

TRANSFER OF OWNERSHIP WITH POWER OF ATTORNEY

- A. Use of Secure Power of Attorney (with conforming title).
1. Federal regulations prohibit the same person from signing a disclosure as both the seller and the buyer in the same transaction
 - a.. Exception: A secure Power of Attorney may be used if the title is with the lienholder or if the title has been lost and a duplicate title is required.
 1. With electronic titles, out-of-state titles may be assigned by a dealer (as seller) with a power of attorney, but the title gives the appearance that there was not a lien (or a duplicate title). In these situations, the power of attorney can be accepted, as long as the title has a recent issue or print date.
- B. Use of Non-Secure Power of Attorney (with conforming title).
1. Federal regulations prohibit the same person from signing a disclosure as both the seller and the buyer in the same transaction. Powers of Attorney for other than mileage disclosure purposes and "third party" Powers of Attorney for mileage disclosure are acceptable. (Example, One spouse may give another his/her Power of Attorney to complete and sign a disclosure form in connection with the sale of a vehicle to a third party. The "third party" acting pursuant to the Power of Attorney on behalf of one party, however, must not be an agent of the other party.)

DISPOSITION OF CERTIFICATE OF TITLE THAT HAS BEEN PROPERLY ASSIGNED

- A. A South Dakota certificate of title that has been properly assigned should be presented to the county treasurer.
- B. The South Dakota driver's license or social security number of each purchaser must be given. In the case of a company, the FEIN is required. If the company is a sole proprietorship, the owner's South Dakota driver's license number or social security number may be used.
 - 1. A matricula consular card or substantially similar document issued by the Mexican Consulate as proof of identification for any purpose is unacceptable (SDCL 1-1-26).
- C. All liens shown on the face of the certificate of title should be properly released of record by the proper county treasurer.
 - 1. The county treasurer may accept a title submitted for transfer with an open lien if the lienholder's Notice of Filing form, with the lien release section properly completed, or a properly completed order to cancel lien form is attached to the title.
- D. A certificate of title shall be presented within 30 days of assignment.
- E. The county treasurer shall send all documents to the Division of Motor Vehicles, no later than the next business day.
 - 1. If the application for certificate of title is presented more than 30 days after the date of sale, in addition to the title fee, the following applies. (NOTE: All fees are assessed from purchase date, regardless of when an applicant applies for title and registration.)
 - a. A late fee for late application for title.
 - b. Interest and Penalty (applies to 3% motor vehicle excise tax and 4% initial registration fee). All fees are assessed from purchase date regardless of when an applicant applies for title and registration.
 - 1) The system automatically assesses interest on the tax owed for each month or part thereof for which the tax payment is late at the rate of 1-1/4% or \$5, whichever is greater, for the first month; and 1-1/4% per month thereafter on any application made after 30 days from the date of purchase. (Interest is not calculated on interest.)
 - 2) A one-time penalty equal to 10% of the tax or \$10, whichever is greater, is automatically applied against any application made after 60 days from the purchase date.
 - d. In addition, any person applying for a title more than 90 days after the date of assignment is guilty of a Class 2 misdemeanor.
 - e. If a purchaser fails to comply with transfers of title within 30 days, and the seller files a written complaint attesting to the facts, the purchaser is guilty of a Class 2 misdemeanor.
 - f. If a purchaser defaults on the terms of the sale within the 30-day period, the seller does not have to deliver the title to the purchaser. The seller must notify the Division of Motor Vehicles in writing of the seller's refusal to deliver title to the purchaser within 14 days of the purchaser's default on the terms of the sale.

2. If an apparent erasure of the assignment date is found, it will be necessary for the applicant to substantiate the corrected date. This could be done by a bill of sale, sales contract, etc. The penalty would continue to run while the applicant is obtaining proof of the date of purchase.
- F. A properly completed Damage Disclosure Statement form, if applicable and if damage disclosure information is not contained on the assignment of the certificate of title, must be attached.

