

Estate Planning for Guns and Digital Assets

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Digital Assets

Uniform Fiduciary Access to Digital Assets Act

Arizona recently enacted the “Uniform Fiduciary Access to Digital Assets Act.” If you think that sounds like a mouthful, that’s actually the name given as its “Short title!”

The act is a set of eighteen (18) statutes that attempt to deal with the legal issues involved for a Trustee, Personal Representative, or Agent under a Power of Attorney who is dealing with “digital assets.” The term “digital assets” can include a lot of different things: your ownership and intellectual property rights in social media accounts, your access to online bill payments or money processing, your rights to use software or listen to music, and your ability to view e-mails and other similar information.

Uniform laws like this are created by think tanks of lawyers and other professionals to be helpful in dealing with specific issues. They come up with a model, and then state legislatures can choose to enact them or adapt them for their own jurisdictions. This particular law is a valiant attempt to deal with the complex landscape of digital assets.

Overall, both the new state law and the estate planning provisions are intended to grant fiduciaries the right to digital assets of the original owner. Generally, an Agent, Trustee, or Personal Representative has the power to deal with all your assets if you become incapacitated and when you die – whether real estate, stocks, bonds, bank accounts, or any other similar traditional assets. The point of this law is to ensure that a fiduciary has the same type of general rights and duties with respect to digital assets as well.

One comforting provision in all of these laws is to ensure that the fiduciary does not commit criminal computer acts while trying to fulfill his or her fiduciary duties. Prior to this law being enacted, there was the possibility that son or daughter, acting as Personal Representative for deceased parent, could be guilty of fraud for accessing the parent’s digital account using the parent’s password. So, simply doing their job in good faith and looking up the online brokerage statement could have been a criminal act! This act should lay that issue to rest; the law makes clear that any person acting as a fiduciary is considered an authorized user and will not be guilty of criminal conduct in Arizona.

Even with a law that gives fiduciaries access and rights to digital assets – along with estate planning documents that specifically give these powers – there are limitations to recovering information or exercising these abilities. From a technical perspective, almost all software, online services, and similar offerings require you to explicitly or implicitly agree to specific terms of service or user agreement. Remember that user agreement you signed when you activated iTunes? It’s alright, neither does anyone else. So the often unread and rarely remembered service agreement becomes a binding contract that will supercede state law or estate planning documents. So Facebook or iTunes can generally respond, with legal validity, that they do not have to speak to your Agent or a Trustee if that is covered in the terms you agreed to when signing up for the service.

There is also the practical problem of getting the person on the other end of the phone or the other side of the chat box to understand your legal rights to access mom or dad's account. Even if you have the legal right to do so, if a company's support infrastructure is not well versed with this issue, you may not be able to get what you need.

It can be easy to forget how new these "rights" are. We are generally talking about things that did not exist at all 20 years ago and were barely developed and available 10 years ago. That is an incredibly young landscape, and the law has had to quickly develop to try to deal with this burgeoning field that deeply impacts so many people. There is no guarantee the new law or new provisions in estate planning documents will solve the digital issues encountered by a fiduciary, but they at least provide a better set of tools to try.

For many individuals, online access to Facebook or Twitter for a decedent may seem like a minor issue to try to clean up or just delete an inactive account. But as probate practitioners we should all be aware of the nature of the most problematic estates. Bluntly, the families where everyone hates each other and want to fight about everything. Imagine the potential court arguments over who gets to delete or save social media content, and how it could become something that yields an active contest in court. Provisions of this act are sure to be used in those cases in ways we really cannot imagine until we see how angry people are at each other.

Imagine the disputes if the Personal Representative is able to go onto Facebook and say that the user is deceased, and that he is survived only by his three loving children, while not mentioning the decedent's surviving spouse. You can imagine people will be dragging this act into court over that issue.

THE ACT ITSELF

(A.R.S. §§ 14-13101 - 14-13118)

SELECTED STATUTES:

§ 14-13102. Definitions

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16. “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

§ 14-13104. User direction for disclosure of digital assets

- A. A user **may use** an online tool to **direct the custodian** to disclose to a designated recipient or not to disclose some or all of the user’s digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure **using an online tool overrides** a contrary direction by the user in a will, trust, power of attorney or other record.
- B. If a user **has not used** an online tool to give direction under subsection A of this section or if the custodian has not provided an online tool, the user **may allow or prohibit** in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user’s digital assets, including the content of electronic communications sent or received by the user.

§ 14-13105. Terms-of-service agreement

- A. This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.
- B. This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.
- C. **A fiduciary’s or designated recipient’s access to digital assets** may be modified or eliminated by a user, by federal law or **by a terms-of-service agreement if the user has not provided direction under section 14-13104.**

§ 14-13107. Disclosure of content of electronic communications of DECEASED USER

If a **deceased user consented or a court directs disclosure of the contents of electronic communications** of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the death certificate of the user.
3. A certified copy of the letters testamentary, a small-estate affidavit or a court order.
4. Unless the user provided direction using an online tool, a copy of the user’s will,

trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications.

5. If requested by the custodian, any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - (b) Evidence linking the account to the user.
 - © A finding by the court of ***one or more*** of the following:
 - (I) The user had a specific account with the custodian, identifiable by the information specified in subdivision (a) of this paragraph.
 - (ii) Disclosure of the content of electronic communications of the user would not violate 18 United States Code sections 2701 through 2712, 47 United States Code section 222 or other applicable law.
 - (iii) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications.
 - (iv) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

§ 14-13108. Disclosure of other digital assets of **DECEASED USER**

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the death certificate of the user.
3. A certified copy of the letters testamentary, a small-estate affidavit or a court order.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - (b) Evidence linking the account to the user.
 - © An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate.
 - (d) A finding by the court of either of the following:
 - (I) The user had a specific account with the custodian, identifiable by the information specified in subdivision (a) of this paragraph.
 - (ii) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

§ 14-13109. Disclosure of content of electronic communications of **PRINCIPAL**

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal.
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - (b) Evidence linking the account to the principal.

§ 14-13110. Disclosure of other digital assets of **PRINCIPAL**

Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal.
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - (b) Evidence linking the account to the principal.

§ 14-13112. Disclosure of contents of electronic communications held in trust when **TRUSTEE IS NOT ORIGINAL USER**

Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust, if the trustee gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the trust instrument or a certification of the trust under section 14-11013 that includes consent to disclosure of the content of electronic communications to the trustee.
3. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - (b) Evidence linking the account to the trust.

§ 14-13114. Disclosure of digital assets to CONSERVATOR of protected person

- A. ***After an opportunity for a hearing*** under chapter 5, article 4 of this title, the court may grant a conservator access to the digital assets of a protected person.
- B. ***Unless otherwise ordered by the court or directed by the user, a custodian shall disclose*** to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian all of the following:
 - 1. A written request for disclosure in physical or electronic form.
 - 2. A certified copy of the court order that gives the conservator authority over the digital assets of the protected person.
 - 3. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person.
 - (b) Evidence linking the account to the trust.
- C. A conservator with general authority to manage the assets of a protected person ***may request a custodian*** of the digital assets of the protected person ***to suspend or terminate an account of the protected person for good cause***. A request made under this subsection must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

§ 14-13115. FIDUCIARY DUTY AND AUTHORITY

- A. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including all of the following, if applicable:
 - 1. The duty of care.
 - 2. The duty of loyalty.
 - 3. The duty of confidentiality.
- B. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:
 - 1. Except as otherwise provided in section 14-13104, is subject to the applicable terms of service.
 - 2. Is subject to other applicable law, including copyright law.
 - 3. In the case of a fiduciary, is limited by the scope of the fiduciary's duties.
 - 4. May not be used to impersonate the user.
- C. A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.
- D. ***A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including section 13-2316.***

§ 14-13116. CUSTODIAN COMPLIANCE AND IMMUNITY

- A. *Not later than sixty days after receipt of the information* required under section 14-13107, 14-13108, 14-13109, 14-13110, 14-13111, 14-13112, 14-13113, 14-13114 or 14-13115, *a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account.* If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

Sample Language - Trust, Will, and Financial Power of Attorney

Trust Powers Language:

The Trustee shall specifically also have all rights, powers, and authority to administer any and all “Digital Assets” which either Settlor holds. “Digital Assets” shall include, without limitation, the legal, practical, and technical authority to control or manage any and all personal electronic devices, online accounts, digital assets, and digital intellectual property. By way of illustration and not limitation, this shall include the rights to access and control any personal electronic devices, including computers, telephones, or any other device; social media profile or page which either Settlor owns, licenses, and/or controls, including Facebook, Twitter, Instagram, and Google plus, and any or all similar accounts; any and all electronic commerce sites, whether in the name of either Settlor or in the name of a company or d/b/a designation which either Settlor owns or controls, including eBay, Craigslist; control and manage any loyalty program credits or awards, including airline miles, credit card awards, or any retail loyalty programs; control and manage any digital media accounts, including Netflix; any offsite or other “cloud” storage of documents, files, computer backup, or digital information, including Google Drive, Dropbox; any or all financial accounts either Settlor may have online, as well as access or control of any traditional financial accounts through electronic portals, including but not limited to any bank or brokerage company, electronic tax filings, utility accounts, loan or debt organization accounts, personal finance programs such as Quicken, or any online financial accounts such as Paypal; control and manage any internet assets such as blogs or domain names; and, any and all accounts that Settlor has established with any online retailers or sellers of any sort whatsoever. The Trustee shall have the right to retrieve passwords; edit or remove content; reset information; delete pages and/or profiles or other information; take action under any account or profile; transfer funds; withdraw and/or deposit money or other assets; and otherwise, without limitation, take absolutely any actions and have any powers that such Settlor would have had with respect to any Digital Assets. Any company managing such digital accounts is specifically authorized and directed to deal with The Trustee on either Settlor’s behalf.

The Settlers, pursuant to this power and this Agreement, hereby specifically assign, effective upon each Settlor’s death or incapacity, all of that Settlor’s individually held rights to the trust estate held under this Agreement.

Arizona’s Uniform Fiduciary Access to Digital Assets Act specifically applies to this Trust

Agreement as set forth in A.R.S. § 14-13103(A)(4). Pursuant to A.R.S. §§ 14-13108, 14-13111, 14-13112, and 14-13113, a custodian of digital assets or electronic communications shall disclose to the Trustee any digital asset held in trust, including a catalogue of electronic communications of the Trustee and the content of electronic communications, whether or not the currently acting Trustee is the original user.

Pursuant to A.R.S. § 14-13115, the Trustee shall be an authorized user of the property of either Settlor, for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including A.R.S. § 13-2316.

Will Language:

My Personal Representative shall specifically also have all rights, powers, and authority to deal with any and all “Digital Assets” which I may hold at the time of my death. “Digital Assets” shall include, without limitation, the legal, practical, and technical authority to control or manage any and all personal electronic devices, online accounts, digital assets, and digital intellectual property. By way of illustration and not limitation, this shall include the rights to access and control any personal electronic devices, including computers, telephones, or any other device; social media profile or page which I may own at the time of my death, licenses, and/or controls, including Facebook, Twitter, Instagram, and Google plus, and any or all similar accounts; any and all electronic commerce sites, whether in my name or in the name of a company or d/b/a designation which I own or control at the time of my death, including eBay and Craigslist; control and manage any loyalty program credits or awards, including airline miles, credit card awards, or any retail loyalty programs; control and manage any digital media accounts, including Netflix; any offsite or other “cloud” storage of documents, files, computer backup, or digital information, including Google Drive, Dropbox; any or all financial accounts I may maintain online, as well as access or control of any traditional financial accounts through electronic portals, including but not limited to any bank or brokerage company, electronic tax filings, utility accounts, loan or debt organization accounts, personal finance programs such as Quicken, or any online financial accounts such as Paypal; control and manage any internet assets such as blogs or domain names; and, any and all accounts I have established with any online retailers or sellers of any sort whatsoever. My Personal Representative shall have the right to retrieve passwords; edit or remove content; reset information; delete pages and/or profiles or other information; take action under any account or profile; transfer funds; withdraw and/or deposit money or other assets; and otherwise, without limitation, take absolutely any actions and have any powers that I would have had with respect to any Digital Assets. Any company managing such digital accounts is specifically authorized and directed to deal with the Personal Representative on behalf of my estate.

The Arizona Uniform Fiduciary Access to Digital Assets Act specifically applies to my Personal Representative as set forth in A.R.S. § 14-13103(A)(2). Any custodian shall disclose information to my Personal Representative as set forth in A.R.S. § 14-13108. Pursuant to A.R.S. § 14-13115, the Personal Representative shall be an authorized user of my property for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including A.R.S. § 13-2316.

Financial Power of Attorney Language:

The Agent shall specifically also have all rights, powers, and authority to deal with any and all “Digital Assets” which the Principal holds. “Digital Assets” shall include, without limitation, the legal, practical, and technical authority to control or manage any and all personal electronic devices, online accounts, digital assets, and digital intellectual property. By way of illustration and not limitation, this shall include the rights to access and control any personal electronic devices, including computers, telephones, or any other device; social media profile or page which the Principal owns, licenses, and/or controls, including Facebook, Twitter, Instagram, and Google plus, and any or all similar accounts; any and all electronic commerce sites, whether in the name of the Principal or in the name of a company or d/b/a designation which the Principal owns or controls, including eBay, Craigslist; control and manage any loyalty program credits or awards, including airline miles, credit card awards, or any retail loyalty programs; control and manage any digital media accounts, including Netflix; any offsite or other “cloud” storage of documents, files, computer backup, or digital information, including Google Drive, Dropbox; any or all financial accounts the Principal may have online, as well as access or control of any traditional financial accounts through electronic portals, including but not limited to any bank or brokerage company, electronic tax filings, utility accounts, loan or debt organization accounts, personal finance programs such as Quicken, or any online financial accounts such as Paypal; control and manage any internet assets such as blogs or domain names; and, any and all accounts the Principal has established with any online retailers or sellers of any sort whatsoever. The Agent shall have the right to retrieve passwords; edit or remove content; reset information; delete pages and/or profiles or other information; take action under any account or profile; transfer funds; withdraw and/or deposit money or other assets; and otherwise, without limitation, take absolutely any actions and have any powers that the Principal would have had with respect to any Digital Assets. Any company managing such digital accounts is specifically authorized and directed to deal with the Agent on the Principal’s behalf.

This Section specifically grants the Agent authority over the content of electronic communications sent or received by the Principal, as set forth in A.R.S. § 14-13109 and any custodian of electronic communications shall disclose to Agent the electronic communications of the Principal upon the required request for same under Arizona law. The Agent shall also have the specific authority to receive a catalogue of electronic communications sent or received by the Principal, *and* digital assets, pursuant to A.R.S. § 14-13110.

The Arizona Uniform Fiduciary Access to Digital Assets Act specifically applies to this Power of Attorney as set forth in A.R.S. § 14-13103(A)(1).

Pursuant to A.R.S. § 14-13115, the Agent shall be an authorized user of the property of the Principal for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including A.R.S. § 13-2316.

Suggested Resources

Entire Uniform Fiduciary Access to Digital Assets Act – A.R.S. Title 14, Chapter 13
<http://www.azleg.gov/arsDetail/?title=14>

Estates & Trusts: Regular and Restricted Firearms

While not necessarily the easiest topic to discuss with clients, firearms are an asset that every estate planner, financial advisor, and even tax professional should be prepared to discuss, at least briefly. There are going to be those clients who are gun enthusiasts and have the latest firearm on the market. On the flip side, there are going to be clients who would prefer never to see or, let alone, handle a firearm. Regardless of the client's (or your) personal feelings, it is not that uncommon to encounter firearms in an estate or trust administration.

