

ESTATE PLANNING FOR FIREARMS

Keeping the PEACE While Keeping the PIECE

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FIREARMS ARE SPECIAL ASSETS

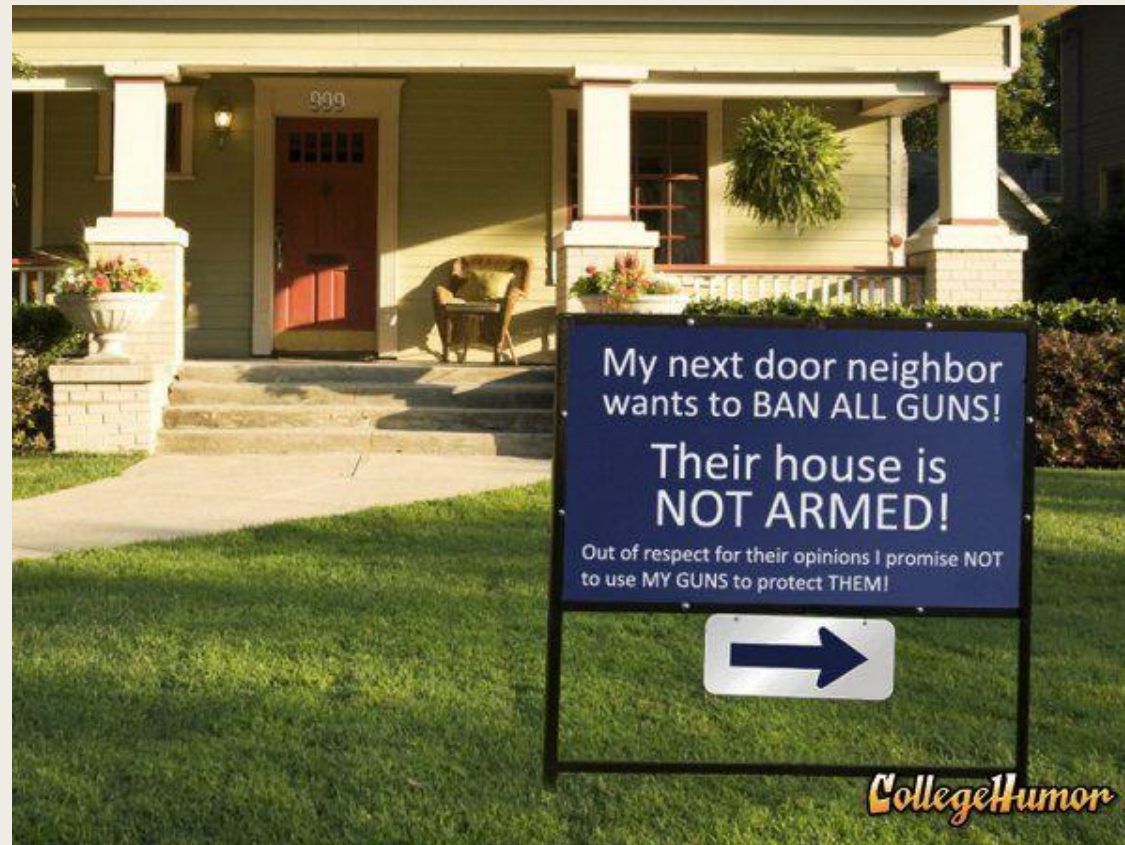
**FIREARMS ARE
SPECIAL TO AMERICANS**

U.S. FIREARMS FACTS

Personal protection is the #1 reason given for owning a gun

- 39% of Men admit to owning a gun
- 22% of Women admit to owning a gun
- 41% of Adults in Rural areas
- 29% of Adults in Suburbs
- 20% of Adults in Cities
- 44% of Republicans and Republican-leaning Independents own a gun
- 20% of Democrats and Democrat-leaning Independents own a gun

HOME OF A GUN OWNER LIVING IN THE SUBURBS?



