

TITLE 43. TRANSPORTATION

PART 13. HIDALGO COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 401. MOTOR VEHICLE TITLE SERVICES

The Hidalgo County Tax Assessor-Collector adopts new 43 TAC §§401.1 - 401.13, concerning the regulation of motor vehicle title services, with one minor change to the proposed rules as published in February 5, 2016, issue of the *Texas Register* (41 TexReg 950). The aim of the new rules is to curb document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

In preparing the new sections, Mr. Villarreal considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. Mr. Villarreal also considered assessing lower and higher license fees but concluded that the needs of a border county like Hidalgo are different from the counties that set regulations under 43 TAC §95.1 (Harris County) and 43 TAC §301.1 (Fort Bend County).

The Hidalgo County Tax Assessor-Collector received comments concerning the rules from staff requesting clarification. The Tax Assessor-Collector provided clarification to staff, and no changes were made to the proposed rules. One comment was received from Aline Aucoin, Associate General Counsel from the Texas Department of Motor Vehicles, stating an error was presented in the proposed rules section 401.94 Denial, Suspension, or Revocation of License. The actual agency that provides administrative procedures is the Texas Department of Motor Vehicles and not the Texas Department of Transportation. That correction was quickly made.

The Hidalgo County Tax Assessor-Collector adopts the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

The new rules do not affect any other statutes, articles, or codes.

§401.1. Definitions.

(a) "Motor vehicle" has the meaning assigned by Texas Transportation Code §501.002(17).

(b) "Motor vehicle title service" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(c) "Title documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of the Texas Transportation Code or Chapter 70 of the Texas Property Code.

(d) "Title service license holder" means a person who holds a motor vehicle title service license or a title service runner's license. A title service license holder is legally responsible for each title service runner it employs or contracts.

(e) "Title service record" means the written record for each transaction in which a motor vehicle title service receives compensation.

(f) "Title service runner" means any person employed by a licensed motor vehicle title service license holder to submit or present title documents to the county tax assessor-collector.

§401.2. License Requirement.

(a) A person may not act as a motor vehicle title service or act as an agent for such a business (which includes a title service runner) in Hidalgo County unless that person holds a license issued by the Hidalgo County Tax Assessor-Collector to conduct such transactions.

(b) A person commits an offense if the person violates a provision of Title 7, Subtitle A, Chapter 520, Subchapter C of the Texas Transportation Code or a rule adopted by the Hidalgo County Tax Assessor-Collector under Subchapter E, §§520.051 - 520.063 of the Texas Transportation Code. Such an offense is a Class A misdemeanor.

(c) Any unlicensed individual observed conducting motor vehicle transactions on behalf of others in Hidalgo County and who claims to be doing so without compensation shall complete an affidavit stating that the individual is not receiving compensation for the transaction. This affidavit shall be notarized and will be forwarded to the Fraud Investigations Department of the Hidalgo County Tax Assessor-Collector.

§401.3. License Fees.

(a) License fees must be remitted at the time a license application is submitted and are non-refundable. License fees are payable only by certified bank check or money order unless the Hidalgo County Tax Assessor-Collector agrees, in writing, to accept cash.

(b) The fee for a motor vehicle title service license shall be \$500 for the initial application and \$200 for each annual renewal.

(c) The fee for a title service runner license shall be \$100 for the initial application and \$100 for each annual renewal.

(d) The fee for replacement of a lost title service license or title runner license shall be \$20 for the first occurrence; \$20 for the second occurrence; and \$20 for each occurrence thereafter.

§401.4. General License Application Requirements.

(a) Applications for a title service license may be submitted Monday through Friday, from 9:00 a.m. to 4:00 p.m., at the Hidalgo County Tax Office located at 2804 S. US HWY 281, Edinburg, Texas 78539 or online at the Hidalgo County Tax Assessor-Collector's website at: <http://www.hidalgocountytax.org>.

(b) An applicant for a motor vehicle title service license must complete all forms required by the Hidalgo County Tax Assessor-Collector. The applicant must sign the application form and pay the license fee. An application must include:

(1) the applicant's name, business address, and business telephone number;

(2) the name under which the applicant will do business;

(3) the physical address of each office from which the applicant will conduct business (a P.O. Box will not be accepted) and a corresponding photo of each building where business is being conducted;

(4) a statement indicating whether the applicant has previously applied for a license under this section, the result of the previous application, and whether the applicant has ever been the holder of a license under this section that was revoked or suspended in any Texas county;

(5) the applicant's federal tax identification number;

(6) the applicant's state sales tax number; and

(7) the name of all individuals who have an ownership interest in the applicant motor vehicle title service company;

(8) if applicable, motor vehicle license information for each individual who has an ownership interest in the applicant's motor vehicle title service company.

