

# Florida

## Department of Highway Safety and Motor Vehicles

### *Division of Motorist Services*

<b>PROCEDURE</b>	<b>SUBJECT:</b>		
TL-61	APPLICATION FOR CERTIFICATE OF TITLE FOR A TITLE LOAN		
<b>DESCRIPTION AND USE:</b>			
THIS PROCEDURE PROVIDES INFORMATION AND INSTRUCTIONS TO ASSIST TAX COLLECTOR EMPLOYEES, LICENSE PLATE AGENCY EMPLOYEES, AND THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES IN PROCESSING APPLICATIONS FOR THE TRANSFER AND ISSUANCE OF CERTIFICATES OF TITLE FOR TITLE LOANS.			
<p><b>I. PROVISIONS OF LAW:</b></p> <p>Section 319.22, Florida Statutes, provides for the transfer of certificates of title to motor vehicles. Chapter 537, Florida Statutes, pertains to "title loans."</p> <p>Section 537.012(1), Florida Statutes, states, "If a borrower fails to repay all amounts legally due under the title loan agreement on or before the end of the title loan's maturity date or any extension of such date and fails to make a payment on the loan within 30 days after the end of the loan's maturity date or any extension of such date, whichever is later, the title loan lender may take possession of the titled personal property. A lender may take possession of the titled personal property only through an agent who is licensed by the state to repossess motor vehicles."</p> <p>Section 537.012(3), Florida Statutes, states" Upon taking possession of titled personal property, the lender may dispose of the titled personal property by sale but may do so only through a motor vehicle dealer licensed under s. 320.27. At least 10 days prior to sale, the lender shall notify the borrower of the date, time, and place of the sale and provide the borrower with a written accounting of the principal amount due on the title loan, interest accrued through the date the lender takes possession of the titled personal property, and any reasonable expenses incurred to date by the lender in taking possession of, preparing for sale, and selling the titled personal property. At any time prior to such sale, the lender shall permit the borrower to redeem the titled personal property by tendering a money order or certified check for the principal amount of the title loan, interest accrued through the date the lender takes possession, and any reasonable expenses incurred to date by the lender in taking possession of, preparing for sale, and selling the titled personal property. Nothing in this act nor in any title loan agreement shall preclude a borrower from purchasing the titled personal property at any sale."</p> <p>Section 537.012(4), Florida Statutes, states, "Any such sale or disposal shall vest in the purchaser the right, title, and interest of the owner and the title loan lender."</p>			
<b><i>Revision(s) to this Procedure: Corrected Exhibit C to Exhibit D on page 3.</i></b>			
<b>DIVISION DIRECTOR</b>	<b>EFFECTIVE DATE</b>	<b>REVISION DATE</b>	<b>PAGE #</b>
	Immediately	05/03/05	TL-61-01

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**GENERAL INFORMATION:**

**When an owner transacts a "TITLE LOAN" agreement for a motor vehicle for a loan of money, the title must be in the possession of the lender and does not have to be completed for transfer.**

**If a borrower fails to repay all amounts due under the title loan agreement on or before the end of the title loan's maturity date, or any extension of such date, and fails to make payment on the loan within 30 days after the end of the loan's maturity date, or any extension of such date, whichever is later, the title loan lender may take possession of the motor vehicle.**

**When an owner defaults on a "Title Loan" agreement, the lender must repossess the motor vehicle through an agent who is licensed by the State to repossess motor vehicles. The lender must have physical possession of the motor vehicle prior to making application for title in their name or prior to selling the motor vehicle to a purchaser.**

**If the motor vehicle has not been redeemed and no payment has been made on the account within the specified time (see above), the lender may dispose of the motor vehicle (by sale), but must do so through a motor vehicle dealer licensed under s. 320.27, Florida Statutes.**

**After the sale, the purchaser would be entitled to the right, title and interest of the owner and the title loan lender.**