Layering on to potentially uncomfortable conversation is where it may be difficult to identify different types of firearms. At times, it can be difficult to differentiate between a "regular" and "restricted" firearms. Moreover, both types of firearms can be referred to with interchangeable designations: guns, NFA weapons, Title I weapon, Title II weapon, the "Walking Dead" Gun. Sometimes, the weapons are not commonly considered firearms but can be an explosive devices, a "pen-gun," or even more confusingly, a whatchamacallit. Other indications of a restricted firearms are those type of firearms that you probably have never seen before (or only ever seen in a James Bond movie).

To be more exact, a regular firearm can range from a general pistol, semi-automatic assault rifle, to the hunting shotgun. Restricted firearms are those weapons more commonly known as "sawed-off" shotguns, automatic assault rifles, silencers/suppressors, machineguns, or even grenades.

Regular Firearms:

Here are few basic questions to ask when firearms are found in an estate or trust:

- 1) Has the firearm been collected and secured as part of the estate or trust assets?
- 2) Who is the ultimate recipient of the firearm?
- 3) What are the Personal Representative / Trustee role and responsibilities for firearms?

Ultimately, the above questions fall into three distinct areas: Administration, Distribution, and Fiduciary Considerations.

Administration: Unlike other tangible items, firearms have an inherent danger and liability beyond preserving their value. Thus, a fiduciary who may come into contact with any firearms has a responsibility not only to preserve the value of the items, but also to ensure no one is hurt. Anyone who may encounter firearms in the fiduciary capacity should either know (a) how to safely secure the gun, or (b) trust someone to assist. For instance, if during an initial examination of an estate home a fiduciary finds a gun on a table, both fiduciary responsibility and simple prudence dictates that the fiduciary may not be able to just leave that item there. A fiduciary in these situations may also find a simple portable safe or steel locking box to be a very efficient way to secure the item.

Distribution: For firearms that are not given specific directions for distribution, the Trustee or Personal Representative has the same duties they would have as to any other tangible property, whether distributing them in kind, or to selling in a reasonable manner designed to maximize their

return. While in kind is a default method of distribution, a fiduciary could reasonably decide an in kind distribution is not appropriate. However, a fiduciary may still wish to consider the offer if a beneficiary would be very upset to know they were not given the chance.

If selling a firearm, the fiduciary must take reasonable steps to realize its value. If a professional appraisal is not required, a gun value guide might be used to ensure you are not selling a \$10,000 rare classic for \$200, and to substantiate the sale if questioned. A fiduciary may otherwise seek a reputable Federally Licensed Firearms dealer (FFL) who will purchase the guns and provide the appropriate receipt to document the transfer was made, as well as and prove the weapons are out of the fiduciary's control. Many guns found in estates will have minimal, if any value, and certain stores will also destroy worthless or damaged guns as part of the transaction. Still, if a beneficiary questions, "How did you know those guns were only worth \$50?" – there should be some reasonable way to document the process.

How to distribute is another consideration when the intended recipient resides in another state. While it may seem simplistic, a firearm should not be just mailed in a box to the beneficiary. When distributing, a fiduciary should consider the practical implications of getting the firearm to the intended recipient. In general, there are two different methods of distributing a firearm to ensure appropriate chain of custody: (1) ship the firearm to a FFL dealer, gunsmith, or manufacturer in the recipient's state; or the more secure method, (2) have the weapon shipped directly from one FFL to another FFL located in the recipient's state of residence.

Under Federal law, all licensed dealers (whether at a gun show, store, or internet) are required to obtain Form 4473s and background checks from all purchasers of firearms before they receive the weapon. A copy of the 4473 Form is included in this outline. Recent legislation has proposed that background checks should be expanded into "universal" background checks. These legislative changes could impact private parties, including an estate, including considering whether there should be carve-outs limited to certain family members. It is at least conceivable that proposed laws could change in a way that impacts an estate administrator, and even if someone is specifically devised a gun under a Will or tangible personal property list, in the future, a background check could be required.

Fiduciary Considerations: Firearms in Arizona between estates and a private person generally involve no specific transfer paperwork or licensure. Generally guns are not "licensed" or "registered" in Arizona, as they may be in other states. Fiduciaries from other states may be particularly confused with how to deal with such assets and not realize they do not need to take them to the police or some government agency.

Under any of these duties, a Trustee, Personal Representative, and even a family member or friend helping with the administration needs to always be aware of the criminal law ramifications of possessing and transporting firearms. If transferring a firearm in Arizona, there is no affirmative duty to inquire whether the recipient is a prohibited possessor. However, if the fiduciary KNOWINGLY distributes the firearm to a prohibited possessor, then the fiduciary has committed a class six felony.

Another consideration is the intersection between state and Federal law when distributing a firearm. Under the Gun Control Act of 1968 (GCA), Federal law made it not only a crime for certain individuals to possess guns, but also if the transferor knows, or has reasonable cause to know, that the recipient is an prohibited possessor. To be clear, there are different definitions under Arizona law and Federal law (detailed more below), but a good rule of thumb is that felons or individuals residing a correctional facility are prohibited possessors.

For transportation examples:

- (A) Let's say Tommy Jones is Personal Representative for his father's estate, and father specifically devised his prized Beretta shotgun to his daughter, Lori, and that everyone lived or lives in Tucson. Tommy takes the shotgun out of his father's safe, carefully unloads it, and puts the shells into a box for Lori, and puts the shotgun and the box in his trunk so he can take it to his sister's home. On the way to her home, he stops in the parking lot of his son's high school to drop off his son's lunch. Tommy just committed a felony under Arizona law by having the gun in his car on school grounds, and if Tommy does not have a valid concealed weapons license, he also committed a violation of Federal law.
- (B) Let's say Jenny Smith is Trustee for her mother's Trust, and mother had a service revolver that belonged to Jenny's grandfather while he was a police officer. Mother wanted the revolver to go to her other son, Johnny, who is himself a police officer in New Mexico. Jenny carefully packs up the revolver in a secure box and mails it to Johnny. Jenny's just committed a crime under Federal law by mailing a firearm to someone other than an FFL.

Restricted Firearms:

Here are the few basic questions to ask when a restricted firearm is found in an estate or trust:

- 1) Was it registered?
- 2) Is there a dispositive provision in the Will or "gun" trust involved?
- 3) Who is the intended beneficiary?
- 4) Who is the designated Personal Representative or Trustee?

As with regular firearms, again there are three distinct areas: Administration, Distribution, and Fiduciary Considerations. However, before we start to sound boorish, there are different considerations added into the mix along the already discussed regular firearm considerations above.

To note, in July 2016, there was a significant change to the Federal law with the introduction of Rule 41F. While the implications on gun trusts will be discussed below, the Rule also codified some answers to the previously unanswered questions that had arisen when estates contained restricted firearms (27 CFR Part 479.90a).

Administration: Well, what happens if the personal representative discovered a restricted firearm in grandfather's safe? The first consideration is that the fiduciary should secure the firearm as they would in any other administration. However, given some unique concerns with possession (whether

actual or constructive), the fiduciary may wish to exercise an abundance of caution and secure the firearm in a separate safe that only the fiduciary can access (i.e., no one else has the combination or security code).

Besides securing the firearm, the fiduciary must then determine if the firearm was registered to the decedent. The good (or bad) news is if there is no registration for that restricted firearm, the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) needs to be contacted, and the firearm will be confiscated.

However, if the firearm was registered individually to the decedent (not in a gun trust), then the fiduciary must go through the process of ‘transferring’ the firearm to the intended beneficiary. Please note, while the Federal law has a strict definition of transfer, during the period of administration, the fiduciary was not ‘transferred’ the firearm for purposes of ownership or possession requirements.

Yet, what that means for the beneficiary is not that the fiduciary cannot allow Johnny to come over to the home and take the firearm. Rather, it means BATFE needs to be contacted and paperwork needs to be completed **AND approved** before the intended beneficiary ever receives the restricted firearm. The form required for this transfer is Form 5 (tax-exempt transfer status) along with the typical background check and fingerprint process, if the recipient is an individual.

Fiduciary Considerations: Unlike the transfer of regular firearms in Arizona, a restricted firearm requires an affirmative duty on the part of the transferor to at least reasonably determine if the intended beneficiary is a prohibited possessor. Clear examples would be a fiduciary should not transfer the gun to Uncle John while he resides in a Federal corrections facility.

To note, the National Firearms Act (NFA) was modified by the GCA to define the individuals who are prohibited possessors (also for regular firearms). Not only does liability extend to the recipient, but also the person who transfers the firearm to the prohibited possessor. While part of the transfer process includes the approval of the BATFE for actual distribution to the beneficiary, it is important for the fiduciary to be aware of the implications when considering distributions.

Gun Trust or No Gun Trust?

Unlike the different descriptions of regular or restricted firearms, a “gun” trust is the common reference where the trust is the owner of a restricted firearm. There are variations of the assets held in gun trusts; however, if a client says they have a gun trust – they probably have a restricted firearm.

Back in the good ol’ days (those dark years before July 13, 2016), a gun trust was primarily touted for its ability to avoid the dreaded chief law enforcement officer (“CEO”) approval process. As of July 13, 2016, there was a significant change to the Federal regulations with the addition of Rule 41F (27 CFR Part 479). The much-aligned change modified the existing CEO approval process to that of a CEO “notification” process. Moreover, Rule 41F also added the requirement for “responsible

persons” to submit the new 5320.23 Form, fingerprints, and a photograph. This new form needs to not only to be submitted to the BATFE, but also the responsible person’s local CEO.

Well, who is a responsible person? Under the Code of Federal Regulations:

Responsible person. In the case of an unlicensed entity, including *any trust*, partnership, association, company (including any Limited Liability Company (LLC)), or corporation, any individual who possesses, directly or indirectly, the power or authority to direct the management and policies of the trust or entity to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity. *In the case of a trust, those persons with the power or authority to direct the management and policies of the trust include any person who has the capability to exercise such power and possesses, directly or indirectly, the power or authority under any trust instrument, or under State law, to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust.* Examples of who may be considered a responsible person include *settlers/grantors, trustees*, partners, members, officers, directors, board members, or owners. An example of *who may be excluded* from this definition of responsible person is the beneficiary of a trust, if the *beneficiary does not have* the capability to exercise the powers or authorities enumerated in this section.

Thus, under the new regulations, gun trust drafters need to be very careful how beneficiary powers are defined vis a vis a trustee’s powers. If improperly drafted, a gun trust can subject a beneficiary to the new responsible persons requirement.

Selected Firearm Laws and Regulations

Federal Law and Regular Firearms: 18 U.S.C. § 921(a)(3)

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- © any firearm muffler or firearm silencer; or
- (D) any destructive device.

Such term does not include an antique firearm.

Federal Law and Restricted Weapons: 18 U.S.C. § 5845

(a) *Firearm*

The term “firearm” means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a Machineguns; (7) any silencer (as defined in section 921 of title 18, United States Code); and

(8) a destructive device. The term “firearm” shall not include an antique firearm or any device (other than a Machineguns or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector’s item and is not likely to be used as a weapon.

(b) ***Machineguns***

The term “Machineguns” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a Machineguns, and any combination of parts from which a Machineguns can be assembled if such parts are in the possession or under the control of a person.

(c) ***Rifle***

The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) ***Shotgun***

The term “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) ***Any other weapon***

The term “any other weapon” means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) ***Destructive device***

The term “destructive device” means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in

converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) ***Antique firearm***

The term “antique firearm” means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Federal Law and Curios and Relics: 27 CFR § 478.11

Firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. ***To be recognized as curios or relics, firearms must fall within one of the following categories:***

- (a) Firearms which were manufactured ***at least 50 years prior*** to the current date, but not including replicas thereof;
- (b) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be ***curios or relics of museum interest***; and
- © Any other firearms which derive a substantial part of their monetary value from the fact that they are ***novel, rare, bizarre, or because of their association with some historical figure, period, or event***. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector’s items, or that the value of like firearms available in ordinary commercial channels is substantially less.

Arizona Guardianship and Firearms: A.R.S. § 14-5304

...

- G. Unless the court makes a specific finding that the appointment of a guardian is ***due solely to the ward’s physical incapacity*** under subsection F of this section, at the time of appointing a guardian, the court ***shall transmit*** the ward’s name, sex and date of birth, the last four digits of the ward’s social security number, if available, the court case number, the court originating agency identification number and the date of the guardian’s appointment to the supreme court. The supreme court shall transmit the information to the department of public safety. The department of public safety shall transmit the information to the ***national instant criminal background check system***.

Arizona Law and Underage Firearm Possessors: A.R.S. § 13-3109

- A. Except as provided in subsection C of this section, a person who ***sells or gives to a minor, without written consent of the minor's parent or legal guardian***, a firearm, ammunition or a toy pistol by which dangerous and explosive substances may be discharged is ***guilty of a class 6 felony***.
- B. Nothing in this section shall be construed to require reporting sales of firearms, nor shall registration of firearms or firearms sales be required.
- C. The temporary transfer of firearms and ammunition by firearms safety instructors, hunter safety instructors, competition coaches or their assistants shall be allowed if the minor's parent or guardian has given consent for the minor to participate in activities such as firearms or hunting safety courses, firearms competition or training. With the consent of the minor's parent or guardian, the temporary transfer of firearms and ammunition by an adult accompanying minors ***engaged in hunting or formal or informal target shooting activities*** shall be allowed for those purposes.

Arizona Law and Prohibited Possessors: A.R.S. § 13-3101

- A. In this chapter, unless the context otherwise requires:
 - ...
 - 7. "Prohibited possessor" means any person:
 - (a) Who has been ***found to constitute a danger to self or to others*** or to have a ***persistent or acute disability or grave disability*** pursuant to court order pursuant to section 36-540, and whose right to possess a firearm has not been restored pursuant to section 13-925.
 - (b) ***Who has been convicted within or without this state of a felony*** or who has been adjudicated delinquent for a felony and whose civil right to possess or carry a gun or firearm has not been restored.

Arizona Law and Firearm Misconduct: A.R.S. § 13-3102

- A. A person commits misconduct involving weapons by knowingly:
 - 1. Carrying a deadly weapon except a pocket knife concealed on his person or within his immediate control in or on a means of transportation:
 - ...
 - (b) When ***contacted by a law enforcement officer and failing to accurately answer the officer*** if the officer asks whether the person is carrying a concealed deadly weapon; or
 - 2. Carrying a deadly weapon except a pocket knife concealed on his person or concealed within his immediate control in or on a means of transportation ***if the person is under twenty-one years of age***; or
 - ...
 - 4. Possessing a deadly weapon or prohibited weapon if ***such person is a prohibited possessor***; or
 - 5. ***Selling or transferring a deadly weapon to a prohibited possessor***; or
 - ...

10. Unless specifically authorized by law, ***entering any public establishment or attending any public event and carrying a deadly weapon*** on his person after a ***reasonable request by the operator of the establishment*** or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event for temporary and secure storage of the weapon pursuant to section 13-3102.01; or
11. Unless specifically authorized by law, ***entering an election*** polling place on the day of any election carrying a deadly weapon; or
12. ***Possessing a deadly weapon on school grounds;***

...

B. Subsection A, paragraph 2 of this section shall not apply to:

1. ***A person in his dwelling***, on his business premises or on real property owned or leased by that person or that person's parent, grandparent or legal guardian.

...

