

# Gun Trust Update: New Rules & Regulations You Need to Know About

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# Upcoming Webinars

## from Gassman, Crotty & Denicolo, P.A.

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**Cornflakes & Estate Planning Mistakes**  
with Alan S. Gassman  
Saturday, November 5, 2016 at 9:00 AM EDT



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Stephanie at [stephanie@gassmanpa.com](mailto:stephanie@gassmanpa.com).

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### SAVE THE DATE!

Please mark your calendars for the Saturday, February 11<sup>th</sup>, 2017 Professional Acceleration Workshop with Dr. Srikumar Rao and Alan Gassman and Stetson Law School in Gulfport, Florida. Dr. Srikumar Rao will also host a Development Workshop at Stetson the following Sunday, February 12<sup>th</sup>.

Dr. Rao, in his celebrated workshop, shows you how to virtually eliminate stress from your life. He has helped thousands of successful entrepreneurs and executives, and his methods are effective because they do not attack stress directly. He shows you how mistaken you might be in your thinking about what really causes stress in your life and how to change your mental models to align with your new understanding.

Don't miss this powerful workshop! Contact Alan Gassman at [agassman@gassmanpa.com](mailto:agassman@gassmanpa.com) for more information or to RSVP.

# Sean Healy Biography



Sean Healy, Esquire is an attorney in private practice. He is the General Counsel for the Texas State Rifle Association, a member of the American Arbitration Association's Panel of Mediators, and an arbitrator for the Better Business Bureau and AAA. His law practice focuses on business law, civil litigation, family law, representation of property owners' associations, and firearms and aviation matters.

Sean is a concealed handgun instructor and an NRA-Certified Instructor and Training Counselor, with certifications in Pistol, Rifle, and Shotgun; Muzzleloading Pistol, Rifle, and Shotgun; Metallic Cartridge Reloading and Shotshell Reloading; Home Firearms Safety; and Personal Protection in the Home. He is a Chief Range Safety Officer and a nationally-trained instructor trainer for Texas 4-H Shooting Sports. He is also qualified as a force-on-force instructor.

He testified before a Senate committee as the expert witness for NRA and TSRA regarding House Bill 823, the predecessor to the Motorist Protection Act. He now serves as Election Volunteer Coordinator for the National Rifle Association Institute for Legislative Action, covering Texas Congressional District 1. He has given numerous speeches, continuing legal education presentations to judges and lawyers, and televised interviews on firearms matters and other subjects, including an extensive interview that aired on CNN.

Sean is a life member of the National Rifle Association and Second Amendment Foundation. He served for eighteen years on the East Texas Friends of NRA Committee. He also served on the Friends of NRA State Fund Committee for North Texas for thirteen years. Sean has participated in over 150 firearms competitions, including matches organized by the United States Practical Shooting Association (USPSA), International Defensive Pistol Association (IDPA), and Steel Challenge Association. He is also a private pilot and a Panel Attorney for the Aircraft Owners and Pilots Association.

Sean received his Bachelor of Arts degree in Psychology and Communications Studies from the University of Kansas, where he was a Summerfield/Watkins Berger Scholar and a National Merit Finalist. He then received his Juris Doctor degree from the University of Kansas School of Law.

# Crimes with Machine Guns

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From [http://www.guncite.com/gun\\_control\\_gcfullau.html](http://www.guncite.com/gun_control_gcfullau.html)

- Two documented murders with legal machine guns since 1934. One was by a police officer.
- Four police officers killed with illegally owned machine guns between 1983 and 1992, out of a total of 713 officers killed.
- ATF Director testified to Congress in 1987: “Registered machine guns which are involved in crimes are so minimal so as not to be considered a law enforcement problem.”

