

Motor Vehicle Division Policy Memo # 21-05

Certification of Trust and Vehicle Transactions

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FROM: MVD Policy & Compliance Team

TO: All Motor Vehicle Division staff, Iowa County Treasurers and County Treasurer's staff

SUBJECT

This policy memo explains legislation enacted during the 2019 and 2021 legislative sessions and administrative rules effective April 13, 2022 regarding certifications of trust and is most applicable to staff involved in vehicle registration and title transactions. This legislation impacts us because when a trust seeks to register or title a motor vehicle, we are required to review a copy of the certification of trust document to verify the existence of the trust and we also have trustee signature requirements for our title, registration, and transfer of ownership documentation.

SUMMARY

Current policy provides that a certification of trust must be signed by a currently acting trustee or the attorney of an acting trustee. The application for registration or the title of a vehicle owned by a trust must be signed by the number of trustees as specified in the trust document or certification of trust. The applicant or transferor is required to provide us with the document that specifies the required signatories for the trust.,

Senate File 173 passed during the 2021 session amended Iowa Code section 633A.4604 to further clarify the required contents of a certification of trust.

The 2021 legislation requires a certification of trust to list the names of all currently acting trustees and if there is more than one currently acting trustee, is required to state whether the trustees may act individually, must act by majority decision, or must act by unanimous decision. The 2021 legislation also allows the certification of trust to be certified under penalty of perjury rather than sworn under penalty of perjury before a notary public.

Therefore, effective July 1, 2021, if a trustee seeking to title or register a vehicle owned by a trust presents you with only a certification of trust signed on or after July 1, 2021 (to prove the existence of the trust) you must review the certification of trust and do one of the following:

- 1) If the certification states the trustees may act individually, you can accept the signature of any of the currently acting trustees on the vehicle registration, title, and transfer of ownership documentation.
- 2) If the certification of trust states that the trustees must act by majority decision, you can only accept vehicle registration, title, and transfer of ownership documentation signed by a majority of the trustees.

- 3) If the certification of trust states that the trustees must act by unanimous decision, you can only accept vehicle registration, title, and transfer of ownership documentation signed by all of the currently acting trustees.

If the certification of trust does not (1) state the name of all the currently acting trustees and (2) if there is more than one currently acting trustee, state whether the trustees may act individually or must act by majority decision or must act by unanimous decision, the certification of trust is invalid under Iowa Code 633A.4604 and the customer must either properly complete a new certification of trust or provide the trust documents.

If the trustee provides both a valid certification of trust and the trust documents, and the trust documents provided have a more specific or different description of signing authority, the trust document controls.

The 2021 legislation became effective July 1, 2021 and the administrative rule changes take effect April 13, 2022. The relevant contents of policy memo #20-04 addressing the 2019 legislation and 2020 administrative rules were incorporated into this memo and therefore prior policy memo #20-04 was rescinded.

LINK TO LEGISLATION AND ADMINISTRATIVE RULES

<https://www.legis.iowa.gov/docs/publications/LGE/89/SF173.pdf>

<https://www.legis.iowa.gov/docs/aco/arc/6219C.pdf>

QUESTIONS AND ANSWERS

The following questions and answers provide additional information that will be helpful to you and to customers.

WHEN WILL COUNTY TREASURERS BE PRESENTED WITH CERTIFICATIONS OF TRUST?

Under Iowa law, an applicant must provide certain information on the application for registration and certificate of title as well as supporting documents. When the applicant is a trust, the applicant must show evidence of the existence of a trust. A certification of trust properly completed under Iowa Code 633A.4604 is an option to prove the existence of a trust without providing all trust documents.

WILL THE DOT BE UPDATING THE ADMINISTRATIVE RULES?

Yes, as of April 13, 2022, our administrative rules will align with the 2021 legislation described above.

WHAT HAPPENS IF A CUSTOMER PRESENTS A CERTIFICATION OF TRUST SIGNED BEFORE JULY 1, 2019?

Prior to July 1, 2019, a certification of trust was required to be signed by all currently acting trustees. Therefore, if the certification of trust was signed before July 1, 2019, it must contain the signatures of all currently acting trustees and any vehicle documents executed for a trust must be signed by all currently acting trustees, unless the trust instrument provided otherwise.

WHAT HAPPENS IF A CUSTOMER PRESENTS A CERTIFICATION OF TRUST SIGNED ON OR AFTER JULY 1, 2019 BUT PRIOR TO JULY 1, 2021?

