

Florida

Department of Highway Safety and Motor Vehicles

Division of Motorist Services

PROCEDURE TL-21	SUBJECT: CERTIFICATE OF TITLE APPLICATIONS INVOLVING TRUST AGREEMENTS
<p>DESCRIPTION AND USE: 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 ESTABLISHING REQUIREMENTS FOR CERTIFICATE OF TITLE APPLICATIONS INVOLVING TRUST AGREEMENTS.</p>	
<p>I. PROVISIONS OF LAW:</p> <p>Sections 319.22 and 319.23, Florida Statutes, provide for the transfer and issuance of original or duplicate certificates of title for motor vehicles or mobile homes.</p> <p>Sections 328.01, 328.03 and 328.11, Florida Statutes, provide for the transfer and issuance of original or duplicate certificates of title for vessels.</p> <p>The issuance and transfer of a certificate of title to or from a legal trust are authorized by these sections.</p> <p><u>Chapter 736 (Florida Trust Code) provides for Revocable Trusts, Duties and Powers of Trustee, Liability of Trustee and Rights of Persons Dealing with Trustee, and Charitable Trusts, etc.</u></p> <p><u>Section 736.0703, Florida Statutes, provides information for cotrustees.</u></p> <p>Section 736.1017 (1), Florida Statutes, allows for the Certification of Trust to be submitted in lieu of a copy of the trust instrument.</p> <p>Section 736.1017 (5), Florida Statutes, states the recipient of a Certification of Trust may require the trustee to furnish copies of any excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.</p>	
<i>Revision(s) to this Procedure: Added Florida Statutes information on page 1.</i>	
EFFECTIVE DATE Immediately	REVISION DATE 08/09/13
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II. DOCUMENTATION REQUIRED AND SPECIAL INSTRUCTIONS:

A. A trust is treated as a separate entity. A certificate of title may be transferred into the name of a trust or transferred out of a trust. If a trust agreement is to effect or prevail, the motor vehicle, mobile home or vessel must be in the name of the trust. One of the following must be submitted.

1. A photocopy of the trust agreement must be submitted (along with the customer's application for title) to verify the name of the trust and the name of the trustee, when applicable. Only the following pages of the trust agreement are required:
 - The first page.
 - The page which specifies the name of the trustee and successor trustee.
 - The page which shows the signature of the creator of the trust.

NOTE: Any title being issued pursuant to a trust must include the name of the trust, even if the customer is only requesting the trustee's name to be shown on the title (see II, C, for examples).

2. A photocopy of the Certification of Trust may be submitted in lieu of a photocopy of the trust agreement. An example of a Certification of Trust is shown in Exhibit D. The Certification of Trust must contain the following information:
 - (a) The trust exists and the date the trust instrument was executed.
 - (b) The identity of the settlor.
 - (c) The identity and address of the currently acting trustee.
 - (d) The powers of the trustee.
 - (e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.
 - (f) The authority of co-trustees to sign and whether all or less than all is required in order to exercise powers of the trustee.
 - (g) The manner of taking title to trust property.
 - (h) The Certification of Trust must be signed by the trustee and notarized. If the penalty of perjury clause is included, notarization is not required.
 - (i) The Certification of Trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the Certification of Trust to be incorrect.

NOTE: When a Certification of Trust is provided, a copy of any excerpt from the original trust instrument and later amendments may be requested.

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- B. For documentation required, refer to:
1. Procedure TL-10 when the application is for an original certificate of title.
 2. Procedure TL-11 when the application is for a transfer of a certificate of title.
 3. Procedure TL-05 when the application is for a duplicate certificate of title.
 4. Procedure TL-12 when the application is for a duplicate with transfer certificate of title.
- C. The following list is provided as examples of designations used to describe a trustee, a trust and a U/D/T (Under Declaration of Trust). A copy of the trust agreement or certification of trust is required. Refer back to II, A.