# Summary of Legal Principles

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- 1. Possession of NFA Firearms: The NFA prohibits any person other than the registered owner to possess an NFA firearm (machine gun, silencer or suppressor, short-barreled rifle or shotgun, destructive device, or "any other weapon").
- 2. Application and Transfer Tax: To legally transfer an NFA firearm, one must submit an application, pay the tax (\$200.00, except for "any other weapon" the tax is \$5.00), and have the application returned by ATF with a tax stamp. Beginning on July 13, 2016, each application must include additional information on "Responsible Persons, and the chief local law enforcement officer (CLEO) must be notified of each application.
- 3. Trusts are Persons Too: The Tax Code (which includes the NFA) defines "person" to include trusts, corporations, and other business entities, so they can own NFA firearms.
- 4. Prohibited Persons: It is illegal for any Prohibited Person (felons and nine other categories of people) to possess any type of firearm or ammunition.
- 5. State Law: State law may be more restrictive, or even prohibit ownership of NFA firearms.
- 6. Trust Requirements: A trust or business entity owning NFA firearms must be legally valid, and remain in existence during the entire time it has NFA firearms registered in its name. It should be drafted with specific provisions to meet legal requirements for owning NFA firearms.

# Definitions of NFA Firearms

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26 U.S.C. § 5845

- Machine guns
- Suppressors and silencers
- Short barreled rifles (and weapons made from a rifle)
- Short barreled shotguns (and weapons made from a shotgun)
- Destructive devices
- “Any other weapon”

# Prohibited Weapons

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Texas Penal Code § 46.05

- Explosive weapons
- Machine guns
- Short-barrel firearms
- Firearm silencers
- Switchblade knives
- “Knuckles”
- Armor-piercing ammunition
- Chemical dispensing devices
- Tire deflation devices



# Definitions of “Firearm”

## Under NFA and GCA

		Gun Control Act	
		Firearm	Not a firearm
National Firearms Act	Firearm	<u>“Firearm” under both laws:</u> <ul style="list-style-type: none"> <li>* Machine guns</li> <li>* Short barreled rifles (barrel &lt; 16" or overall &lt; 26")</li> <li>* Short barreled shotguns (barrel &lt; 18" or overall &lt; 26")</li> <li>* Destructive devices that are actual firearms</li> <li>* Weapons made from a shotgun or rifle</li> <li>* "Any other weapon"</li> <li>* Guns that can be readily converted to machine guns</li> </ul>	<u>“Firearm” only under NFA:</u> <ul style="list-style-type: none"> <li>* Suppressors and silencers</li> <li>* Suppressor parts</li> <li>* Machine gun parts and receivers</li> <li>* Destructive devices that are not actual firearms (bombs, rockets, missiles, mines, etc.)</li> </ul>
	Not a firearm	<u>“Firearm” only under GCA:</u> <ul style="list-style-type: none"> <li>* Normal pistols</li> <li>* Normal rifles</li> <li>* Normal shotguns</li> </ul>	<u>Not “firearms” under either law:</u> <ul style="list-style-type: none"> <li>* Antique firearms</li> <li>* <del>Airguns</del></li> <li>* any device (other than a <del>machine gun</del> or destructive device) designed as a weapon but which the Secretary finds is primarily a collector's item and is not likely to be used as a weapon</li> </ul>

# Prohibited Persons

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18 U.S.C. Sec. 922(g)

- Convicted felons.
- Fugitives from justice.
- Unlawful drug users or addicts.
- Persons adjudicated as mental defective, or involuntarily committed (unless rights restored).
- Illegal aliens/persons with nonimmigrant visas.
- Persons with dishonorable discharges.
- Persons who renounced their US citizenship.
- Persons subject to protective orders, etc.
- Persons convicted of misdemeanor crimes of domestic violence.

# Other Prohibited Actions

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## Under federal law

- Persons under *indictment* for felonies can't ship, transport, or receive guns or ammo. 18 U.S.C. § 922(n).
- Persons under 18 years of age can't possess handguns or ammo that is only usable in handguns except with written parental permission or certain activities. 18 U.S.C. § 922(x).
- It is not a conviction if it was expunged, set aside, pardoned, or civil rights restored, unless the restoration prohibits the person from possessing guns. 18 U.S.C. § 921 (a)(33)(A).
- It is a crime to sell or dispose of guns or ammo, knowing or having reasonable cause to believe the transferee is a prohibited person. 18 U.S.C. § 922(d).



# ATF Form 4

## Revised 2016, Page 3

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 4 application for each Responsible Person.

