



ALAN WILSON
ATTORNEY GENERAL

June 16, 2025

Thomas S. Mullikin, PhD, JD
Director
South Carolina Department of Natural Resources
PO Box 167
Columbia, SC 29202

Dear Director Mullikin:

Attorney General Alan Wilson forwarded your letter to the Opinions section. You seek an opinion interpreting the 2024 amendment to South Carolina Code Section 50-23-60(A)(6) which permits a Transfer on Death (TOD) beneficiary to be designated on the title of a watercraft or outboard motor. Because the amendment is set to take effect on July 1, 2025, you requested an expedited opinion. Your letter explains:

Prior to this amendment and in accordance with SC Code Ann. §50-23-80, the South Carolina Department of Natural Resources (the department) required proof that any existing security interest in the watercraft or outboard motor was released or satisfied before issuing a new certificate of title. However, with the new provision allowing for TOD beneficiaries, the department is uncertain about the proper procedure when a security interest is still recorded on the title at the time of the owner's death. Specifically, may the department withhold issuing the certificate of title to the TOD beneficiary until the beneficiary provides reasonable proof that the security interest has been released or satisfied?

The department proposes implementing the following procedure: the TOD beneficiary would be required to complete an application for a certificate of title for the watercraft or outboard motor. Along with the completed application, the TOD beneficiary would need to submit the following documents: a Death Certificate, Personal Property tax receipts, a notification of lien release from the lienholder, and payment of any applicable transfer fees. Would this proposed process conflict with the recent amendment to S.C. Code Ann. §50-23-60(A)(6)?

It is the opinion of this office that upon a TOD transfer, the new owner receives the same interest in the property that the prior owner had and may only receive clear title if the title is already

clear or when any existing liens are satisfied. However, the new owner is required to promptly apply for a certificate of title and the department cannot withhold issuing a new certificate of title until the new owner establishes that any liens have been satisfied.

Law/Analysis

South Carolina requires any watercraft, outboard motor, or both held or principally used in the State to be titled by the department. S.C. Code Ann. § 50-23-20 (Supp. 2024); see also S.C. Code Ann. § 50-23-55(A) (Supp. 2024) (“All watercraft and outboard motors subject to the titling requirements of this chapter must be titled.”). Exemptions to the titling requirement include watercraft documented by the United States Coast Guard, “water skis, aquaplanes, surfboards, windsurfers, and similar devices,” and watercraft that are “propelled exclusively by human power.” S.C. Code Ann. § 50-23-30 (Supp. 2024). “A certificate of title to a watercraft or outboard motor is prima facie evidence of ownership” of the same. S.C. Code Ann. § 50-23-55(A).

The application for a certificate of title requires the applicant to provide information about any pending liens and lienholders. S.C. Code Ann. § 50-23-60(A)(3). Before issuing a certificate of title, the department must be satisfied that the applicant is the owner, the application is in proper form, and there is no undisclosed security interest in the item being titled. S.C. Code Ann. § 50-23-80(A) (Rev. 2008). If the department is not satisfied, it “shall withhold the issuance of a certificate of title until the applicant reasonably satisfies the department that the applicant is the owner of the watercraft or outboard motor and that there are no undisclosed security interests in it.” S.C. Code Ann. § 50-23-80(D). When the applicant’s ownership is subject to a security interest created at the time of transfer, the certificate of title will be retained by or provided to the lienholder. S.C. Code Ann. § 50-23-140(a) (Supp. 2024). When a lien is discharged, the lienholder must note that fact on the face of the certificate of title and either discharge the lien through the department’s electronic lien system or surrender the paper certificate of title to the department. S.C. Code Ann. § 50-23-140(B). When the last lien is discharged, the department must print a clear title and convey it to the owner. S.C. Code Ann. § 50-23-125(A) (Supp. 2024).

A person who disposes of a watercraft or outboard motor subject to the state’s titling requirements has a statutory obligation to transfer the certificate of title to the person obtaining property. S.C. Code Ann. § 50-23-55(C). When no certificate of title is available because the watercraft is new or the watercraft or outboard motor was last owned in a jurisdiction that did not title such property, other documentation may be substituted. Id. The disposing owner must also notify the department of the transfer in ownership, transfer out of state, or other disposal within thirty days. S.C. Code Ann. § 50-23-20. The owner of a titled watercraft or outboard motor is prohibited from transferring title when there are taxes owed on the same. S.C. Code Ann. § 50-23-295 (Rev. 2008). However, there is no such prohibition against an owner transferring the same property when there is an outstanding security interest. In fact, all liens noted on the certificate of title are valid against a subsequent purchaser. S.C. Code Ann. § 50-23-140(a). A person who acquires the watercraft or outboard motor is required to obtain the certificate of title or other appropriate documentation. S.C. Code Ann. § 50-23-55(B). The new owner then has thirty days