(c) Following the submission of an application, an applicant must submit to a criminal background check in conformance with policies adopted by the Hidalgo County Tax Assessor-Collector.

(d) An applicant must present a valid, government-issued picture identification at the time of application. Lack of identification shall prevent the Hidalgo County Tax Assessor-Collector from granting a person's application for a title service license.

(e) An applicant must be at least 18 years of age on the date the application is submitted to apply for a title service license.

(f) Applicants will be notified of the outcome of an application within 30 days of the application being submitted to the Hidalgo County Tax Assessor-Collector. This notification will be mailed to the business address listed on the application.

(g) All licenses are issued for a period of one year and must be renewed each year thereafter. A renewal application has the same requirements as a new application.

(h) A license may not be issued under a name that is fictitious; a name that is similar to or may be confused with the name of a governmental entity; or a name that is deceptive or misleading to the public.

§401.5. Additional Application Requirements for Certain Businesses.

(a) Corporation. In addition to the information required above concerning General License Application Requirements, an applicant for a motor vehicle title service license that intends to engage in business as a corporation shall submit the following information:

(1) the state of incorporation (if any);

(2) a "doing business as" (DBA) certificate or articles of incorporation;

(3) the name, address, date of birth, and social security number of each of the principal owners and directors of the corporation;

(4) information about each officer and director as requested by the Hidalgo County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(5) a statement indicating whether an employee, officer, or director has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

(b) Partnership. In addition to the information required above concerning General License Application Requirements, a motor vehicle title service license applicant that intends to engage in business as a partnership shall submit an application that includes the following information:

(1) the names, address, date of birth, and social security number of each partner;

(2) information about each partner as requested by the Hidalgo County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(3) a statement indicating whether a partner or employee has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

§401.6. Tax Assessor-Collector Transactions.

(a) All vehicle transactions for Hidalgo County will be processed at the Hidalgo County Tax Office, 2804 S. US HWY 281, Edinburg, Texas 78539; or any other location specified by the Tax Assessor-Collector in writing at: <http://www.hidalgocountytax.org>.

(b) Title service license holders and title service runners may conduct business at privately run, contracted offices. A list of these offices is available upon request.

(c) An Hidalgo County Tax Assessor-Collector title service transaction form must accompany all motor vehicle title service transactions. Title service providers may obtain a blank title service transaction form from the Hidalgo County Tax Assessor-Collector. The motor vehicle title service company is responsible for the accuracy and validity of the information for each vehicle listed. Only vehicles authorized and listed by the licensed motor vehicle title service will be processed.

(d) Motor vehicle title services and runners may only process the following documents: motor vehicle title applications; motor vehicle registration renewal applications; requests for replacement windshield stickers; and requests for new or replacement vehicle license plates. The Hidalgo County Tax Assessor-Collector will also accept applications for a motor vehicle mechanic's lien title, a motor vehicle storage lien title and a bond title from a motor vehicle title services or runners.

(e) After the final vehicle transaction on each transaction sheet is completed, a copy of the transaction sheet will remain on file at the office of the Hidalgo County Tax Assessor-Collector.

(f) A motor vehicle title service shall assume the responsibility for the accuracy and validity of all documents presented to the Hidalgo County Tax Assessor-Collector under its name.

(g) Title service runners must be identified and sponsored by a motor vehicle title service company in order to conduct business on the motor vehicle title service's behalf. The required documents for any runner must be on file with each service company for which the runner is an authorized agent. Individuals whose names are not on file with the Hidalgo County Tax Assessor-Collector as a title service runner acting on behalf of a motor vehicle title service will not be allowed to conduct business with the Hidalgo County Tax Assessor-Collector on behalf of that motor vehicle title service.

§401.7. Record Keeping.