DUPLICATE CERTIFICATE OF TITLE

- A. The application for duplicate certificate of title (DMV-010) shall be made to any county treasurer.
 - 1. If title has been issued with names joined by “and”, all owners must sign.
- B. Application for duplicate certificate of title shall be made by the recorded owner or by a duly authorized agent holding power of attorney. (A copy of the power of attorney document must be attached to the application form.) Duplicate title will be issued in the name indicated in the motor vehicle records. Only address changes will be allowed when an application for duplicate title is made.
- C. Application for duplicate certificate of title shall be made only when the original valid title has been lost, mutilated, or destroyed. The mutilated certificate of title shall be attached to the application.
- D. Application for duplicate certificate of title shall not be made or accepted by the county treasurer or the Division of Motor Vehicles when the original certificate of title is being held by the lienholder.
- E. Prior to the acceptance of the application for duplicate title, the whereabouts of the original title shall be ascertained to prevent there being two documents in circulation for the same vehicle.
- F. When there are existing liens, the lienholder’s signature must also be on the application, unless a lien release is attached, regardless of whether the title is indicated as owner-held or lienholder-held.
 - 1. If an application for duplicate title in which a lien exists is submitted along with a lien release, the lien will be canceled by the division and the duplicate title issued without the lien. The duplicate title will be mailed to the owner unless otherwise directed.
- G. In the event of a name change due to marriage, divorce, or a court order, it will be necessary to issue the duplicate title as the motor vehicle file indicates. The title can then be resubmitted with all appropriate documents in order to accomplish the change of name.
 - 1. If the applicant has changed names since the original title was issued, the application should be signed using the same name as indicated on the computer system;
 - 2. The application may be signed using both names; or
 - 3. If the owner chooses to sign using his/her new name, a notarized affidavit stating he/she is one and the same must accompany the application.
 - 4. If the title is listed only in the name of a trust, the application must be signed by the trustee(s).
 - 5. If the trust appoints multiple trustees with the form of ownership as “and”, all of the trustees’ signatures are required.
 - 6. The portion of the trust appointing the trustee(s) and the signature page of the trust must be attached.
- H. The current odometer reading, when applicable, must be completed on the application.
- I. The duplicate certificate of title fee must be collected.
- J. In the event the South Dakota driver's license number or social security number has not previously been furnished on each owner on the title, the identification number must be given. In the case of a company,

the FEIN is required. If the company is a sole proprietorship, the owner's South Dakota driver's license number or social security number may be used.

REPLACEMENT OF LOST TITLE DOCUMENT (LOST IN MAIL)

- A. In cases where individuals do not receive the original certificate of title through the mail, the county treasurer may waive the fee normally required for a duplicate title. The application for replacement of lost title must be made within ninety (90) days from the date that the application for title was originally made. A replacement (duplicate) title may be issued at no additional charge to the customer.
- B. A replacement (duplicate) title may be provided whenever the county treasurer is sure that the customer has never received the original title, and the customer has signed an application for replacement of lost title document (DOR:DMV:299) attesting to that fact. The original title is canceled and the customer is required to return it, should the original turn up later.
- C. The application for replacement of lost title document is a two-part form. The original is sent to the Division of Motor Vehicles and will become a permanent part of the vehicle history. The copy is retained by the county treasurer.
- D. In cases where the original title was received and then lost, the duplicate title fee must be collected.