Between July 1, 2019 and July 1, 2021, the law only required that the certification of trust be signed by a currently acting trustee or the attorney of an acting trustee and did not specify when a trustee could act individually or must act by majority or unanimous consent. For certifications of trust signed between these dates, the application for registration or the title of a vehicle owned by a trust must be signed by the number of trustees as specified in the trust document or certification of trust. The applicant or transferor is required to provide us with the document that specifies the required signatories for the trust, and if the required number of signatories is not specified, we may accept an application or title signed by a currently acting trustee or the attorney for a currently acting trustee.

WHAT HAPPENS IF A CUSTOMER PRESENTS A CERTIFICATION OF TRUST SIGNED ON OR AFTER JULY 1, 2021?

A certification of trust signed on or after July 1, 2021 is required to identify all currently acting trustees and, if there is more than one currently acting trustee, state whether the trustees may act individually or must act by majority decision or must act by unanimous decision. A certification of trust signed on or after July 1, 2021 is not valid if it fails to meet these requirements. The county treasurer should request either that the customer provide a valid certification of trust or provide the trust documents.

IS A CERTIFICATION OF TRUST SIGNED ON OR AFTER JULY 1, 2021 STILL REQUIRED TO BE NOTARIZED?

No. The new law allows a certification of trust to be certified under penalty of perjury and no longer requires certification under penalty of perjury before a notary public. The county treasurer should still confirm that the certification of trust is certified under penalty of perjury.

FOR CERTIFICATIONS OF TRUST SIGNED ON OR AFTER JULY 1, 2021, IS A CERTIFICATION OF TRUST VALID IF THERE IS ONLY ONE TRUSTEE AND THE CERTIFICATION DOES NOT STATE IF THE TRUSTEE MAY ACT INDIVIDUALLY?

Yes, the certification of trust is valid. Since there is only one trustee, the certification of trust is not required to state if the trustees may act individually, by majority, or unanimously. This is logical, as there is only one trustee in this scenario.

WILL THE DOT BE UPDATING FORMS TO ADDRESS THE NEW LAW?

The DOT does not have a certification of trust form. The certification of trust is a part of the Iowa Trust Code and is used for a variety of legal purposes. We are aware that counties and dealers may have their own certification of trust forms that they recommend customers use. We encourage counties and dealers to have these forms updated prior to July 1, 2021 to comply with the new law. Any certifications of trust signed after July 1, 2021 that do not contain (1)

currently acting trustees and (2), if more than one trustee whether the trustees may act individually, by majority, or unanimously is an invalid document and cannot be accepted.

AFTER JULY 1, 2021, WHAT HAPPENS IF THE CERTIFICATION OF TRUST SIGNED ON OR AFTER JULY 1, 2021 IS SIGNED BY A SINGLE TRUSTEE BUT THE CERTIFICATION OF TRUST OR TRUST DOCUMENT REQUIRES MULTIPLE TRUSTEES TO SIGN-OFF ON DOCUMENTS ON BEHALF OF THE TRUST?

There could be times where a single trustee may sign-off on the certification of trust document, which is meant to prove the existence of a trust without having to provide the full trust document. However, just because a single trustee signs the certification of trust document, that does not automatically mean that only a single trustee is authorized to sign off on the application or title transfer documents for a vehicle owned by the trust. Rather, the certification of trust or the trust document itself may require multiple trustees to sign any document affecting a vehicle owned by the trust (such other documents may include, but not be limited to, title reassignments, damage disclosure statements, odometer disclosure statements and bills of sale). As noted above, beginning July 1, 2021 a certification of trust will be required to list all of the currently acting trustees and if more than one currently acting trustee, must also state whether the trustees may act individually, by majority decision or by unanimous decision. If the certification of trust is signed on or after July 1, 2021 and does not meet these requirements, it is an invalid document and the customer may either provide a valid certification of trust or must provide the trust documents.

FOR CERTIFICATIONS OF TRUST SIGNED ON OR AFTER JULY 1, 2021, HOW WILL I DETERMINE WHAT CONSTITUTES A MAJORITY OF THE TRUSTEES FOR PURPOSES OF SIGNING THE VEHICLE TRANSACTION DOCUMENTS?

If the certification of trust document states that a majority of trustees must act on behalf of the trust, you must review the list of trustees in the certification of trust document and only accept the vehicle transaction documents if a majority of the listed trustees have signed the documents.

A simple majority is determined to mean more than half of the total. Examples:

- If the trust lists 3 currently acting trustees, you must require 2 out of the 3 listed trustees to sign-off on the vehicle transaction documents.
- If the trust lists 4 currently acting trustees, you must require 3 out of 4 listed trustees to sign off on the vehicle transaction documents.
- If the trust lists 2 currently acting trustees, you must require both listed trustees to sign off on the vehicle transaction documents. This is because only one trustee would equal 50% of the trustees and would not be a majority of trustees.

