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Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2385

Date: 27-Jan-16

From: Steve Leimberg's Estate Planning Newsletter

Subject: **FLASH Alan Gassman, Lee-Ford Tritt, Sean Healy, Jonathan Blattmachr, Seaver Brown & Travis Arango: New Title II Firearm and Gun Trust Laws Set to Impact Thousands**

“Many estate planners are not aware of the stringent federal, state and local laws applicable to the possession, ownership, transfer and control of Title II firearms. Moreover, new Federal regulations that were issued on January 4, 2016 (effective July 13, 2016) add to the uncertainty and level of complexity in advising clients who possess or want to purchase or transfer such firearms. Therefore, an understanding of federal, state and local firearm laws and regulations is imperative for comprehensive estate planning for your clients who possess these items.

For many years, so-called Gun Trusts were not required to submit fingerprints and photographs when purchasing, transferring, or making Title II firearms. These Gun Trusts enable the settlor to select as many legitimate Trustees as desired to share in the ability to use and control Title II firearms that are registered under the Gun Trust. In addition, there can be multiple beneficiaries and automatically succeeding ownership, which is not permitted for individually registered Title II firearms.

In order to transfer or make a Title II firearm as a Gun Trust before July 13, 2016, only one trustee of a multiple trustee Gun Trust will need to comply with the Bureau of Alcohol, Tobacco, Firearms, and Explosive's ("ATF") application rules, but beginning on July 13, 2016, all new trusts, and presumably trusts that add new Title II items, will be required to have all Trustees register under the new filing requirements, which will include: providing fingerprinting, photographs, submittal to background checks and written notification of the Title II firearm(s) or item(s) and all trustee names with their local chief law enforcement officer.

Despite the changes to current Gun Trust regulations that 41F will enact, some commentators wrongly assume that it means the end to Gun Trusts. However, the authors remain steadfast in their belief that for those who remain interested in genuine estate planning techniques designed to protect friends and family members, Gun Trusts will continue to provide benefits.”

Alan Gassman, Lee-Ford Tritt, Sean Healy, Jonathan Blattmachr, Seaver Brown and Travis Arango provide **LISI** members with important and timely commentary on the Bureau of Alcohol, Tobacco, Firearms, and Explosive's long-awaited final rule 41F that impacts Title II firearms and Gun Trusts.

Alan S. Gassman JD, LLM, practices law in Clearwater, Florida with Christopher Denicolo JD, LLM and Kenneth J. Crotty, JD, LLM. They publish numerous articles and books in publications such as BNA Tax & Accounting, Estate Planning, Trusts and Estates, Interactive Legal and their own Haddon Hall Publishing. Mr. Gassman and the below authors have written “The Legal Guide to NFA Firearms and Gun Trusts,” which is now available on Amazon, and also as a publication of Interactive Legal. The Alan Gassman Channel at Interactive Legal has recently opened, and features many books and resources, including the above book and many Florida and Federal based materials, forms and resources.. Alan is also co Chairman of the Florida Bar annual Wealth Protection Conference which will take place in Miami Florida on April 14th and 15th this year as an advanced program and will feature many well-known authorities, including Barry Engle, Denis Kleinfeld, Howard Fisher, Jerry Hesch and more. His e-mail address is agassman@gassmanpa.com

Lee-Ford Tritt NYU School of Law, J.D., LL.M. (taxation), is a law professor at the **University of Florida College of Law** and **Director of the Center for Estate Planning**. Lee-ford is an Academic Fellow of the American College of Trust and Estate Counsel. In addition, Lee-ford serves as Vice Chair of the American Bar Association RPTe Law Section’s Outreach Committee as well as a Chair of a committee for the Non-Tax Estate Planning Considerations Group. He serves as Vice-President of the American Association of Law Schools’ Trusts & Estates Division as well as an advisor for the Committee on an Act on the Recovery of Stolen Cultural and Artistic Property for the National Conference of Commissioners on Uniform State Laws. Before joining UF College of Law in 2005, Lee-ford spent eight years in the New York City trusts and estates departments of Davis, Polk & Wardwell and Milbank, Tweed. Lee-ford’s strong commitment to students and the practice of law has helped earn him Professor of the Year for the academic years 2008/2009; 2009/2010; 2010/2011; 2011/2012, and 2012/2013. In addition, he received the University of Florida’s Presidential Award for Excellence in Education in 2011 and the University’s Impact Award in 2012. Lee-ford has published several books and many academic articles, including two BNA Tax Management Portfolios. He is frequently cited as an authority in newspaper, magazine, and academic articles. Lee-ford also is a frequent lecturer across the country on various estate planning and tax issues, including presentations for the ABA’s RPTe Law Section’s annual meetings, the ABA’s Tax Section’s annual meetings, the Heckerling Institute on Estate Planning, the Notre Dame Tax and Estate Planning Institute, and Bloomberg BNA Tax & Accounting.

