

FREQUENTLY ASKED QUESTIONS

Disclaimer:

The Content of this Website, Including the Information Set Forth Below, Are for General Information Purposes Only. Use of this Website, Including Accessing All Materials and Information, Does Not Create an Attorney-client Relationship. We Strongly Recommend You Consult and Engage Legal Counsel Before Acting And/or Relying on Any Information and Content on this Website.

What is a Trust and what is it used for?

Trusts are commonly used in the estate planning process. A trust is a legal arrangement that separates the right to *control* assets from the right to receive the *benefits* from those assets. In other words, one person controls the assets for the benefit of another person. The obvious example is a child who inherits significant assets - normally a responsible adult will control the assets for the child's benefit.

Trusts can be revocable (able to be cancelled or amended) or irrevocable (set in stone once formed). Making a trust revocable or irrevocable has legal and/or tax consequences.

Basics of a Firearm Trust

1. Transfers the trust property from the settlor(s) to the trustees.
2. Establishes the powers held by the trustees over the trust property. At a minimum, the trust places the trustees in charge of storing, preserving, and administering the trust property. Normally, the settlors are also appointed as trustees.
3. Requires the trustees to distribute the trust property to the beneficiaries after the appropriate form has been submitted to and approved by the ATF

What are Settlers?

The settlor is the person who forms the trust and, normally, who transfers the property to the trust. For those reasons, the settlor decides what the trust will do with the trust property. Ultimately, the settlor causes all the provisions in the trust agreement to be effective when signed and accepted by the trustee. If there is ever any question about what the trust should do, the general principle is to carry out the intentions of the settlor.

Who are the Trustees and what roles to they have?

The trustees are the persons who control, possess, and preserve the trust property for the benefit of the beneficiaries. Generally, the trust also authorizes the trustees to take any other lawful action, including selling and transferring trust property. In the context of firearm trusts, the trustees may lawfully possess trust property, including Title II firearms (NFA firearms). Trustees are considered

“responsible persons” and must comply with the rules regarding transferring and making Title II firearms.

With a traditional trust formed to hold financial assets, the trustees serve solely for the benefit of the beneficiaries. They accept their position as trustees with the understanding that they will be held responsible for those decisions. There are also successor trustees, who only take office if another trustee ceases to serve in that capacity.

A Title II firearm owned by and registered to an individual may not be borrowed by another person. Often, Title II firearms are placed under trusts in order to permit multiple trustees to have possession and use of the firearms, with primary possession and decision-making to be maintained by the settlor, who will also act as primary trustee. Traditional trust documents do not have provisions to accomplish this.

What role do beneficiaries play?

As is the case with other trusts, a beneficiary is the individual entitled to the benefits of that trust. For a firearm trust, that means the firearms are held under the trust for their benefit. There is no age requirement for beneficiaries, and they typically include the settlor’s minor children, if any.

However, the firearm trust should address the potential scenario where the settlor dies and leaves the trust property to their minor child. In this instance, there would be someone under the age of 18 in possession of restricted firearms, which is unlawful. Thus, a provision should be included that will allow the trustees to use and possess the trust property until the beneficiaries are old enough and mature enough to inherit the trust property.

Beneficiaries should solely use or possess Title II firearms owned by the firearm trust outside the presence of at least one trustee. Thus, an individual who is only a beneficiary, as opposed to a trustee and beneficiary, cannot safely be in sole possession of the Title II firearm regardless of his age.

Why are firearm trusts so complicated?

Firearm trusts, especially trusts holding NFA firearms, can pose significant problems for all parties involved. Not only must trustees and beneficiaries comply with state laws for creating and properly maintaining a trust, but the firearm trust must also address the various and equally complicated state and federal laws on firearm ownership, as well as what happens to the trust property upon the death of the settlor. To gain a better understanding of just how complicated this can be, take a look at the following questions which a proper firearm trust should address.

What are the National Firearms Act and the Gun Control Act?