U.S. FIREARMS FACTS

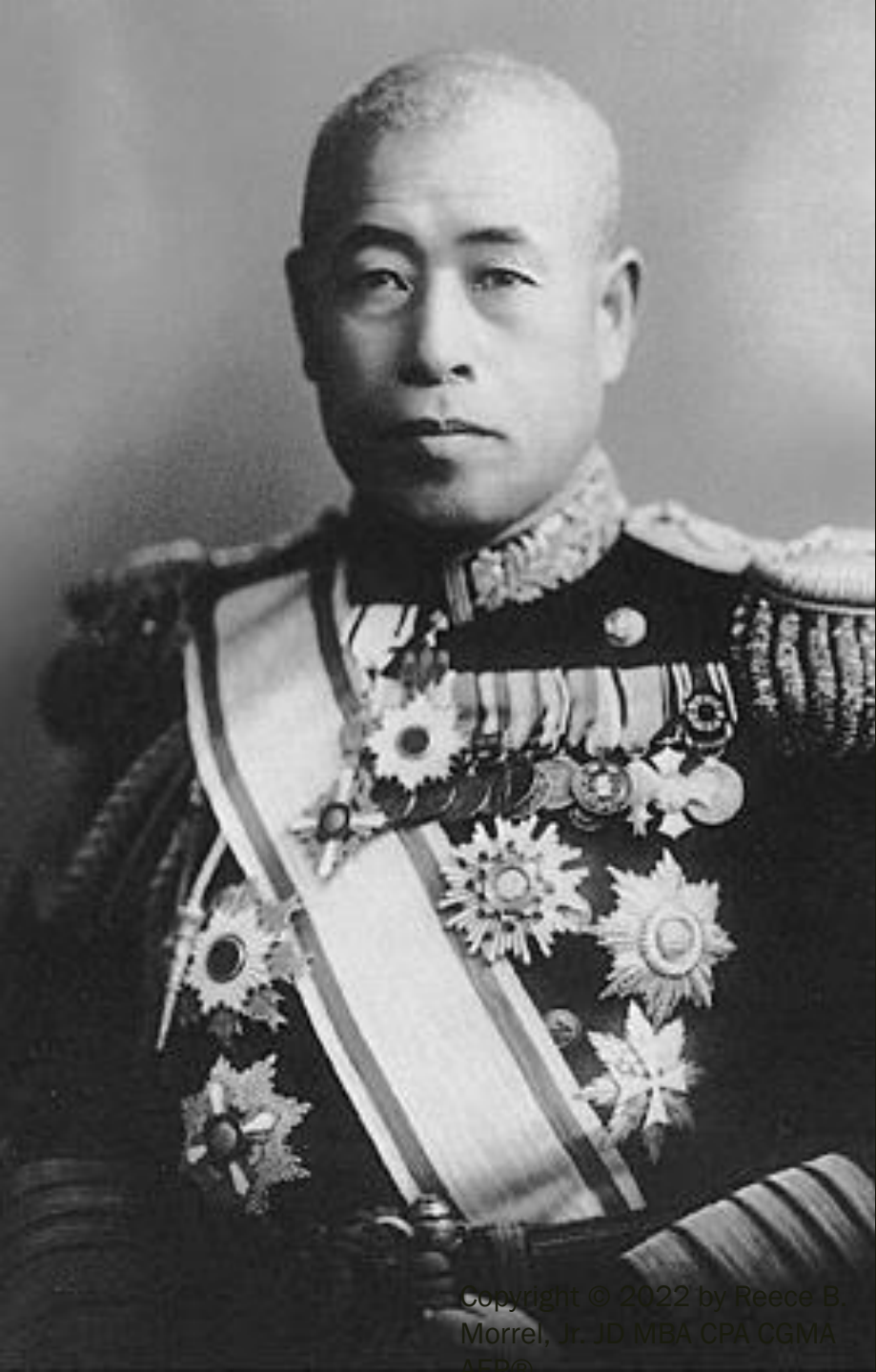
- Four-in-one U.S. adults live in a household with a gun
- Three-in-one U.S. adults own a gun
- 120 guns per 100 people
- 1 to 2 million guns are bought each month (FBI background checks)
 - *During the COVID-19 Pandemic in 2020, the LA Times reported increase in sales of guns, weed, and craft supplies*
- 400 million guns in the U.S.