3. ***A firearm that is carried in:***

- (a) A manner where any portion of the firearm or holster in which the firearm is carried is visible.
- (b) A holster that is wholly or partially visible.
- © A scabbard or case designed for carrying weapons that is wholly or partially visible.
- (d) Luggage.
- (e) A case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, map pocket, trunk or glove compartment of a means of transportation.

...

E. Subsection A, ***paragraphs 3 and 7 of this section shall not apply to:***

...

3. Acquisition by a person by operation of law such as by ***gift, devise or descent or in a fiduciary capacity*** as a recipient of the property or former property of ***an insolvent, incapacitated or deceased person.***

I. Subsection A, ***paragraph 12 of this section*** shall not apply to the possession of a:

1. ***Firearm that is not loaded and that is carried within a means of transportation*** under the control of an adult provided that if the adult leaves the means of transportation the ***firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.***

...

3. Firearm by a person who possesses a ***certificate of firearms*** proficiency pursuant to section 13-3112, subsection T ***and who is authorized*** to carry a concealed firearm pursuant to the law enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B and 926C).

...
M. . . . Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of this section is a **class 4 felony**. Misconduct involving weapons under subsection A, **paragraph 12** of this section is a **class 1 misdemeanor** unless the violation occurs in connection with conduct that violates section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a **class 6 felony**. Misconduct involving weapons under subsection A, paragraph 1, subdivision (a) of this section or subsection A, paragraph 5, 6 or 7 of this section is a **class 6 felony**. Misconduct involving weapons under subsection A, paragraph 1, subdivision (b) of this section or subsection A, paragraph 10 or 11 of this section is a **class 1 misdemeanor**. Misconduct involving weapons under subsection A, **paragraph 2** of this section is a **class 3 misdemeanor**.

Federal Law and Prohibited Possessors: 18 U.S.C. § 922

(g) It shall be unlawful for any person —

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien—
 - (A) is illegally or unlawfully in the United States; or
 - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that—
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- ©
 - (I) 21 includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting

commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Federal Law and Liability of Transferor: 18 U.S.C. 922

...

(d) ***It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person***

- (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) is a fugitive from justice;
- (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) has been adjudicated as a mental defective or has been committed to any mental institution;
- (5) who, being an alien—
 - (A) is illegally or unlawfully in the United States; or
 - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
 - (B)
 - (I) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) has been convicted in any court of a misdemeanor crime of domestic violence.

Selected Materials

CHAPTER 2. WHAT ARE “FIREARMS” UNDER THE NFA?

Section 2.1 Types of NFA firearms

The NFA defines the specific types of firearms subject to the provisions of the Act. These definitions describe the function, design, configuration and/or dimensions that weapons must have to be NFA firearms. In addition to describing the weapon, some definitions (machinegun, rifle, shotgun, any other weapon) state that the firearm described also includes a weapon that can be readily restored to fire. A firearm that can be readily restored to fire is a firearm that in its present condition is incapable of expelling a projectile by the action of an explosive (or, in the case of a machinegun, will not in its present condition shoot automatically) but which can be restored to a functional condition by the replacement of missing or defective component parts. Please be aware that case law is not specific but courts have held that the “readily restorable” test is satisfied where a firearm can be made capable of renewed automatic operation, even if it requires some degree of skill and the use of tools and parts.

2.1.1 Shotgun A shotgun is a firearm designed to be fired from the shoulder and designed to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles or a single projectile for each pull of the trigger.¹⁰ A shotgun subject to the NFA has a barrel or barrels of less than 18 inches in length.



The ATF procedure for measuring barrel length is to measure from the closed bolt (or breech-face) to the furthest end of the barrel or permanently attached muzzle device. Permanent methods of attachment include full-fusion gas or electric steel-seam welding, high-temperature (1100°F) silver soldering, or blind pinning with the pin head welded over. Barrels are measured by inserting a dowel rod into the barrel until the rod stops against the bolt or breech-face. The rod is then marked at the furthest end of the barrel or permanently attached muzzle device, withdrawn from the barrel, and measured.

¹⁰ 26 U.S.C. 5845(d)

2.1.2 Weapon made from a shotgun. A weapon made from a shotgun is a shotgun type weapon that has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.



The overall length of a firearm is the distance between the muzzle of the barrel and the rearmost portion of the weapon measured on a line parallel to the axis of the bore.

2.1.3 Rifle. A rifle is a firearm designed to be fired from the shoulder and designed to use the energy of an explosive in a fixed cartridge to fire only a single projectile through a rifled barrel for each single pull of the trigger.¹¹ A rifle subject to the NFA has a barrel or barrels of less than 16 inches in length.



The ATF procedure for measuring barrel length is to measure from the closed bolt (or breech-face) to the furthest end of the barrel or permanently attached muzzle device. Permanent methods of attachment include full-fusion gas or electric steel-seam welding, high-temperature (1100°F) silver soldering, or blind pinning with the pin head welded over. Barrels are measured by inserting a dowel rod into the barrel until the rod stops against the bolt or breech-face. The rod is then marked at the furthest end of the barrel or permanently attached muzzle device, withdrawn from the barrel, and measured.

¹¹ 26 U.S.C. 5845(c)

2.1.4 Weapon made from a rifle. A weapon made from a rifle is a rifle type weapon that has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

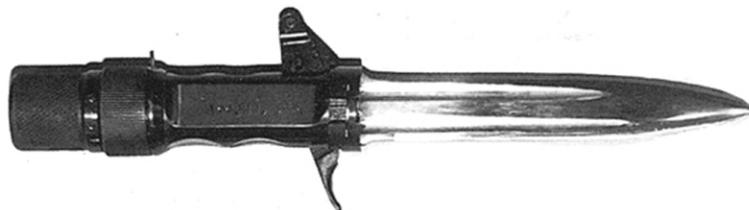


The overall length of a firearm is the distance between the muzzle of the barrel and the rearmost portion of the weapon measured on a line parallel to the axis of the bore.

2.1.5 Any other weapon. Firearms meeting the definition of “any other weapon” are weapons or devices capable of being concealed on the person from which a shot can be discharged through the energy of an explosive. Many “any other weapons” are disguised devices such as penguns, cigarette lighter guns, knife guns, cane guns and umbrella guns.



pengun

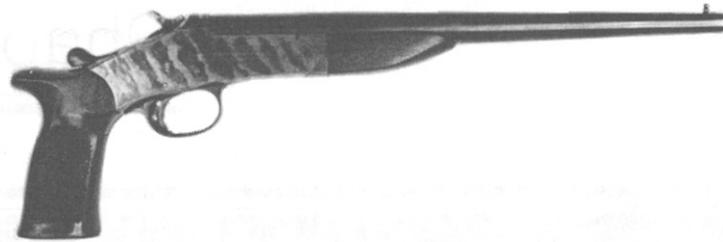


knife gun



umbrella gun

Also included in the “any other weapon” definition are pistols and revolvers having smooth bore barrels designed or redesigned to fire a fixed shotgun shell.



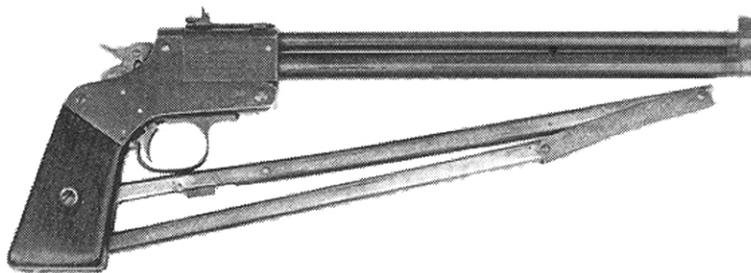
H&R Handy Gun



Ithaca Auto & Burglar Gun

While the above weapons are similar in appearance to weapons made from shotguns, they were originally manufactured in the illustrated configuration and are not modified from existing shotguns. As a result, these weapons do not fit within the definition of shotgun¹² or weapons made from a shotgun¹³.

The “any other weapon” definition also includes specifically described weapons with combination shotgun and rifle barrels 12 inches or more but less than 18 inches in length from which only a single discharge can be made from either barrel without manual reloading. The firearm most commonly associated with this portion of the definition is the Marble’s Game Getter.



Marble’s Game Getter

¹² 26 U.S.C. 5845(d)

¹³ 26 U.S.C. 5845(a)(2)

NOTE: One version of the Marble’s Game Getter was produced with 18-inch barrels and a folding shoulder stock. This model of the Game Getter, as manufactured, is not subject to the provisions of the NFA because it has barrels that are 18 inches in length and the overall length of the firearm, with stock extended, is more than 26 inches. *However, if the shoulder stock has been removed from the 18-inch barrel version of the Game Getter, the firearm has an overall length of less than 26 inches and is an NFA weapon.* Specifically, the firearm is classified as a weapon made from a rifle/shotgun.

The “any other weapon” definition excludes weapons designed to be fired from the shoulder that are not capable of firing fixed ammunition or a pistol or revolver having a rifled bore. However, certain alterations to a pistol or revolver, such as the addition of a second vertical handgrip, create a weapon that no longer meets the definition of pistol or revolver.¹⁴ A pistol or revolver modified as described is an “any other weapon” subject to the NFA because the weapon is not designed to be fired when held in one hand.



semiautomatic pistol with second vertical handgrip

As stated above, a pistol or revolver having a rifled bore does not meet the definition of “any other weapon” and is not subject to the NFA. It is important to note that any pistol or revolver having a barrel without a rifled bore does not fit within the exclusion and is an “any other weapon” subject to the NFA.

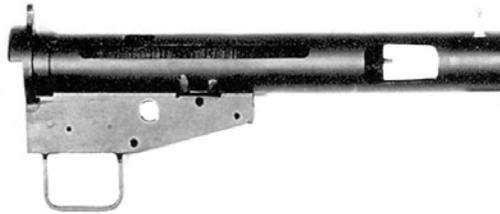
2.1.6 Machinegun. Firearms within the definition of machinegun include weapons that shoot, are designed to shoot, or can be readily restored to shoot, automatically more than one shot without manual reloading by a single function of the trigger.

¹⁴ 27 CFR 479.11



STEN MK II submachinegun

The definition of machinegun also includes the frame or receiver of a machinegun.



STEN MK II submachinegun receiver

Of all the different firearms defined as NFA weapons, machineguns are the only type where the receiver of the weapon by itself is an NFA firearm. As a result, it is important that the receiver of a machinegun be properly identified. Many machineguns incorporate a “split” or “hinged” receiver design so the main portion of the weapon can be easily separated into upper and lower sections. Additionally, some machineguns utilize a construction method where the receiver is composed of a number of subassemblies that are riveted together to form the complete receiver.

The following table lists specific models of machineguns incorporating the above designs and the portion of the weapon that has been held to be the receiver. This list is not all- inclusive. For information concerning a split or hinged receiver type machinegun not listed below, contact FTB at (304) 260-1699.

<u>Model</u>	<u>Receiver</u>
Armalite AR10	lower
Armalite AR15 (all variations)	lower
Armalite AR18	lower
Beretta AR70	lower
British L1A1	upper
Browning M1917	right side plate
Browning M1919 (all variations)	right side plate
Browning M2 & M2HB	right side plate
Colt M16 (all variations)	lower
Czech Vz 61	lower
FN FNC	lower
<u>Model</u>	<u>Receiver</u>
FN CAL	upper
FN FAL	upper

French MAT 49	upper
German MP38 & MP40	upper
H&K G3 (all variations)	upper
H&K MP5 (all variations)	upper
IMI UZI	upper
M61 Vulcan	outer housing
M134 Minigun	outer housing
Maxim MG08 and 08/15	right side plate
SIG AMT	upper
SIG STG 57	upper
SIG 550 Series (all variations)	upper
Soviet PPsH 41	upper
Soviet PPS 43	upper
Steyr MPi 69	upper
Steyr MPi 81	upper
Thompson submachinegun (all variations)	upper
Vickers water cooled machineguns	right side plate

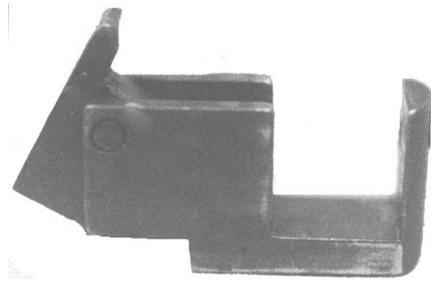
The “designed to shoot automatically more than one shot without manual reloading by a single function of the trigger” portion of the definition relates to the characteristics of the weapon that permit full automatic fire. ATF has also held that the “designed” definition includes those weapons which have not previously functioned as machineguns but possess design features which facilitate full automatic fire by simple modification or elimination of existing component parts. ATF has published rulings concerning specific firearms classified as machineguns based on this interpretation of the term “designed.”¹⁵

Included within the definition of machinegun is any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun. This portion of the machinegun definition addresses what are commonly referred to as conversion kits. The “any part designed and intended solely and exclusively” language refers to a part that was produced for no other reason than to convert a weapon into a machinegun. Illustrated below are examples of such parts.



conversion sear for H&K semiautomatic firearms

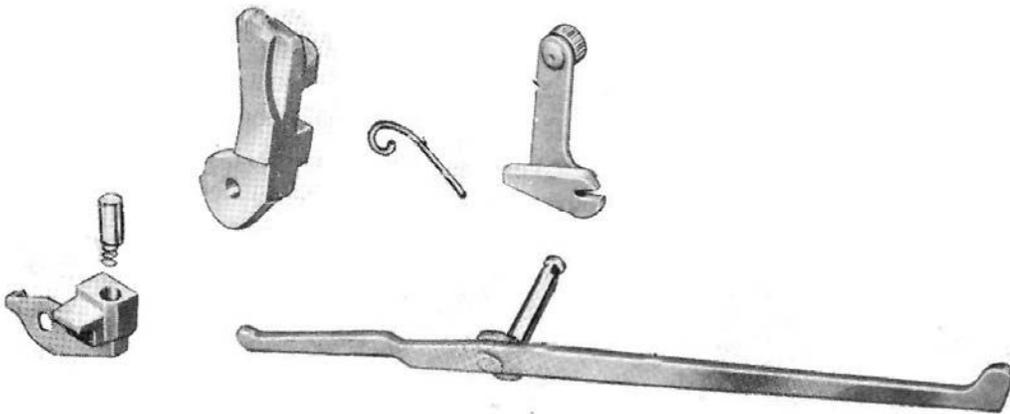
¹⁵ Appendix B (ATF Rulings 82-2, 82-8, 83-5)



Drop in Auto Sear for AR15 type semiautomatic firearms

The above parts are designed solely and exclusively for use in converting a weapon into a machinegun and are classified as machineguns.

The “combination of parts designed and intended for use in converting a weapon into a machinegun” language refers to a group of parts designed and intended to be used in converting a weapon into a machinegun. A typical example is those M2 carbine parts that are only used to permit fully automatic fire in a US Carbine M1 or M2.



