



Will Power

Craig R. Hersch *Florida Bar, Board Certified, Wills, Trusts & Estates Attorney; CPA*

THE DECEASED'S AUTOMOBILE

I'm often asked by family members who have lost a loved one how to transfer the deceased's automobile. The surviving spouse or children are often concerned that the car will be subject to a probate proceeding in order to transfer the title. In most circumstances, transferring the automobile is a routine matter.

Under Florida law, specifically §732.402 – all automobiles held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal automobile(s) are exempt from probate. This also means that they are exempt from all claims against the estate, except for perfected security interests, such as a loan where the automobile is specifically subject to a lien under the terms of the loan.

The next issue that must be addressed is who is the rightful beneficiary of the automobile? Since the automobile is tangible personal property, it might be bequeathed under a separate written list that is referenced in the will. The will itself may include a devise of the automobile.

Interestingly, if either is the case, then under §732.402(5), if exempt property — including an automobile — is demonstrably devised in the will, then it is not considered exempt from the claims of creditors, unless a petition for determination of exempt property is made to the court before certain time periods have elapsed.

It is therefore important to note that if the decedent died with potential creditor claims and if the automobile was specifically devised in the will, then it will be important for the beneficiary to preserve his or her rights to the car and file the necessary court papers.

In most cases there is no issue whether the automobile is exempt. If the decedent's will did not, however, directly bequeath the automobile to anyone in particular, then one must read the decedent's documents to see who has the rights to it. Often a family member will take it as part of his or her inheritance. Where there is a surviving spouse, and he or she is entitled to all assets under the will or trust, then he or she often will take the automobile.

After a determination as to the proper beneficiary is made, the question arises as to how to transfer title to the automobile. Since it is an exempt asset from probate, there is no court order mandating that the title be changed. Thankfully, it is easy to accomplish this part of the process. One simply needs to bring the automobile, along with the title and a copy of the will (or other relevant documents) and certified copy of the death certificate to the tax collectors office. You will go to the same place where you would apply for or have your tags renewed. There they have paperwork that you can complete. In a few days the State of Florida will issue a new title in the proper beneficiary's name.

One important topic that needs to be addressed is the decedent's automobile insurance. Every effort should be made to issue a new policy in the name of the beneficiary of the automobile following the decedent's death. You do not want a cancelled policy and an accident in the vehicle to create legal liability to the estate, threatening other assets. So it will be important to transfer the title and to have the new owner obtain insurance promptly.

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