EXAMPLES: Smith Family Trust
John Smith as Trustee for Smith Family Trust
Friendly Bank, U/D/T

1. In instances where the trustee was previously named, that person should sign as trustee.

EXAMPLES: **"John Smith, Trustee"** – (John Smith should sign)
"John Smith as Trustee for Smith Family Trust" - (The proper signature would be **John Smith, Trustee**)

2. In instances where there was previously an unidentified trustee, such as "Smith Family Trust," or Friendly Bank, U/D/T, that person should sign as shown below:

EXAMPLES: **"Smith Family Trust"** – (The proper signature would be John Smith, Trustee for Smith Family Trust)
"Friendly Bank, U/D/T" – (The proper signature would be Larry Smith, Trustee for Friendly Bank)

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III. MISCELLANEOUS INFORMATION:

A. AFTER a title has been issued in the name of the trust AND the trustee, a copy of the trust agreement would not be required when the trustee transfers the title to a new purchaser.

Example: "John Smith as Trustee for Smith Family Trust" - (John Smith is the trustee and could transfer the title without submitting a copy of the trust agreement.)

NOTE: However, if the title was issued in only the name of the trust, a copy of the trust agreement or certification of trust would be required when the trustee transfers the title to a new purchaser.

Example: "Smith Family Trust" – (Need trust agreement or certification of trust to show name of the trustee for the Smith Family Trust.)

B. The only person authorized to sign certificate of title transactions for a trust is the trustee, unless a power of attorney has been assigned from the trustee to an individual or a business. In this case, the authorized agent of the business must submit an affidavit stating they are acting on behalf of the trustee. The power of attorney must show a complete description of the motor vehicle, mobile home or vessel.

C. If two trustees are named in the trust agreement or certification of trust with the names joined by "and," both trustees must sign (i.e., duplicate application, transferring title). If the names are joined by "or," either may sign.

NOTE: If the trust agreement states that co-trustees can act independently/separately, either of the co-trustees may sign the applicable application.

D. When the trustee of a trust is deceased, see DMS Procedure TL-18 for deceased instructions and appropriate checklist.

E. A duplicate with transfer is not allowed when the title is in the name of a trust and the trustee is deceased (see DMS Procedure TL-18 for deceased instructions).

F. A Checklist is attached to this procedure as Exhibit A.

G. "Questions and Answers" pages are attached to this procedure as Exhibit B.

H. A "Definitions" page is attached to this procedure as Exhibit C.

I. An example of a "Certification of Trust" is attached as Exhibit D.

J. See Forms Appendix for a sample of the HSMV forms referred to in this procedure.

EXHIBIT A

TRUST CHECKLIST

APPLICATION FOR CERTIFICATE OF TITLE IN THE NAME OF THE TRUST

FLORIDA RECORD

OUT-OF-STATE RECORD

_____ Florida Certificate of Title

_____ Out-of-state Certificate of Title

_____ HSMV 82042, or the VIN
Verification section on the form
HSMV 82040.

_____ HSMV 82040 or HSMV 82041, completed by the trustee.

_____ A copy of the trust agreement.

Or

A copy of the Certification of Trust.

_____ Certificate of title completed for transfer by the seller to the trust and trustee (if applicable).

_____ Lien satisfactions(s), if applicable.

_____ Florida sales tax or specify the sales tax exemption information on form HSMV 82040 or 82041.

_____ Florida license plate number or a non-use affidavit or mobile home decal or RP decal.

_____ Title fees.

TRUST CHECKLIST

TRANSFER OF TITLE IN THE NAME OF THE TRUST OR TRUSTEE TO A PURCHASER

FLORIDA RECORD

OUT-OF-STATE RECORD

_____ Florida Certificate of Title

_____ Out-of-state Certificate of Title

_____ HSMV 82042, or the VIN
Verification section on the form
HSMV 82040.

_____ HSMV 82040 or HSMV 82041, completed by the purchaser.

_____ Certificate of title completed for transfer by the trustee to the purchaser.

_____ Lien satisfactions(s), if applicable.

_____ Florida sales tax or specify the sales tax exemption information on form HSMV 82040 or
82041, for the purchaser.

_____ Florida license plate number or a non-use affidavit or mobile home decal or RP decal, for the
purchaser.

_____ Title fees for the purchaser.

NOTE: If the title was previously issued in only the name of the trust, a copy of the trust
agreement or Certification of Trust would be required when the trustee transfers the
title to a new purchaser.