M2 Carbine conversion kit

The above parts consisting of an M2 selector lever, selector lever spring, disconnecter lever assembly, M2 disconnecter, disconnecter spring, disconnecter plunger and M2 hammer are classified as a machinegun. These parts are used specifically for fully automatic fire and have no application in a semiautomatic carbine. While other parts such as an M2 sear, operating slide, trigger housing and stock are used in the fully automatic carbine, these parts are also appropriate for use in semiautomatic M1 carbines.¹⁶

Therefore, the M2 sear, operating slide, trigger housing and stock are not a combination of parts designed and intended for use in converting a weapon into a machinegun. Other commonly encountered

¹⁶ TM9-1267, Cal. .30 Carbines M1, M1A1, M2, and M3, United States Government Printing Office, 1953

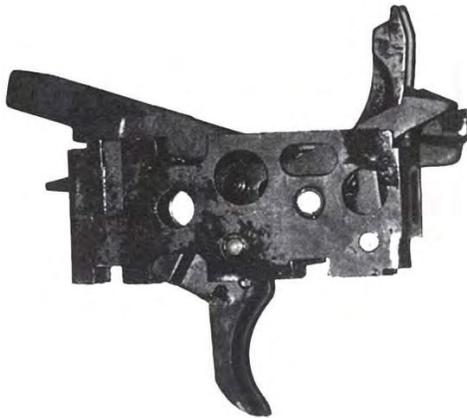
conversion kits include modified trigger housings and/or trigger paks for Heckler & Koch (HK) type semiautomatic firearms. As originally manufactured, semiautomatic HK firearms (HK, 41, 43, 91, 93 and SP89) were specifically designed such that they will not accept fully automatic trigger housings or trigger paks for HK selective fire weapons such as the G3 and MP5. If selective fire trigger paks or trigger housings are modified so that they will function with semiautomatic HK firearms, the modified components are classified as parts designed and intended solely and exclusively, or combination of parts designed and intended for use in converting a weapon into a machinegun. These modified parts are also machineguns as defined.

The following illustration shows a selective fire HK trigger pak with a selective fire trigger housing that has been modified to function with a HK semiautomatic firearm by removing the forward pivot point or “ears” from the trigger housing.



modified HK selective fire trigger housing

Illustrated below is a selective fire HK trigger pak that has been modified by notching the forward lower corner of the pak so that it will fit into a standard semiautomatic HK trigger housing.



modified HK selective fire trigger pak

NOTE: standard selective fire HK trigger housings and trigger paks as originally manufactured are component parts for machineguns. These unmodified parts, in and of themselves, are not subject to the NFA. However, when adapted to function with a semiautomatic HK firearm the modified parts have been redesigned and are intended for use in converting a weapon into a machinegun.

The following illustration shows a semiautomatic HK trigger pak with HK conversion sear installed.



HK semiautomatic trigger pak with conversion sear installed

For the conversion sear to function the trigger or the trigger pak must be modified to increase the rearward travel of the trigger. When the trigger is modified a notch is cut into the trailing leg to provide more travel before the trigger contacts the upper trigger stop. When the trigger pak is modified, the upper trigger stop is either removed or relocated. *IMPORTANT NOTE: should the conversion sear be removed from the trigger pak and the modified pak left in the firearm, the weapon will still be capable of fully automatic fire. Therefore, it is important that registered HK conversion sears be kept with their respective trigger paks. This is particularly important in instances where HK type firearms are sold as being “sear ready” or “sear host guns”. If these weapons contain semiautomatic trigger paks modified to function with conversion sears the firearms are capable of fully automatic fire (without the conversion sear) and as such are machineguns as defined.*

Concerning the installation of conversion kits in semiautomatic firearms, it must be pointed out that the receiver of the firearm may not be modified to permit fully automatic fire. Such modification results in the making of a machinegun which is prohibited by 18 U.S.C. 922(o).

The definition of machinegun also includes a combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. An example of a firearm meeting this section of the definition is a semiautomatic AR15 rifle possessed with an M16 bolt carrier, hammer, trigger, disconnecter and selector. If the semiautomatic AR15 is assembled with the described M16 parts and the rifle is capable of fully automatic fire, the weapon possessed in conjunction with the M16 parts, whether assembled or not, is a machinegun as defined.¹⁷

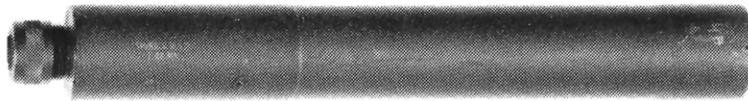
¹⁷ ATF P 5300.4 (9/05), Federal Firearms Regulations Reference Guide – 2005, p. 155

An additional example of a combination of parts from which a machinegun can be assembled is a STEN submachinegun “parts kit” possessed with a length of metal tube to be used as a replacement receiver and instructions for assembling the parts into a functional machinegun. The parts kit as sold does not contain a firearm receiver although remnants of the destroyed receiver may be present. A machinegun parts kit in this condition is not subject to the GCA or the NFA.

Unfinished receiver tubes with instructions and/or templates for use in the assembly of a functional machinegun are also commercially available. These tubes with instructions/templates, in and of themselves, are not subject to the GCA or NFA.

When the parts kit is possessed in conjunction with the above described unfinished receiver tube, a combination of parts from which a machinegun can be assembled exists and is a machinegun as defined.

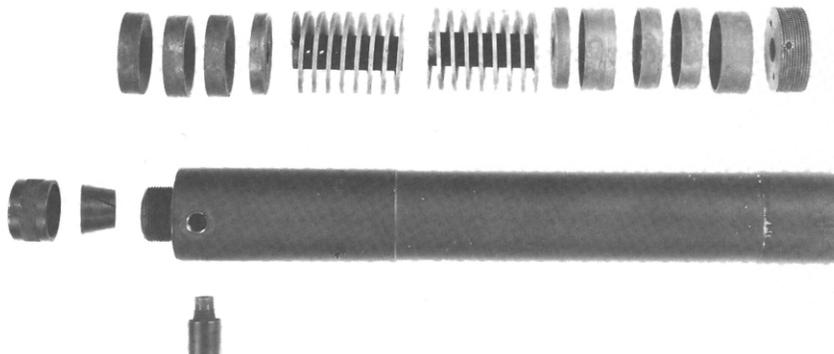
2.1.7 Silencer. A firearm silencer and a firearm muffler are defined as any device for silencing, muffling, or diminishing the report of a portable firearm.¹⁸ Firearm silencers are generally composed of an outer tube, internal baffles, a front end cap, and a rear end cap.



complete firearm silencer

The definition of a silencer also includes any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler.

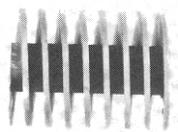
The following illustration depicts parts that are designed and intended for use in assembling a firearm silencer. Another example of parts redesigned and intended for use in assembling or fabricating a firearm silencer are automotive engine freeze plugs that have been modified by drilling a hole through their center to permit passage of a bullet.



silencer parts

¹⁸ 18 U.S.C. 921(a)(24)

Also included within the silencer definition is any part intended only for use in the assembly or fabrication of a firearm silencer.

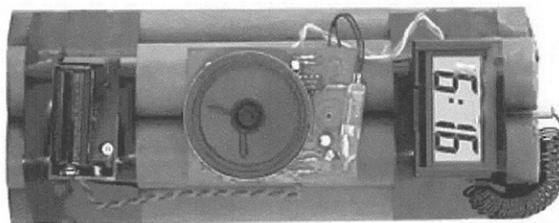


silencer baffle

Any of the above illustrated components meet the definition of a firearm silencer and are subject to the NFA. *NOTE: the language in the definition of silencer contains no provisions that permit an owner of a registered silencer to possess spare or replacement components for the silencer. However, licensed manufacturers who are SOTs may possess spare silencer components in conjunction with their manufacturing operations.*

2.1.8 Destructive device. The destructive device definition contains different categories that address specific types of munitions. Each category describes the devices subject to the definition based on the material contained in the item, the dimensions of the bore of certain weapons, and a combination of parts for use in converting the described items into destructive devices.

2.1.8.1 Explosive devices. The first portion of the definition deals with explosive, incendiary and poison gas munitions. The definition specifies that any explosive, incendiary or poison gas bomb, grenade, mine or similar device is a destructive device.

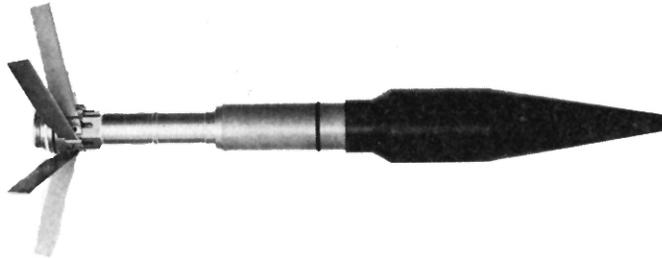


explosive bomb



explosive grenade

This portion of the definition includes a rocket having a propellant charge of more than four ounces and a missile (projectile) having an explosive or incendiary charge of more than one-quarter ounce.



rocket with more than 4 ounces of propellant



NOTE: Missiles (projectiles) less than caliber 20mm generally are not large enough to accommodate more than one-quarter ounce of explosive or incendiary material. In the case of 20mm high explosive (HE) or high explosive incendiary (HEI) projectiles, it is imperative to determine the model designation of the specific item as some 20mm HE and HEI projectiles contain more than one-quarter ounce of explosive or incendiary material and are destructive devices. Other 20mm HE and HEI projectiles do not contain more than one-quarter ounce of explosive and are not destructive devices. Therefore, it is incumbent upon persons interested in 20mm HE and HEI ammunition to determine the amount of explosives contained in a specific projectile. HE and HEI missiles (projectiles) larger than 20mm generally contain more than one-quarter ounce of explosive or incendiary material and are destructive devices.

2.1.8.2 Large caliber weapons. The second section of the definition states that any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore diameter of more than one-half inch in diameter is a destructive device. This portion of the definition specifically excludes a shotgun or shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes. ATF has issued rulings classifying specific shotguns as destructive devices because they have a bore of more than one half inch in diameter and were found to not be particularly suitable forfor sporting purposes.¹⁹

The majority of weapons covered by this portion of the destructive device definition are large caliber military weapons such as rocket launchers, mortars and cannons.

¹⁹ Appendix B (ATF Rulings 94-1, 94-2)



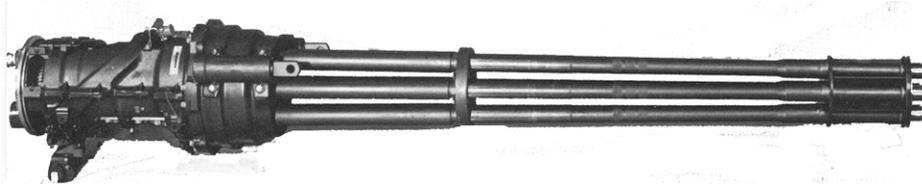
RPG 7 launcher (bore diameter 1.57 inches)



120mm mortar (bore diameter 4.7 inches)

It is important to note that the large caliber firearms covered by this section are defined as weapons that expel a projectile by the action of an explosive *or other propellant*. This is the only place in the GCA and NFA where a propellant other than an explosive must be considered when classifying a weapon. Examples of weapons having a bore diameter of more than one-half inch in diameter and that expel a projectile by means other than an explosive are mortars that utilize compressed air as a propellant and some rocket launchers.

Certain destructive devices may also meet the definition of machinegun because in addition to having a bore diameter of more than one-half inch the weapons are capable of fully automatic fire. ATF treats NFA firearms of this type as both machineguns and destructive devices. The weapons are coded as machineguns in the NFRTR with an annotation that they are also destructive devices. Any such weapons manufactured on or after May 19, 1986 are subject to 18 U.S.C. 922(o). In instances where a weapon of this type is being transferred, it is imperative that State and local laws where the weapon is being transferred do not prohibit possession of destructive devices or machineguns.



M61 20mm full automatic cannon

In addition to defining destructive devices, the definition also specifically excludes certain items from that classification. As previously stated, any shotgun or shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes is not a destructive device. Additionally, the following items are also excluded from the definition:

- Any device which is neither designed nor redesigned for use as a weapon.
- Any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device.
- Surplus ordnance sold, loaned or given by the Secretary of the Army pursuant to the provisions of 10 U.S.C. 4684(2), 4685, or 4686.
- Any other device which the Attorney General finds is not likely to be used as a weapon, or is an antique, or is a rifle which the owner intends to use solely for sporting purposes.

It should not be assumed that any device meeting the above descriptions is automatically excluded from the definition of a destructive device. ATF has ruled that certain pyrotechnic devices are destructive devices.²⁰ ATF should be contacted to confirm the classification of any items that appear to meet the above exclusions. Additionally, many of the items excluded from the definition of destructive device may contain a firearm receiver and would still be a firearm as defined in the GCA.

2.1.9 Unserviceable firearm. An unserviceable firearm is a firearm that is incapable of discharging a shot by the action of an explosive and is incapable of being readily restored to a firing condition. The most common method for rendering a firearm unserviceable, and that recommended by ATF, is to weld the chamber of the barrel closed and weld the barrel to the receiver.²¹ The chamber of the barrel should be plug welded closed and all welds should be full fusion, deep penetrating, and gas or electric steel welds. In instances where the above procedure cannot be employed to render a firearm unserviceable, FTB should be contacted for alternate methods.

It is important to remember that rendering a firearm unserviceable does not remove it from the definition of an NFA firearm. An unserviceable NFA firearm is still subject to the import, registration, and transfer provisions of the NFA. However, there is no tax imposed on the transfer of an unserviceable

²⁰ Appendix B (ATF Ruling 95-3)

²¹ ATF Form 5 (5320.5), Instruction 6a

firearm as a “curio or ornament.” See 26 U.S.C. 5852(e). *NOTE: “curio or ornament” is only descriptive of unserviceable firearms transferred exempt from transfer tax. An unserviceable firearm transferred as a “curio or ornament” is not necessarily a “curio or relic” firearm for purposes of the GCA unless the weapon is classified as a curio or relic under the GCA.* For further information on curio or relic classification see section 2.2.

Section 2.2 Antique firearm. Firearms defined by the NFA as “antique firearms” are not subject to any controls under the NFA.²² The NFA defines antique firearms based on their date of manufacture and the type of ignition system used to fire a projectile. Any firearm manufactured in or before 1898 that is not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition is an antique firearm. Additionally, any firearm using a matchlock, flintlock, percussion cap or similar type ignition system, irrespective of the actual date of manufacture of the firearm, is also an antique firearm.

NFA firearms using fixed ammunition are antique firearms only if the weapon was actually manufactured in or before 1898 *and* the ammunition for the firearm is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. To qualify as an antique firearm, a fixed cartridge firing NFA weapon must meet both the age and ammunition availability standards of the definition.

Concerning ammunition availability, it is important to note that a specific type of fixed ammunition that has been out of production for many years may again become available due to increasing interest in older firearms. Therefore, the classification of a specific NFA firearm as an antique can change if ammunition for the weapon becomes readily available in the ordinary channels of commercial trade.

Section 2.3 Curios or relics. Curios or relics are firearms that are of special interest to collectors.²³ NFA firearms can be classified as curios or relics under the same criteria used to classify conventional firearms as curios or relics.²⁴

An NFA firearm that is recognized as a curio or relic is still an NFA “firearm” and is still subject to the registration and transfer provisions of the NFA. The primary impact of a curio or relic classification is that a properly registered NFA firearm classified as a curio or relic may be lawfully transferred interstate to, or received interstate by, a person licensed as a collector of curios or relics under the GCA.

Section 2.4 Applications to remove firearms from the scope of the NFA as collector’s items.

Certain NFA weapons can be removed from the provisions of the NFA as collector’s items.²⁵ The procedures for requesting removal of an NFA firearm are the same as used for requesting a destructive device determination.²⁶

²² 26 U.S.C. 5845(a), (g)

²³ 27 CFR 478.11

²⁴ 27 CFR 478.26

²⁵ 26 U.S.C. 5845(a)

²⁶ 27 CFR 479.24 - 479.25

An NFA firearm removed from the NFA as a collector's item is no longer subject to any of the provisions of the NFA. In most cases, the weapon will still be a firearm as defined in the GCA and subject to regulation under the GCA. In some situations, the weapon that is removed from the NFA as a collector's item will be an antique firearm as defined in the GCA.²⁷ In these instances, the weapon would no longer be a firearm as defined in Federal law.

