure: Verified statutes and linked to the statutes. Changed applicant to customer and deleted duplicative renaming of forms throughout policy. Updated definitions on Exhibit A.</i>		
EFFECTIVE DATE	REVISION DATE	PAGE #
Immediately	03/07/18	TL-02-01

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II. SPECIFYING ORIGINAL OR PHOTOCOPY OF POWER OF ATTORNEYS (POA):

A. (Non-Secure) Limited POA (HSMV 82053):

A photocopy of an original or certified copy of a power of attorney (form HSMV 82053) may be submitted with the paperwork if the individual processing the transaction views the original or certified copy of the power of attorney (HSMV 82053) at time of processing the transaction. The original/certified copy may be submitted with the application. However, if the customer chooses to retain the original/certified copy, the clerk may make a photocopy to submit.

The certification can be made on the front or back of the photocopy or may be attached as a separate page if the complete description of the motor vehicle, mobile home, or vessel is shown.

A photocopy of an original power of attorney (form HSMV 82053) may be certified as being a true and correct copy by a notary public provided the power of attorney is not a public record per section 117.05(12)(2), F.S.).

**Example:** A copy, which can be made and certified by the custodian of the public record or another public official.

B. General or Durable:

A photocopy of a general or durable power of attorney may be accepted in lieu of the original, UNLESS the person named as the attorney in fact is transferring title to him/herself.

Therefore, if the person named as the attorney in fact is transferring title to him/herself, he/she must apply the same rules as shown in letter "A" above for a limited power of attorney.

**Witnesses and Perjury Clause**

A general or durable power of attorney, which is issued on or after October 1, 2011, must include two witnesses' signatures along with the principal's signature and acknowledgement before a notary public. A perjury clause is acceptable in lieu of notarization.

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C. (Secure) Limited POA (HSMV 82995):

The ORIGINAL HSMV 82995, Motor Vehicle Power of Attorney/Odometer Disclosure, MUST be submitted. A photocopy or a certified copy is NOT acceptable.

III. DOCUMENTATION REQUIRED AND SPECIAL INSTRUCTIONS:

No person other than the owner of record or the authorized, designated company representative may sign any document submitted as part of a certificate of title application or certificate of title transfer unless that person has been appointed as attorney-in-fact within a power of attorney.

The customer MUST submit the ORIGINAL HSMV 82995, a certified copy is NOT acceptable.

A. POWER OF ATTORNEY BY A CORPORATION:

A corporation may give a power of attorney to an individual if it clearly identifies one or more motor vehicle(s), mobile home(s), or vessel(s) and is signed by an officer of the corporation. Any officer may sign for the corporation and show his/her official title.

B. POWER OF ATTORNEY BY A PERSONAL REPRESENTATIVE OF AN ESTATE:

The personal representative responsible for administering the estate may give a "Limited" power of attorney to another person in order to transfer a specific motor vehicle, mobile home, or vessel by using HSMV 82053 or HSMV 82995 when applicable. A copy of the letters of administration must accompany the certificate of title application.

A "General" power of attorney cannot be used in this situation because it allows the individual appointed as attorney-in-fact to conduct business above and beyond transferring titles.

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C. SECURE POWER OF ATTORNEY (LIMITED):

1. Federal and state laws prohibit an individual appointed as an attorney-in-fact from completing an odometer disclosure when acting as both transferor (seller) and transferee (buyer). However, a licensed dealer/business may be entitled to use HSMV 82995 when one of the following applies:

a. The certificate of title is physically being held by the lienholder and is not available for the transferor (seller) to endorse to transfer ownership and disclose the odometer reading of a motor vehicle.

b. The certificate of title is lost and not available for the transferor (seller) to endorse to transfer ownership and disclose the odometer reading of a motor vehicle.

Part C of HSMV 82995 must be completed by the same person acting as the power of attorney after the dealership has transferred all odometer information to the certificate of title.

HSMV 82995 does not authorize the attorney-in-fact to assign or designate an alternate agent to act as the attorney-in-fact.