Full Name	Full Name
_____	_____
_____	_____
_____	_____
_____	_____

20. Method of Payment (Check one) (See instruction 2i) (If paying by credit/debit card, complete the sections below)

Check (Enclosed)    Cashier's Check or Money Order (Enclosed)    Visa    Mastercard    American Express    Discover    Diners Club

Credit/Debit Card Number (No dashes)	Name as Printed on the Credit/Debit Card	Expiration Date (Month & year)
_____	_____	_____

Credit/Debit Card Billing Address:	Address:		
	City:	State:	Zip Code:
	_____	_____	_____

Total Amount:
\$ _____

I Authorize ATF to Charge my Credit/Debit Card the Tax Amount.

Signature of Cardholder	Date
_____	_____

Your credit/debit card will be charged the above stated amount upon receipt of the application. The charge will be reflected on your credit/debit card statement. In the event your application is NOT approved, the above amount will be credited to the credit/debit card noted above.

### 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 of the Paperwork Reduction Act of 1995. The information you provide is used in applying to transfer serviceable firearms taxpaid. Data is used to identify transferor, transferee, and firearm, and to ensure legality for transfer under Federal, State and local laws. The furnishing of this information is mandatory (26 U.S.C. § 5812).

# Trusts - Definitions

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## Texas Property Code Sec. 111.004

- Trust - A fiduciary relationship by which the trustee holds equitable title to property for the benefit of another person.
- Settlor (or Grantor or Trustor) - A person who creates a trust or contributes property.
- Trustee - A person holding property in trust (for the benefit of another).
- Beneficiary - A person for whose benefit property is held in trust.

# Powers of Trustees

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Standard living trust form

- Make distributions.
- Conserve trust property.
- Invest in securities.
- Invest in margin accounts.
- Invest in real estate and personal property.
- Invest in Oil, Gas and Other Mineral Interests.

# Powers of Trustees - cont.

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## Standard living trust form

- Invest in undivided interests.
- Invest in partnerships.
- Organize or continue businesses.
- Select and retain investments.
- Hold title to investments.
- Make loans.



# Powers of Trustees - cont.

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## Standard living trust form

- Vote stock.
- Protect trust estate.
- Manage notes, mortgages, and foreclose.
- Maintain insurance.
- Employ and compensate agents and representatives.
- Establish and maintain reserves.

# Powers of Trustees - cont.

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## Standard living trust form

- Determine income and corpus.
- Execute documents.
- Engage in transactions with beneficiaries and fiduciaries.
- Withhold money for taxes and obligations.
- Exercise any power under Texas Trust Code.

# Powers of Trustees - cont.

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## Standard living trust form

- Sell, exchange, alter, mortgage, pledge or otherwise dispose of trust property; borrow any sum believed by the Trustee to be necessary or desirable for protecting the trust or any part thereof, making any income or corpus payment or distribution, or for any other purpose which in the Trustee's opinion may be appropriate; pay all reasonable expenses; execute obligations, negotiable and nonnegotiable; join in, by deposit, pledge, or otherwise, any plan of reorganization or readjustment of any investments of the trust, and vest in a protective committee or other legal entity such power as in the Trustee's opinion may be desirable; and sell for cash and/or credit all or any part of the trust property.

# Features of NFA Trusts

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Your job as a lawyer

- Drafted after thorough consultation.
- Based on standard living trust form.
- Legally valid. No “merger.”
- Consistent with client’s estate plan.
- Educate Trustees about legal requirements.
- Limit Trustees’ power to transfer NFA firearms.

# Features of NFA Trusts - cont.

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Your job as a lawyer

- Minimize civil liability to beneficiaries. Does not confer limited liability like a corporation.
- Maximize client's control of trust and assets.
- Flexible.
- Address as many “what if’s” as possible.
- Maximize privacy.
- Include additional forms.

# NFA Corporations

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- Generally treated by ATF like NFA trusts.
- Limited liability.
- Require franchise tax report and public information report to be filed annually.
- Charter forfeited if not filed, resulting in NFA firearms being possessed unlawfully.
- Reduced privacy due to public information.

