

Transferring A Vehicle Title in Florida After A Loved One Passes Away

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When a person dies with a car titled in their name, the title generally needs to be transferred to someone with the legal authority to gift, donate or sell it to another person, charity, or organization. The executor or beneficiary must apply for a new title with The Florida Department of Highway Safety and Motor Vehicles (FLHSMV).

If the car was jointly owned with a spouse, and both names are on the title with alternate or "and/or" ownership, then a surviving spouse should be given an immediate certification of title after going to the DMV with a copy of the death certificate and the title.

The FLHSMV also allows a surviving spouse to transfer a title that is in the name of the deceased spouse ONLY. Florida Statute § 319.28 also says that any surviving spouse who would be entitled to the car title in Florida and wishes to dispose of the vehicle doesn't need to obtain a certificate of title in their name. Instead, they may transfer the title directly to the new owner. A marriage certificate may be required to transfer the title under these circumstances if the name of the surviving spouse isn't on the death certificate.

If there is no spouse, then a family member will typically need to open a Florida Probate court proceeding to nominate themselves as a Personal Representative. By serving as the decedent's estate administrator, they handle all affairs, including the sale of vehicles. In some cases, however, particularly if the estate has no debts, the state provides some easier options to transfer titles to the person who will be responsible for selling or gifting it.



THE PROBATE PROCESS AND VEHICLES

Probate is a legal process that determines how to manage the estate and distribute assets. It verifies that a will is the most recent copy and has been properly executed. It also inventories the deceased's assets and debts. If there is a will, the probate process ensures that the beneficiaries named in the will receive their share of assets after estate debts are paid. Without a will, the probate process inventories the deceased person's assets, pays creditors, and determines the legal heirs to any remaining property.

The transfer of a vehicle after death in Florida is described by [Section 319.28](#), Florida Statutes. In many cases, if a car is one of the decedent's significant assets, a title transfer may have to wait until the probate process is complete. This is especially true if someone dies without a will. However, there are exceptions to this general rule if there are no debts or demands from creditors against the estate.

Alternative "quicker" processes for transferring a car to someone other than a spouse depend on whether:

- ✓ There is a will,
- ✓ There is no will, or
- ✓ If the decedent had their assets, including the vehicle, in a living trust.





Transferring a Car With a Will - If There are No Debts

If the previous owner died with a will, and there is a Personal Representative named in the will, they can transfer a car title into their own name. They must provide a sworn copy of the will and an affidavit that the estate is not indebted. They don't need to wait until the estate is closed. If there are debts, creditor claims must be resolved through probate or payments confirmed in the proceeding. The Personal Representative will need to:

- ✓ Complete an application for a Certificate of Title With/Without Registration ([HSMV form 82040](#)) found on the [FL DMV](#) website.
- ✓ Provide the current certificate of title for the car
- ✓ Provide the death certificate for the decedent.
- ✓ Offer proof of ID for themselves and the decedent.

Whether the will is being probated or not, the Personal Representative must provide a court-certified (exemplified) copy of the will and an affidavit at the DMV showing the estate is not indebted.

Transferring a Car Without a Will - If There are No Debts

When a previous owner dies WITHOUT a will (intestate), a title change can still be made by heirs without waiting for a probate proceeding to be finalized. In this case, the appointed Personal Representative will need to:

- ✓ Complete an application for a Certificate of Title With/Without Registration ([HSMV form 82040](#)) found on the [FL DMV](#) website.
- ✓ Provide the current certificate of title for the car
- ✓ Provide the death certificate for the decedent.
- ✓ Provide an affidavit that the estate is not indebted and the surviving spouse or heirs, if any, have agreed on the division of the estate and to whom the vehicle is to be transferred, delivered, gifted, or otherwise sold (and proceeds distributed from the sale).
- ✓ Offer proof of ID of the vehicle owner and the decedent.

Note: when filling out Form 82040, it asks for the owner's name and address. Put in the person who's receiving the new title, not the name of the original car owner who passed away.