EXHIBIT A (page 3, cont.)

TRUST CHECKLIST

APPLICATION FOR DUPLICATE TITLE IN THE NAME OF A TRUST

_____ Form HSMV 82101, completed by the trustee.

APPLICATION FOR DUPLICATE WITH TRANSFER WHEN TITLE IS IN THE NAME OF A TRUST

_____ Form HSMV 82101, accurately completed in the applicable sections, by the trustee and the purchaser.

_____ Florida sales tax or specify the sales tax exemption information on form HSMV 82040 or 82041, for the purchaser.

_____ Florida license plate number or a non-use affidavit or mobile home decal or RP decal, for the purchaser.

_____ Title fees, for the purchaser.

NOTE: A duplicate with transfer is not allowed when the title is in the name of a trust and the trustee is deceased (see DMS Procedure TL-18 for deceased instructions).

EXHIBIT B

QUESTIONS AND ANSWERS

- 1. Q. WHAT IS A TRUST AGREEMENT?**

A. A legal agreement created by a person for the purpose of holding property in trust on their behalf.
- 2. Q. IS IT NECESSARY TO ATTACH A COPY OF THE TRUST AGREEMENT WHEN TRANSFERRING A CERTIFICATE OF TITLE INTO THE NAME OF A TRUST?**

A. A copy of the trust agreement or certification of trust is required and must be submitted (along with the customer's application for title) to verify the name of the trust. Only the following pages of the trust agreement are required:

 - The first page.
 - The page which specifies the name of the trustee and successor trustee.
 - The page which shows the signature of the creator of the trust.
- 3. Q. WHO IS A TRUSTEE?**

A. The person(s) named in a trust agreement authorized to administer and supervise the terms of the trust agreement.
- 4. Q. WHO BECOMES TRUSTEE UPON THE DEATH OF THE TRUSTEE?**

A. The successor trustee.
- 5. Q. WHO ASSIGNS A SUCCESSOR TRUSTEE?**

A. The person who created the trust.
- 6. Q. WHEN IS THE SUCCESSOR TRUSTEE ALLOWED TO USE THEIR POWER?**

A. Upon the death of the trustee.
- 7. Q. CAN THE TRUSTEE GIVE POWER OF ATTORNEY TO AN INDIVIDUAL?**

A. Yes.
- 8. Q. DOES THE SUCCESSOR TRUSTEE HAVE TO SHOW A COPY OF THE TRUSTEE'S DEATH CERTIFICATE?**

A. Yes.
- 9. Q. A WILL LEAVES A MOTOR VEHICLE OR MOBILE HOME TO A TRUST. DOES THE TITLE HAVE TO GO IN THE NAME OF THE TRUST PRIOR TO SALE OR MAY THE DESIGNATED TRUSTEES, (ACCORDING TO THE TRUST), SELL THE PROPERTY?**

A. If the will leaves the property to a trust, the title must be issued into the name of the trust before title can be transferred to a new owner.

EXHIBIT B (page 2, cont.)

