

## **Motor Vehicle Division Informational Memo # 23-18**

### ***2023 Legislation – Odometer Disclosure Statements for Certain Operation-of-Law Transfers***

**DATE:** May 22, 2023

**FROM:** Kelli Huser, Compliance Officer, MVD

**TO:** All Motor Vehicle Division staff and county treasurer staff

#### **SUBJECT**

This informational memo explains legislation enacted during the 2023 legislative session. HF 583 allows a person who signs an affidavit to transfer a vehicle under Iowa Code 321.47(2) to act as the owner's agent to complete the odometer disclosure statement.

#### **SUMMARY**

Under federal law and Iowa law, vehicles of a certain age cannot be sold with "ACTUAL" odometer mileage without a properly completed odometer disclosure statement. For the odometer disclosure statement, only the vehicle owner or the vehicle owner's agent may sign (in most cases). Without the right signature, the new vehicle title will state "NOT ACTUAL" for the mileage. This "NOT ACTUAL" mileage may lower the vehicle's value.

This is an issue when the vehicle owner is deceased. In some cases, the owner's estate goes through a court proceeding and there is an executor or an administrator to transfer the vehicle. In other cases, an heir uses Iowa Code 321.47 to transfer the vehicle by completing an affidavit with certain information. Prior to HF 583, Iowa law did not expressly allow heirs using the affidavit process to sign the odometer disclosure statement on behalf of a deceased owner.

HF 583 states that persons completing affidavits for operation-of-law transfers under Iowa Code 321.47(2) may act as the agent of the deceased owner solely to complete the odometer disclosure statement. The bill is retroactive to July 1, 2022.

**The legislation is effective July 1, 2023.**

#### **LINK TO LEGISLATION**

<https://www.legis.iowa.gov/legislation/BillBook?ba=HF%20583&ga=90>

#### **CURRENT**

Heirs may use the affidavit process in Iowa Code 321.47 to transfer a vehicle into the heir's name. But the heir may not sign the odometer disclosure statement on behalf of the deceased owner. Instead, the heir may either (1) proceed with probate or administration of the decedent's estate as appropriate to have an executor/administrator sign the odometer disclosure on behalf of the deceased owner or (2) transfer the vehicle with "NOT ACTUAL" mileage.

## **NEW**

As of July 1, 2023, and retroactive to July 1, 2022, heirs using the affidavit process in Iowa Code 321.47 may both transfer the vehicle into the heir's name and complete an odometer disclosure statement as the deceased person's agent.

## **BUSINESS IMPACT**

We are updating DOT Form 411083 "Certification of Death Testate (with a will) for Vehicle Transfer" and DOT Form 411088 "Certification of Death Intestate (without a will) for Vehicle Transfer" to include an odometer disclosure statement section to comply with this law change.

For all applicable vehicle transfers on or after July 1, 2023, an heir may complete the applicable updated form to transfer the vehicle. County treasurers should allow "ACTUAL" mileage on the new title.

## **PROCESS FOR RETROACTIVE TITLING**

For all applicable vehicle transfers between July 1, 2022, and July 1, 2023, where title transferred from deceased owner → heir, and title is still in the heir's name, please see the following paragraphs.

Beginning July 1, 2023, customers with titles that were obtained from July 1, 2022, through July 1, 2023, through testate or intestate process that resulted in a title that read "NOT ACTUAL" miles because the heir was not able to sign the odometer disclosure statement, may apply for corrected titles to reflect actual mileage. The heir may apply for the corrected title in the following two situations:

1. The heir still possesses the vehicle and current title which was issued with "not actual" miles.
2. The heir has transferred a title with "not actual" miles to a transferee, but the transferee has not yet obtained a new title.

Example: The heir sold the vehicle during this period to a dealer with "not actual" miles on the title. The heir assigned the title on the back and the dealer signed as the transferee, but the dealer did not sell the vehicle or get a dealer title.

When applying for the corrected title for this time period, the heir shall present to the County Treasurer:

1. New version of the Death Testate or Death Intestate form (411083 or 411088) with odometer disclosure included, which is available on July 1, 2023. No affidavit of correction is needed.
2. Turn in current title with "not actual" miles on it.

The county treasurer should look up the original Death Testate or Intestate form, previously submitted by the heir, to make sure the heir is the same as originally processed. The ownership shall not change on the corrected title. The county may issue a corrected title to the heir, reflecting the actual miles. If the certificate of title is in the possession of a secured party, the county treasurer shall notify the secured party to return the certificate of title to the county treasurer for the purpose of issuing a corrected title. A title fee may be collected by the county treasurer to process the corrected title.