In some instances where a company is both the owner and lienholder on the title, an authorized agent of the company will sign as the seller on the face of the title then forward it to another authorized agent within the company to endorse and satisfy the lien. This may take a few days or longer; however, this delay does not mean that the title is not available. Therefore, this transaction type would not require a secure power of attorney.

1. Some federal and state laws exempt certain motor vehicles from odometer disclosure requirements.

HSMV 82995 should not be used when a vehicle is exempt due to one of the exemptions below:

- Ten (10) years old or older
- Not self-propelled
- A gross vehicle weight rating (GVWR) of more than 16,000 pounds.

If a power of attorney is needed for an exempt motor vehicle or any other reason, use HSMV 82053.

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**D. NON-SECURE POWER OF ATTORNEY (LIMITED)**

HSMV 82053, Power of Attorney:

1. HSMV 82053 is used by the owner of a specific motor vehicle, mobile home, or vessel to appoint another person to sign an application for an original, transfer, or duplicate certificate of title and to file a notice of lien for noting that lien on the new certificate of title.
2. No person other than the owner of record or the authorized, designated company representative may sign any part of a certificate of title application or certificate of title transfer unless empowered to do so by a power of attorney. The HSMV 82053 must be attached to each transaction.
3. If HSMV 82053 is used and the individual appointed as the attorney-in-fact will be completing the odometer disclosure statement as transferor only or transferee only, this non-secure power of attorney form may be used. HSMV 82053 can be given to any third party to act for the transferor or transferee, except that it cannot be used to allow an individual or entity to sign as both buyer and seller confirming the federally required odometer reading. This can only be accomplished with a secure power of attorney, HSMV 82995, Motor Vehicle Power of Attorney/Odometer Disclosure, under the conditions in Section C, 1.

When the owner of the motor vehicle, mobile home, or vessel completes HSMV 82053, or 82995, and an individual is appointed as the attorney-in-fact, the individual's full name is required.

**IV. MISCELLANEOUS INFORMATION:**

A. In some cases, a power of attorney may apply to more than one certificate of title (example: fleet vehicles, estate vehicles). After the clerk views the original or certified copy of the power of attorney (general or durable) the customer may retain the original and submit a photocopy for motor vehicle records. The photocopy of the power of attorney must accompany each group of title applications it covers.

For general or durable powers of attorney, ensure the title number from the first title certificate (example: 1234567) is written on the front or back of all subsequent title certificates in that group. This will facilitate researching and matching a title certificate to its power of attorney after the documents are imaged. This may also be noted in the comment field in FRVIS.

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- B. A durable power of attorney is acceptable if it grants authority to sell, trade, buy, or encumber personal property.
- C. Some security agreements have a built-in power of attorney. If the security contract is signed, the power of attorney is legal and can be used to execute title transactions.
- D. A lien may be satisfied using a general, limited, or durable power of attorney, which states that the appointee has authority to satisfy liens.
- E. A general, limited, or durable power of attorney made by the registered owner of a motor vehicle, mobile home, or vessel becomes invalid upon the death of the registered owner.
- F. A person named as an attorney-in-fact may not assign, transfer, or otherwise designate anyone else as attorney-in-fact.
- G. A general or a limited power of attorney may be used to record and satisfy a lien if authority has been granted within the power of attorney.
- H. If a company or individual (such as title services, couriers, etc.) has approval to complete and sign documents on behalf of another company, they must provide proof of this authorization. The authorization must be on the company's letterhead stationery and designate the individual or company (title service, courier, etc.) that is allowed to sign for its company. This authorization letter must also be signed by an officer of the company. If a company is named to sign instead of an individual, the company named must provide a list of all employees that would be allowed to sign or a letter on letterhead stationery authorizing a specific individual to sign for the specific transaction.
- I. A secure Power-of-Attorney from another state is acceptable when the sale took place in that state.
- J. A "Definitions" page is attached as Exhibit A.
- K. See Forms Appendix for a sample of the HSMV forms referred to in this procedure.
- L. Frequently Asked Questions and Answers are attached as Exhibit B

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## EXHIBIT A

### DEFINITIONS

#### **POWER OF ATTORNEY**

A written document in which one person (the principal) appoints another person to act as an agent on his or her behalf, thus conferring authority on the agent to perform certain acts or functions on behalf of the principal.