from acquisition to apply for a new certificate of title. S.C. Code Ann. § 50-23-60(A) (Supp. 2024). When ownership is transferred by operation of law, the transferee must promptly submit an application for a new certificate of title along with the existing certificate of title or other appropriate documentation. S.C. Code Ann. § 50-23-130(a) (Supp. 2024); S.C. Code Ann. § 50-23-130(b) (Rev. 2024). A transfer by inheritance is one of the listed ways ownership can be transferred by operation of law. S.C. Code Ann. § 50-23-130(a).

The imminent amendments that prompted your opinion request were included in Act Number 200, 2024 S.C. Acts 1602, which in part permits owners of personal property titled with the Department of Motor Vehicles or the Department of Natural Resources to designate one or more “Transfer on Death” beneficiaries. Act. No. 2024 S.C. Acts 1602. Four Title 50 statutes were amended by the Act. Beginning on July 1, 2025, owners will be able to designate a TOD beneficiary on the certificate of title for an outboard motor or watercraft. Owners who wish to designate a TOD beneficiary will be required to provide details about the beneficiary on the application for certificate of title. S.C. Code Ann. § 50-23-60(A)(6) (Supp. 2024) (effective July 1, 2025). Owners will be charged a \$10 fee to establish, modify, or revoke a TOD beneficiary. S.C. Code Ann. § 50-23-70(F) (Supp. 2024) (effective July 1, 2025). The certificate of title will reflect any designated TOD beneficiary. S.C. Code Ann. § 50-23-90(a)(7) (Supp. 2024) (effective July 1, 2025). Transfer on death will be added to the list of transfers of ownership by operation of law. S.C. Code Ann. § 50-23-130(a) (Supp. 2024) (effective July 1, 2025). And, when the property has transferred by operation of the law, the new owner will be required to provide proof of death of the titled owner or owners. S.C. Code Ann. § 50-23-60(a)(7) (Supp. 2024) (effective July 1, 2025).

Act Number 200, 2024 S.C. Acts 1602 also updates the Probate Code in relation to the TOD designation. Definitions for “Transfer on Death” or “TOD” and “Titled personal property” are added to a definition section of the Probate Code. S.C. Code Ann. § 62-6-101(16), (17) (Supp. 2024) (effective July 1, 2025). Section 62-6-401 is the sole statute created by Act No. 200. Entitled “Transfer on Death,” the new statute contains the rules and mechanical details for the TOD designation and its application. S.C. Code Ann. § 62-6-401 (Supp. 2024) (effective July 1, 2025). For example, the statute provides that a sole owner who uses the TOD designation may revoke or modify the designation any time during the owner’s lifetime. S.C. Code Ann. § 62-6-401(D)(3). When there are multiple owners, TOD designations are limited to property titled with right of survivorship and the owners must act together when making, revoking, or modifying a TOD designation. S.C. Code Ann. § 62-6-401(E)(1) and (4). Significantly, a TOD beneficiary has no interest in the property during the lifetime of the owner or owners, but the property immediately “belongs to” the TOD beneficiary or beneficiaries on the death of the sole owner or last of multiple owners. S.C. Code Ann. § 62-6-401(C) (TOD beneficiary has no interest in the property during the lifetime of the owner or owners); § 62-6-401(D)(1) (on death of sole owner, titled personal property “belongs to” the named TOD beneficiary or beneficiaries); § 62-6-401(E)(3) (on death of last of multiple owners, property “belongs to” the named TOD beneficiary or beneficiaries). The transfer is a result of the designation authorized by statute and is not

testamentary or subject to estate administration. § 62-6-401(B). The statute provides the following instructions for retitling personal property titled with a TOD designation:

(H) The Department of Motor Vehicles or the Department of Natural Resources, as appropriate, upon request, shall retitle the appropriate titled personal property with a TOD designation, to:

(1) The beneficiary or beneficiaries named in the TOD designation, if proof of death is presented to the appropriate department showing that the beneficiary or beneficiaries survived all owners of the titled personal property.

