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GUN TRUSTS

What is a Gun Trust?

The National Firearms Act (“NFA”) 72nd Congress, Sess. 2 ch. 757, 48 Stat. 1236 which was enacted on June 26, 1934, acts to oversee and regulate several different types of weapons in their use, possession and most importantly for this article, their transfer from one owner to the next. The NFA refers to these types of firearms as “Title II” weapons. Title II weapons include short-barreled rifles and shotguns, machine guns (meaning they fire multiple times with one squeeze of the trigger), suppressors or silencers, destructive devices (such as grenades) and a general class known as “AOWs” or Any Other Weapon. Utah allows citizens to own certain types of these weapons as long as the regulations of the NFA are observed.

The NFA anticipates two separate ways in which title to these types of weapons may take place; first, would be by an individual. To acquire these weapons as an individual, one must submit fingerprints from an authorized finger printing authority. The individual must also provide a current photograph, pay a \$200 fee, and, most burdensome of all requirements, the individual must obtain the authorization by signature of the Chief Law Enforcement Officer (“CLEO”) in the jurisdiction in which they reside. As you can imagine, a CLEO is preoccupied with many other matters and the CLEO’s politics may act to make obtaining this authorization very difficult, if not impossible.

If the individual were able to comply with all these requirements and obtain the authorization of the CLEO, the individual who received this authorization would be the only person entitled to have access and use of the weapon. Taken to the letter of the law, this potentially means that if an individual is at a shooting range with a friend (or anyone who is not that individual, including a spouse) and allows the other individual to have access to the weapon, that individual may very well be in violation of making an “unauthorized transfer.”

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The second way to obtain these types of weapons and the authorization to use and possess them is through an entity. The benefits of this cannot be understated in that an entity is not required to do any of the following:

- Provide finger prints
- Provide a photograph
- Obtain the authorization from the CLEO
- Restrict the possession and usage of the Title II weapon to one individual.

As you can see, this is a much easier process.

What type of entity should be chosen?

There are many types of entities that can be utilized in obtaining Title II weapons. However, our preferred method is through a Trust. Although technically a Trust is not considered an entity, a Trust does have a separate legal identity, and the flexibilities available to a Trust are superior to that of forming a corporation or some other form of company. However, when you form an actual company (Corporation, LLC, Ltd. Partnership, Etc.), you now must comply with all requirements related to running these entities. There are filing fees involved in the formation of the business and ongoing expenses for as long as the entity is in existence. Corporations, LLCs, etc., can also automatically expire with the passage of time if the annual renewal is not filed with the appropriate state agency, resulting in a potential unintended dissolution of the entity. A Trust, on the other hand, is simply an agreement and therefore avoids many of the formalities involved in starting a company within a given state.

It is critical that a professional with necessary experience draft a Gun Trust. Many online resources will offer “examples” or “forms” that can be used for a do-it-yourselfer to draft and implement their own Gun Trust. However, the nuances and particular familial desires regarding who should be part of the Trust, succeed in control of the Trust and the specific Title II weapons that it will hold (as well as regulation within the Trust regarding their usage) are all factors and details that should be carefully considered and identified therein. It is simply a complex area of the law that is not something inherently known or logical.

A Gun Trust is a very specific tool in our toolbox and should only be used for the very specific purpose of owning Title II firearms and dictating the usage and succession of these weapons. In our practice, we see couples where one spouse may have a much larger interest in firearm collecting than the other. In fact, some spouses may be whole-heartedly against obtaining these weapons. One recent case we dealt with was with a very wealthy Utah family with an extensive firearm collection. Only one of the children had any interest in inheriting this collection. The Gun Trust was an excellent tool to carve these assets out of the general

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distribution or division of the other familial assets and allow the child with the passion for collecting to continue on with the family's legacy.

The Gun Trust also provides many of the same benefits of a basic, living Trust; the ability to avoid the court process of probate when one generation moves assets to the next, increased asset protection planning, potential estate tax efficiencies and marital step-up issues (please see York Howell's article on the Marital Step-Up Trust™). It further dramatically increases the privacy of being able to avoid the court spectacle of probate. Our experience is that firearm collections can be extremely valuable intrinsically, but these collections also have sentimental value as one may have fond memories of a day at the range with their parent. These cherished memories should be enjoyed by future generations as well.

Responsible Title II Weapon Ownership

Owning these types of Title II weapons brings with the ownership a considerable amount of responsibility. The Gun Trust allows an owner to take stewardship over the passage of the weapon in a reasonable and responsible manner. It is superior to simply passing away with these weapons being individually owned and leaving the burden of the disposal upon the family, who may not have knowledge or interest in dealing with these types of weapons.

Many commentators see the Gun Trust as a "loophole." This term seems to denote some sort of nefarious intent and has raised red flags with many opponents to 2nd Amendment freedoms and rights. There have been numerous proposals to eliminate the ability to engage in this type of planning. We anticipate that this opposition will only intensify and may ultimately result in this "loophole" being closed. Our opinion is that creating a Gun Trust is completely within the boundaries of the law, and that our clients who engage in the formation of this type of Trust exhibit far more thoughtful consideration in the succession of these Type II weapons than the average person spends on simply transferring grandpa's old shotgun. Be responsible and give some careful consideration in the event you desire to obtain a Type II weapon.

Summary

The type of weapons considered to be Type II weapons are as follows:

- Machine guns
- Silencers
- Short-barreled shotguns and rifles
- Grenades and other explosive devices
- AOWs (Any Other Weapon)

The benefits of a Gun Trust are as follows:

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- Allows more than one person to possess and use the weapon
- Keeps the ownership of the weapon in Trust after a person's death and avoids the usual transfer requirements
- Allows the creator of the Trust to responsibly pass on this type of weapon
- Gives direction to the people handling the estate on how these weapons should be administered in the future
- Avoids probate and increases privacy
- Helps to avoid potential restrictive legislation adopted in the future

If you are passionate about firearm collecting and your collection includes, or you anticipate acquiring a Title II type of weapon, a Gun Trust should certainly be considered. We at York Howell would be honored to speak with you in more detail about the formation of a Gun Trust and the potential costs associated with us assisting in its creation. Do not attempt to do this on your own. Both Federal and State law needs to be followed and the laws change dramatically from State to State. Please do not hesitate to contact us. Keep the groupings tight!

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