(a) A holder of a motor vehicle title service license shall maintain records as required by Texas law for each transaction in which the license holder receives compensation. The records shall include:

(1) the date of the transaction;

(2) the name, age, address, sex, driver license number, and a legible photocopy of the driver's license for each customer; and

(3) the vehicle make, model, year, license plate number, vehicle identification number, and a legible photocopy of proof of financial responsibility for the motor vehicle involved.

(b) A motor vehicle title service shall keep, for at least two (2) years after the date of the transaction:

- (1) two copies of all records required under this section;
- (2) legible photocopies of any documents submitted by a customer; and
- (3) legible photocopies of any documents submitted to the Hidalgo County Tax Assessor-Collector.

(c) A motor vehicle title service license holder or any of its employees shall allow an inspection of the required records by a peace officer on the premises of the motor vehicle title service at any reasonable time to verify, check, or audit the records. Failure to do so, or to maintain required records, may result in discipline under these rules.

§401.8. License Renewal.

(a) A license issued pursuant to these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee as outlined above. All renewals will be subject to an additional criminal background check and confirmation of the applicant's current address and contact information.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the Hidalgo County Tax Assessor-Collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(c) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Hidalgo County Tax Assessor-Collector one and one-half times the required renewal fee.

(d) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the Hidalgo County Tax Assessor-Collector two times the required renewal fee.

(e) If a person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. Notwithstanding this, if a person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired license. The person must pay to the Hidalgo County Tax Assessor-Collector a fee that is equal to two times the required renewal fee for the license.

(f) Before the 30th day preceding the date on which a person's license expires, the Hidalgo County Tax Assessor-Collector shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the Hidalgo County Tax Assessor-Collector. Failure to send notice under this provision, however, does not provide any right or remedy to a license holder.

§401.9. Denial, Suspension, or Revocation of License.

(a) Grounds for the denial, suspension, revocation, or denial of reinstatement of a title service license or title service runner license in Hidalgo County include, but are not limited to:

- (1) having been found to have submitted a vehicle packet, or other document, to the Hidalgo County Tax Assessor-Collector's office which contains false information, and the Hidalgo County Tax Assessor-Collector determines that the false information was intentionally submitted by the motor vehicle title service license holder or title service runner;

(2) having been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the completion date of the applicant's sentence is fewer than five years from the date of applying for a motor vehicle title service license;

(3) having been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) having been found in violation of the administrative procedures required by the Texas Department of Motor Vehicles;

(5) in the event the Tax Assessor-Collector determines a title service license holder has delinquent Class C misdemeanor fines, the licensee shall have thirty calendar (30) days from the date of deposit of written notice into the U.S. Postal Service to pay or otherwise resolve the fines. If the fines remain unresolved after thirty calendar (30) days, the Tax Assessor-Collector may, in his discretion, deny, suspend, refuse to renew, or revoke, as provided in this section, the license of that title service license holder;

(6) a title service runner license may be revoked or suspended if the title service runner has presented a title packet to the Hidalgo County Tax Assessor-Collector that was not authorized by a licensed motor vehicle title service or if the title service runner altered or forged the original paperwork prepared for and signed by the motor vehicle title service;

(7) failure to maintain records required by §520.057 of the Texas Transportation Code or this section;

(8) behavior that causes disruption or creates a security concern to any tax office location or contracted office location, as determined by the Tax Assessor-Collector or designee, in his discretion; or

(9) involvement in the issuance of fraudulent liability insurance while holding an Hidalgo County title service license, as determined by the Tax Assessor-Collector or designee, in his discretion.

(b) The Hidalgo County Tax Assessor-Collector shall consider any and all substantial evidence available in making factual determinations under this section.

(c) If the Hidalgo County Tax Assessor-Collector makes a determination that a person's license hereunder should be denied, cancelled, suspended, or revoked, then the Tax Assessor-Collector shall send notice of the action to the person, by certified mail, stating the facts or conduct alleged to warrant the action.

(d) Upon a determination of violation of this section, the Hidalgo County Tax Assessor-Collector may order the violator's license suspended for up to one (1) year for the first offense. The Tax Assessor-Collector, in his discretion, may order an additional suspension for up to one year or the revocation of the holder's license for the second offense. A license may be revoked upon a third offense.

(e) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation. A person whose license has been revoked must apply for a new license under this section.

(f) A license may not be issued under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

(g) The Tax Assessor-Collector may discipline a title service license holder for acts in violation of these regulations or other law committed by a title service runner employed or contracted by the title service license holder. Such discipline may include suspension or revocation of the title service license holder's license if the Tax Assessor-Collector also suspends or revokes the license of the at-fault title service runner.