Transferring a Car Held by a Living Trust

To avoid the significant time and expense of probate in Florida, many people create estate plans with a revocable living trust, allowing a person to decide in advance who will manage their assets if they become ill, incapacitated, or pass away. The assets are distributed according to the terms of the trust privately and with no court involvement. Living trusts typically nominate successor trustees to buy, sell or transfer property when a person is incapacitated or passes away as instructed.

Vehicles can be put in a living trust well before death. If the title reflects that a trust is the owner of a vehicle, the current trustee can take any action on behalf of the trust and outside of probate. They already have the authority to legally sign over the title. Creating a living trust is one of the best ways to streamline property transfers to your family and settle your estate. It avoids delays and added expenses, keeping family matters private and out of court.



CAN CREDITORS REPOSSESS OR ATTACH A LIEN ON THE CAR AFTER SOMEONE DIES?

Generally, in Florida, the only creditors who can attach a motor vehicle after a person's death are dealerships or lenders who have been financing the vehicle. They are secured creditors and may file a lien up to the amount remaining on the loan. In many cases, the family can simply contact the dealership to either:

- ✓ Buy back the vehicle (which may result in a payment to the family).
- ✓ Voluntarily repossess the vehicle and release the loan (without payment to the family).
- ✓ Transfer the obligations of the lease or loan to a spouse or family member (depending on the family member's credit profile).

The family may also have the option of paying off the loan with other assets of the estate and owning the vehicle outright. It would then be available to transfer. If the loan is paid off, make sure the payoff and release of the lien are documented. This can take several weeks, so be patient!

AUTO INSURANCE COVERAGE AFTER DEATH

When a policyholder dies, what happens to their car insurance policy? The decedent's family or Personal Representative must notify the insurance carrier as soon as possible. The policy isn't automatically canceled by the carrier because:

- ✓ The insurance company has no way of knowing of the death without being notified, and
- ✓ Other drivers on the policy may need to continue coverage on a new policy, requiring changes in types and amounts of coverage.

Whether you're related to the policyholder or not, you will still need to provide documentation to prove that the insured person has passed away and that you are legally allowed to close their policy. If you are not a spouse but are a personal representative or other family member, additional information is required.

Spouses who continue to drive a car and are on the original insurance policy may be able to continue coverage without much hassle. They may even receive discounts or credits when removing a driver from their policy. It may only require a death certificate. If a Personal Representative wishes to use the car for estate purposes temporarily, insurance coverage must be obtained or remain in place to protect the individual, family, and estate from accidents, personal injury, or other property damage. A Personal Representative should never assume possession or control of a vehicle without the appropriate insurance in place.

If the vehicle is not going to be transferred for some time, maybe due to the probate process or delays in a sale or transfer, and it's going to be garaged or parked, insurance coverage can be amended to cover a lesser liability (comprehensive coverage for falling objects, theft or fire).





WORKING WITH TESSIER LAW FIRM, P.A.

Take Charge of Life's Transitions!

Depending on your family situation, the transfer of a car title in Florida after a loved one's death can be easy. However, you may need to hire a probate attorney if there are:

- ✓ Debts against the estate,
- ✓ No will and unknown heirs,
- ✓ Multiple beneficiaries and no one agrees with each other, or
- ✓ Questions about what is supposed to be happening with the vehicle.

Many of our clients are seniors with children who live out of state and be the ones to administer their wills after their death. We can advise the best way to set up the original title for your estate to ease transfers at death. This may include creating a will or revocable living trust to instruct the family on how to transfer the title or sell it quickly, with or without probate. You can decide who gets what, and confusion is avoided between family members. If you are handling the estate of a loved one, we can talk about your specific situation to see whether a full probate is necessary or avoid it altogether.



If you have questions, please **contact me today.**

You can also call me at **863-220-7927**
or email me at **info@tessierlawfirm.com.**

The Tessier Law Firm, P.A. helps families with Estate Planning and Elder Law, including wills and trusts, asset protection, long-term care planning, and probate.

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