10. **Q. A WILL STATES THAT A MOTOR VEHICLE OR MOBILE HOME GOES TO A CHILD AND THE TRUST STATES IT GOES TO TWO CHILDREN; MUST BOTH TAKE TITLE?**
- A. If the will specifies that the motor vehicle or mobile home goes to a child, follow the instructions in the will. If the will leaves the property to the trust, then the trust agreement should be followed.
11. **Q. TITLE READS: JOHN AND MARY DOE TRUST, DATED 08/19/02. WHAT DO WE NEED WHEN BOTH ARE DECEASED?**
- A. We need a death certificate for both individuals. Depending on how the trust agreement reads, the trustee can transfer ownership. If a successor trustee has been named, then the successor trustee will be the one to transfer ownership.
12. **Q. WHAT TAKES PRIORITY, A WILL OR TRUST AGREEMENT? DOES THE WILL REPLACE A TRUST AND DOES THE SUCCESSOR TRUSTEE, IF ANY, HAVE TO TAKE TITLE OR CAN THEY SELL IT?**
- A. It depends on the ownership of the vehicle (estate or trust). If the vehicle is owned by the estate and was never transferred to the trust, go by deceased instructions. If the vehicle is owned by the trust and the trustee is deceased, the successor trustee can transfer ownership. The successor trustee does not have to take title before selling, if the title is in the name of the trust (Smith Family Trust).
13. **Q. TITLE READS: DOE, JOHN AND MARY. THE WILL STATES DECEDENT LEFT EVERYTHING TO THE TRUST OR TRUSTEE, ALTHOUGH THE PROPERTY IS NOT IN THE NAME OF THE TRUST. SUPPOSE THERE IS MORE THAN ONE HEIR, BUT THE TRUST ONLY NAMES ONE SUCCESSOR TRUSTEE?**
- A. Since the will left everything to the trust or trustee, title must be issued in the name of the trust or trustee, prior to selling. If the trust names one successor trustee, then the successor trustee can settle the estate without other heirs signing. The primary determining factor to consider in these situations is ownership of the motor vehicle. After reading the trust agreement and the will and ownership is clearly established, you follow the appropriate procedure.

EXHIBIT C

DEFINITIONS

LIVING TRUST	A trust that takes effect during the lifetime of the settlor.
REVOCABLE TRUST	A trust that can be changed or revoked at anytime.
SETTLOR	A person who makes a settlement of property.
UNDER DECLARATION OF TRUST	The document signed by a trustor (settlor) creating a trust into which assets are placed, a trustee is appointed to manage the trust (who may be the party who created the trust), the powers and duties of management of the principal and profits of the trust are stated, and distribution of profits and principal is spelled out.
IRREVOCABLE TRUST	A trust that cannot be changed or revoked.

EXHIBIT D

CERTIFICATION OF TRUST

This Certification of Trust is made this _____ day of _____ 20____, by the undersigned, pursuant to and in accordance with Section 736.1017, Florida Statutes; accordingly, said undersigned hereby certifies the following:

1. That certain Trust known as the _____ (hereinafter the "Trust") was duly executed and created by _____ Settlor, on _____, 20 _____, and remains in full force and effect as of the date hereof.
2. The Trustee(s) _____ whose address is _____, is the current duly authorized and acting Trustee of the Trust.
3. That, if the undersigned is not the currently vested Trustee of record, attached hereto are true and correct copies of the pertinent pages of the Trust and any additional documentation required to establish the undersigned as the currently acting Trustee of the Trust.
4. The Trust grants the undersigned full power and authority to sell, lease, encumber, manage and otherwise dispose of any and all trust property.
5. The Trust authorizes the undersigned to execute any and all documents required in connection with any sale, lease mortgage or other transfer including, without limitation, deeds, mortgages certifications, affidavits, closing statements and other related documents.
6. The Trust is:

(NOTE: Initial and complete, if appropriate, the applicable provision set forth below.)

(_____) Trust is Revocable and the power to revoke is/was held by _____.

(_____) Trust is Irrevocable.

CHECK ONE: **Motor Vehicle** **Mobile Home** **Vessel**

Year	Make/Manufacturer	Body Type	Title Number
Vehicle/Vessel Identification Number			

7. That title to all property of the Trust including, without limitation, the above described property shall be titled as follows: " _____, as Trustee of the _____."
8. The Trust has not been revoked, modified or amended in any manner that would cause any representation or certification contained herein to be untrue or incorrect in any manner.
9. The undersigned hereby acknowledges and agrees that this Certification of Trust is being made pursuant to and in accordance with Section 736.1017, Florida Statutes, with full understanding that it will be relied upon to establish the truth of the matters set forth herein as provided under said Section 736.1017, Florida Statutes.

Under penalties of perjury, I declare that I have read the forgoing document and that the facts stated in it are true.

Signature(s): _____
 Trustee Co-Trustee(s)

Printed Name(s): _____
 Trustee Co-Trustee(s)