# Privacy

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Public info on corporations, from Texas Comptroller

- <https://ourcpa.cpa.state.tx.us/coa/Index.html>
- Name and address of corporation
- Status (Active, not in good standing, or other)
- Registered agent's name and address
- Date of registration
- Names and addresses of officers and directors

# Privacy - cont.

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Public info on corporations, from Texas Secretary of State

- <https://direct.sos.state.tx.us/acct/acct-login.asp> (requires subscription)
- Search by entity name, individual, agent, assumed name, etc.
- Filing history
- All publicly filed documents (Certificate of Formation, Public Info Reports, Change of Registered Agent or Office, Articles of Amendment, Dissolution, etc.)
- Assumed names
- Associated entities



# ATF Docket 41F

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Effective July 13, 2016

- **Responsible Persons:** All “responsible persons” of trusts and business entities who can possess its NFA firearms or make significant decisions must complete a “Responsible Person Questionnaire” and submit fingerprints and photographs to ATF.
- **CLEO Notification:** Recipients and RP’s must notify their chief local law enforcement officer (“CLEO”) of the application. The CLEO cannot prevent the form from being processed.
- **Estates:** Personal representatives may possess decedent’s NFA firearms “during the term of probate.” Codifies ATF’s previous informal policy.
- **Exemption:** Trusts and entities which had an ATF application approved in the last 24 months don’t have to submit RP Questionnaires, fingerprints, or photos if the info has not changed.
- **Regulation does NOT require ATF permission for each change of trustee (or corporate officers or directors).** RP info is only submitted with an application.

# Electronic filing

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ATFOnline.gov

- ATF established e-filing system 7/10/13.
- ATF went from 9 examiners to 26.
- Initially this sped up the system and cut down on the backlog.
- System had numerous problems, now is not available for Form 4 or Form 3 (dealer-to-dealer transfers).
- ATF is working on “eFiling 2.0.” Stay tuned.

# Drafting NFA Trusts

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- Consultation: Conduct an adequate consultation with the client. Determine what assets the trust will hold. Determine the client's knowledge of guns and gun laws. Consider the client's overall situation, and general estate planning needs.
- Education: Thoroughly educate the client (and to the extent possible, the other trustees) regarding the legal principles and requirements for acquiring, possessing, and transferring NFA firearms.
- Basics: Start with the standard form, then draft a valid trust. Adapt your NFA trust form to its intended purpose. Rewrite every sentence with the legal principles in mind. Create a structure that will prevent the client and Trustees from breaking the law.
- Customize it: Adapt the trust to your clients' specific needs.
- Protection: Limit civil liability, criminal exposure, and forfeiture issues as much as possible.
- Control: Maximize client's control of the trust and assets.
- Flexibility: Maximize flexibility of the trust.
- Continuity: Provide continuity.
- Privacy: Maximize privacy.

# Ancillary Documents

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## Should be included with Trust

- Letter of explanation. Educates the client and others about the legal principles. Warns the client about unlawful acts, and protects the client and attorney.
- Removal of Trustee. May be needed immediately, for instance if a Trustee becomes a prohibited person.
- Appointment of Additional (or Successor) Trustee.
- Change of Beneficiary: To allow the Settlers to add, subtract, or substitute beneficiaries.
- Assignment: To add property to trust. Similar to corporate minutes.
- Declaration of Trust: For third parties (such as banks) that do not need to know all the technicalities of the trust, or the fact that it owns guns.

# Benefits of NFA Trusts

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## *After New Rule 41F is Effective*

- Protection from prosecution: Friends and family members appointed as trustees may possess and have access to NFA firearms without fearing arrest or prosecution for possession of an NFA firearm by someone other than the registered owner. Trust and documents can educate trustees and beneficiaries about legal requirements.
- Use of and access to NFA firearms: Any trustee can lawfully possess and use the NFA firearms. An individually owned NFA firearm may only be lawfully possessed by the registered owner.
- Tax-free transfer: Control may be transferred by changing trustees instead of submitting Form 4 and paying the tax for a transfer through ATF).
- Continuity: A gun trust allows continuity of control over NFA items, even if individuals pass away or cease to be involved, by appointing other persons as trustees.
- Estate planning: Gun owners can separate firearms from the rest of the estate, treat them as family heirlooms, and preserve them for future generations.
- Compliance: The trust should provide detailed instructions to heirs and beneficiaries on how to comply with the law. They are probably not as knowledgeable as the settlor.

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