There are different kinds of power of attorney's which allow different actions on behalf of the principal. It is imperative that the person processing the transaction carefully note what action(s) are stated in each power of attorney.

#### **"LIMITED" POWER OF ATTORNEY**

A limited power of attorney specifies the authority the agent will have. The principal lists all matters for which the agent will make decisions, sign documents or give instructions. Often, a limited power of attorney will cover only a single process or matter.

The department provides two limited power of attorneys; HSMV 82053 which does not allow the individual appointed attorney-in-fact to sign for both buyer and seller for the purpose of disclosing the odometer reading and HSMV 82995 which allows the owner, purchaser, or dealer to make a required odometer disclosure on behalf of the providing party.

#### **"GENERAL" POWER OF ATTORNEY**

A general power of attorney gives the agent broad authorizations to manage the principal's assets and financial affairs while the principal is alive. The appointment may be for a fixed period and can be revoked at any time.

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#### **"DURABLE" POWER OF ATTORNEY**

A durable power of attorney differs from a limited or general in that it continues the relationship of the agent on behalf of the principal beyond the incapacity of the principal. The durable can be crafted to either confer general power or limited power.

#### **PRINCIPAL**

One who employs another to act on their behalf, subject to the principal's general control and instructions. The principal is the person from whom an agent's authority derives.

## Exhibit B

### FREQUENTLY ASKED QUESTIONS WITH ANSWERS

#### Question #1

**What is the difference between an odometer disclosure and odometer declaration?**

**Answer:**

Odometer Disclosure: An odometer verification statement requiring the transferor to state the odometer information and the transferee to acknowledge the statement.

**Example:** An odometer disclosure is on the conforming MCO, conforming title, form HSMV 82994 and form HSMV 82995.

Odometer Declaration: An odometer verification statement signed by the owner of the motor vehicle.

**Example:** An odometer declaration is on the form HSMV 82040 and form HSMV 82041.

#### Question #2

**When is a motor vehicle transaction exempt from odometer disclosure requirements?**

**Answer:**

1. Any motor vehicle that is ten calendar years or older as of January 1 of the current year.
2. Any motor vehicle that is not self-propelled.
3. Any motor vehicle that has a gross vehicle weight rating (GVWR) of more than 16,000 pounds.
4. Any new motor vehicle, covered by an MCO, transferred between dealers (dealer swaps).

#### Question #3

**When may HSMV 82995 be used for a non-exempt motor vehicle transaction?**

**Answer:**

Federal and state law prohibits an individual who has been appointed as attorney-in-fact from acting as both transferor (seller) and transferee (buyer) for completing odometer disclosure statements in conjunction with the transfer of ownership of a motor vehicle unless a secure power of attorney form is used.

The department adopted HSMV 82995 (secure power of attorney) to be used only when an individual appointed as the attorney-in-fact is acting as both transferor (seller) and transferee (buyer) for the purposes of completing the odometer disclosure in conjunction with the transfer of a motor vehicle in specified situations. They are:

1. When the certificate of title is physically held by the lienholder and is not available for endorsement by the seller for transferring ownership of the motor vehicle and odometer disclosure.
2. When the certificate of title has been lost or destroyed and is not available for endorsement by the seller for transferring ownership of the motor vehicle and odometer disclosure.

**Question #4**

**When may HSMV 82053 be used for a non-exempt motor vehicle transaction?**

**Answer:**

An individual appointed as attorney-in-fact when completing an odometer disclosure statement as transferor (seller) only or transferee (buyer) only may use the form.