The National Firearms Act (NFA) and the Gun Control Act (GCA) were enacted to restrict who may possess, buy, and sell certain restricted firearms and firearm accessories. The NFA operates primarily as a taxing statute by imposing a \$200 statutory excise tax per item and also requires the owner to register all restricted firearms with the Bureau of Alcohol, Tobacco, Firearms and Explosives. The

GCA, on the other hand, was enacted to restrict the transfer of certain types of firearms between individuals. The GCA places firearms into two categories, and each has different rules. Title I firearms primarily include long rifles, shotguns, and handguns. Title II firearms include machine guns, short-barreled rifles, short-barreled shotguns, suppressors (silencers), and destructive devices such as grenades, bombs, explosive missiles, and poison gas weapons. Together, the NFA and the GCA impose various restrictions on the rights of firearm owners to possess and transfer certain firearms.

Why use a firearm trust when I can simply register Title II firearms as an individual or corporation?

A firearm trust is the most comprehensive method to protect yourself and other individuals who you want to use or possess Title II firearms. With a firearm trust, you can name as many trustees as you want to use and possess Title II firearms. A firearm trust also allows you to properly pass those firearms to future beneficiaries, protecting them from criminal prosecution. Corporations and LLCs are usually easy to set up but do not offer the same estate planning tools that a firearm trust does. Further, if you fail to pay the annual filing fee, the Secretary of State can dissolve the corporation or LLC, leaving you and its members in the unlawful possession of unregistered Title II firearms.

Can I go online or use software like Quicken Will and Trust Maker?

Many people simply try to search online for a pre-made trust to fill in some blanks and submit it to the ATF. This is an exceptionally risky decision. Cutting corners is simply not an option when small, innocuous mistakes can result in ten (10) years of jail time. These firearm trusts that are posted online or given out at local or national gun stores are tremendously dangerous and should be avoided at all costs. Typically, they are not even drafted by attorneys.

While nothing is technically going to keep you from using software products, you should realize that they are not designed to address the complex issues involved with creating a firearm trust. Substituting a generic trust form for a firearm trust can also be dangerous, as these forms do not typically address applicable federal and state laws. Generic forms tend to be very simple and tend to only address how an individual's property will pass on death.

A firearm trust should have specific language on how the firearms will be managed during your life and also direct whom they will pass to after your death. Important consideration must be given as to who will qualify as a co-trustee and beneficiary and whether they will be permitted by law to use and possess firearms. Beware of the doctrine of merger, whereby the trustee or trustees and beneficiary or beneficiaries are the same person. In some states, this can cause the trust to constructively dissolve because of the fusion of legal and equitable ownership.

Furthermore, the trust must be structured to ensure that at no time the sole trustee is also the sole beneficiary. Otherwise, the doctrine of merger would invalidate the trust, leaving that person in the unlawful possession of unregistered firearms.

Unlike a generic trust, a firearm trust should also include provisions that address what happens to

the trust property if a settlor, trustee, or beneficiary becomes a Prohibited Person who is unable to use or possess any type of firearm. Typically, the firearm trust will automatically disqualify them from any rights they had from the trust agreement, thus protecting all the other trustees from an illegal transfer of possession.

Who may access the firearms held by the firearm trust?

The trustees are the only ones who should access the firearms. The settlor can add as many or as few trustees as he wants. Note that all trustees will have specific duties and obligations to perform pursuant to the trust's provisions. In some states, trustees must be at least 18 years old to possess the firearms held by the trust, and in others, they must be 21 years old. However, in order to purchase Title II firearms for the trust, trustees must be at least 21 years old.

A Prohibited Person cannot be in possession of a firearm and cannot be a trustee of a firearm trust. Furthermore, Prohibited Persons cannot directly own, purchase, ship, or transfer any type of firearm. The trustees of a firearm trust must ensure that they do not inadvertently transfer firearms held by the firearm trust to a Prohibited Person. These rules do not preclude a Prohibited Person from being a beneficiary of a firearm trust, but special arrangements must be made for the trustees to retain possession and sell the firearms, and only then to distribute the proceeds to the Prohibited Person beneficiary.