§401.10. The Review Board.

(a) A person who receives notice of adverse action taken on his license by the Hidalgo County Tax Assessor-Collector may submit a written request for appeal or protest and submit evidence, in the form of documents or testimony, to demonstrate that person's compliance with all requirements for the issuance, retention, or reinstatement of the person's license. The person must submit evidence and file a written request for the appeal of an action taken on the person's license with the County Tax Assessor-Collector within 10 calendar days from the date of receipt of the notice of action on the person's license. Proof of receipt of a notice of action, or any other document that triggers a deadline under this section, includes, but is not limited to, a certified mail return receipt. The Tax Assessor-Collector or the Review Board may grant additional time to comply with this section upon written request.

(b) Evidence and/or a written request for an appeal must be sent to Hidalgo County Tax Office, via certified mail at 2804 S. US HWY 281, Edinburg, Texas 78539/P.O. Box 2099, Edinburg, Texas 78540 or at the address published at: <http://www.hidalgocountytax.org>.

(c) Upon timely filing of a request for an appeal, the County Tax Assessor-Collector shall request review by the Review Board. The adverse action shall be stayed until a final decision is made on the license.

(d) The above-referenced Review Board, designated by the Hidalgo County Tax Assessor-Collector, shall consist of an active member of the licensed Title Service, the Tax Assessor-Collector or his/her representative, and one law enforcement officer from the Fraud Investigations Department.

(e) Each member of the Review Board shall serve for a term lasting for one year. A member may be designated for additional terms as deemed appropriate by the Hidalgo County Tax Assessor-Collector.

(f) If a member is absent for three consecutive meetings, the Tax Assessor-Collector, may, in his discretion, remove the member and appoint a new member to serve the remainder of the term.

(g) If a review board member is removed or resigns, the Tax Assessor-Collector may appoint a new review board member to fill that member's position. The new member will serve for the remainder of the former member's term.

(h) The Review Board shall meet as needed, on a date determined by the Hidalgo County Tax Assessor-Collector. The Board will review any appeals and make a recommendation to the County Tax Assessor-Collector stating whether the Board agrees or disagrees with the action taken.

(i) The Hidalgo County Tax Assessor-Collector shall be the Chair of the Review Board.

(j) A quorum of three members of the Review Board must be present to render a decision. No proxy votes will be allowed.

(k) Review Board decisions are administrative in nature. As such courtroom rules of evidence shall not apply. However, the Review Board Chair may limit or discard evidence that he or she finds is not material and relevant.

(l) The parties to a Review Board proceeding shall file and exchange documentary evidence at least seven (7) days before a Review Board proceeding. The Chair may, at the Chair's discretion, exclude evidence that is not timely filed and served on the other party(ies).

(m) A simple majority vote of a quorum of Review Board members shall determine the recommendation on matters under consideration. The Tax Assessor-Collector's Fraud

Investigations Division, or his or her designee, shall present the case to the Review Board and carry the burden of proof. The standard of proof shall be by a preponderance of the evidence.

(n) A quorum of the Review Board may draft and approve other procedural rules that are not inconsistent with this section or other law. Any such rules must be published on the Hidalgo County website and made available to the public in print form upon request.

(o) All decisions related to license appeals or protests shall be subject to final review and determination by the Hidalgo County Tax Assessor-Collector. The Hidalgo County Tax Assessor-Collector shall send disposition of the appeal to the person by registered or certified mail. If the Tax Assessor-Collector does not reinstate the license, any adverse action stayed by the appeal will be reinstated.

§401.11. Exemptions.

The following persons and their agents are exempt from the licensing and other requirements described in this section:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Texas Transportation Code Chapter 503;

(2) a vehicle lessor holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under §2301.254(a), Texas Occupations Code; and

(3) a vehicle lease facilitator holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code.

§401.12. Training.

The Tax Assessor-Collector may require title service license holders and title service runners to attend an annual training to orient such licensees to these sections, Texas law, and the Tax Assessor-Collector's policies under these sections. Failure to attend the training may result in discipline under these sections.

§401.13. Policies and Procedures.

The Tax Assessor-Collector may authorize other policies and procedures that are not inconsistent with these sections or other law and to the extent authorized by law.