

WHAT IS AN NFA GUN TRUST?



GTL
Gun Trust Lawyer®



*Helping Individuals And Their
Families Educate And Protect Themselves From
Unintentional Violations Of The NFA*

WHAT IS AN NFA GUN TRUST?

David M. Goldman
Gun Trust Lawyer®

Legal Ownership, Transfer, and Possession
of NFA Firearms in Most States

Silencers (Suppressors)

Short Barreled Rifles

Short Barreled Shot Guns

Pre 1986 Machine Guns

Destructive Devices

Any Other Weapon

WHAT IS AN NFA GUN TRUST?

NFA Firearms (also called Title II Firearms) are guns and other items regulated by the National Firearms Act (the "NFA"). Many people mistakenly refer to them as "Class 3" firearms or weapons. The NFA regulates the sale, use, possession, and transfer of machine guns, short-barreled shotguns and rifles, silencers, destructive devices, and AOWs.

In most states, some or all of these items are LEGAL to own. In addition to state regulation, federal law regulates these items under the NFA. Individuals, business entities, and trusts are permitted to purchase NFA firearms if allowed by state law. To obtain permission to transfer or make these items, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (the "BATFE" or "ATF") requires completion of a Form 1 or Form 4 along with payment of \$200 for a tax stamp.

While a traditional trust can be used to purchase NFA firearms, there are many problems with using a traditional trust and therefore only an NFA Gun Trust should be used.

We work with over 100 lawyers in over 43 states to help individuals and their families educate and protect themselves from unintentional violations of the NFA. The process of creating an NFA Gun Trust involves talking with a Gun Trust Lawyer® about the client's objectives, determining what and how the client's family makeup will influence the structure of the trust, as well as trying to limit future legislative and transfer tax risks associated with NFA firearms ownership. Once the NFA Gun Trust is designed an attorney who is licensed in the proper state reviews the trust and forwards the trust to the client. The client reviews the instructions and FAQs and has a phone consultation to discuss any questions or comments on federal and state laws. If necessary, modifications are made, then the all grantors and trustees sign the trust.

Once the trust is properly executed, NFA items can be purchased. The entire process takes less than a week and often only 1 – 2 days.

WHY DO I NEED AN NFA GUN TRUST?

No CLEO Signature Required

The ATF requires that all individuals obtain approval from their Chief Law Enforcement Officer (the "CLEO") as part of the application process to obtain a Title II firearm from another individual or Class 3 dealer. Many CLEOs around the country are refusing sign or even acknowledge the ATF Forms.

Invalid & Traditional Trusts

Many free trusts on the Internet or from other sources have been found to be invalid. Lately we have seen many dealers and manufactures providing trusts to customers or helping them to fill out the trusts in order to purchase firearms. The problem with using an invalid trust or one not signed correctly or a trust that is not complete is that the trust may not exist. If the trust does not exist, even if the ATF approves a transfer to the trust, you will be illegally in possession of the firearm and subject to the penalties of the NFA. Even otherwise valid trusts like a traditional estate planning trust or one from Intuit or Legal Zoom have substantial problems with dealing with incapacity, death, and transfer of the firearms as they instruct the trustees to take steps that create liability to the beneficiary, put the assets at risk of seizure, and put both the trustees and beneficiary at risk of the penalties for violating the NFA. You should seek legal advise from someone familiar with the NFA and not just someone who can create a trust. A lawyer who recommends or supplies a traditional trust for NFA firearms may be committing legal malpractice and many so called gun trusts or trusts for NFA firearms do not properly deal with the purchase, possession, and use of NFA firearms

The Copyrighted NFA Gun Trust

Our NFA Gun Trust is protected by US Copyright Laws and designed from the ground up to protect the firearms and those who are using or may be in possession of them from the penalties proscribed by state laws and the NFA. The NFA Gun Trust has been rewritten with these principals in mind. This trust instructs the grantors, trustees, successor trustees, and beneficiaries on their rights, duties, and qualifications and guides them through the proper way to purchase, use, and transfer the items under state and federal regulations. Each NFA Gun Trust comes with a comprehensive instructional memorandum that covers how to purchase, transfer, use, share, transport, store the firearms as well as how to use the trust based on questions and feedback from thousands of clients.

How to Begin the Process of Creating Your NFA Gun Trust

The first step in creating your NFA Gun Trust is to call the Gun Trust Lawyer® at (877) 7GUN - LAW or (904) 685-1200 to find out if a NFA Gun Trust is right for you. With a short 10-minute conversation, your suitability for using a NFA Gun Trust can be determined and one can be designed around your specific situation. Within a few days, you will receive a customized trust that has been created to deal with the NFA as well as modified by an attorney licensed in your state to deal with your state's specific trust and firearms regulations.

There is no legal remedy in most states to force the review of these forms. In most states a NFA Gun Trust does not require the CLEO's signature to obtain approval on a Form 4.

No Fingerprints or Photographs are Required

When using an NFA Gun Trust to acquire Title II firearms, no fingerprints or photographs are required. This is a cost savings and can also significantly decrease the time required to take possession of the items. Often fingerprints have to be retaken because they are not acceptable for the FBI's criminal database.

Privacy

Individuals who submit their ATF forms to their CLEO are often concerned about who will have knowledge of their firearms. They also express concerns that they will come under additional scrutiny because the police will have knowledge that they are in possession of these more restricted firearms. In most states when using an NFA Gun Trust, neither the CLEO nor the police are given notice that you will be in possession of or own the NFA firearms.