**II. DOCUMENTATION REQUIRED AND SPECIAL INSTRUCTIONS:**

**A. When a "Title Loan" is in default and the lender has either sold the motor vehicle or is taking title in their name, the following documentation is required:**

- 1. The Florida or out of state certificate of title.**

**NOTE: The certificate of title does not have to be completed for transfer to the title loan lender.**

- 2. A copy of the Notice, which was mailed certified to the owner, at the address shown on motor vehicle records of this or any other state (if the owner's address is different on the title loan agreement, notice must also be sent to that address), along with the original or certified copy of the post office returned receipt card for the certified mail, or the returned, unopened, unclaimed certified letter.**

**NOTE: The notice must be sent 10 days prior to the sale.**

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<p>3. The notice must contain the following:</p> <ul style="list-style-type: none"><li>a. A detailed description of the motor vehicle (year, make, &amp; vehicle identification number).</li><li>b. Date, time and place of the sale.</li><li>c. An accounting of the principal amount due on the title loan, interest accrued through the date of the lender taking possession of the motor vehicle and any reasonable expenses incurred to date by the lender in taking possession of, preparing for sale and selling the motor vehicle.</li></ul> <p>4. If sold at a sale by a licensed Florida motor vehicle dealer, an accurately completed Form HSMV 82994, Motor Vehicle Dealer Title Reassignment Supplement, from the selling dealer to the purchaser.</p> <p><b>NOTE:</b> The motor vehicle may be purchased by the borrower (previous owner) at the sale, if it was not redeemed prior to the sale.</p> <p>5. A form HSMV 82040, Application for Certificate of Title with/without Vehicle Registration, or HSMV 82041, Application for Vehicle/Vessel certificate of Title and/or Registration, accurately completed by the purchaser (if sold), or if not sold, accurately completed by the title loan lender.</p> <p>6. If the motor vehicle is not titled in Florida, a form HSMV 82042, Vehicle Identification Number and Odometer Verification Affidavit, accurately completed by the purchaser with the vehicle identification number verified by one of the four officials shown on the lower portion of the form. Form HSMV 82040, Application for Certificate of Title, may be used in lieu of the above listed form. Verification is not required for any mobile home, trailer or semi-trailer with a net weight less than 2,000 pounds, travel trailer, camping trailer, truck camper, or fifth wheel recreational trailer.</p> <p>7. A copy of the title loan agreement (see Exhibit <b>D</b>).</p> <p>8. An affidavit (from the title loan lender) stating the date of the last payment and that no payment was made on the account within 30 days after the end of the loan's maturity date or any extension of such date. It should also state the lender took possession of the motor vehicle pursuant to s. 537.012(1), Florida Statutes, and is either :</p> <ul style="list-style-type: none"><li>• selling the vehicle through a licensed dealer (must state the name of the dealership who is selling the vehicle)</li></ul> <p style="text-align:center">OR</p> <ul style="list-style-type: none"><li>• the lender is making application for title in their name.</li></ul> <p>9. Lien satisfaction(s) for any liens, as shown on the motor vehicle records of this or any other state.</p>	
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**10.** **Florida sales tax or if the title loan lender is taking title, they must specify "Obtained per Chapter 537, Florida Statutes, for Title Loan" on form HSMV 82040, Application for Certificate of Title with/without Registration, or form HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration.**

**11.** **A Florida license plate number transferred to or purchased for the motor vehicle, or a non-use affidavit.**

**12.** **Title fees.**

**B.** **When a title loan lender transacts a "Title Loan" agreement and wants the lien recorded on the certificate of title, the following documentation is required:**

**1.** **Motor vehicle is titled in Florida:**

**a.** **Florida Certificate of Title.**

**b.** **Form HSMV 82139, Notice of Lien, accurately completed by the owner showing the title loan lender as the lienholder.**

**or,**

**Form HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration, accurately completed by the owner showing the title loan lender as the lienholder.**