NOT DISCUSSING GUN CONTROL – DISCUSSING WHAT TO DO WITH THE EXISTING 400 million (and growing) “SPECIAL ASSETS”

U.S. Active Hunters are the **LARGEST** Standing Army in the World

- 12,700,000 – U.S. Active Hunters
- 2,333,000 – Chinese Military AFP
- 1,400,000 – U.S. Military AFP
- 1,325,000 – Indian Military AFP
- 761,000 – Russian Military AFP
- 690,000 – North Korean AFP
- 624,000 – South Korean
- 410,000 – Turkish AFP

Every 2-3 months, Americans could REARM the Chinese and Russian Armies



Admiral Isoroku Yamamoto

**“You cannot invade the
mainland United States.
There would be a rifle
behind every blade of
grass”.**

NEW HAMPSHIRE FIREARM FACTS

41.1% Have Guns at Home

Other New England States have vastly different percentages of guns at home:

- Maine 46.8% have guns at home
- Massachusetts 14.7% have guns at home
- Vermont 50.5% have guns at home
- Connecticut 23.6% have guns at home
- Rhode Island 14.8% have guns at home

FIREARM LAW

WHAT MAKES FIREARMS SPECIAL ASSETS?

TANGIBLE PERSONAL PROPERTY

- Intersection of FEDERAL, STATE and LOCAL laws
- Different DEFINITIONS on what is a FIREARM
- Different VALUATIONS (Financial or Emotional)
- Restrictions on POSSESSION
- Restrictions on TRANSFER (Purchase, Loan or Gift)
- Restrictions on PERSONS (Prohibited Persons)
- LIABILITY ♦ LIABILITY ♦ LIABILITY (Agent / Personal Representative / Trustee)
- PRIVACY ♦ PRIVACY ♦ PRIVACY

Second Amendment US Constitution

- A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.
- Ratified December 15, 1791
- U.S. Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), held that an individual has a right to own a gun within the home for self-defense
- U.S. Supreme Court in McDonald v. City of Chicago, 561 U.S. 742 (2010), held that the right of an individual to “keep and bear arms” is incorporated by the Due Process Clause of the Fourteenth Amendment and is thereby enforceable against the states.

National Firearms Act (1934)

- **Title 26 Internal Revenue Code Chapter 53** – Machine Guns, Destructive Devices, and Certain Other Firearms (Section 5801 et. seq.)
- Imposes a tax of \$200 on the transfer (i.e., purchase) of certain firearms (This amount has not changed since 1934 – equivalent to \$4,000 in 2022)
- Mandates the registration of certain firearms
- If not registered, then the firearm is considered **CONTRABAND !!!**
WARNING: A lot of WW2 “bring-back” never registered

The NFA is a TAXATION Statute !!! Remember Al Capone ???

National Firearms Act (1934)

- Congressional response to gang activity
- St. Valentines Day Massacre of 1929
 - *George “Bugs” Moran (Irish North Siders) vs. Al Capone (Chicago Mafia)*
 - *Used two Tommy Guns (machineguns)*
- Ownership of NFA items is HIGHLY-REGULATED by the BATFE (Forms, forms, and more forms)
- If you own it, then you must register it and pay the tax
- Haynes v. U.S., 390 U.S. 95 (1968), held that the registration requirement of the NFA was UNCONSTITUTIONAL since it violated a person’s 5th Amendment right against self-incrimination

Gun Control Act (1968)

- “Fixed” the unconstitutional problems of the original NFA and made the new and improved NFA Title II of the GCA
- Bans mail order sales of rifles and shotguns
 - *President John Kennedy*
 - *Attorney General Robert Kennedy*
 - *Martin Luther King, Jr.*
- “Prohibited Person” - prohibits most felons, drug users and people found mentally incompetent from buying guns

FIREARMS - GCA / Title I

“Normal” firearms

- Revolvers
- Pistols
- Rifles
- Shotguns

FIREARMS - NFA / Title II / Class 3

- Machinegun (and their parts)
- Silencer / Suppressor / Muffler (and their parts)
- Short-Barreled Shotgun (SBS) – Barrel < 16 Inches; Overall Length < 26 Inches
- Short-Barreled Rifle (SBR) – Barrel < 16 inches; Overall Length < 26 Inches
- Destructive Device (Spud Gun? With Tennis Balls? PVC Pipe – a Muzzleloader?)
- Any Other Weapon (i.e., Pen Gun, Wallet Gun, Cane Gun, Umbrella Gun)