Sean Healy is an attorney in private practice. He has served as general counsel for two congressional campaigns, and as National Corporate Counsel for American Mensa. He served as Course Director of the State Bar of Texas Firearms Law Seminar in 2012 and 2013, and spoke at the seminar in 2003, 2004, 2014, and 2015. He is the lead author of “The Legal Guide to NFA Firearms and Gun Trusts” (2016), authored a chapter on NFA trusts in “Texas Perspectives on Firearms Law” (2015), and is the NFA Trusts Editor for Interactive Legal, a company that provides knowledge, support, and documents to estate planning attorneys. He is the General Counsel for the Texas State Rifle Association. He is a mediator for civil, family law, and child protective cases, a member of the American Arbitration Association’s Panel of Mediators, and an arbitrator for the Better Business Bureau and AAA. During law school he served as an appellate advocacy instructor, and he previously served as a college instructor in business law.

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

force instructor. Speeches and Publications: Mr. Healy 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.

Jonathan Blattmachr, JD is often referred to as “the best estate planner in America,” and practiced law for many years with Milbank Tweed in New York City, while authoring numerous books and pioneering a number of very effective and now famous estate tax planning techniques. He has spoken at tax and estate planning conferences throughout the US, and is presently the **Director of Estate Planning** for the **Alaska Trust Company**, a **Director** at **Pioneer Wealth Partners, LLC**, a wealth management firm in New York City, and with Dallas Attorney **Mike Graham**, is **Editor in Chief** at **Interactive Legal**, which offers document assembly and artificial intelligence systems for lawyers.

Seaver Brown is a law clerk at **Gassman, Crotty & Denicolo, P.A.** in Clearwater, Florida. He graduated with his Juris Doctorate from Florida Coastal School of Law, and obtained his Masters in Business Administration from Jacksonville University. He attended the University of South Carolina where he played football and graduated with a degree in Business Administration.

Travis Arango is a law clerk at **Gassman, Crotty & Denicolo, P.A.** in Clearwater, Florida. He graduated with his Juris Doctorate from the Stetson University College of Law, and a BA in economics from the University of South Florida. He has been the author of numerous **LISI** newsletters and articles.

Sean Healy, Alan Gassman, Lee-Ford Tritt, Jonathan Blattmachr, Seaver Brown and **Travis Arango** have written “**The Legal Guide to NFA Firearms and Gun Trusts**” which is now available on Amazon, and as a publication of Interactive Legal. Interactive Legal has also created a Gun Trust module that is available to help attorneys develop plans individually tailored to each client’s unique circumstances. Additional information about the Gun Trust Book and the separate module are available by emailing Alan@GassmanPA.com or JBlattmachr@hotmail.com. The authors thank gun law expert and weapon instructor **Sean Healy** for his leadership in co-authoring this work.

Here is their commentary:

EXECUTIVE SUMMARY:

Many estate planners are not aware of the stringent federal, state and local laws applicable to the possession, ownership, transfer and control of Title II firearms, which include: suppressors (silencers),^[1] short-barreled shotguns,^[2] short-barreled rifles,^[3] machine guns,^[4] destructive devices^[5] and certain other weapons,^[6] Moreover, new Federal regulations that were issued on January 4, 2016 (effective July 13, 2016) add to the uncertainty and level of complexity in advising clients who possess or want to purchase or transfer such firearms. In addition, Title I firearms (or, traditional firearms) are worthy of special attention in estate planning matters as well.^[7] Therefore, an understanding of federal, state and local firearm laws and regulations is imperative for comprehensive estate planning for your clients who possess these items.

For many years, so-called Gun Trusts were not required to submit fingerprints

and photographs when purchasing, transferring, or making Title II firearms. In addition, firearm enthusiasts, collectors and other owners can share in the use and control of their Title II firearms by placing them into an appropriately drafted Gun Trust. These Gun Trusts enable the settlor to select as many legitimate Trustees as desired to share in the ability to use and control Title II firearms that are registered under the Gun Trust. In addition, there can be multiple beneficiaries and automatically succeeding ownership, which is not permitted for individually registered Title II firearms.