What must you submit to the ATF when registering and transferring firearms to the trust?

First, when purchasing firearms or related items, the trust should be named after the purchaser, not the settlor or trustee. Furthermore, at the time of purchase, the trustee should submit the applicable form to the ATF. The most common forms include Form 1 for firearm manufacturing, Form 4 for the taxable transfer of a firearm, Form 5 for a tax exempt firearm transfer, and Form 20 for the interstate transport of a Title II firearm. You are also required to submit a complete copy of the firearm trust document and any schedules or attachments referenced in the trust. The last item required is a check or money order payable to the ATF for \$200 and notice to be given to the local Chief Law Enforcement Officer.

I am single. Should I even bother setting up a firearm trust?

Presently, you may feel it unnecessary to establish a firearm trust to hold Title II firearms just for yourself. However, doing so now will provide you with the flexibility to amend the trust during your lifetime so that you may add or remove trustees and beneficiaries as the occasion arises. While you may not have a spouse or children right now, that may not be the case in the future. Also, there is the issue of constructive possession if you have a roommate who may have access to your Title II firearms. Furthermore, keep in mind that individuals purchasing Title II firearms must still pay the \$200 tax stamp (as of October 2025). Later, if you wish to set up a firearm trust so that you can lawfully pass on your Title II firearms, you must pay an additional \$200 tax stamp for each firearm transferred to a trust that was originally purchased in your individual name – at least until December 31, 2025.

Who is considered to be a prohibited person, and can they be a trustee?

A prohibited person cannot be a trustee of a firearm trust. Furthermore, they are precluded from directly owning, purchasing, shipping, or transferring any type of firearm. The trustees of a firearm trust must also ensure that they do not inadvertently transfer firearms held by the firearm trust to these individuals. The following is a list of those individuals that are deemed to be Prohibited Persons under federal law, 18 U.S.C. §922(g). Each state may have additional restrictions. Please check your local laws in addition to this list.

- a) Any person who has been convicted in any court of a crime punishable by imprisonment for a term greater than one year;
- b) Any fugitive from justice;
- c) Any unlawful user of, or any person who is addicted to, a controlled substance;
- d) Any person who has been adjudicated as having a mental defect or who has been committed to a mental institution;
- e) Any alien who is illegally or unlawfully in the United States or, except as provided in 18 U.S.C. § 922 (y)(2), has been admitted to the US under a non-immigrant visa (as defined in 8 U.S.C. § 1101(a)(26));
- f) Any person who has been discharged from the Armed Forces under dishonorable conditions;
- g) Any person who, having been a U.S. citizen, has renounced their citizenship;
- h) Any person who is subject to a restraining-order; and
- i) Any person who has been convicted of a crime of domestic violence.

If I currently own Title II firearms, may I transfer them into the Firearm Trust without paying the transfer tax?

No, this type of transaction will require a \$200 tax stamp for each firearm transferred – at least until December 31, 2025.

Can I add an individual as a trustee of the firearm trust if they live in a state where Title II firearms are illegal?

Yes. However, in this situation, the trustee will not be able to use or possess the Title II firearms within that state. They will only be able to use and possess them in those states that permit Title II firearms and items. Furthermore, if the trustee lives in a state that imposes additional restrictions on the use and possession of Title II firearms that are different than what the state where the trust was created requires, then they must also comply with those additional requirements. For example, the trustee's state may require them to obtain a Firearms Identification Card before they can lawfully purchase or possess firearms.

Can my friends and I form a Firearm Trust and put Title II firearms into the trust?

Legally, there is nothing that will prevent someone from forming a trust in this manner. However, each friend must be aware of the potential consequences of sharing a firearm trust. Most importantly, what happens to the trust property if the friendship ends?

Can I or should I put non-Title II firearms in my National Firearms Act firearm trust?