The Attorney General does not have the authority to remove a machinegun or a destructive device from the provisions of the NFA as collector's items.²⁸ Therefore, applications to remove machineguns or destructive devices from the NFA as collector's items cannot be approved.

Section 2.5 Removal of firearms from the scope of the NFA by modification/elimination of components.

Firearms, except machineguns and silencers, that are subject to the NFA fall within the various definitions due to specific features. If the particular feature that causes a firearm to be regulated by the NFA is eliminated or modified, the resulting weapon is no longer an NFA weapon.

For example, a shotgun with a barrel length of 15 inches is an NFA weapon. If the 15-inch barrel is removed and disposed of, the remaining firearm is not subject to the NFA because it has no barrel. Likewise, if the 15 inch barrel is modified by permanently attaching an extension such that the barrel length is at least 18 inches and the overall length of the weapon is at least 26 inches, the modified firearm is not subject to the NFA. *NOTE: an acceptable method for permanently installing a barrel extension is by gas or electric steel seam welding or the use of high temperature silver solder having a flow point of 1100 degrees Fahrenheit.*

A shot pistol ("any other weapon") such as an H&R Handy Gun may be removed from the NFA by either disposing of the smooth bore barrel or permanently installing a rifled sleeve chambered to accept a standard pistol cartridge into the smooth bore barrel. Modified by sleeving the barrel, an H&R Handy Gun is no longer an NFA weapon because it now has a rifled bore.

Large caliber destructive devices that are not also machineguns can be removed from the NFA by disposing of the barrel. If the barrel of a 37mm cannon is removed and disposed of, the remaining weapon has no barrel or bore diameter. As an alternative, the barrel of a destructive device may be functionally destroyed. To destroy the barrel of a destructive device the following operations must be performed:

- Cut a hole, equal to the diameter of the bore, on a 90-degree angle to the axis of the bore, through one side of the barrel in the high pressure (chamber) area.
- Weld the barrel to the receiver of the weapon.
- Weld an obstruction into the barrel to prevent the introduction of a round of ammunition.

2.5.1 Removal of machineguns and silencers from the scope of the NFA. Machineguns are defined to include the receiver of a machinegun and the definition of silencer includes each component of a

²⁷ 18 U.S.C. 921(a)(16)

²⁸ 26 U.S.C. 5845(a)

silencer. Therefore, to remove these weapons from the provisions of the NFA, the receiver of a machinegun or all the components of a silencer must be destroyed.

The preferred method for destroying a machinegun receiver is to completely sever the receiver in specified locations by means of a cutting torch that displaces at least one-quarter inch of material at each cut location. ATF has published rulings concerning the preferred destruction of specific machineguns.²⁹

A machinegun receiver may also be properly destroyed by means of saw cutting and disposing of certain removed portions of the receiver. To ensure that the proposed saw cutting of a particular machinegun receiver is acceptable, FTB should be contacted for guidance and approval of any alternative destruction proposal. *Note: a machinegun receiver that is not properly destroyed may still be classified as a machinegun, particularly in instances where the improperly destroyed receiver is possessed in conjunction with other component parts for the weapon.*

A silencer may be destroyed by completely severing each component by means of a cutting torch that has a tip of sufficient size to displace at least one-quarter inch of material at each cut location.

Concerning the outer tube(s) of a silencer, these components may be destroyed by crushing them flat in lieu of cutting with a torch.

Anyone interested in destroying an NFA weapon by means other than described above should contact FTB to discuss possible alternatives.

²⁹ Appendix B (ATF Rulings 2003-1, 2003-2, 2003-3, 2003-4)

Firearms Transaction Record

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. 921 et seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's/Seller's
Transaction Serial
Number (If any)

Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee/Buyer

1. Transferee's/Buyer's Full Name (If legal name contains an initial only, record "IO" after the initial. If no middle initial or name, record "NMN".)

Last Name (Including suffix (e.g., Jr, Sr, II, III))	First Name	Middle Name
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2. Current State of Residence and Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)

Number and Street Address	City	County	State	ZIP Code
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3. Place of Birth U.S. City and State	-OR-	Foreign Country	4. Height Ft. _____ In. _____	5. Weight (Lbs.) _____	6. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	7. Birth Date Month _____ Day _____ Year _____
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8. Social Security Number (Optional, but will help prevent misidentification)	9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)
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10.a. Ethnicity <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	10.b. Race (In addition to ethnicity, select one or more race in 10.b. Both 10.a. and 10.b. must be answered.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian	<input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander	<input type="checkbox"/> White
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11. Answer the following questions by checking or marking "yes" or "no" in the boxes to the right of the questions.	Yes	No
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b. (See Instructions for Question 11.a.)	<input type="checkbox"/>	<input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	<input type="checkbox"/>	<input type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	<input type="checkbox"/>	<input type="checkbox"/>
d. Are you a fugitive from justice? (See Instructions for Question 11.d.)	<input type="checkbox"/>	<input type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.	<input type="checkbox"/>	<input type="checkbox"/>
f. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	<input type="checkbox"/>	<input type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	<input type="checkbox"/>	<input type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	<input type="checkbox"/>	<input type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	<input type="checkbox"/>	<input type="checkbox"/>

12.a. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.) <input type="checkbox"/> United States of America (U.S.A.) <input type="checkbox"/> Other Country/Countries (Specify)		
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	Yes	No
12.b. Have you ever renounced your United States citizenship?	<input type="checkbox"/>	<input type="checkbox"/>
12.c. Are you an alien illegally or unlawfully in the United States?	<input type="checkbox"/>	<input type="checkbox"/>
12.d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See Instructions for Question 12.d.)	<input type="checkbox"/>	<input type="checkbox"/>
12.d.2. If "yes", do you fall within any of the exceptions stated in the instructions? <input type="checkbox"/> N/A	<input type="checkbox"/>	<input type="checkbox"/>

13. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I94#):

I certify that my answers in Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.i and/or 12.b. through 12.c. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12.d.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 12.d.2. and provides the documentation required in 18.c. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of Federal law. (See Instructions for Question 14.)

14. Transferee's/Buyer's Signature

15. Certification Date

Section B - Must Be Completed By Transferor/Seller

16. Type of firearm(s) to be transferred (check or mark all that apply):

- Handgun Long Gun (rifles or shotguns) Other Firearm (frame, receiver, etc. See Instructions for Question 16.)

17. If transfer is at a qualifying gun show or event:

Name of Function: _____
City, State: _____

18.a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 18.a.)

Issuing Authority and Type of Identification	Number on Identification	Expiration Date of Identification (if any)		
		Month	Day	Year

18.b. Supplemental Government Issued Documentation (if identification document does not show current residence address) (See Instructions for Question 18.b.)

18.c. Exception to the Nonimmigrant Alien Prohibition: If the transferee/buyer answered "YES" to 12.d.2. the transferor/seller must record the type of documentation showing the exception to the prohibition and attach a copy to this ATF Form 4473. (See Instructions for Question 18.c.)

Questions 19, 20, or 21 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 19, 20 and 21.)

19.a. Date the transferee's/buyer's identifying information in Section A was transmitted to NICS or the appropriate State agency:

Month	Day	Year
-------	-----	------

19.b. The NICS or State transaction number (if provided) was:

19.c. The response initially (first) provided by NICS or the appropriate State agency was:

- Proceed Delayed
 Denied [The firearm(s) may be transferred on _____ if State law permits (optional)]
 Cancelled

19.d. The following response(s) was/were later received from NICS or the appropriate State agency:

- Proceed _____ (date) Overturned
 Denied _____ (date)
 Cancelled _____ (date)
 No response was provided within 3 business days.

19.e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on:

_____ (date). Proceed Denied Cancelled

19.f. The name and Brady identification number of the NICS examiner. (Optional)

_____ (name) _____ (number)

19.g. Name of FFL Employee Completing NICS check. (Optional)

20. No NICS check was required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application. (See Instructions for Question 20.)

21. No NICS check was required because the transferee/buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS. (See Instructions for Question 21.)

Issuing State and Permit Type	Date of Issuance (if any)	Expiration Date (if any)	Permit Number (if any)
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Section C - Must Be Completed Personally By Transferee/Buyer

If the transfer of the firearm(s) takes place on a different day from the date that the transferee/buyer signed Section A, the transferee/buyer must complete Section C immediately prior to the transfer of the firearm(s). (See Instructions for Question 22 and 23.)

I certify that my answers to the questions in Section A of this form are still true, correct, and complete.

22. Transferee's/Buyer's Signature

23. Recertification Date

Section D - Must Be Completed By Transferor/Seller Even If The Firearm(s) is Not Transferred

24. Manufacturer and Importer (If any) (If the manufacturer and importer are different, the FFL must include both.)	25. Model (If Designated)	26. Serial Number	27. Type (See Instructions for Question 27.)	28. Caliber or Gauge
1.				
2.				
3.				
4.				

REMINDER - By the Close of Business Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

29. Total Number of Firearms Transferred (Please <i>handwrite</i> by printing e.g., zero, one, two, three, etc. Do not use numerals.)	30. Check if any part of this transaction is a pawn redemption. <input type="checkbox"/> Line Number(s) From Question 24 Above:
31. For Use by Licensee (See Instructions for Question 31.)	32. Check if this transaction is to facilitate a private party transfer. <input type="checkbox"/> (See Instructions for Question 32.)
33. Trade/corporate name and address of transferor/seller and Federal Firearm License Number (Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)	

**The Person Transferring The Firearm(s) Must Complete Questions 34-37.
For Denied/Cancelled Transactions, the Person Who Completed Section B Must Complete Questions 34-36.**

I certify that: (1) I have read and understand the Notices, Instructions, and Definitions on this ATF Form 4473; (2) the information recorded in Sections B and D is true, correct, and complete; and (3) this entire transaction record has been completed at my licensed business premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless this transaction has met the requirements of 18 U.S.C. 922(c). Unless this transaction has been denied or cancelled, I further certify on the basis of — (1) the transferee's/buyer's responses in Section A (and Section C, if applicable); (2) my verification of the identification recorded in question 18 (and my re-verification at the time of transfer, if Section C was completed); and (3) State or local law applicable to the firearms business — it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

34. Transferor's/Seller's Name (Please print)	35. Transferor's/Seller's Signature	36. Transferor's/Seller's Title	37. Date Transferred
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NOTICES, INSTRUCTIONS, AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. 923 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms. The transferor/seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the transferor/seller must be familiar with the provisions of 18 U.S.C. 921-931 and the regulations in 27 CFR Parts 478 and 479. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a resident of another State, the transferor/seller is presumed to know the applicable State laws and published ordinances in both the transferor's/seller's State and the transferee's/buyer's State. (See ATF Publication 5300.5, State Laws and Published Ordinances.)

Generally, ATF Form 4473 must be completed at the licensed business premises when a firearm is transferred over-the-counter. Federal law, 18 U.S.C. 922(e), allows a licensed importer, manufacturer, or dealer to sell a firearm to a nonlicensee who does not appear in person at the licensee's business premises only if the transferee/buyer meets certain requirements. These requirements are set forth in section 922(e), 27 CFR 478.96(b), and ATF Procedure 2013-2.

After the transferor/seller has completed the firearms transaction, he/she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definitions), and any supporting documents, part of his/her permanent records. Such Forms 4473 must be retained for at least 20 years and after that period may be submitted to ATF. Filing may be chronological (by date of disposition), alphabetical (by name of purchaser), or numerical (by transaction serial number), as long as all of the transferor's/seller's completed Forms 4473 are filed in the same manner.

FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED: If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not completed after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his/her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

If the transferor/seller or the transferee/buyer discovers that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and the transferor/seller or the transferee/buyer wishes to correct the omission(s) or error(s), photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. The transferor/seller should only make changes to Sections B and D. The transferee/buyer should only make changes to Section A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of the transferor's/seller's permanent records.

Exportation of Firearms: The State or Commerce Departments may require a firearms exporter to obtain a license prior to export. **Warning:** Any person who exports a firearm without proper authorization may be fined not more than \$1,000,000 and/or imprisoned for not more than 20 years. See 22 U.S.C. 2778(c).

Section A

The transferee/buyer must personally complete Section A of this form and certify (sign) that the answers are true, correct, and complete. However, if the transferee/buyer is unable to read and/or write, the answers (other than the signature) may be completed by another person, excluding the transferor/seller. Two persons (other than the transferor/seller) must then sign as witnesses to the transferee's/buyer's answers and signature/certification in question 14.

When the transferee/buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his/her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity; and (B) the name and address of that business entity.

Question 1. If the transferee's/buyer's name in question 1 is illegible, the transferor/seller must print the transferee's/buyer's name above the name written by the transferee/buyer.

Question 2. Current Residence Address: A rural route (RR) may be accepted provided the transferee/buyer lives in a State or locality where it is considered a legal residence address. County and Parish are one and the same.

If the transferee/buyer is a member of the Armed Forces on active duty, his/her State of residence is the State in which his/her permanent duty station is located. If the service member is acquiring a firearm in a State where his/her permanent duty station is located, but resides in a different State, the transferee/buyer must list both his/her permanent duty station address and his/her residence address in response to question 2. If the transferee/buyer has two States of residence, the transferee/buyer should list his/her current residence address in response to question 2 (e.g., if the transferee/buyer is purchasing a firearm while staying at his/her weekend home in State X, he/she should list the address in State X in response to question 2).

Question 9. Unique Personal Identification Number (UPIN): For transferees/buyers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a UPIN, which the transferee/buyer should record in question 9. The licensee should provide the UPIN when conducting background checks through the NICS or the State POC.

Question 10.a. and 10.b. Federal regulations (27 CFR 478.124(c)(1)) require licensees to obtain the race of the transferee/buyer. This information helps the FBI and/or State POC make or rule out potential matches during the background check process and can assist with criminal investigations. Pursuant to Office of Management and Budget (OMB), effective January 1, 2003, all Federal agencies requiring collection of race and ethnicity information on administrative forms and records, were required to collect this information in a standard format. (See 62 FR 58782) The standard OMB format consists of two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino" and five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

Ethnicity refers to a person's heritage. Persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race, are considered Hispanic or Latino.

Race - one or more of the following responses must be selected: (1) American Indian or Alaska Native - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment; (2) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; (3) Black or African American - A person having origins in any of the Black racial groups of Africa; (4) Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and (5) White - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. Any other race or ethnicity that does not fall within those indicated, please select the closest representation.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, a person is the actual transferee/buyer if he/she is purchasing the firearm for him/herself or otherwise acquiring the firearm for him/herself. (e.g., *redeeming the firearm from pawn, retrieving it from consignment, firearm raffle winner*). A person is also the actual transferee/buyer if he/she is legitimately purchasing the firearm as a bona fide gift for a third party. A gift is not bona fide if another person offered or gave the person completing this form money, service(s), or item(s) of value to acquire the firearm for him/her, or if the other person is prohibited by law from receiving or possessing the firearm.