(2) The personal representative of a deceased party, if proof of death is presented to the appropriate department showing that the deceased party was the last survivor of all other owners named on the title to the titled personal property and there shall be no surviving beneficiaries named in any TOD designation.

(3) To such party or parties in accordance with a court order directing the retitling of such titled personal property.

S.C. Code Ann. § 62-6-401(H). Act 200 does not add, remove, or amend any language regarding the interests of lienholders noted on the certificate of title. We therefore conclude it does not affect the interests of lienholders.

You ask whether the department may withhold issuing title following a TOD transfer until the new owner resolves any lien on the property's certificate of title. To answer your question, we must determine whether the department's function in titling watercraft and outboard motors is ministerial or discretionary. "The duties of public officials are generally classified as ministerial and discretionary (or quasi-judicial)." Wilson v. Preston, 378 S.C. 348, 354, 662 S.E.2d 580, 583 (2008). Where the duty is "defined by law with such precision as to leave nothing to the exercise of discretion," it is ministerial. Id. By contrast, where the duty "requires the exercise of reason in adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued," it is discretionary or quasi-judicial. Id.

As the administrative agency charged with titling watercraft and outboard motors, the department derives its authority from statute. See Mungo v. Smith, 289 S.C. 560, 564, 347 S.E.2d 514, 517 (Ct. App. 1986) (administrative agencies are creatures of statute and find their authority within statute). The department's responsibility in processing applications for certificates of title is established by Section 50-23-80. The department is required to file each application it receives that conforms to the statutory requirements and is submitted with the appropriate fee. § 50-23-80(A). When the department is satisfied the application is in property form, the applicant is the owner, and there are no undisclosed security interests in the property, the statute provides the department "shall issue a certificate of title." Id. When questions regarding ownership or undisclosed security interests remain, the department is required to withhold issuing title "until the applicant reasonably satisfies the department that the applicant is the owner" of the property and

“that there are no undisclosed security interests in it.” § 50-23-80(D). Our review of this statute reveals the department’s titling function is ministerial as it lacks discretion to deny an otherwise proper application. Additionally, the new TOD Probate Code statute reinforces the ministerial nature of the department’s responsibility by requiring that on an appropriate request, the department “shall retitle” the property. § 62-6-401(H). In short, while the department must respect and honor documented liens, it is not required or allowed to prevent the title from reflecting current ownership following a TOD transfer simply because a lien remains on the property.

Upon a TOD transfer of a titled watercraft or outboard motor, the transferee will be required to promptly apply for a certificate of title. S.C. Code § 50-23-130(a). The department must file the application if it is proper and accompanied by the appropriate fee. § 50-23-80(A). If satisfied that the applicant is the owner and there are no undisclosed security interests in the property, the department must retitle the property. *Id.*; § 62-6-401(H). To withhold the issuance of title because of a disclosed security interest would be contrary to the department’s ministerial titling duty and at odds with the change of ownership that occurred at the death of the prior owner.

Importantly, any lienholders noted on the certificate of title for a watercraft or outboard motor maintain their security interests in the property notwithstanding the change in the law or a transfer on death permitted by the law. Therefore, the only thing a lienholder loses as the result of a TOD transfer is the option to pursue the deceased borrower for payment. All other options permitted by law and available under the agreements formed at the creation of the security interest remain intact. We presume the lienholders will be notified both when a TOD beneficiary is designated and when an application for a certificate of title following a TOD transfer has been processed.

By permitting owners of titled watercraft and outboard motors to designate one or more TOD beneficiaries, our General Assembly gave owners the freedom to pass the property on death outside of our probate court system. For owners who exercise this option, it offers convenience and potential cost savings. If the legislature wishes, it can certainly restrict use of the TOD designation to clear titles or to situations where the lienholder consents to the designation. The legislature has restricted other transfers of titled watercraft and outboard motors where taxes are owed. S.C. Code Ann. § 50-23-295 (Rev. 2008). And, as mentioned above, the new TOD statute limits use of the TOD designation when the property is owned by multiple people. S.C. Code Ann. § 62-6-401(E)(1) and (4).

Conclusion

Beginning on July 1, 2025, when the owner of a titled watercraft or outboard motor dies while a living TOD beneficiary is named on the certificate of title, the beneficiary receives precisely the interest the titled owner held before death, no more or less. At death of the prior owner, the beneficiary becomes the new owner. It is the opinion of this office that the department may not refuse to accept an application for title or withhold issuing a new title until the new owner establishes any lien on the title has been satisfied.

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Sincerely,



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REVIEWED AND APPROVED BY:



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