You certainly have the ability to do so, as there is no rule that states a firearm trust can only own Title I or Title II items. There is also no rule that states if you use a Title II item on a non-Title II firearm that the non-Title II firearm has to be owned by the trust. This would come up if you owned a suppressor in a trust but owned your pistol that it is attached to as an individual. Keep in mind that it is safer to keep your Title II firearm ownership separate in case there is any forfeiture of the Title II items in the firearm trust. Then, in that case, your Title I items will be protected. If you want to place your Title I items in a trust for estate planning purposes, it may be more beneficial to create a second trust for only those items.

May a private citizen register a firearm not previously registered in the National Firearms Registration and Transfer Record?

No. The National Firearms Act (NFA) permits only manufacturers, makers, importers, and certain governmental entities to register firearms.

Are there any exemptions from the making or transfer tax provisions of the NFA?

Yes. These exemptions are noted below, along with the required form number, if any, to apply for the exemption. Completed forms must be approved by the National Firearms Act (NFA) Branch prior to the making or transfer:

- (1) ATF Form 3: Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer (National Firearms Act). This form is used by a licensed Federal Firearms Licensee (FFL) with a Special Occupational Tax (SOT) status to transfer a National Firearms Act (NFA) firearm to another FFL/SOT without payment of the transfer tax.
- (2) ATF Form 5: Application for Tax Exempt Transfer and Registration of Firearm. This form is used to apply for a tax-exempt transfer by operation of law (e.g., court order). A trustee of a trust may submit this form to transfer a firearm to a lawful heir as a tax exempt transfer.

Are parts or kits which would convert a firearm into a machine gun subject to registration?

Yes.

Does the possessor of an NFA firearm have to show proof of registration?

Yes. The approved application received from the ATF serves as evidence of registration of the Title II firearm. This document must be made available upon request of any ATF officer. It is suggested that a photocopy of the approved application be carried by the possessor when the weapon is being transported.

If I have any further questions as to the classification of a paintball or air gun silencer, who

should I contact?

Send a written request to the ATF's Firearms Technology Branch (see below).

May machine guns be transferred from one registered owner to another?

Yes. If the machine gun was lawfully registered and possessed before May 19, 1986, it may be transferred pursuant to an approved ATF Form 4 (5320.4).

Are muzzle loading cannons classified as destructive devices?

Generally, no. Muzzle loading cannons not capable of firing fixed ammunition and manufactured in or before 1898, and replicas thereof, are antiques and not subject to the provisions of either the Gun Control Act (GCA) or the National Firearms Act (NFA).

If an individual is changing his state of residence and the individual's application to transport the NFA firearm cannot be approved because of a prohibition in the new state, what options does a lawful possessor have?

Title II firearms may be left in a safe deposit box in his former state of residence. Also, the firearm could be left or stored in the former state of residence at the house of a friend or relative in a locked room or container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The firearms may also be transferred in accordance with National Firearms Act (NFA) regulations or, if abandoned, given to the ATF.

Does the registered owner of a destructive device, machine gun, short-barreled shotgun, short-barreled rifle need authorization to lawfully transport such items interstate?

Yes, unless the registered possessor is a qualified dealer, manufacturer or importer, or a licensed collector transporting only curios or relics. Prior approval must be obtained, even if the move is temporary. Approval is requested by either submitting a letter containing all necessary information or by submitting ATF Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain Title II firearms. This requirement does not apply to the lawful interstate transportation of silencers. Possession of the firearms also must comply with all State and local laws.

May a licensed collector obtain NFA firearms in interstate commerce?

Yes, but only if the firearms are classified as curios or relics, are registered, and are transferred in accordance with the provisions of the National Firearms Act (NFA).

How does a person qualify to import, manufacture, or deal in NFA firearms?