WHAT IF NEITHER THE CERTIFICATION OF TRUST NOR THE TRUST DOCUMENT ITSELF SPECIFIES THE REQUIRED NUMBER OF SIGNATORIES TO SIGN-OFF ON DOCUMENTS ON BEHALF OF THE TRUST?

This situation only applies if there is more than one trustee. While it will likely be a rare occurrence, especially because beginning July 1, 2021 the Iowa Code will require the certification of trust document to list whether the trustees may act individually, by majority decision, or by unanimous decision, it is still possible there could be a situation where neither the certification of trust nor the trust document itself specifies the required number of signatories to sign-off on documents on behalf of the trust. If this situation occurs and multiple trustees are listed, the county treasurer must refer to the trust document because the certification of trust is invalid without specifying the required number of signatories. If the trust document does not specify, current administrative rules provide that a single trustee may transact on behalf of the trust.

IF THE LIST OF TRUSTEES HAS NOT BEEN UPDATED ON THE CERTIFICATION OF TRUST, HOW DOES IT AFFECT THE MAJORITY REQUIREMENT ON THE CERTIFICATION OF TRUST?

The certification of trust must contain the names of all the currently acting trustees. If the customer informs you that the list of trustees on the certification of trust is inaccurate because a trustee is deceased, incapacitated, or otherwise no longer a currently acting trustee, the certification of trust is invalid. This is because the new law requires the names of all currently acting trustees, and that trustee is no longer a currently acting trustee. The customer will either need to obtain a new certification of trust with the correct information or provide the trust documents.

IF THE CERTIFICATION OF TRUST REQUIRES CONSENSUS FROM A MAJORITY OF TRUSTEES, DOES THE SAME MAJORITY NEED TO SIGN ALL DOCUMENTS?

No. If the certification of trust requires a majority of trustees, it does not require the same majority of trustees to sign all documents. If different trustees sign different documents, the county treasurer should look to the certification of trust for the names of currently acting trustees and confirm that the majority of trustees signing each document match the currently acting trustees. But the same majority is not required.

WHAT IF NEITHER THE CERTIFICATION OF TRUST NOR THE TRUST DOCUMENT ITSELF SPECIFIES THE REQUIRED NUMBER OF SIGNATORIES TO SIGN-OFF ON DOCUMENTS ON BEHALF OF THE TRUST AND WE ACCEPT THE SIGNATURE OF A SINGLE TRUSTEE, DOES THE SAME TRUSTEE NEED TO SIGN ALL DOCUMENTS?

If there are multiple trustees, the certification of trust is invalid if it does not specify the required number of signatures and the trust document is required. If the trust document is silent regarding how the trustees may act on behalf of the trust, the same trustee should sign all the documents of that transaction.

If a different trustee wants to undertake a separate transaction on behalf of the same trust for which the trust document does not specify the required number of signatories for the trust, that second trustee should complete a separate certification and then proceed to sign all appropriate transaction documents

WHAT IF THE CERTIFICATION OF TRUST IS SIGNED BY AN ATTORNEY OF A CURRENTLY ACTING TRUSTEE?

A certification of trust signed by the attorney of a currently acting trustee is permissible under the code as the certification of trust is meant to prove the existence of a trust without requiring presentation of the full trust document. However, the attorney of a trustee is not generally permitted to act on behalf of the trustee in completing legal documents, such as a title application or transfer of ownership document, unless the trustee's attorney also has a power of attorney (POA) authorizing the trustee's attorney to act in that capacity on behalf of the trustee. Therefore, while you can accept a certification of trust signed by the attorney of a currently acting trustee as establishing the existence of a trust, that attorney cannot also sign the application or transfer of ownership documents on behalf of the trustee unless they provide you with a POA delegating that power to them.

WHAT HAPPENS IF THERE IS A DISPUTE AMONGST TRUSTEES?

Iowa Code chapter 633A governs trusts established under Iowa law and addresses the actions of trustees. If a customer believes that an acting trustee is not reflecting the decisions of the trust, the customer will need to follow any applicable provisions for a resolution outlined in chapter 633A.

Neither this legislation nor Iowa Code specifies any role, action, or recourse for us if there is a dispute amongst trustees. Any such dispute amongst trustees or other parties to the trust would be handled entirely under the provisions of the code and the trust document itself, and not as part of any DOT process. If the customer presents a certification of trust, title application and other related documents that are signed according to the amended Iowa Code section 633A.4604, then we must accept the documents (assuming all other aspects of the transaction are accurate) and process according to the guidance above.

We want to emphasize that it is not our role to intervene in a perceived dispute involving a trust or the actions of any trustees. If a trustee has proper legal standing for completing a transaction, then we should process the transaction accordingly.