In order to transfer or make a Title II firearm as a Gun Trust before July 13, 2016, only one trustee of a multiple trustee Gun Trust will need to comply with the Bureau of Alcohol, Tobacco, Firearms, and Explosive's ("ATF") application rules, but beginning on July 13, 2016, all new trusts, and presumably trusts that add new Title II items will be required to have all Trustees register under the new filing requirements, which will include: providing fingerprinting, photographs, submittal to background checks and written notification of the Title II firearm(s) or item(s) and all trustee names with their local chief law enforcement officer ("CLEO"). Until July 13, 2016, Gun Trusts can acquire Title II firearms without consent from or notification to a CLEO.^[8] Whereas individuals acquiring these items must get advanced consent from a CLEO before acquiring ownership, this requirement will change to a notification without permission procedure for individuals after July 13, 2016.^[9]

FACTS:

Under the National Firearms Act of 1934 ("NFA"), the federal government can regulate the ability of an individual, trust, or legal entity to purchase, transfer, and/or manufacture certain types of firearms and items. These firearms and items are typically and often interchangeably referred to as Title II and/or NFA firearms.^[10] The primary purpose behind the enactment of this rule was to discourage the spread of certain types of firearms to the general public, and thus curtail the rampant gang-related crime occurring at the time. In doing so, Congress imposed a stamp tax (\$200 for all Title II firearms, and \$5.00 for "Any Other (Title II) Weapon") upon the transfer or manufacture of Title II firearms, and did not index this stamp tax for inflation. The NFA has also required all individual applicants to provide fingerprints, photographs, a background check and the approval of a chief law enforcement officer, in addition to the \$200 stamp tax.^[11]

Most of the advice regarding Gun Trusts and Title II firearms can be boiled down to some key legal principles:

1. The NFA makes it a federal felony for any "person"^[12] other than the registered owner, to possess a Title II firearm (machine gun, silencer or suppressor, short-barreled rifle or shotgun, destructive device, or "any other weapon").
2. Currently, the NFA requires submission of the appropriate ATF application, payment of the \$200 stamp tax, and individual applicants must receive the *approval* of the application by a CLEO *before* a Title II firearm can be transferred or made. After July 13th, 2016 both individuals and Gun Trusts that submit *new* applications must only notify a CLEO of their application, in addition to paying the \$200 per gun tax and providing fingerprints and photographs of all responsible persons, which will include all trustees then serving under a Gun Trust.
3. It is illegal for any Prohibited Person^[13] (felons and nine other categories of people) to possess any type of firearm or ammunition. This includes both Title I ("normal" rifles, shotguns, and handguns), and Title II firearms. It is also illegal for any

“person,” other than the registered individual or the trustees of a Gun Trust to possess or control a Title II firearm. Allowing anyone other than the registered owner to have the ability to obtain physical control of the firearm or item is a felony, which does not require intent or actual possession, and is punishable by ten years imprisonment plus a monetary penalty of up to \$250,000! For example, simply leaving a Title II silencer in the trunk of a car where your spouse has a key and drives the car is an example of a technical violation of this law. This is why all Title II firearms and items should be stored in a locked gun safe in which only those registered to control or possess them have the key or combination.

4. The laws of each state may also restrict the ability of individuals, trusts or other legal entities from having ownership, possession and use of guns, including Title II firearms. For example, in New York and California a Title II firearm may not be possessed even if eligible or appropriate under Federal law.

5. A trust that owns Title II firearms must be drafted to meet many requirements, which include prohibiting the trustees from distributing Title II firearms to individuals not registered or who are prohibited for any one of ten different reasons, which can violate federal, state, county or city local laws and ordinances. This could result in legal malpractice and/or an ethical violation, not to mention long prison terms.

As noted above, on January 4th, 2016 the ATF published the long-awaited final rule 41F regarding Title II firearms and Gun Trusts. Fortunately for existing and compliant Gun Trusts, this final rule “is not retroactive and . . . will not apply to applications that are in ‘pending’ status, or to previously approved applications for existing legal entities and trusts holding Title II firearms and items.”^[14] This means that all applications to transfer or make a Title II firearm submitted before July 13th, 2016 will not have to comply with the final rules.

The most important changes under the final rules, which were published with over 200 pages of explanation, questions and answers, and other commentary, are summarized below.