CONSIGNMENT SALES BY DEALERS OR PUBLIC AUCTIONS

- A. Any dealer or public auction may sell or offer to sell South Dakota titled vehicles/boats on consignment. No person may sell or offer to sell on consignment a motor vehicle/boat that the manufacturer's statement of origin has not been transferred. A titled vehicle that is at least 20 years old and a motorcycle that is at least 30 years old that is not titled in South Dakota may be sold at a public auction if a title is issued in the name of the seller.
1. Dealer to Dealer consignments are prohibited (unless sold at public auction).
 2. A dealer is prohibited from using dealer plates or permits on a consigned vehicle.
 3. An out-of-state dealer may sell a vehicle that is at least 20 years old or a motorcycle that is at least 30 years old that is titled in the dealer's name (out-of-state title) at public auction if the dealer purchases a temporary permit from the division. The dealer must provide proof that the dealership is in good standing in the dealer's home state and has no outstanding dealer violations. The fee for the permit is \$250 if purchased prior to the auction or \$500 if purchased at or after the auction. Any dealer in violation shall be denied a temporary permit for a period of one year from the date of the violation.
- B. Consignment is defined as: the delivery of a vehicle/boat by the owner into the possession of another without transfer of title for the purpose of sale or where there is any condition that the purchaser does not have an absolute obligation to pay for the vehicle/boat or has a right to return the vehicle to the seller.
- C. Public auction is defined as: a business that is open to the public where South Dakota titled motor vehicles/boats are consigned, displayed, and auctioned to the highest bidder by an auctioneer.
- D. Auctioneer is defined as: a person who presides over a public auction where following an initial starting price, bids are taken from 2 or more people until a final bid or price is established for a motor vehicle/boat.
- E. If a person trades in a vehicle to a dealer or enters into a consignment with a dealer and the vehicle has a lien notated on the title, the parties may agree that the dealer will satisfy the lien. Failure to satisfy a lien constitutes theft.
1. A dealer must satisfy the lien within ten business days after receipt of the funds.
 2. Proof of payment of the lien shall be the confirmation number when payment is made on-line or a copy of the check and the certified return mail card if payment is not made on-line.
 3. A dealer may not offer the vehicle for sale until payment has been made to the lienholder, except on a consigned vehicle on which the dealer must comply with the terms of the consignment agreement. Proof of payment shall be documented as listed above "2".
- F. Any dealer or public auction that sells or offers to sell South Dakota titled vehicles/boats on consignment shall enter into a contract with the consignor. The contract shall contain, at a minimum, the following information:
1. Name and address of consignor (owner);
 2. Name and address of consignee (dealer or auctioneer);
 3. Vehicle/boat description: title number, year, make serial number;

4. When applicable, completed odometer disclosure;
 5. Agreed upon price or range;
 6. Agreed upon amount that the owner will pay the dealer or auctioneer;
 7. Length of time vehicle/boat will be with the dealer or auctioneer;
 8. Disclosure by dealer or auctioneer that the sale is a consignment sale;
 9. When applicable, completed damage disclosure;
 10. Signature of owner and dealer or auctioneer.
- F. The following documents must be available at the dealership or auction prior to sale of a vehicle/boat:
1. South Dakota title in the name of the consignor;
 2. Completed and signed consignment sales contract containing information set out above;
 3. When applicable, an odometer reading certified by the owner (may be included on contract);
 4. When applicable, a damage disclosure statement signed by the owner (may be included on the contract);
 5. Federal FTC Buyer Guide must be displayed in a vehicle being offered for sale on dealer lot.
- G. The following documents must be available at the dealership or auction upon sale of a vehicle/boat:
1. South Dakota title properly assigned by the consignor (owner);
 2. Bill of sale;
 3. Prior disbursement of proceeds if lien is indicated (lien must be satisfied and released).
- H. A violation of these provisions is a Class 2 misdemeanor.
- I. A dealer and auctioneer are required to keep the following records:
1. Dealer or auctioneer must maintain record of consignment sales for 5 years;
 2. Dealer or auctioneer must retain a copy of consignment sales contract for 5 years.
- J. A dealer or an auctioneer may not sell a vehicle/boat that has a title with a lien on it for less than the full amount of the lien, without the advance written consent of the lienholder. A dealer or an auctioneer may not release the proceeds from the sale of a vehicle/boat with a lien until the lienholder signs a release of the lien. A violation of these provisions is a Class 2 misdemeanor.
- K. Every dealer and public auction shall keep books, records and files. A record shall be kept on every vehicle/boat offered for sale, including the serial number or vehicle/hull identification number and a description of the vehicle/boat and the name and address of the owner. If the vehicle/boat is sold, the name and address of the person purchasing the vehicle/boat and the price for which it is sold.
- L. All records must be open and available to inspection by a dealer inspector.

TRANSFER OF OWNERSHIP TO OR FROM A JOINT OWNERSHIP

- A. Assignment shall be completed in the regular manner from the recorded owner to the joint ownership.
- B. No certificate of title shall be issued showing the phrase "and/or" in any joint ownership.
- C. Assignment shall be completed from the recorded joint owners to the new purchaser as follows:
 - 1. "John Doe or Mary Doe" shall be assigned by either.
 - 2. "John Doe and Mary Doe" shall be assigned by both.
 - 3. "John Doe and Mary Doe, with rights of survivorship (WROS)" shall be assigned by both except on death of one, may be assigned by the survivor, when a certified copy of death certificate is attached to the certificate of title.
- D. If a document had previously been issued by the State of South Dakota with the joint ownership shown as "and/or", form of ownership shall be construed as "or" and the title may be assigned by either owner.
- E. Any owners desiring to change the type of joint ownership shall assign the certificate in the proper manner and present the same for transfer with the required title fee. The appropriate exemption must be noted on the MV-608 or the MV-609 and must be attached and signed. A Damage Disclosure Statement is not required when a title, issued in the names of two or more persons, is being transferred without consideration to one or more such persons (Exemption #3).
- F. The form of ownership on an out-of-state title shall be construed in the same manner as a South Dakota title.

