

JOHNSON, GASINK & BAXTER, LLP

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October, 2011

## NFA TRUSTS

*By Jeremy C. Johnson*

The climate against privately owned firearms can often be described as politically hostile at the local, state and federal levels, especially when dealing with items covered by the National Firearm Act ("NFA"). It is illegal for any person to possess an NFA item that is not registered to that person in the NFA Registry. It is also illegal to transfer an NFA item without complying with several NFA transfer rules. An NFA trust is a legal instrument which can be used to acquire, control, regulate and transfer the private use of NFA (Class 3) items, weapons, suppressors and other destructive devices.

If you have a firearm collection, your estate plan may be missing the mark if it fails to include a specially drafted 'gun trust,' known more formally as an NFA Trust. The typical estate plan provides for tax saving strategies, probate avoidance and beneficiary designation of various assets. However, some assets pose additional issues that must be carefully addressed to avoid unintended consequences in the future. Firearms, in particular, are regulated under federal and state laws and demand careful attention from your estate planning attorney.

Your firearm collection may include weapons used for sport, self-defense or investment purposes. America's long history with private firearm ownership means your collection may include family heirlooms that have been passed down from generation to generation.

Unlike simple bank accounts, real property or vehicle ownership changes, transfers of many firearms and various related accessories are restricted and subject to very specific requirements. For example, under Title II of the NFA, the transfer of short-barreled shotguns and rifles, suppressors/silencers, automatic weapons and certain other "destructive devices" require the approval of your local Chief Law Enforcement Officer ("CLEO") and a federal tax stamp. To keep your gun collection in your family, you must ensure that all transfers comply with the NFA, as well as state laws where you and your beneficiaries reside.

In many jurisdictions, the CLEO will not sign off on the approval of privately owned NFA items. As such, this results in an unreviewable (and often unwritten) policy that private citizens should be actively prevented from owning firearms or other NFA covered items, which is enforced by the CLEO by his/her unwillingness to approve the NFA item registration. An NFA Trust provides the private citizen with an easy and viable solution to this problem. Owning an NFA covered item in an NFA Trust does not require the signature/authorization of the CLEO in that jurisdiction.

So how do you ensure your firearms seamlessly transfer to your loved ones after you pass on? By establishing an NFA Trust, which holds only your NFA items and/or firearm collection, you can retain ownership and control of these items during your lifetime while providing for the disposition of your NFA items and firearms to your intended beneficiaries. During your lifetime, you remain the trustee and beneficiary of the NFA Trust, and appoint a successor trustee and lifetime and remainder beneficiaries. Because the trust is revocable, you are free to make changes or revoke it at any time.

As with most living trusts, an NFA Trust enables you to provide detailed instructions regarding the disposition of your firearms upon your death. But given the unique challenges associated with transferring firearm ownership, your NFA Trust is most valuable in helping expedite the transfer of a firearm or item that is restricted under the NFA. If you use an NFA Trust to own and transfer Title II firearms, you are not required to obtain the approval of your local CLEO; the transfer application may be sent directly to the Bureau of Alcohol, Tobacco and Firearms.

NFA-restricted firearms/items are not permitted to be transported or handled by any other individual unless the registered owner is present – which can present a problem if the registered owner is deceased. However, when owned by a properly drafted NFA Trust, these items may be legally possessed by the trustee, and any beneficiary may use the firearm under the authority of, or in the presence of, the trustee. This greatly simplifies and expedites the transfer, and saves your beneficiaries from any unintended violations of the NFA – which can result in steep fines, prison, and forfeiture of all rights to possess or own firearms in the future.

Gun dealers may sometimes make ‘fill in the blank’ trust forms available, but these boilerplate documents typically fail to specifically address the ownership of NFA firearms and other items. A properly drafted NFA Trust will include guidance and/or limitations for the successor trustee, to ensure he/she does not inadvertently commit a felony when owning, using or transferring the weapons.

The Attorneys of Johnson, Gasink & Baxter, LLP can help you safely and legally obtain ownership of NFA covered firearms and/or other items through the use of a properly drafted, comprehensive NFA Trust. Criminal penalties, stiff fines and the termination of your private right to own firearms should be taken very seriously by anyone intending on acquiring NFA firearms/items. Do not put your trust in 'form' documents acquired by a non-lawyer; or worse, the internet. Protect yourself, your family and your rights by using a JGB NFA Trust.



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**About the Author:**

Jeremy Johnson is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Jeremy takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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