**Question #5**

**May the seller or buyer use HSMV 82053 to appoint a licensed motor vehicle dealer or his employees as attorney-in-fact for a non-exempt motor vehicle transaction?**

**Answer:**

No. The seller or buyer cannot lawfully use HSMV 82053 to appoint a licensed motor vehicle dealer or his employee as attorney-in-fact to execute an odometer disclosure in their behalf. The individual appointed must be an independent third party who is not associated with the dealership in any capacity. A licensed motor vehicle dealer, including his employees, is considered one legal entity.

**Scenario: John Smith owns five different franchises, each with separate dealer licenses. The title work for all five franchises is completed in one location. When a “third party” is needed to sign as power of attorney, John Smith Honda would let the title clerk for John Smith Toyota sign as power of attorney. The title clerk for John Smith Toyota does not work for John Smith Honda.**

**Question #6**

**Because John Smith is the owner of all five franchises, does this mean the title clerk from John Smith's franchises cannot sign as a third party on HSMV 82053 in this manner?**

**Answer:**

The title clerk cannot sign as the third party because they work for John Smith who owns all five franchises.

**Scenario: John Smith only has one dealer license with DBA's (doing business as) and the third party works for, and is paid by, one of the DBA companies under the same dealer's license.**

**Question #7**

**Could the title clerk sign as a legitimate “third party?”**

**Answer:**

No. The individual appointed as an independent third party must not be associated with the dealership in any capacity.

**Question #8**

**When a dealer sells a vehicle to a lease company, can the lessee sign for the lease company without a power of attorney?**

**Answer:**

No. If the lessee is signing for the lease company, a general power of attorney or a form prescribed by the department must be submitted showing the name of the lessee and clearly specifying the lessee's authority.

**Scenario: A dealer sells a vehicle to a lease company and the conforming MCO is not available at the time of sale.**

**Question #9**

**Can a person from the dealership sign the form HSMV 82994 as seller and another person from the dealership sign as purchaser for the lease company using a general power of attorney or form HSMV 82053?**

**Answer:**

No. The individual appointed as an independent third party must not be associated with the dealership in any capacity.

**Question #10**

**Can a leasing company give the lessee a general power of attorney to sign the odometer disclosure statement and the dealer a general power of attorney to sign the odometer declaration?**

**Answer:**

Yes. The general power of attorney must show the name of the appointee and clearly specify the appointee's authority.

**Question #11**

**Is a floor planner considered a lienholder?**

**Answer:**

No.

**Question #12**

**Is it reasonable for a tax collector or license plate agency's office to accept the same third-party name continuously as the appointed power of attorney on form HSMV 82053 from the same dealership?**

**Answer:**

Yes. If the third party is not associated with the dealership.

No. If the third party is associated with the dealership in any way. If you are suspicious about a transaction, notify your local Division of Motorist Services Regional office. They will contact the dealership to verify the information in question.

**Question #13**

**Can an individual appoint a company to be Power of Attorney? This would mean a representative of the company or corporation could sign as POA for the individual. Can this be done?**

**Answer:**

Yes, it is legally permissible for an individual to give POA powers to a company/corporation. An individual for that company/corporation may sign on their behalf. In order for an individual to sign for the company, a list of persons authorized to sign on behalf of the company/corporation is required. The authorization must be on company/corporation's letterhead stationery and designate the individual(s) that is allowed to sign for their company. This letterhead letter must also be signed by an officer of the company.

**Question #14**

**Is a general power of attorney required to be notarized or have a perjury clause?**

**Answer:**

A general power of attorney is not required to be notarized or have a perjury clause **unless the power of attorney was issued on or after October 1, 2011.**

**Question #15**

**Is a durable power of attorney required to be notarized or have a perjury clause?**

**Answer:**

A durable power of attorney must be "...executed with the same formalities required for the conveyance of real property by Florida law..." An instrument conveying real property must be signed in the presence of two subscribing witnesses. It is not necessary for the durable power of attorney to be notarized to be valid. However, most forms for durable powers of attorney include a space for acknowledgement.