For all applicable vehicle transfers between July 1, 2022, and July 1, 2023, where title transferred from deceased owner → heir → new owner, and the parties are seeking a corrected title, please contact your MVD county liaison for assistance. Since these scenarios will vary, we will assist counties with these transactions on a case-by-case basis. If all parties are willing to “unwind” the deal, which would include the heir signing the affidavit and the current owner having the title cancelled to correct the title work, then we may be able to accomplish the retroactive process. We should not otherwise intercede in any renegotiations the parties may wish to consider in light of the correction to the title.

## **QUESTIONS AND ANSWERS**

The following questions and answers provide additional information to you and to customers.

### **MAY ANY PERSON SIGN THE UPDATED AFFIDAVITS TO CHANGE THE ODOMETER STATEMENT?**

No. The only person(s) authorized to sign as the agent of the deceased person for the odometer disclosure statement is the “affiant,” (referred to as “heir” in this memo) meaning the person who signs the affidavit under Iowa Code 321.47. The only people that can legally sign the affidavit are:

- The person entitled under Iowa laws of descent and distribution to the vehicle if (1) the owner died without a will and (2) there’s been no administration of the person’s estate or
- The person entitled under the deceased person’s will to the vehicle if (1) the will is not probated or (2) the will is admitted to probate without administration.

### **IF I BOUGHT THE VEHICLE FROM AN HEIR AND HAVE THE TITLE IN MY NAME, MAY I SIGN THE UPDATED AFFIDAVIT TO CHANGE THE ODOMETER MILEAGE?**

No. The person who buys the vehicle from the heir does not qualify to sign the updated affidavit and does not qualify under Iowa law to sign the odometer statement as the decedent’s agent. See above guidance for case-by-case review for any “unwinding” of title work after the heir sold the vehicle.

### **AS A MOTOR VEHICLE DEALER, IF THE HEIR SIGNED THE VEHICLE OVER TO MY DEALERSHIP, MAY I SIGN THE UPDATED AFFIDAVIT TO CHANGE THE ODOMETER MILEAGE OR WHAT DO I NEED TO DO?**

No, the motor vehicle dealer may not sign the updated affidavit. Only the heir can sign the affidavit. If the transfer from deceased owner → heir happened between July 1, 2022, and July 1, 2023, the heir qualifies to get a corrected title that the heir could choose to re-assign to the motor vehicle dealer.

### **AS A MOTOR VEHICLE DEALER, IF THE HEIR SIGNED THE VEHICLE TO ME AND I SOLD THE VEHICLE MAY I GET THE ODOMETER MILEAGE CHANGED?**

No. If the vehicle has been sold and new title is issued to the new owner down the chain from the heir, this is too removed from the heir’s ownership.

### **SHOULD COUNTY TREASURERS STILL ACCEPT SMALL ESTATE AFFIDAVITS?**

Yes, small estate affidavits are still valid ownership documents and can still be accepted as proof a person is entitled to ownership of a vehicle. But the small estate affidavit does not have the required odometer disclosure statement. Customers who want to transfer the vehicle with “ACTUAL” mileage would need to also complete the applicable updated form.

**CAN AN HEIR USING THE AFFIDAVIT PROCESS COMPLETE THE ODOMETER DISCLOSURE STATEMENT ON THE BACK OF THE TITLE?**

No, the heir must use the applicable updated form (DOT Form 411083 or 411088) to complete the odometer disclosure statement. The heir has limited authority to act as the decedent’s agent for odometer disclosure statement purposes only. Signing the back of the title would act beyond that authority.

**IF THERE IS MORE THAN ONE INHERITOR, DO BOTH NEED TO ATTEST TO THE ODOMETER DISCLOSURE?**

If there are multiple inheritors, then they must all submit an affidavit to attest to their right to own the vehicle and to be jointly listed on the new title. However, as with any other odometer attestation, only one inheritor needs to provide the odometer disclosure.

**SHOULD COUNTY TREASURERS REQUIRE AN AFFIDAVIT OF CORRECTION (DOT FORM 411219) TO PROCESS THE RETROACTIVE CORRECTED TITLES?**

No. The Affidavit of Correction does not apply to this process. The heir only needs to certify that they are the heir testate or intestate with odometer disclosure on one of the new forms and turn in the current title.

**IS THIS CHANGE ALLOWED IF THE DECEDENT’S TITLE HAD NOT ACTUAL MILES PRIOR TO TRANSFERRING TO THEIR HEIR?**

No. If the decedent’s title already had “not actual” miles then the heir’s title will need to retain the “not actual” reading. A County Treasurer should be able to review the title history to see the decedent’s title. This legislation only applies to the situation when the decedent’s title had “actual” miles and but the heir’s title needed to have “not actual” miles because there was no legal executor or administrator to attest to the miles.