Actual TRANSFEREE/buyer examples: Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith (*who may or may not be prohibited*). Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE**

ACTUAL TRANSFEREE/BUYER of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown buys the firearm with his own money to give to Mr. Black as a gift (*with no service or tangible thing of value provided by Mr. Black*), Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, the transferor/seller may not transfer a firearm to any person he/she knows or has reasonable cause to believe is prohibited under 18 U.S.C. 922(g), (n) or (x). **EXCEPTION:** If a person is picking up a repaired firearm(s) for another person, he/she is not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 12. Generally, 18 U.S.C. 922(g) prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated as a mental defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; is subject to certain restraining orders; convicted of a misdemeanor crime of domestic violence under Federal, State or Tribal law; has renounced his/her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa. Furthermore, section 922(n) prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year. An information is a formal accusation of a crime verified by a prosecutor.

A member of the Armed Forces must answer "yes" to 11.b. or 11.c. if charged with an offense that was either referred to a General Court Martial, or at which the member was convicted. Discharged "under dishonorable conditions" means separation from the Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a General Court-Martial. That term does not include any other discharge or separation from the Armed Forces.

EXCEPTION: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored, AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception, or who receive relief from disabilities under 18 U.S.C. 925(c), should answer "no" to the applicable question.

Question 11.d. Fugitive from Justice: Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

Question 11.f. Adjudicated as a Mental Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

EXCEPTION: Under the NICS Improvement Amendments Act of 2007, a person who has been adjudicated as a mental defective or committed to a mental institution in a State proceeding is not prohibited by the adjudication or commitment if

the person has been granted relief by the adjudicating/committing State pursuant to a qualifying mental health relief from disabilities program. Also, a person who has been adjudicated as a mental defective or committed to a mental institution by a department or agency of Federal Government is not prohibited by the adjudication or commitment if either: (a) the person's adjudication or commitment was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication/commitment; or (d) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code; (e) the person was granted relief from the adjudicating/committing agency pursuant to a qualified mental health relief from disabilities program. Persons who fall within one of the above exceptions should answer "no" to question 11.f. This exception to an adjudication or commitment by a Federal department or agency does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Qualifying Restraining Orders: Under 18 U.S.C. 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabitated with the person.

Question 11.i. Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties. (*See Exception to 11.b. - 12.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

Question 12.d. Immigration Status: An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. These aliens must answer "yes" to this question and provide the additional documentation required under question 18.c. Permanent resident aliens and aliens legally admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements may answer "no" to this question and are not required to submit the additional documentation under question 18.c.

Question 13. U.S.-issued Alien Number or Admission Number: U.S.-issued alien and admission numbers may be found on the following U.S. Department of Homeland Security documents: Legal Resident Card or Employment Authorization Card (AR# or USCIS#); Arrival/Departure Record, Form I94, or Form 797A (I94#). Additional information can be obtained from www.cbp.gov. If you are a U.S. citizen or U.S. national then this question should be left blank.

Question 14. Under 18 U.S.C. 922(a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he/she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal

objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his/her personal collection of firearms.

Section B

Question 16. Type of Firearm(s): "Other" refers to frames, receivers and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms, including silencers.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, frames and receivers are still "firearms" by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(B). Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a "firearm other than a shotgun or rifle," it cannot be transferred to anyone under the age of 21, nor can these firearms be transferred to anyone who is not a resident of the State where the transfer is to take place. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not "pistols or revolvers" under Section 923(g)(3)(A).

Question 17. Qualifying Gun Show or Event: As defined in 27 CFR 478.100, a gun show or event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

Question 18.a. Identification: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the transferee/buyer. The transferee/buyer must provide a valid government-issued photo identification document to the transferor/seller that contains the transferee's/buyer's name, residence address, and date of birth. A driver's license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. See instructions for question 18.b. Supplemental Documentation.

If the transferee/buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his/her permanent duty station is located, but he/she has a driver's license from another State, the transferor/seller should list the transferee's/buyer's military identification card and official orders showing where his/her permanent duty station is located in response to question 18.a. Licensees may accept electronic PCS orders to establish residency.

Question 18.b. Supplemental Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee/buyer may be supplemented by another valid, government-issued document showing the transferee's/buyer's residence address. This supplemental documentation should be recorded in question 18.b., with the issuing authority and type of identification presented. For example, if the transferee/buyer has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. A valid electronic document from a government website may be used as supplemental documentation provided it contains the transferee's/buyer's name and current residence address.

Question 18.c. Exceptions to the Nonimmigrant Alien Prohibition and Acceptable Documentation: An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its

headquarters in the United States; (5) is an official representative of a foreign government who is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Question 19. NICS BACKGROUND CHECKS: 18 U.S.C. 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include State agencies designated as points-of-contact ("or POCs") to conduct NICS checks for the Federal Government.

The licensee should NOT contact NICS and must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possessing a firearm, including if: the transferee/buyer answers "no" to question 11.a.; the transferee/buyer answers "yes" to any question in 11.b. - 11.i. or 12.b. - 12.c.; the transferee/buyer has answered "yes" to question 12.d.i., and answered "no" to question 12.d.2.; or the transferee/buyer cannot provide the documentation required by questions 18.a, b, or c. **WARNING:** Any person who transfers a firearm to any person he/she knows or has reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the transferor/seller has complied with the Federal background check requirements.

At the time that NICS is contacted, the licensee must record in question 19.a. - 19.c.: the date of contact, the NICS (*or State*) transaction number, and the initial (first) response provided by NICS or the State. The licensee may record the date the firearms may be transferred to the transferee/buyer (also known as the Missing Disposition Information (MDI) date) in 19.c. that NICS provides for delayed transactions (*States may not provide this date*). If the licensee receives any subsequent response(s) before transferring the firearm, the licensee must record in question 19.d. any response later provided by NICS or the State, or that no response was provided within 3 business days. If the transaction was denied and later overturned in addition to checking the "Proceed" and entering the date, the licensee must also check the "Overturned" box and, if provided, attach the overturn certificate issued by NICS or the State POC to the ATF Form 4473. If the licensee receives a response from NICS or the State after the firearm has been transferred, he/she must record this information in question 19.e. Note: States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS responses: If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" or "denied" response, the transferor/seller is prohibited from transferring the firearm to the transferee/buyer. If NICS provides a "delayed" response, the transferor/seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the transferor/seller that the transferee's/buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *State law may impose a waiting period on transferring firearms.*

Questions 20 and 21. NICS Exceptions: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR 478.102(d). Generally these include: (a) transfers of National Firearms Act firearms to an individual who has undergone a background check during the NFA approval process; (b) transfers where the transferee/buyer has presented the licensee with a permit or license that allows the transferee/buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR 478.131. A firearm must not be transferred to any transferee/buyer who fails to provide such documentation.

A NICS check must be conducted if an NFA firearm has been approved for transfer to a trust, or to a legal entity such as a corporation, and no background check was conducted as part of the NFA approval process on the individual who will receive the firearm. Individuals who have undergone a background check during the NFA application process are listed on the approved NFA transfer form.

Section C

Questions 22 and 23. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the transferee/buyer signed Section A, the licensee must again check the photo identification of the transferee/buyer at the time of transfer.

Section D

Question 24-28. Firearm(s) Description: These blocks must be completed with the firearm(s) information. Firearms manufactured after 1968 by Federal firearms licensees should all be marked with a serial number. Should you acquire a firearm that is legally not marked with a serial number (i.e. pre-1968); you may answer question 26 with "NSN" (No Serial Number), "N/A" or "None."

If more than four firearms are involved in a transaction, the information required by Section D, questions 24-28, must be provided for the additional firearms on a separate sheet of paper, which must be attached to this ATF Form 4473.

Types of firearms include, but are not limited to: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell (pistol grip firearm) or NFA firearms (machinegun, silencer, short-barreled shotgun, short-barreled rifle, destructive device or "any other weapon").

Additional firearms purchases by the same transferee/buyer may not be added to the form after the transferor/seller has signed and dated it. A transferee/buyer who wishes to acquire additional firearms after the transferor/seller has signed and dated the form must complete a new ATF Form 4473 and undergo a new NICS check.

Question 31. This item is for the licensee's use in recording any information he/she finds necessary to conduct business.

Question 32. Check this box, or write "Private Party Transfer" in question 31, if the licensee is facilitating the sale or transfer of a firearm between private unlicensed individuals in accordance with ATF Procedure 2013-1. This will assist the licensee by documenting which transaction records correspond with private party transfers, and why there may be no corresponding A&D entries when the transfer did not proceed because it was denied, delayed, or cancelled.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. 923(g). Disclosure of this information by the transferee/buyer is mandatory for the transfer of a firearm. Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the transferee's/buyer's identity.

For information about the routine uses of this form see System of Records Notice Justice/ATF-008, Regulatory Enforcement Records System (68 FR 163558, January 24, 2003).

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive and possess firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, IT Coordination Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.

Application for Tax Exempt Transfer and Registration of Firearm

ATF Control Number	Internal Control Number
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Submit in duplicate to: **National Firearms Act Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405**

1. Type of Transfer: tax exempt I believe that I am entitled to exemption from the payment of the Transfer Tax Imposed by section 5811 (26 U.S.C. Chapter 53) on the Firearm described herein for the following reason (See Instruction 2b): <input type="checkbox"/> Firearm is unserviceable and is being transferred as a curio or ornament <input type="checkbox"/> Firearm is being transferred to or from a Government Entity <input type="checkbox"/> Firearm is being transferred to a lawful heir or by operation of law <input type="checkbox"/> Other (Specify) _____	2a. Transferee's Name and Address (Include trade name, if any) (See instruction 2j) <table style="width:100%;"> <tr> <td style="width:33%;"><input type="checkbox"/> INDIVIDUAL</td> <td style="width:33%;"><input type="checkbox"/> TRUST or LEGAL ENTITY</td> <td style="width:33%;"><input type="checkbox"/> GOVERNMENT ENTITY</td> </tr> </table> 2b. County _____ 3a. If Applicable: Decedent's Name, Address, and Date of Death _____	<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> TRUST or LEGAL ENTITY	<input type="checkbox"/> GOVERNMENT ENTITY
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> TRUST or LEGAL ENTITY	<input type="checkbox"/> GOVERNMENT ENTITY		

3b. Transferor's Name and Address (Include trade name, if any) (Executors: see instruction 2j)	3c. Transferor's telephone (area code and number)	3d. e-mail address (optional)
3e. Number, Street, City, State and Zip Code of Residence (or Firearms Business Premises) If Different from Item 3a.		

The above-named and undersigned transferor hereby makes application as required by Section 5812 of the National Firearms Act to transfer and register the firearm described below to the transferee.

4. Description of Firearm (Complete items a through i) (See instruction 2m)			d. Model		
a. Name and Address of Maker, Manufacturer and/or Importer of Firearm	b. Type of Firearm (See definitions)	c. Caliber or Gauge	Length (Inches)	e. Of Barrel:	f. Overall:
			g. Serial Number		
h. Additional Description or Data Appearing on Firearm (Attach additional sheet if necessary)			i. Is the Firearm Unserviceable as Defined in Definition 1m? (If "No," describe the method by which firearm has been rendered unserviceable. Use additional sheets.) <input type="checkbox"/> Yes <input type="checkbox"/> No		

5. Transferee's Federal Firearms License (If any) (Give complete 15-digit number) (See instruction 2c)				6. Transferee's Special (Occupational) Tax Status (If any)	
First 6 digits	2 digits	2 digits	5 digits	a. Employer Identification Number	b. Class
7. Transferor's Federal Firearms License (If any)				8. Transferor's Special (Occupational) Tax Status (If any)	
First 6 digits	2 digits	2 digits	5 digits	a. Employer Identification Number	b. Class

Under Penalties of Perjury, I Declare that I have examined this application, and to the best of my knowledge and belief it is true, correct and complete, and that the transfer of the described firearm to the transferee and receipt and possession of it by the transferee are not prohibited by the provisions of Title 18, United States Code; Chap 44; Title 26, United States Code; Chap 53; or any provisions of State or local law.

9. Signature of Transferor (Or authorized official)	10. Name and Title of Authorized Official (Print or type)	11. Date
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The Space Below is for the use of the Bureau of Alcohol, Tobacco, Firearms and Explosives

By Authority of The Director, This Application Has Been Examined, and the Transfer and Registration of the Firearm Described Herein and the Interstate Movement of that Firearm, When Applicable to the Transferee are:

<input type="checkbox"/> Approved (With the following conditions, if any)	<input type="checkbox"/> Disapproved (For the following reasons)
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Signature of Authorized ATF Official	Date
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TRANSFEEE CERTIFICATION (not completed by a Government Entity)

12. Law Enforcement Notification (See instruction 2f)

The transferee is to provide notification of the proposed acquisition and possession of the firearm described on this Form 5 by providing a copy of the completed form to the chief law enforcement officer in the agency identified below:

Agency or Department Name _____ Name and Title of Official _____

Address (Street address or P.O. Box, City, State and Zip Code) to which sent (mailed or delivered) _____

Information for the Chief Law Enforcement Officer

This form provides notification of the transferee's intent to acquire and possess a National Firearms Act (NFA) firearm. No action on your part is required. However, should you have information that may disqualify this person from acquiring or possessing a firearm, please contact the NFA Branch at (304) 616-4500 or NFA@atf.gov. A "Yes" answer to items 14.a through 14.h or 16.b or 16.c could disqualify a person from acquiring or possessing a firearm. Also, ATF will not approve an application if the transfer or possession of the firearm is in violation of State or local law.

13. Transferee Necessity Statement (Do not complete if the transferee is a government agency) (See instruction 2e)

I, _____, have a reasonable necessity to possess the machinegun, short-barreled rifle, _____

 (Name and Title of Transferee)
 short-barreled shotgun, or destructive device described on this application for the following reason(s) _____

 and my possession of the device or weapon would be consistent with public safety (18 U.S.C. § 922(b) (4) and 27 CFR § 478.98).

Transferee Questions (complete only when transferee is an individual)

14. Answer questions 14.a through 14.h. Answer questions 16 and 17, if applicable. For any "Yes" answer the transferee shall provide details on a separate sheet. (See instruction 7b and definitions)

	Yes	No	15. Photograph
a. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See definition 1n)			Affix Recent Photograph Here (Approximately 2" x 2") (See instruction 2g)
b. Have you ever been convicted in any court for a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See definition 1n)			
c. Are you a fugitive from justice? (See definitions 1t)			
d. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.			
e. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? (See definitions 1o and 1p)			
f. Have you been discharged from the Armed Forces under dishonorable conditions?			
g. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See definition 1q)			
h. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See definition 1r)			

16a. Country of Citizenship (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.) (See definition 1s)

United States of America Other Country/Countries (specify): _____

	Yes	No
b. Have you ever renounced your United States citizenship?		
c. Are you an alien illegally or unlawfully in the United States?		
d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa?		
d.2. If "yes", do you fall within any of the exceptions stated in the instructions? Attach the documentation to the application	<input type="checkbox"/> N/A	

17. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or 194#): _____

CERTIFICATION: Under penalties imposed by 18 U.S.C. § 924 and 26 U.S.C. § 5861, I certify that, upon submission of this form to ATF, a completed copy of this form will be directed to the chief law enforcement officer (CLEO) shown in item 12, that the statements, as applicable, contained in this certification, and any attached documents in support thereof, are true and correct to the best of my knowledge and belief. **NOTE:** See instructions 2.d(2) and 2.d(3) for the items to be completed depending on the type of transferee.

18. Number of Responsible Persons (see definitions) associated with the transferee trust or legal entity _____

19. Provide the full name (printed or typed) below for each Responsible Person associated with the applicant trust or legal entity (if there are more Responsible Persons than can be listed on the form, attach a separate sheet listing the additional Responsible Person(s)). Please note that a completed Form 5320.23, National Firearms Act (NFA) Responsible Person Questionnaire, must be submitted with the Form 5 application for each Responsible Person.