Incapacity

If you become incapacitated, your family or friends are often the ones to help you. In doing so, they may come in contact with the restricted items and put themselves at risk of violating the NFA without knowledge. An NFA Gun Trust helps protect these individuals from violating the NFA by providing them clear instructions on what they are and are not permitted to do. Many normal trusts actually instruct people to break the law.

Death

When you die your individually owned firearms will be part of your "probate estate." Probate proceedings will be necessary to transfer your guns under your will or to your heirs and are part of the public record. Since a family member or a friend usually handles probate proceedings, it is important not to unknowingly place them at risk of violating the NFA. With an NFA Gun Trust, your firearms are not subject to probate or made part of a public record. Your beneficiaries will be protected because they will receive guidance on how and under what circumstances the items can be legally transferred. If you have children, a NFA Gun Trust has specific provisions to protect them and make sure they do not receive the firearms if they live in a location where it is illegal to possess NFA firearms, and most importantly a NFA Gun Trust can help ensure that your children are mature and responsible enough that you would want them to have the firearms.

Co-owners and Authorized Users

If an individual purchases Title II firearms then he or she is the only one permitted to use or have access to them. Many people incorrectly believe that it is ok to let others use their NFA firearms when in their presence. However, the NFA would consider this a transfer and be a violation of the law. When your spouse or someone else knows the combination to your firearms safe, you may be violating the law through constructive possession. Improper possession through constructive possession is a form of an unapproved transfer and a violation of the NFA. If you use an NFA Gun Trust to purchase Title II firearms, you can designate additional owners and authorized users. If you want to add or change users or owners a NFA Trust can be adapted to reflect your current desires. The risk of constructive possession can be dealt with by adding that person to the NFA Gun Trust so that they can be in legal possession of the Firearms. This can help protect you and your family from the penalties of violating the NFA.

Reducing Risk of Legal Changes

Many groups are attempting to limit the ability to transfer firearms to family members or friends. With an NFA Gun Trust an adult child, family member, or friend can be made a co-owner of the trust. While the ownership of the NFA Gun Trust can be changed, the NFA Gun Trust is still the registered owner of the firearms and no transfer has taken place under the NFA. Penalties for violating the National Firearms Act can be severe.

Each violation of the National Firearms Act subjects the owner to forfeiture of all weapons, 10 years in prison, and fines of up to \$250,000. An NFA Gun Trust provides guidance to the creators, managers, and beneficiaries of the trust to help them avoid violating the NFA.

Benefits of a NFA Gun Trust Over a Corporation or LLC

Corporations and LLCs have annual fees associated with them. Business entities are not private and much information about the individuals associated with them is contained in public records. Corporations and LLCs have annual state fees and other costs associated with the maintenance of the entity. Often business entities are subject to the requirement to file sales tax and income tax returns. If you already have a business entity that is used to purchase NFA firearms, the business is at risk if the managers or anyone else ever misuse a firearm. Each manager of a corporation or LLC can purchase firearms and subject the entity to the penalties for violating the NFA. To make a change to the people authorized to use, purchase, or possess the firearms, the secretary of state needs to be updated with the changes in the management of the company. This can cost money and take a substantial time to complete. In addition,

business entities do not deal with incapacity or death like an NFA Gun Trust does. Unlike with a corporation or LLC, an NFA Gun Trust does not require any annual recording fees and documents do not need to be filed with the state. To make a change to an NFA Gun Trust, one simply amends the trust to change who can use, purchase, or possess the firearms without risk of criminal liability for violating the NFA.

Benefits of a NFA Gun Trust Over a Revocable Trust

There are more than 50 differences between a traditional trust and an NFA Gun Trust. Only a few of the issues will be discussed here. Most trusts do not instruct how to purchase, who may use, or who may have access to Title II firearms. They also do not give the people involved with the trust enough information to properly sell or transfer assets. If you become incapacitated, a normal trust may require the sale of your firearms or transfer to an ineligible individual or one who does not know the restrictions on these highly restricted firearms. When you die, these restricted firearms need to be transferred properly and only to those who are legally able to be in possession.

An NFA Gun Trust provides information to determine if:

1. it is permissible to transfer the items;
2. the items are legal in the state where they will be transferred to;
3. the beneficiary is legally able to be in possession of or use the firearms; and most importantly
4. the successor trustee is given the ability to determine on their own, when and if the beneficiary is mature and responsible enough to receive the firearms.

A normal trust allows the trust to be revoked even if its assets become illegal upon revocation. Also a normal trust allows a trustee to resign while they are still in possession of restricted firearms. A trustee may also find that with a normal trust, an agent acting under a power of attorney may take actions that are in violation of the NFA and subject them to criminal penalties.

Most people using traditional trusts purchase NFA firearms incorrectly. They usually purchase them as an individual and then transfer the weapons into the trust. While the ATF may approve a transfer from the dealer to the trust, they never approved an individual transfer from the dealer nor a transfer from the individual to the trust. Each of these is a violation of the NFA

GTL

Gun Trust Lawyer® 

www.GunTrustLawyer.com

This brochure does NOT provide or contain legal advice and does NOT establish an attorney-client relationship. Legal advice can vary according to a client's unique situation. This is for general informational purposes only.



Law Office of

David M. Goldman

..... PLLC

Jacksonville Office

3733 University Boulevard West, Suite 212B
Jacksonville, FL 32217

Toll-Free: (877) 7GUN-LAW
Phone: (904) 685-1200
Fax: (904) 875-4081

Jacksonville Beach Office

324 6th Ave North
Jacksonville Beach, FL 32250

Phone: (904) 425-1910
Fax: (904) 875-4081

www.GunTrustLawyer.com

Copyright 2014, David Goldman