**c.** **Lien satisfaction(s) for any liens, as shown on the motor vehicle records of this or any other state.**

**d.** **Title and lien recording fees.**

**NOTE: Once the lien has been recorded and the title loan is in default, refer to DMS Procedure TL-23 for further instructions.**

**2.** **Motor vehicle is not currently titled in Florida:**

**a.** **The out-of-state Certificate of Title, in the owner's name.**

**b.** **Form HSMV 82040, Application for Certificate of title with/without Vehicle Registration, or HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration, accurately completed by the owner.**

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<p style="text-align:center"><b><u>c.</u></b>     <b><u>Form HSMV 82042, Vehicle Identification Number and Odometer Verification Affidavit, accurately completed by the owner with the vehicle identification number verified by one of the four officials shown on the lower portion of the form.</u></b></p> <p style="text-align:center"><b><u>Form HSMV 82040, Application for Certificate of Title, may be used in lieu of the above listed form.</u></b></p> <p style="text-align:center"><b><u>Verification is not required for any mobile home, trailer or semi-trailer with a net weight less than 2,000 pounds, travel trailer, camping trailer, truck camper, or fifth wheel recreational trailer.</u></b></p> <p style="text-align:center"><b><u>d.</u></b>     <b><u>Lien satisfaction(s) for any liens, as shown on the motor vehicle records of this or any other state.</u></b></p> <p style="text-align:center"><b><u>e.</u></b>     <b><u>Form HSMV 82139, Notice of Lien, accurately completed by the owner showing the title loan lender as the lienholder.</u></b></p> <p style="text-align:center"><b><u>NOTE: Form HSMV 82139 is not needed if the lien information is shown on an accurately completed HSMV 82040 or 82041.</u></b></p> <p style="text-align:center"><b><u>f.</u></b>     <b><u>Title and lien recording fees.</u></b></p> <p style="text-align:center"><b><u>NOTE: Once the lien has been recorded and the title loan is in default, refer to DMS Procedure TL-23 for further instructions.</u></b></p> <p><b><u>III. MISCELLANEOUS INFORMATION:</u></b></p> <p><b><u>A.</u></b>     <b><u>Prior to engaging a repossession agent, the lender shall allow the debtor an opportunity to make the titled personal property available to the lender at a place, date, and time reasonably convenient to the lender and the borrower. Prior to taking possession of titled personal property, the lender shall allow the borrower a reasonable opportunity to remove from the titled personal property any personal belongings without charge or additional cost to the borrower. After the lender takes possession of the titled personal property, the lender, at the lender's sole expense and risk, may authorize a third party to retain physical possession of the titled personal property.</u></b></p> <p><b><u>B.</u></b>     <b><u>If a title loan lender takes title in their name and then sells the motor vehicle, it does not have to be sold through a licensed motor vehicle dealer.</u></b></p> <p><b><u>C.</u></b>     <b><u>A "Information Concerning Title Loans" page is attached as Exhibit A.</u></b></p> <p><b><u>D.</u></b>     <b><u>A documentation check list is attached as Exhibit B.</u></b></p> <p><b><u>E.</u></b>     <b><u>A "Definitions" page is attached as Exhibit C.</u></b></p> <p><b><u>F.</u></b>     <b><u>Section 537.008, Florida Statutes, is attached as Exhibit D.</u></b></p> <p><b><u>G.</u></b>     <b><u>See Forms Appendix for a sample of the HSMV forms referred to in this procedure.</u></b></p>	
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## EXHIBIT A

### INFORMATION CONCERNING TITLE LOANS

A person may transact a **"title loan agreement"** with a title loan lender. A title loan agreement is when a written agreement in which a title loan lender agrees to make a title loan to a borrower. The person is given a loan of money and the person's motor vehicle title (**not the motor vehicle**) is deposited with the title loan lender as a security for the loan. **However, the title does not have to be signed over to the lender.** If the borrower defaults (**doesn't make payment on the loan within 30 days after the end of the loan's maturity date**) on the agreement, the lender must repossess the motor vehicle through an agent licensed in the state of Florida to repossess motor vehicles. The lender must have physical possession of the motor vehicle prior to making application for title in their name or prior to selling the vehicle. If the lender does not take title in their name, but wishes to sell the vehicle, they must do so through a Florida licensed motor vehicle dealer. However, if the lender takes title in their name and then sells the vehicle, it would not have to be sold through a licensed motor vehicle dealer.