The person must be licensed under the GCA and pay the required special (occupational) tax imposed by the NFA. After becoming licensed under the GCA, the licensee must file an ATF Form 5630.7,

Special Tax Registration and Return National Firearms Act (NFA) with the appropriate tax payment with the ATF. In addition, an importer (except importers of sporting shotguns and shotgun ammunition) must also be registered with the ATF under the Arms Export Control Act of 1976, by filing an ATF Form 4587, Application to Register as an Importer of U.S. Munitions Import List Articles.

What should a person do if he or she comes into possession of an unregistered NFA firearm?

Contact the nearest ATF office immediately. A listing of the telephone numbers can be found online at www.aif.gov/contact/atf-field-divisions.

What should a state do when an unregistered NFA firearm is acquired through forfeiture or abandonment?

When a state wants to keep such Title II firearms for official use, the state must register the firearm by filing an ATF Form 10 Application for Registration of Firearms Acquired by Certain Governmental Entities. Since approval of the Form 10 is conditioned on an “official use only” basis, subsequent transfers will not be approved unless the transfer is to another government agency for official use.

How is this tax paid?

A check or money order payable to the ATF, together with the application forms, may be mailed to:

National Firearms Act Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
P.O. Box 530298
Atlanta, GA 30353-0298.

The tax may also be paid on line through the ATF eForms site and account.

How can a person legally obtain NFA firearms?

A person may make an NFA firearm by filing and receiving an approved ATF Form 1 Application to Make and Register a Firearm. A person may transfer a Title II firearm to another person by filing and receiving an approved ATF Form 4, Application for Tax Paid Transfer and Registration of Firearm. Applications to make or transfer a firearm will not be approved if Federal, State, or local law prohibits the making or possession of the firearm.

May the short barrel on an SBR or SBS be replaced with a long barrel for hunting or other purposes, with the intent of replacing the short barrel?

Yes, and you will not be required to again register the firearm before replacing the short barrel. The ATF recommends written notification to the National Firearms Act (NFA) Branch when a firearm’s configuration is permanently changed or removed from the purview of the National Firearms Act

(NFA).

What is an unserviceable firearm?

An unserviceable firearm is defined as one which is incapable of discharging a shot by means of an explosive and which is incapable of being readily restored to a firing condition. An acceptable method of rendering most firearms unserviceable is to fusion weld the chamber closed and fusion weld the barrel solidly to the frame. Certain unusual firearms require other methods to render the firearms unserviceable. An unserviceable Title II firearm is still subject to the controls of the National Firearms Act (NFA) but may be transferred tax free as a curio or ornament.

Are grenade and rocket launcher attachments destructive devices?

Grenade and rocket launcher attachments for use on military type rifles generally do not come within the definition of destructive devices. However, the grenades and rockets used in these devices are generally within the definition.

Are Paintball and/or Air Firearm Sound Suppressers NFA firearms?

The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts designed or redesigned and intended for use in assembling or fabricating a firearm silencer or firearm muffler and any part intended only for use in such assembly or fabrication. Numerous paintball and air gun silencers tested by the ATF’s Firearms Technology Branch have been determined to be, by nature of their design and function, firearm silencers. Because silencers are National Firearms Act (NFA) weapons, an individual wishing to manufacture or transfer such a silencer must receive prior approval from the ATF and pay the required tax.

May a transferor submit an application to transfer an NFA firearm prior to the date on which the transferor receives the weapon?

No.

What is the status of unloaded or dummy grenades, artillery shell casings, and similar devices?

Unloaded or dummy grenades, artillery shell casings, and similar devices, which are cut or drilled in an ATF approved manner so that they cannot be used as ammunition components for destructive devices, are not considered National Firearms Act (NFA) weapons.

If a person has a pistol and an attachable shoulder stock, does this constitute possession of an NFA firearm?

Yes, unless the barrel of the pistol is at least 16 inches in length (and the overall length of the firearm with stock attached is at least 26 inches). However, certain stocked handguns, such as original semi-automatic Mauser “Broomhandles” and Lugers, have been removed from the purview of the NFA

as collectors' items.