Other Federal Firearm Laws

- **Firearms Owners Protection Act (1986)** – persons traveling from one place to another have a defense for any state firearms offense in a state that has strict gun control laws if the traveler is just passing through
- **Gun Free School Zones Act (1990)**
- **Brady Handgun Violence Prevention Act (1993)** – requires that background checks (NICS) be conducted on individuals before a firearm may be purchased from a federally licensed dealer, manufacturer or importer (Does not apply to private sales)
- **The Lautenberg Amendment** – makes it a felony for anyone convicted of a misdemeanor crime of domestic violence such as an assault or attempted assault on a family member, to ship, transport, possess, or receive firearms or ammunition

New Hampshire Firearm Law

STATE CONSTITUTIONAL PROVISION - Part 1, Article 2-a

“All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the state.”

- Castle Doctrine Enacted
- Right to Carry Confidentiality Enacted
- No Permit to Carry Open or Concealed
- No Licensing of Owners; No Registration of Firearms; and No Permit to Purchase
- New Hampshire does not impose additional restrictions to the Federal requirements for the purchase and possession of Title I or Title II firearms

New Hampshire Firearm Law

New Hampshire does not require a permit to open carry or concealed carry, but makes concealed carry permits available to New Hampshire residents. 29 states offer reciprocity to individuals with New Hampshire concealed carry permits, including Maine and Vermont.

New Hampshire Statute 159:6(III) provides that "The availability of a license to carry a loaded pistol or revolver under this section or under any other provision of law shall not be construed to impose a prohibition on the unlicensed transport or carry of a firearm in a vehicle, or on or about one's person, whether openly or concealed, loaded or unloaded, by a resident, nonresident, or alien if that individual is not otherwise prohibited by statute from possessing a firearm in the state of New Hampshire."

BACKGROUND

How Did GUN TRUSTS Get Started?

ONCE UPON A TIME

- If an INDIVIDUAL wanted to legally purchase an NFA / Title II / Class 3 FIREARM, then permission was REQUIRED from a law enforcement officer, such as
 - *Attorney General*
 - *Sheriff*
 - *Chief of Police*
- The answer was very often NO !!!
- If an ENTITY wanted to legally purchase an NFA / TITLE II / Class 3 FIREARM, then the law enforcement officer was NOTIFIED after the BATFE forms were completed

My 6th Grade English Teacher told me ...

YOU are an AMERI-CAN !!!

YOU are NOT an AMERI-CAN'T !!!

15 minutes later, LAWYERS were drafting GUN TRUSTS so that the TRUST (an ENTITY) could purchase NFA Firearms without needing the approval of law enforcement officers, and maintain their client's privacy, but

But Things Got Complicated !!!

- As of January 1, 2001, only handguns on the California DOJ Roster of Certified Handguns can be purchased, manufactured, or imported
 - *For most manufacturers, it is cost-prohibitive to have their product certified*
 - *Generation 3 of the GLOCK 17 (9MM) is the most current version on the list*
- In May 2013, Attorney General Kamala Harris declared that all requirements had been met for a California Statute to become effective
 - *The serial number of a handgun must be stamped in two locations on each round of ammunition*
 - *Easy to stamp the primer*
 - *No one has figured out how / where to place the second stamp*

But Things Got Complicated !!!

A CULTURE WAR BROKE OUT

- Several States outlawed high-capacity magazines – different definition in each State
- Medical Professionals began asking patients about guns in the home
- Banks began declining CREDIT CARD PURCHASES at gun stores because the Cardholders were “DISTRESSED”

MEDICAL MARIJUANA BECAME A THING

- “Drug Addicts” are PROHIBITED PERSONS under Federal Law
- As of April 30, 2020, 9,940 New Hampshire residents have a Medical Marijuana Card

Example #1 – Facts

- Husband is Convicted Felon – Identity Theft (Non-Violent White-Collar Crime)
- Son, 22 years old, lives at home and has his Medical Marijuana Card
- Wife owns a Medical Marijuana Grow Facility and a Dispensary

Example #1 – Analysis

FIREARMS ARE SPECIAL ASSETS

- Husband is a PROHIBITED PERSON – is not allowed to OWN or POSSESS a firearm
- Son is a PROHIBITED PERSON – is not allowed to OWN or POSSESS a firearm
- Wife is NOT a PROHIBITED PERSON – and may OWN and POSSESS a firearm
- Under New Hampshire law, medical marijuana can be grown in a licensed distribution facility, and Wife is allowed to bring her firearm onto the facility
- Under FEDERAL law, bringing a firearm into a DISPENSARY is considered “ARMED WITH INTENT TO DISTRIBUTE” and is a FELONY – can include mandatory jail time !