The lender also has the option of recording their lien against the vehicle, which would then revert to TL-23, if the loan is ever defaulted upon.

## EXHIBIT B

### TITLE LOAN CHECK LIST

#### FLORIDA RECORD

\_\_\_\_\_ HSMV 82040 or 82041

\_\_\_\_\_ Florida Certificate  
of Title

#### OUT-OF-STATE RECORD

\_\_\_\_\_ HSMV 82040 or 82041

\_\_\_\_\_ HSMV 82042, or the VIN verification  
section on form HSMV 82040

\_\_\_\_\_ Out-of-state proof of ownership

#### **NOTE: Title does not have to be completed for transfer.**

\_\_\_\_\_ Copy of the Notice, which was sent certified to the owner, along with the original or certified copy of the post office returned receipt card for the certified mail, or the returned, unopened, unclaimed certified letter.

\_\_\_\_\_ If the motor vehicle is sold by a licensed motor vehicle dealer, a completed form HSMV 82994, from the selling dealer to the purchaser.

\_\_\_\_\_ Copy of the title loan agreement.

\_\_\_\_\_ Affidavit stating no payment has been made within 30 days after the end of the loan's maturity date or any extension of such date. **It must also state the lender took possession of the vehicle pursuant to s. 537.012(1), Florida Statutes, and is either selling the vehicle through a licensed dealer (must name the dealership selling the vehicle) or making application for title in their name.**

\_\_\_\_\_ Lien satisfaction, if applicable.

\_\_\_\_\_ Florida sales tax or if the title loan lender is taking title, they must specify "Obtained per Chapter 537, Florida Statutes, for Title Loan" on form HSMV 82040 or 82041.

\_\_\_\_\_ Florida license plate number or non-use affidavit.

\_\_\_\_\_ Title fees.

### TITLE LOAN (PERFECTING LIEN ON TITLE) CHECK LIST

#### FLORIDA RECORD

\_\_\_\_\_ Florida Certificate  
of Title

\_\_\_\_\_ HSMV 82139

or,

\_\_\_\_\_ HSMV 82041

#### OUT-OF-STATE RECORD

\_\_\_\_\_ HSMV 82040 or 82041

\_\_\_\_\_ HSMV 82042 or the VIN  
verification section on form  
HSMV 82040

\_\_\_\_\_ HSMV 82139 (Form 82139 is not  
needed if the lien information is  
shown on the accurately completed  
82040 or 82041.

\_\_\_\_\_ Out-of-state proof of ownership

\_\_\_\_\_ Lien satisfaction(s), if applicable.

\_\_\_\_\_ Title fees.

## EXHIBIT C

### DEFINITIONS

#### LOAN PROPERTY

Any motor vehicle certificate of title that is deposited with a title loan lender as a security for a title loan in the course of the title loan lender's business.

#### MATURITY DATE

The date which is: 30 days after the date the title loan agreement is executed by the title loan lender and the borrower.

#### MOTOR VEHICLE

An automobile, motorcycle, mobile home, truck, trailer, semi-trailer, truck tractor and semi-trailer combination, or any other vehicle operated on the public highways and streets of this state, used to transport persons or property, and propelled by power other than muscular power, but excluding a vehicle which runs only upon a track and a mobile home that is the primary residence of the owner.

