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An Overview of NFA Trusts for Estate
Planners and Probate Practitioners****Christina Lesher**

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Annie Get Your Gun Trust: An Overview of NFA Trusts for Estate Planners and Probate Practitioners

I. Introduction to NFA Trusts

Many of the trust instruments we as estate planning and elder law practitioners encounter on a day-to-day basis have their roots in English law. With a few modern modifications, this is also true of our probate procedure and methods of estate distribution. But with present day technology and social evolution, we occasionally encounter a new or unusual utilization of estate planning documents tailored for a client's particular purposes in response to contemporary legislation and policy.

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Texans submit more applications for registration and transfer of firearms and weapons controlled under the National Firearms Act (NFA) than residents of any other state. Because Texas outpaces the other 49 states in terms of gun ownership, our beloved Lone Star State is a potential hotbed of activity for what are known as NFA Trusts or, more colloquially, "Gun Trusts." Practitioners who learn to properly draft these trusts and have them approved by the ATF will likely find an open market not yet tapped by many of our colleagues. And NFA Trusts, which are essentially Revocable Living Trusts at their base, may easily be fit into an existing estate planning practice.

But even if you have no desire to be a drafter of NFA Trusts, a background understanding of the instruments is still pertinent. For most estate planning and elder law attorneys, probate practice is almost inevitable. If you encounter an estate with NFA firearms, general procedure for estate distribution under the Texas Probate Code (TPC) does not apply. In addition to their other duties, executors and administrators of estates with NFA Firearms are tasked with the significant hurdle of properly registering and transferring the weapons according to Federal guidelines. If the administrator is not familiar with firearms or registration procedures, he or she may be looking to the attorney as a guide in this effort.

What follows is an overview of NFA Firearms and Gun Trusts. Though not all-encompassing, this discourse should provide a sufficient foundation for consulting with clients on the basic facets of Federal law surrounding weapons, NFA Trusts, and estate distribution in cases where firearms are part of a decedent's probate estate.

II. The National Firearms Act

Federal statutes and regulations limit access to and ownership of certain types of firearms and other weapons. These laws also restrict the transfer of permissible weapons by means of sale, trade, gift or estate distribution, and some individuals are barred from owning or accessing regulated weapons altogether.¹ For those who own or come into possession of NFA regulated weapons, failure to comply with Federal law can lead to indictment on criminal charges, possibly resulting in fines, imprisonment, and forfeiture of any weapons involved.²

¹ 18 U.S.C. § 1922 (2012).

² I.R.C. §§ 5871-5872; 27 C.F.R. § 479.182 (2011).

To fully grasp the purpose and design of NFA Trusts, it is essential to first understand the primary facets and features of gun control statutes at the Federal level. The obstacle course that is the path to firearms ownership has given rise to the Gun Trust as a means of simplifying the process while still complying with legal guidelines. Because some practitioners may be entirely unfamiliar with firearms and weapon ownership and regulation altogether, a basic background follows.

A. Titles I and II, Gun Control Act of 1968

1. Regulatory Scheme

The overarching and primary legislation regulating access to and ownership of NFA weapons is the Gun Control Act of 1968. This statute is divided into two primary parts: Title I and Title II. Weapons of all kinds are then classified as either Title I firearms or Title II firearms. The classification of a particular weapon is key to determining the steps to be taken to legally own and transfer it.

i. Title I

Title I of the Act pertains primarily to rifles, shotguns, and handguns,³ and these weapons are generally regulated by state laws, so the gun owner is subject to the jurisdiction in which he or she resides.⁴ Because these weapons are excluded from regulation by the ATF, they are not pertinent to our discussion of Gun Trusts. Practitioners should reference the laws of the state in which the client resides if a question regarding ownership or transfer of a Title I firearm arises.

State and local laws pertaining to weapons can further complicate ownership and transfer of particular firearms, and many states ban ownership of assault weapons altogether. In these states, it is illegal to own or possess certain semi-automatic rifles, pistols, and shotguns, even though ownership would be permitted under Federal law. In this way, Title I of the NFA acts as a ceiling for access to weapons in this class, but the states are permitted to lower that ceiling as their individual legislatures see fit. And beyond this, local authorities at the county or municipal level are able to further impart gun control policies.

In Texas, the state legislature has in no way lowered the ceiling on access to Title I weapons, so residents of this state can own anything permitted under Federal law.⁵ Under the Penal Code, residents must be age 18 or older to purchase a long gun from a dealer, and the age restriction rises to age 21 or older to purchase a handgun. However, an individual need only be age 18 to own a handgun.⁶ In order to carry a concealed handgun, a permit is required, though no such permit is required for long guns. Open carry of a handgun is not permissible, except under certain circumstances such as hunting on one's own property. Open carry of a long gun is not

³ This short list is not all-inclusive. For example, Title I can also cover items such as mace, tomahawks, bowie knives, spears, nightsticks, and incendiary devices, just to name a few. *See, e.g.*, Tex. Penal Code § 46.01.

⁴ Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified at 18 U.S.C. § 921-930 (2006)).

⁵ Chapter 46, Tex. Penal Code.

⁶ Tex. Penal Code § 46.02.

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