TRANSFER OF OWNERSHIP DUE TO MARRIAGE NAME CHANGE

- A. Assignment shall be made in the same manner as any other transfer except on the reverse side of the certificate of title, the owner must sign as seller using the exact name as shown on the face of the certificate of title and then type or print her correct married name as purchaser. The title fee shall be charged.
- B. The legal given name shall be used.
- C. No Damage Disclosure Statement is required.
- D. Exemption #97 shall be used to indicate that no tax is due.

TRANSFER OF OWNERSHIP BY COURT ORDER

- A. The county treasurer shall require the surrender of the certificate of title covering the vehicle(s) involved, along with the original court order (or a certified copy thereof), the required title fee, and an application for South Dakota certificate of title (MV-608) signed by the person granted ownership of such vehicle(s). An application for each vehicle covered will be required.

- B. No Damage Disclosure Statement is required.

TRANSFER OF OWNERSHIP BY INHERITANCE/ SUCCESSION

A. No probate of estate.

1. An Affidavit of Vehicle Ownership by Succession shall be completed where there is not sufficient other property to warrant probate proceedings in the matter of the estate of the deceased.
 - a. If a South Dakota resident inherits a vehicle (not through probate) that is titled in another state, the applicant should apply for title through the state where the decedent lived. There have been some exceptions to this when the state involved will not title the vehicle because it is not present in that state or because the applicant is not a resident of that state. In these situations, an affidavit from the applicant stating this fact is required to title the vehicle in our state. In most instances, however, an affidavit of succession should only be used for South Dakota titled vehicles.
2. The county treasurer shall require the surrender of the South Dakota certificate of title covering the motor vehicle set out in the Affidavit of Vehicle Ownership by Succession. (If the certificate of title is not available, a general affidavit shall be attached stating such fact. A duplicate title would not be issued.) The Affidavit of Vehicle Ownership by Succession vesting ownership of such motor vehicle in the name of the immediate heir(s) or successor(s), a properly completed Damage Disclosure Statement form completed by the applicant (if applicable and if damage disclosure information is not contained on the certificate of title), an application for title (MV-608) completed by the heir(s) or successor(s), and the title fee are also required.
3. The certificate of title shall be issued to the immediate heir(s) or successor(s) listed as being granted ownership of the vehicle in the Affidavit of Vehicle Ownership by Succession. The Affidavit of Vehicle Ownership by Succession shall not be used to transfer ownership from heir(s) or successor(s) to purchaser. The title must first be secured in the name of the heir(s) or successor(s) and properly assigned.
4. The South Dakota driver's license or social security number of each successor the title rests in must be given.
5. If more than one vehicle is involved, a separate Affidavit of Vehicle Ownership by Succession shall be completed for each vehicle.

B. Probate of estate - Personal representative transfers title to heir.

1. The county treasurer shall require the surrender of the South Dakota certificate of title. (If the title cannot be located, the personal representative must apply for a duplicate before transferring title to the heir.) A copy of the papers appointing the personal representative, a properly completed Damage Disclosure Statement form by the applicant, an MV-609 exemption form (exemption #2) completed by the applicant, and the title fee are also required.
 - a. If a resident inherits a vehicle titled in another state through probate (letters of appointment of an administrator or executor) a South Dakota title can be applied for with copies of the probate papers.
2. The certificate of title shall be issued to the heir(s).
3. The South Dakota driver's license or social security number of the applicant(s) must be given.

C. Probate of estate - Personal representative selling vehicle.

1. The personal representative completes the assignment of title, and attaches a copy of the papers appointing him/her as personal representative. (If the title cannot be located, the personal representative must apply for a duplicate before transferring title to the purchaser.)