OOPS !!!

Example #2 – Facts

- Grandpa Adam dies in New Hampshire leaving 10 Grandchildren and 10 Normal Firearms
- Uncle Bob passes out a Firearm to each of the Grandchildren
- Uncle Bob does not ask the Grandchildren any questions or conduct a background check – he just “does it” (← The “Nike Defense” does not work!)
- Granddaughter Charlotte lives in Boston, and Uncle Bob sends her an AR-15 with three 30 round magazines.
- Grandson Duke lives in Oklahoma and has a Medical Marijuana Card and is involved in a “messy” divorce – something about a protective order? Uncle Bob sends Duke an old deer rifle
- Don’t even ask about the other 8 grandchildren!

Example #2 – Analysis

FIREARMS ARE SPECIAL ASSETS

- Uncle Bob messed up! What started out as “no big deal” has now evolved
 - *Although not required, a background check can be done inexpensively*
 - *What if a grandchild is a CPA, Lawyer or Physician? They can lose their professional license if they have a felony!*
 - *Should have asked about Medical Marijuana Cards*
- Under city ordinance, it is illegal to import and possess an AR-15 with a high capacity magazine in Boston. Bob (for importing) and Charlotte (for possession) are both guilty!
- Under FEDERAL Law, Duke is a DRUG ADDICT / PROHIBITED PERSON
Local Law Enforcement and the Wife’s recently hired divorce lawyer want to know how Duke got the deer rifle.

Example #3 – Facts

- Adam and Eve are good friends of your family
- Adam and Eve are “going through a rough patch”
- Adam asks you to keep his guns until “things settle down”
- Adam frequently calls and texts Eve at all hours of the day and night
Eve requests and the Court grants a temporary protective order against Adam
- Adam wants to go duck hunting so he can relax – he needs time to “process” everything that has been going on
- Adam asks you to return his favorite duck hunting shotgun

Example #3 – Analysis

FIREARMS ARE SPECIAL ASSETS

- Returning the Shotgun is a TRANSFER under FEDERAL LAW
- Federal law restricts the TRANSFER of a firearm to a person
 - *“who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner”*

BE CAREFUL !!!

Example #4 – Facts

- Your brother Adam died, leaving you the Trustee of his Trust
- His wife Evita is from Argentina and is a Legal Resident Alien, maybe
- They have three sons: Moe, Larry and Curly
- Adam left a “Personal Property Memorandum” leaving specific items

 - *Shotgun is for Evita*
 - *Gen 3 Glock 17 + three 10-round magazines for Moe – lives in California*
 - *Gen 4 Glock 17 + three 15-round magazines for Larry – lives in Colorado*
 - *Gen 5 Glock 17 + three 17-round magazines for Curly – lives in Oklahoma*

Example #4 – Analysis

FIREARMS ARE SPECIAL ASSETS

IS THIS GOING TO WORK ???

Did you notice all the “things” that YOU – the FIDUCIARY – NEED to check?

- The legal status of Evita
- The California Roster of Certified Handguns
- The California and Colorado restrictions on magazine capacity
- Does anyone have a recreational or medical marijuana card?

May want to engage the services of an FFL to handle the TRANSFERS of the FIREARMS

Examples #1 to #4

Only Involved “NORMAL” Firearms

- Pistols
- Handguns
- Rifles
- Shotguns

Example #5 – Facts (NFA Firearm)

- Sergeant Dan “Hoss” Blocker, is a member of the 45th Infantry Division and is being deployed to Poland
- Before leaving, he brings THREE SUPPRESSORS to his Parent’s house
 - *The first suppressor he puts in a locked case, and he keeps the only key*
 - *The second suppressor he puts in his Dad’s gun safe*
 - *The third suppressor he hides in the closet in the Guest Bedroom*

Example #5 – Analysis

FIREARMS ARE SPECIAL ASSETS

Who has CONTROL of the Suppressor?