Full Name	Full Name
_____	_____
_____	_____
_____	_____

Important Information for Currently Registered Firearms

If you are the current registrant of the firearm described on this form, please note the following information.

Estate Procedures: For procedures regarding the transfer of firearms in an estate resulting from the death of the registrant identified in item 2a, the executor should contact the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405.

Change of Address: Unless currently licensed under the Gun Control Act, the registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 244 Needy Road, Martinsburg, WV 25405, in writing, of any change to the address in item 2a.

Change of Description: The registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405, in writing, of any change to the description of the firearm(s) in item 4.

Interstate Movement: If the firearm identified in item 4 is a **machinegun, short-barreled rifle, short-barreled shotgun, or destructive device**, the registrant may be required by 18 U.S.C. § 922(a)(4) to obtain permission from ATF prior to any transportation in interstate or foreign commerce. ATF E-Form 5320.20 can be used to request this permission.

Restrictions on Possession: Any restriction (*see approval block on face of form*) on the possession of the firearm identified in item 4 continues with the further transfer of the firearm.

Persons Prohibited from Possessing Firearms: If the registrant becomes prohibited from possessing a firearm, please contact the NFA Branch for procedures on how to dispose of the firearm.

Proof of Registration: A person possessing a firearm registered as required by the NFA shall retain proof of registration which shall be made available to any ATF officer upon request.

Paperwork Reduction Act Notice

This form meets the clearance requirements the Paperwork Reduction Act of 1995. The information you provide is used to apply the tax-exempt transfer of an unserviceable firearm to anyone other than a Federal firearms licensee who has paid the required special (*Occupational*) tax to deal in NFA firearms and to or from government agencies. The data is used to ensure legality of transfer under Federal, State and local law.. The furnishing of this information is mandatory (*26 U.S.C. § 5812*).

The estimated average burden associated with this collection of information is 0.5 hours per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestion for reducing this burden should be addressed to Reports Management Officer, Information Technology Coordination Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Privacy Act Information

The following information is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. § 552(e)(3)):

- 1. Authority.** Solicitation of this information is made pursuant to the National Firearms Act (26 U.S.C. § 5812). Disclosure of this information by the applicant is mandatory for any transfer without payment of transfer tax as provided in 26 U.S.C. § 5852.
- 2. Purpose.** To verify that the proposed transfer is exempt from transfer tax; to verify that the transfer would not be in violation of law; and to effect registration of the firearm.
- 3. Routine Uses.** The information will be used by ATF to make the determinations set forth in paragraph 2. In addition, to effect registration of the firearm, information as to the identification of the firearm, date of registration, and the identification and address of person entitled to possess the firearm will be entered into the National Firearms Registration and Transfer Record. No information obtained from an application, registration, or records required to be submitted by an individual in order to comply with any provision of the National Firearms Act or regulation issued thereunder, shall, except in connection with prosecution or other action for furnishing information, be used, directly or indirectly, as evidence against that person in any criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application. The information from this application may only be disclosed to Federal authorities for purpose of prosecution for violation of the National Firearms Act.
- 4. Effects of not Supplying Information Requested.** Failure to supply complete information will delay processing and may cause denial of the application.

Definitions/Instructions

I. Definitions.

- a. **National Firearms Act (NFA).** Title 26, United States Code, Chapter 53. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 479.
- b. **Gun Control Act (GCA).** Title 18, United States Code, Chapter 44. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 478.
- c. **Firearm.** The term "firearm" means: (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in 26 U.S.C. § 5845(e); (6) a machinegun; (7) a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device.
- d. **Person.** A partnership, company, association, trust, corporation, including each responsible person associated with such an entity; including each responsible person associated with such an entity; an estate; or an individual.
- e. **Responsible Person.** In the case of an unlicensed entity, including any trust, partnership, association, company (including any Limited Liability Company (LLC)), or corporation, any individual who possesses, directly or indirectly, the power or authority to direct the management and policies of the trust or entity to receive, possess, ship, transport, deliver, transfer or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity. In the case of a trust, those persons with the power or authority to direct the management and policies of the trust includes any person who has the capability to exercise such power and possesses, directly or indirectly the power or authority under any trust instrument, or under State law, to receive possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of the trust. Examples of who may be considered a responsible person include settlors/grantors, trustees, partners, members, officers, directors, board members, or owners. An example of who may be excluded from this definition of responsible person is the beneficiary of a trust, if the beneficiary does not have the capability to exercise the enumerated powers or authorities.
- f. **Employer Identification Number (EIN).** Required of taxpayer filing special (occupational) tax returns under 27 CFR § 479.35.
- g. **Special (Occupational) Tax.** Required by the NFA to be paid by a Federal firearms licensee engaged in the business of manufacturing (Class 2), importing (Class 1), or dealing (Class 3) in NFA firearms.
- h. **Federal Firearms License.** A license issued under the provisions of the GCA to manufacture, import or deal in firearms.
- i. **ATF Officer.** An officer or employee of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorized to perform any function relating to the administration of the NFA.
- j. **Transfer.** Selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of a firearm.
- k. **Transferor.** The person selling or otherwise disposing of a firearm; including applying to transfer a firearm.
- l. **Transferee.** The person acquiring the firearm.
- m. **Unserviceable Firearm.** One which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to 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.
- n. **Prohibited Person.** Generally, 18 U.S.C. § 922 (g) prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated as a mental defective or has been

committed to a mental institute; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa; or is subject to certain restraining orders. Furthermore, Section 922 (n) prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year. An information is a formal accusation of a crime verified by a prosecutor.

EXCEPTION: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should mark "no" in the applicable box.

- o. **Adjudicated As a Mental Defective.** A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.
- p. **Committed to a Mental Institution.** A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

EXCEPTION NICS Improvement Amendments Act of 2007: A person who has been adjudicated as a mental defective or committed to a mental institution in a state proceeding is not prohibited by the adjudication or commitment if the person has been granted relief by the adjudicating/committing state pursuant to a qualifying mental health relief from disabilities program. Also, a person who has been adjudicated as a mental defective or committed to a mental institution by a department or agency of the Federal Government is not prohibited by the adjudication or commitment if either: (a) the person's adjudication or commitment was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication/commitment; or (d) the adjudication or commitment, respectively is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g) (4) of title 18, United States code; or (e) the person was granted relief from the adjudicating/committing agency pursuant to a qualified mental health relief from disabilities program. Persons who fall within one of the above exceptions should mark "no" in the applicable box. This exception to an adjudication or commitment by a Federal department or agency does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on a lack of mental responsibility or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

- q. **Restraining Order.** Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the partner of a child of the person, or an individual who cohabitates or has cohabitated with the person.
- r. **Misdemeanor Crime of Domestic Violence.** A Federal, State, local, tribal offense that is a misdemeanor under the Federal, State or tribal law and has,

as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parents, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties. (*See Exception in the definition of "Prohibited Person"*). A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should mark "no" in the applicable box.

s. **Alien Admitted to the United States Under a Nonimmigrant Visa.** An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. These aliens must answer "yes" to question 16.d.1 and provide the additional documentation required under question 16.d.2. Permanent resident aliens and aliens legally admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements may answer "no" to this question and are not required to submit the additional documentation under 16.d.2. An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; (4) is an official representative of a foreign government who is en route to or from another country to which that alien is accredited; (5) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; (6) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business; (7) has received a waiver from the prohibition from the Attorney General of the United States.

t. **Fugitives from Justice.** Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor, or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

2. Preparation of Application

a. **Authority.** As provided by 26 U.S.C. §§ 5812, 5852, and 5833, any person seeking to transfer a firearm exempt from payment of tax must submit, in duplicate, a separate application on this form for each firearm. The transferor must furnish all the information called for, except as noted by instructions within on this application form. Please note that the form now contains a 3rd (CLEO) copy of the form for use in compliance with instruction 2f and item 12 of the form.

b. **Exemptions from Transfer Tax.** A registered firearm may be transferred without payment of the transfer tax if:

- (1) it is unserviceable; (*See definition 1m*)
- (2) it is being transferred to or from the United States, or any department, independent establishment or agency thereof;
- (3) it is being transferred to or from any State or possession of the United States or any political subdivision thereof, or any official police organization of such government entity; or
- (4) it is being transferred to a beneficiary of an estate.

c. **Federal Firearms Licensees.** If the transferor or transferee is a Federal Firearms licensee (*FFL*) under the GCA, the licensee's complete name, trade name (*if any*), and address shall be entered in items 2a or 3a of this form, respectively. The complete license number of each shall be entered in items 5 and 7 of the form and, if the licensee is a special (occupational) taxpayer

under the NFA, the licensee's employer identification number (*EIN*) shall be entered in items 6 and 8 of the form along with the class of special tax paid.

IMPORTANT NOTE: The business structure of the licensee shall be described consistently. For example, if the transferor is a sole proprietor, item 3a shall reflect the FFL information for the sole proprietor business and item 7 shall reflect the FFL number for that sole proprietor business. Item 8 will reflect the EIN for the sole proprietor business. If the special tax is paid as a corporation, then it is not valid for the transaction. Similarly, a corporation name shown in item 3a with the FFL number and EIN of a sole proprietor will not be valid for the transaction.

d. Completion of Form.

- (1) The transferor shall provide the transferee's complete name and physical address (*no Post Office boxes*) in item 2a. If the transferee is a trust or legal entity, show only the complete name of the trust or legal entity and do not include any individual names (*such as names of trustees or corporate officials*). The address shall be the location within the particular state where the firearm will be maintained for a trust or legal entity. In the case of two or more locations for a legal entity, the address shown shall be the principal place of business within the particular state (or principal office, in the case of a corporation).
- (2) If the transferee is an individual, the entire Form 5 shall be completed except for items 18 and 19. In addition, the transferee must include his or her fingerprints on FBI Form FD-258 and his or her photos (*see instruction 2g*).
- (3) If the transferee is other than an individual, *e.g.*, a trust or legal entity such as a corporation, the transferee shall not complete items 14, 15, 16, and 17. All other items must be completed including the signing of the Transferee Certification statement by the transferee.
- (4) Documentation of entity existence:
 - (a) If the transferee is other than an individual, the transferee must attach documentation evidencing the existence and validity of the trust or legal entity, which includes complete and unredacted copies of partnership agreements, articles of incorporation, corporate registration, declarations of trust with any trust schedules, attachments, exhibits, and enclosures.
 - (b) If the transferee entity has had an application approved as a maker or transferee within the preceding 24 months of the date of filing this application, and there has been no change to the documentation evidencing the existence and validity of the entity previously provided, the trust or legal entity may provide a certification that the information has not been changed since the prior approval and shall identify the application for which the documentation had been submitted form number, serial number, and date approved.
- (5) If the transferee is other than an individual, each responsible person of the trust or legal entity (*see definition 1e*) must include a completed ATF Form 5320.23, National Firearms Act (NFA) Responsible Person Questionnaire, with the submitted Form 5.
- (6) Item 4g (serial number) is obscured on the CLEO copy. This field does not require completion on the CLEO copy.

e. **Transferee Necessity Statement.** Item 13 must be completed by the transferee if:

- (1) the firearm to be transferred is a machinegun, short-barreled rifle, short-barreled shotgun, or destructive device;
- (2) the transferor is licensed under the GCA to deal in such device or firearm; and
- (3) the transferee is **not** licensed under the GCA to deal in such device or firearm

f. **Law Enforcement Notification.** The transferee must provide a copy of the Form 5 to the chief law enforcement officer (CLEO) who has jurisdiction over the area of the transferee's address shown in item 2a of the Form 5. In addition, if the transferee is other than an individual, a copy of the Form 5320.23, National Firearms Act (NFA) Responsible Person Questionnaire, completed by each responsible person must be provided to their respective chief law enforcement officer. The chief law enforcement officer is considered to be the Chief of Police; the Sheriff; the Head of the State Police; or a State or local district attorney or prosecutor.

g. **Photographs and Fingerprints.** An individual transferee, except if licensed as a manufacturer, importer, or dealer under the GCA, must

- (1) attach to in item 15 of the ATF Form 5, a 2 inch x 2 inch photograph of the frontal view of the transferee taken within 1 year prior to the date of the application and (2) submit two properly completed FBI Forms FD-258 (*Fingerprint Card with blue lines*) with the application. The fingerprints must be clear for accurate classification and taken by someone properly equipped to take them.
- h. **Signatures.** All signatures required on ATF Form 5 must be original in ink on both copies.
- (1) if the applicant is an individual, the applicant shall sign the form;
 - (2) if the applicant is the estate of a decedent or the firearm is being transferred by other operation of law, the executor or administrator of the estate shall sign the form or, in the case of other operation of law transfer, the person appointed to dispose of the property shall sign the form;
 - (3) if the applicant is a trust or legal entity, a responsible person of the trust or legal entity shall sign the form;
 - (4) if the applicant is a Federal firearms licensee, a responsible person of the Federal firearms licensee must sign the form; or
 - (5) if the applicant is a government entity, a person who has authority to sign for the entity shall sign the form.
- i. **Photocopies, Computer Generated Versions, or Downloaded Version from ATF Website.** The form may be copied or downloaded (*for example, from the ATF website (www.atf.gov)*). The form does not have to be printed front to back.
- j. **Estates, Trusts, and Other Transfers by Operation of Law.** When a firearm is being transferred from an estate by bequest or intestate succession (*see 27 CFR § 479.90a*), or by other operation of law to a beneficiary or other authorized recipient, ATF Form 5 is used to effect the transfer. The executor, trustee, or other person appointed to dispose of property shall provide documentation of the legal status of the person entitled to receive property, and shall identify that person in item 2a. In the case of an estate, item 3e shall be completed to reflect the decedent's information. If the transfer is to someone other than to a person identified under operation of law, the transfer is subject to transfer tax and ATF Form 4 shall be used.
- k. **Submission.** The transferor shall submit 2 forms (ATF Copy 1 and Copy 2 (Registrant)) to the NFA Branch at the address on the face of the form. All items on the form are to be completed except as noted in the instructions and any attachment included with the submission. The applicant shall direct the 3rd copy (CLEO) complete copy of the form to the chief law enforcement officer as provided in instruction 2f and item 12.
- l. **Submission by Facsimile Transmission.** ATF Form 5 may also be submitted (*in situations where the application is not accompanied by fingerprints and photographs*) for approval by facsimile transmission to (304) 616-4501 provided that the transferor has filed an affidavit with the NFA Branch as provided by ATF Industry Circular 89-6.
- m. **Description of Firearm and Markings.** (1) Item 4a. please provide the name and address of the maker, manufacturer or importer of the firearm. If there are additional makers, manufacturers, or importers, include this information in item 4h or on a separate sheet of paper. (2) Item 4b. the types of NFA firearm are listed in definition 1c. (3) Item 4c. specify one caliber or gauge. If there are additional calibers associated with the description of the firearm, include this information in item 4h or on a separate piece of paper (4) Item 4d. show the model designation (*if any*). (5) Items 4e and 4f. specify the barrel and overall lengths as applicable. If there are additional barrel and overall lengths associated with the description of the firearm, include this information in item 4h or on a separate sheet of paper. (6) Item 4g. (a) enter the serial number of the firearm. (b) When more than one firearm of the same description is being transferred and the serial numbers are in a consecutive series, the transferor may enter the beginning and ending serial numbers of the range. When more than one firearm of the same description is being transferred but the serial numbers are nonconsecutive, the transferor may note item 4g. to "see attached list of xxx serial numbers." Any attachment must be referenced to the ATF Form 5. (7) If there are differences between the description of the firearm on the form in comparison to the physical description of the firearm or in the markings on the firearm, including the serial number, contact the NFA Branch in regard to these differences. (8) Item 4i. Answer "Yes" or "No".
- n. **State or Local Permit.** If a State or local permit or license is required for the transferee prior to acquisition of the firearm, a copy of the permit must be included with the application. If the transferee is a trust or legal entity, when the State of residence for any responsible person requires a State or local permit or license, a copy of the permit or license must be submitted with Form 5320.23, National Firearms Act (NFA) Responsible Person Questionnaire.
3. **Approval of Application.** Upon approval of an application, the NFA Branch will return the approved copy to the transferor for delivery with the firearm to the transferee. Since the approval of the application effectuates registration of the firearm to the transferee, the physical transfer of the firearm must be completed immediately; however, the transferor must not transfer the firearm until the application has been approved and received. If the physical transfer of the firearm cannot be completed immediately, the transferor must contact the NFA Branch with the specifics.
 4. **Withdrawal of Application.** The transferor may withdraw an application prior to approval subsequent to a written request directed to the Chief, NFA Branch, 244 Needy Road, Martinsburg, WV. 25405.
 5. **Cancellation of Approved Application.** The transferor may cancel an approved application only if the physical transfer of the firearm has not been completed. The transferor must return the approved application with a written request directed to the Chief, NFA Branch, 244 Needy Road, Martinsburg, WV 25405 for cancellation, citing the need and that the physical transfer of the firearm did not take place.
 6. **Disapproval of Application.** If the application is disapproved, the NFA Branch will note the reason for disapproval on the application and return one copy of the ATF Form 5 to the transferor.
 7. **Reasons for Disapproval.** 26 U.S.C. § 5812 provides that applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.
 - a. **Violation of Law.** Applications shall be denied if the receipt or possession of the firearm would place the person receiving or possessing the firearm in violation of law.
 - b. **Persons Prohibited from Receiving a Firearm.** The application will be disapproved if the transferee is a person prohibited from receiving a firearm. For information regarding persons prohibited from receiving a firearm, refer to definitions 1n through 1s.
 8. **Status Inquiries and Questions.** Information relating to the NFA and other firearms laws is available at the ATF Internet website at www.atf.gov. Any inquiry relating to the status of an application to transfer an NFA firearm or about procedures in general should be directed to the NFA Branch at (304) 616-4500. Please be aware that any dissemination by ATF of information relating to the application to register an NFA firearm must conform with the restrictions in 26 U.S.C. § 6103.
 9. **Penalties.** Any person who violates or fails to comply with any of the requirements of the NFA shall, upon conviction, be fined not more than \$10,000 or be imprisoned for not more than 10 years, or both. Any firearm involved in a violation of the NFA shall be subject to seizure and forfeiture. It is unlawful for any person to make or cause the making of a false entry on any application or record required by the NFA knowing such entry to be false.
 10. **Compliance with the Gun Control Act.** Person must also comply with all relevant portions of the GCA