#### TITLE LOAN

A loan of money secured by bailment of a certificate of title to a motor vehicle, except such loan made by a person licensed under chapter 516, chapter 520, chapter 655, chapter 657, chapter 658, chapter 660, chapter 663, chapter 665, or chapter 667 or a person who complies with s. 687.03.

#### TITLE LOAN AGREEMENT

A written agreement in which a title loan lender agrees to make a title loan to a borrower.

#### TITLE LOAN LENDER

Any person who engages in the business of making or servicing title loans.

#### TITLE LOAN OFFICE

The location at which, or premises from which, a title loan lender regularly conducts business under this chapter or any other location that is held out to the public as a location at which a lender makes or services title loans.

#### TITLED PERSONAL PROPERTY

A motor vehicle that has as evidence of ownership a state issued certificate of title except for a mobile home that is the primary residence of the borrower.

## EXHIBIT D

### 537.008, Florida Statutes, Title loan agreement.—

(1) At the time a title loan lender makes a title loan, the lender and the borrower shall execute a title loan agreement, which shall be legibly typed or written in indelible ink and completed as to all essential provisions prior to execution by the borrower and lender. The title loan agreement shall include the following information:

- (a) The make, model, and year of the titled personal property to which the loan property relates.
- (b) The vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property to which the loan property relates.
- (c) The name, residential address, date of birth, physical description, and social security number of the borrower.
- (d) The date the title loan agreement is executed by the title loan lender and the borrower.
- (e) The identification number and the type of identification, including the issuing agency, accepted from the borrower.
- (f) The amount of money advanced, designated as the "amount financed."
- (g) The maturity date of the title loan agreement, which shall be 30 days after the date the title loan agreement is executed by the title loan lender and the borrower.
- (h) The total title loan interest payable on the maturity date, designated as the "finance charge."
- (i) The amount financed plus finance charge, which must be paid to reclaim the loan property on the maturity date, designated as the "total amount of all payments."
- (j) The interest rate, computed in accordance with the regulations adopted by the Federal Reserve Board pursuant to the federal Truth in Lending Act, designated as the "annual percentage rate."

(2) The following information shall also be printed on all title loan agreements:

- (a) The name and physical address of the title loan office.
- (b) The name and address of the Department of Financial Services as well as a telephone number to which consumers may address complaints.

(c) The following statement in not less than 12-point type that:

1. If the borrower fails to repay the full amount of the title loan on or before the end of the maturity date or any extension of the maturity date and fails to make a payment on the title loan within 30 days after the end of the maturity date or any extension of the maturity date, whichever is later, the title loan lender may take possession of the borrower's motor vehicle and sell the vehicle in the manner provided by law. If the vehicle is sold, the borrower is entitled to any proceeds of the sale in excess of the amount owed on the title loan and the reasonable expenses of repossession and sale.

2. If the title loan agreement is lost, destroyed, or stolen, the borrower should immediately so advise the issuing title loan lender in writing.

(d) The statement that "The borrower represents and warrants that the titled personal property to which the loan property relates is not stolen and has no liens or encumbrances against it, the borrower has the right to enter into this transaction, and the borrower will not apply for a duplicate certificate of title while the title loan agreement is in effect."

(e) A blank line for the signature of the borrower and the title loan lender or the lender's agent.

All owners of the titled personal property must sign the title loan agreement.

(3) At the time of the transaction, the title loan lender shall deliver to the borrower an exact copy of the executed title loan agreement.

(4) Upon execution of a title loan agreement, the title loan lender may take possession of the loan property and retain possession of such property until such property is redeemed. The borrower shall have the exclusive right to redeem the loan property by repaying all amounts legally due under the agreement. When the loan property is redeemed, the lender shall immediately return the loan property and commence action to release any security interest in the titled personal property. During the term of the agreement or any extension of the agreement, a title loan lender may retain physical possession of the loan property only. A title loan lender shall not require a borrower to provide any additional security or guaranty as a condition to entering into a title loan transaction.