ACTUAL OR CONSTRUCTIVE

- 1st Suppressor – ONLY Hoss has control since securely locked
- 2nd Suppressor - How owned? By Hoss (Individual) or an NFA Trust ???
 - *Individual? Then a problem, since Father has access to the gun safe*
 - *NFA Trust? Depends if Father is a Special Trustee/Beneficiary of the NFA Trust*
 - *If father NOT a Special Trustee/Beneficiary, then we have a FELONY !!!*
- 3rd Suppressor – A real problem on so many levels !!! DON'T DO IT !!!

Example #6 – Facts (NFA Firearm)

- Frank Eaton (aka “Pistol Pete”) buys an Orange SBR (Short-Barreled Rifle) and the gun store registers it to him personally (as an “Individual”)
- Frank buys a Black SBR and it is registered to his NFA Trust
- Frank is excited to take his friends shooting and let them try out his new SBRs
- While at the shooting range, Frank excuses himself while he visits the restroom

Example #6 – Analysis

FIREARMS ARE SPECIAL ASSETS

- Frank needs to take the ORANGE SBR with him to the restroom since he is the only one that can legally POSSESS the NFA Firearm
- Frank can make each friend a “Special” Trustee/Beneficiary of the NFA Trust for the day.
- As long as a Special Trustee/Beneficiary is around the BLACK SBR – No Problems !!!
- At the end of the day, each appointment of “Special” Trustee/Beneficiary is terminated

ESTATE PLANNING SOLUTIONS

Estate Planning – What is our GOAL?

Liability Protection vs. Privacy

- LLCs – provide LIABILITY PROTECTION
 - Charging Orders
- Trusts – provide PRIVACY
 - *Certification of Trust*
 - *Limited information given as to the Trustees, Beneficiaries, Assets, Management, Operations, and Purpose*
- If PRIVACY is our GOAL, then SPECIAL ASSETS need a SPECIAL FIREARM TRUST

Six Reasons Why SPECIAL ASSETS Need a SPECIAL TRUST

1. Own an NFA item (Original reason why GUN TRUSTS got started)
2. Own 10+ firearms (NOT just the ones your Spouse knows about)
If Firearms owned for investment purposes, then a/k/a as a **401(G) Investment Plan**
3. Own an EXPENSIVE firearm (Barrett M82 Rifle – effective range of 1,800 meters)
4. Own a SENTIMENTAL firearm (Grandfather's Colt Revolver)
5. Own FIREARM ACCESSORIES that may be ILLEGAL in another STATE
6. Participate in shooting sports in MULTIPLE STATES (Competitive Shooter; Hunter)

5 of the 6 reasons involve NORMAL Firearms !!!

Estate Planning of SPECIAL ASSETS – 4 Things Need to Work

- Lawful POSSESSION and
- TRANSFER of a
- FIREARM between
- PERSONS (Individual or Entity)

REMEMBER: What is a FIREARM?

GCA / Title I

“Normal” Firearms

- Pistol
- Handgun
- Rifle
- Shotgun

NFA / Title II / Class 3

- Machinegun
- Silencer / Suppressor / Muffler
- Short-Barreled Shotgun
- Short-Barreled Rifle
- Destructive Device
- Any Other Weapon

Who is a PERSON under the GCA?

- Individual
- Corporation
- Company
- Association
- Partnership
- Limited Liability Company

- Firm
- Society
- Joint Stock Company

DOES NOT INCLUDE TRUSTS !!!

A NORMAL Firearm may be TRANSFERRED to a TRUST just like any other TANGIBLE PERSONAL PROPERTY after the original purchase

Who is a PERSON under the NFA?

- Individual
- Corporation
- Company
- Association
- Partnership
- Limited Liability Company
- Trust
- Estate

REMEMBER:

The NFA is a revenue statute

This lists resembles the TYPE of income tax returns that might be filed

ENTITY – GCA and NFA

- Any ENTITY operating under the GCA and NFA must designate a RESPONSIBLE PERSON on their Application
- A RESPONSIBLE PERSON is anyone that is not a PROHIBITED PERSON
- The RESPONSIBLE PERSON must be Photographed and Fingerprinted
- RECOMMENDATION: When purchasing an NFA Firearm with a TRUST, only have a single individual as the ORIGINAL TRUSTEE
- Since a TRUST is not an ENTITY under the GCA, when transferring NORMAL FIREARMS to a TRUST, the RESPONSIBLE PERSON requirements do not apply

PROHIBITED PERSON – GCA

Form 4432 Firearm Transaction Record

- Convicted in any court of a crime punishable by imprisonment for a term exceeding one year
- Who is a fugitive from justice
- Who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);
- Who has been adjudicated as a mental defective or has been committed to any mental institution;
- Who is an illegal alien;
- Who has been discharged from the Armed Forces under dishonorable conditions;
- Who has renounced his or her United States citizenship;
- Who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
- Who has been convicted of a misdemeanor crime of domestic violence.