National Firearms Act (NFA) Responsible Person Questionnaire

Complete the form in duplicate. The ATF copy of the form, with fingerprints on Form FD-258 and photograph, will be submitted with the ATF Form 1, 4, or 5 (to the address shown on the specific form) and the other copy will be directed to the responsible person's chief law enforcement officer. (See Instructions)

1. Please check the appropriate box to indicate with which ATF form this questionnaire will be submitted.

ATF Form 1 ATF Form 4 ATF Form 5

2. Name and Address of Applicant or Transferee (as shown on the ATF Form 1, 4 or 5) (see instruction 2)

3a. Name and Home Address of Responsible Person

3b. Telephone (Area code and Number)

3c. e-mail address (optional)

3d. Other names used (including maiden name)

4a. Type of Firearm (see definition 5)

3e. Photograph

4b. Name and Address of Maker, Manufacturer and/or Importer of Firearm

Affix recent
Photograph Here

(Approximately 2" x 2")
(See instruction 3b)

4c. Firearm Model

4d. Caliber or Gauge

4e. Firearm Serial Number

5. Law Enforcement Notification (See instruction 5)

As a responsible person (see definition 4) of the trust or legal entity identified in Item 2 of this form, I am required to provide notification of the proposed making or acquisition and possession of the firearm described in item 4 of this form by providing a copy of the completed form to the chief law enforcement officer (CLEO) in the agency identified below:

Agency or Department Name

Name and Title of Official

Address (Street address or P.O. Box, City, State and Zip Code) to which sent (mailed or delivered)

Information for the Chief Law Enforcement Officer

This form provides notification of the maker or transferee's intent to make or acquire and possess a National Firearms Act (NFA) firearm. No action on your part is required. However, should you have information that may disqualify this person from making or possessing a firearm, please contact the NFA Branch at (304) 616-4500 or NFA@atf.gov. A "Yes" answer to items 6h or item 7b or 7c could disqualify a person from acquiring or possessing a firearm. Also, ATF may not approve an application if the transfer or possession of the firearm would be in violation of State or local law.

6. Answer questions 6.a through 6.h. Answer questions 7 and 8 if applicable. For any "Yes" answer the transferee shall provide details on a separate sheet. (See definitions 8-12)

	Yes	No
a. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See definition 8)		
b. Have you ever been convicted in any court for a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See definition 8)		
c. Are you a fugitive from justice? (See definition 13)		
d. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.		
e. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? (See definitions 9 and 10)		
f. Have you been discharged from the Armed Forces under dishonorable conditions?		
g. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See definition 11)		
h. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See definition 14)		

7a. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.) (See definition 12)

United States of America Other Country/Countries (specify): _____

	Yes	No
b. Have you ever renounced your United States citizenship?		
c. Are you an alien illegally or unlawfully in the United States?		
d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa?		
d.2. If "yes", do you fall within any of the exceptions stated in the instructions? Attach the documentation to the questionnaire	<input type="checkbox"/> N/A	

8. If you are an alien, record your U.S. -Issued Alien or Admission number (AR#, USCIS#, or 194#): _____

CERTIFICATION: Under penalties imposed by 18 U.S.C. § 924 and 26 U.S.C. § 5861, I certify that, upon submission of this form to ATF, a completed copy of this form will be directed to the chief law enforcement officer (CLEO) shown in item 5, that the statements contained in this certification, and any attached documents in support thereof, are true and correct to the best of my knowledge and belief.

Signature of Responsible Person

Date

Instructions

1. **Completion:** Each responsible person (see definition 4) of a trust or legal entity seeking to make or acquire a National Firearms Act (NFA) firearm shall complete this form in duplicate. (see instruction 9)
 - a. Each responsible person must submit his/her fingerprints and photograph with this form (see below).
 - b. Please note that this form is not required when the applicant on Form 1, 4 or 5 is an individual.
2. **Item 2 -** Enter the name, trade name (if any) and address of the trust or legal entity identified on the Form 1 (items 3a and b); Form 4 (item 2a); or Form 5 (item 2a)
3. **Item 3 - Responsible Person information**
 - a. Provide the information for the responsible person in items 3a through 3c.
 - b. **Item 3e - Photograph:** The responsible person shall attach, in item 3e on the ATF copy of the form only, a 2-inch by 2-inch frontal view photograph taken within one year prior to the date of the filing of the form. Item 3c is obscured on the CLEO copy.
4. **Firearm information**
 - a. Type of NFA firearm: see definition 5 and as identified in item 4b of Form 1, 4, or 5
 - b. Name of maker, manufacturer and/or importer: as identified in item 4a of Form 1, 4, or 5
 - c. Firearm Model: identified in item 4d of Form 1, 4, or 5
 - d. Caliber or Gauge: identified in item 4c of Form 1, 4 or 5
 - e. Firearm Serial Number: identified in item 4g of Form 1, 4 or 5. Item 4e is obscured on the CLEO copy.
5. **Item 5 - Law Enforcement Notification:** Each responsible person must provide a notification on this form of the proposed making or acquisition of an NFA firearm to his/her chief law enforcement officer having jurisdiction where the responsible person is located. The chief law enforcement officer is considered to be the Chief of Police; the Sheriff; the Head of the State Police; or a State or local district attorney or prosecutor.
6. Complete items 6 through 8
7. **Fingerprints:** The responsible person shall submit, in duplicate with the ATF copy of this form, his or her fingerprints on FBI Form FD-258 and the fingerprints must be clear for accurate classification and taken by someone properly equipped to take them. No fingerprints are required with the copy of the form sent to the chief law enforcement officer.
8. **State or Local Permit:** If the State in which the responsible person resides requires the responsible person to have a State or Local permit or licensee, a copy of the permit or license must be submitted with this form.
9. **Disposition:** The ATF copy of the form, with the fingerprints and photograph, shall be submitted with the ATF Form 1, 4 or 5. The other copy shall be directed to the responsible person's chief law enforcement officer identified in item 5 of this form.
10. **Sign and date the form.** The signature must be original.

DEFINITIONS

1. **National Firearms Act (NFA).** Title 26, United States Code, Chapter 53. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 479.
2. **Gun Control Act (GCA).** Title 18, United States Code, Chapter 44. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 478.
3. **Person.** A partnership, company, association, trust, corporation, including each responsible person associated with such an entity; an estate; or an individual.
4. **Responsible Person.** In the case of an unlicensed entity, including any trust, partnership, association, company (including any Limited Liability company (LLC)), or corporation, any individual who possesses, directly or indirectly, the power or authority to direct the management and policies of the trust or entity to receive, possess or ship, transport, deliver, transfer or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity. In the case of a trust, those persons with the power or authority to direct the management and policies of the trust includes any person who has the capability to exercise such power and possesses, directly or indirectly, the power or authority under any trust instrument, or under State law, to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of the trust. Examples of who may be considered a responsible person include settlors/grantors, trustees, partners, members, officers, directors, board members or owners. An example of who may be excluded from this definition of responsible person is the beneficiary of a trust, if the beneficiary does not have the capability to exercise the enumerated powers or authorities.
5. **Firearm.** (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon as defined in 26 U.S.C. § 5845(e); (6) a machinegun; (7) any silencer (as defined in 18 U.S.C. § 921) and (8) a destructive device.
6. **Maker.** The person (applicant) applying to make and register the firearm.
7. **Transferee.** The person acquiring the firearm.

8. **Prohibited Person.** Generally, 18 U.S.C. § 922(g) prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who has been convicted of a felony or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*), is a fugitive from justice, is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance, has been adjudicated as a mental defective or has been committed to a mental institution, has been discharged from the Armed Forces under dishonorable conditions, has renounced his or her U.S. citizenship, is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa or is subject to certain restraining orders. Furthermore, Section 922(n) prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year. An information is a formal accusation of a crime verified by a prosecutor.

EXCEPTION: A person who has been convicted of a felony or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred the person has been pardoned, the conviction has been expunged or set aside, or the person had their civil rights (the right to vote, sit on a jury and hold public office) taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Person subject to his exception should mark "no" in the applicable box.

9. **Adjudicated as a Mental Defective.** A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease; (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include (1) a finding of insanity by a court in a criminal case, and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.
10. **Committed to a Mental Institution.** A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

EXCEPTION: NICS Improvement Amendments Act of 2007: A person who has been adjudicated as a mental defective or committed to a mental institution in a state proceeding is not prohibited by the adjudication or commitment if the person has been granted relief by the adjudicating/committing state pursuant to a qualifying mental health relief from disabilities program. Also, a person who has been adjudicated as a mental defective or committed to a mental institution by a department or agency of the Federal Government is not prohibited by the adjudication or commitment if either; (a) the person's adjudication or commitment was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication/commitment; or (d) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code; or (e) the person was granted relief from the adjudicating/committing agency pursuant to a qualified mental health relief from disabilities program. Persons who fall within one of the above exceptions should mark "no" in the applicable box. This exception to an adjudication or commitment by a Federal department or agency does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

11. **Restraining Order.** Under 18 U.S.C. § 922 firearms may not be sold to or received by person subject to a court order that (a) was issued after a hearing which the person received actual notice of and had an opportunity, to participate in (b) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and (c)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is the spouse or former spouse of the person, the parent of a child of the person or an individual who cohabitates or has cohabitated with the person.
12. **Alien admitted to the United States Under a Nonimmigrant Visa.** An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. These aliens must answer "yes" to question 7.d.1 and provide the additional documentation required under question 7.d.2. Permanent resident aliens

and aliens legally admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements may answer "no" to this question and are not required to submit the additional documentation under 7.d.2. An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving or possessing a firearm if the alien (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired.

(2) was admitted to the United States for lawful hunting or sporting purposes; (3) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; (4) is an official representative of a foreign government who is en route to or from another country to which that alien is accredited; (5) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; (6) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business; (7) has received a waiver from the prohibition from the Attorney General of the United States.

13. **Fugitives from Justice.** Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor, or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.
14. **Misdemeanor Crime of Domestic Violence:** A Federal, State, local, tribal offense that is a misdemeanor under the Federal, State, or tribal law and has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person cohabitating with, or has cohabited with the victim as a spouse, parents, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties. (*See Exception in the definition of "Prohibited Person"*). A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should mark "no" in the applicable box.

Privacy Act Information

The following information is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. § 552(e)(3)):

1. **Authority:** Solicitation of this information is made pursuant to the National Firearms Act (NFA) 26 U.S.C. §§ 5812 and 5822. Disclosure of this information by the applicant is mandatory for the making or transfer of an NFA firearm.
2. **Purpose:** To ensure payment of the tax imposed by 26 U.S.C. §§ 5811 and 5821; to ensure that the making or transfer would not violate law; and to effect the registration of the firearm.
3. **Routine Uses:** The information will be used by ATF to make the determinations set forth in paragraph 2. In addition, to effect registration of the firearm, the description of the firearm, date of registration, and identification and address of the person entitled to possess the firearm will be entered in the National Firearms Registration and Transfer Record.
4. **Effect of not Supplying Information Requested:** Failure to supply complete information may delay processing and may cause denial of the application.

Paperwork Reduction Act Notice

This information request is in accordance with the Paperwork Reduction Act of 1995. The information provided is used in applying to make or transfer NFA firearms. Data is used to identify the maker; the transferor and transferee; and the firearm being made or transferred; and to ensure legality of the making or transfer.

The estimated burden associated with this collection of information is .25 hours per respondent or recordkeeper, depending upon individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to the Reports Management Officer, Information Technology Coordination Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Suggested Resources

Entire National Firearms Act – 26 U.S.C. §§ 5701 - 5872

<https://www.law.cornell.edu/uscode/text/26/subtitle-E/chapter-53>

Entire Gun Control Act – 18 U.S.C. §§ 921 - 931

<https://www.law.cornell.edu/uscode/text/18/part-I/chapter-44>

BATFE National Firearms Act Handbook (**not updated as of Rule 41F's adoption*)

<https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download>

BATFE Description of NFA Firearms

<https://www.atf.gov/firearms/docs/atf-national-firearms-act-handbook-chapter-2/download>

Final Rule 41F – 27 CFR 479

<https://www.gpo.gov/fdsys/pkg/FR-2016-01-15/pdf/2016-00192.pdf>

BATFE Discussion of Rule 41F

<https://www.atf.gov/rules-and-regulations/final-rule-41f-background-checks-responsible-persons-effective-july-13>

BATFE General 41F Question & Answers

<https://www.atf.gov/resource-center/docs/general41fquestionsandanswersupdated-6-28-16pdf/download>