TRANSFER of a Firearm

Broadly Defined

- Selling
- Assigning
- Pledging
- Leasing
- Loaning
- Giving Away
- Otherwise Disposing of

POSSESSION

Actual or Constructive

- On your person
- In your immediate area of control
- Hidden in your house? How hard to find?
- In your GUN SAFE? Who has the combination?
- In your CAR? Locked in your glove box or trunk?

- **REMEMBER:** NFA Firearms are MORE SPECIAL than Normal GCA Firearms !!!

Solution #1 – Revocable Living Trust for GCA (“Normal”) Firearms

- REMEMBER: The GCA NORMAL Firearm must currently be owned by the Grantor
 - *Only an INDIVIDUAL can purchase a GCA Firearm*
 - *A “Bill of Sale” or “Assignment of Tangible Personal Property” will transfer title of NORMAL Firearms to the Firearm Trust; just like a normal RLT*
- Designate minimum of Three Successor Trustees – Incapacity or Death
 - *Familiarity or Experience with Firearms is preferred*
- Designate the Trust Beneficiaries
 - *Can use a Personal Property Memorandum to designate WHO inherits WHAT*
 - *Can include Spouse, Children (Descendants), Hunting Buddies, Charities, Local Law Enforcement, etc...*
 - *Can include ANOTHER PERSON’S TRUST !!!*

Solution #1 – Revocable Living Trust for GCA (“Normal”) Firearms

- Select a **TAME NAME** for the Trust, i.e., Smith Gun Trust
Don't recommend “The Roy D. Mercer’s Favorite 55-Gallon Drum of Taliban-Kicking Whoop Ass Gun Trust”
 - *Memorandum of Trust*
 - *Bank Accounts*
 - *Published in publicly-available documents*
- No requirement to specifically list each FIREARM
- Can own life insurance ← Opens up a lot of possibilities
- Make other ESTATE PLANNING decisions regarding the Trust

Best described as an Estate Planning Trust with knowledgeable provisions about Firearms – unlike most NFA Gun Trusts that poorly plan for Estate Planning

Solution #2 – Revocable Living Trust for NFA Firearms

- A revocable living trust for NFA firearms should have a short name due to engraving cost and space
- A revocable living trust for NFA firearms should contain detailed instructions for your successor Trustees to help ensure that they do not engage in an “accidental” felony
- A copy of your living trust for NFA firearms will be provided to BATF with your Form 1 or Form 4
- NFA items can be listed on a schedule by make; model; and serial number

Solution #2 – Revocable Living Trust for NFA Firearms

- Designate any NEW Co-Trustees – Fingerprints and photographs not required !!!
- Designate minimum of Three Successor Trustees – Incapacity or Death
 - *Familiarity or Experience with Firearms is preferred*
- Designate the Trust Beneficiaries
 - *Can use a Personal Property Memorandum to designate who inherits what*
 - *Can include Spouse, Children (Descendants), Hunting Buddies, Charities, Local Law Enforcement, etc.*
 - *Can include ANOTHER PERSON'S TRUST !!!*
- Can own life insurance ← Opens up a lot of possibilities
- Make other ESTATE PLANNING decisions regarding the Trust

Solution #2 – Revocable Living Trust for NFA Firearms

- When the NFA Firearm is used, have available
 - *A copy of your ATF Tax Stamp paperwork*
 - *A copy of necessary TRUST documents*
 - *Recommend that a copy of the receipt / invoice showing purchase be kept*
- An INDIVIDUAL appointed as a SPECIAL TRUSTEE / BENEFICIARY may use the NFA Firearm when the RESPONSIBLE PERSON is NOT PRESENT
- Rescind the appointment when the NFA Firearm is no longer being used by the SPECIAL TRUSTEE / BENEFICIARY

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