Responsible Person Defined

A new term and battery of rules under this new regulation revolves around the words “Responsible Person,” which denotes a person or entity that must comply with the new Federal laws and rules. The regulations define a responsible person as follows:

In the case of an unlicensed entity, including any trust, partnership, association, company (including any 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 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 powers or authorities enumerated in this section.”[\[15\]](#)

Until the new rule goes into effect on July 13, 2016, a Gun Trust that submits an application to make or transfer a Title II firearm is not required to include fingerprints or photographs; however, the individual submitting the application on behalf of the Gun Trust (typically a trustee) is required to submit to a background check.[\[16\]](#) In addition to these requirements, Gun Trusts must to pay the \$200 per gun tax stamp upon each acquisition, and, unlike individual owners, do not need to obtain CLEO approval for Title II items. On the other hand, individual owners acquiring these items before July 13, 2016 will be required to obtain such CLEO approval, and may therefore prefer to wait to acquire items after July 13, 2016, when such individual must simply notify the appropriate CLEO of the acquisition.

When the final rule goes into effect on July 13th, 2016, all current responsible persons of a Gun Trust will be required to include in any subsequent applications to make or transfer Title II firearms their fingerprints and photographs, and will have to submit an NFA Responsible Person Questionnaire.[\[17\]](#) However, the final rule also provides an exception to this requirement if the Gun Trust has had an application approved to make or transfer a Title II firearm within the preceding 24 months, “and there has been no change to the documentation previously provided.” The Gun Trust must provide certification of this prior approval by “identifying the application for which the documentation had been submitted by form number, [firearm] serial number, and date approved.”[\[18\]](#)

There has never been a requirement for a trust or corporation to notify the ATF of a change in responsible persons. Prior to the final rules issued this month, Proposed Regulation 41P stated that the ATF wanted to impose that requirement, but was not intending to do so through 41P. However, the final rules did not impose such a requirement. Rather, the ATF will continue to require disclosure only when a new ATF application has been submitted.

To help explain this new exception that will only apply when a new ATF application has been submitted after July 13, 2016, we have provided three hypothetical situations, which assume that a Gun Trust was formed and an application approved on August 1, 2016, after the final rule 41F has become effective:

1. The Trustees decide to submit an application to purchase a Title II firearm on December 1, 2016. Since the first application was approved, the trustees have remained unchanged and none of their information has changed. Here, they are not required to include the Responsible Person Questionnaire for all responsible persons, because the information has not changed and it is within 24 months of the approval of a previous application. In order to take advantage of this exception, however, they must provide certain information to ATF.[\[19\]](#)
2. The Trustees decide to submit an application to purchase a Title II firearm on December 1, 2016. Since the first application was approved, they have appointed a new trustee. They must include the Responsible Person Questionnaire for all responsible persons because the information has changed.
3. The Trustees decide to appoint a new trustee on December 1, 2016, but do not wish to acquire or make another NFA firearm at this time. They are not required to submit any form

to the ATF, or to notify the ATF of the change in trustees.

However, if they change the place where the Title II firearms are stored, or decide to purchase another Title II firearm, they must notify the ATF.

Chief Law Enforcement Officer Notification

One significant departure from the Proposed Regulation 41P was that Gun Trusts were going to be required to obtain a CLEO's approval to transfer or make a Title II firearm, as is currently the case for individual applicants. Many commentators feared this supposed new requirement within the Proposed Regulation would have acted as a *de facto* ban on the ability to make or transfer Title II firearms, especially as it has become nearly impossible for individual applicants in many jurisdictions to obtain such approval. The final rule will only require applicants to notify the applicable CLEO, which was a surprise to many experts.

Executors Will Be Able to Legally Possess and Control Title II Firearms Legally Registered to a Decedent During Probate Proceedings

The final, notable change brought about by the final rule was the introduction of a new section clarifying "that the executor, administrator, personal representative, or other person authorized under State law to dispose of property in an estate may possess a firearm registered to a decedent during the term of probate without such possession being treated as a transfer." Prior to this new section it was possible, albeit highly unlikely, for an executor to face criminal penalties and fines for possessing a decedent's Title II firearm during probate.

The final rule also specifies that any transfer of a Title II firearm to a beneficiary of a Gun Trust will be tax-free, and thus avoid the \$200 per gun transfer tax. However, the appropriate ATF Form must still be completed and accepted along with fingerprints, photographs and CLEO notification.

COMMENT:

Gun Trusts will continue to be the only safe way to allow for multiple persons to share in the use and possession of Title II firearms and other items. They also operate as the most efficient and effective way to have ownership of these assets pass without exposing fiduciaries and intended inheritors to the penalties associated with violating the law, and the inconvenience of applying to change title on the death of a direct or beneficial owner. The factors that apply with respect to this are as follows:

1. Possession by multiple persons: A Gun Trust allows multiple trustees to lawfully possess and use the firearms held by the trust. If the Title II firearm is not registered to a Gun Trust but is instead registered to an individual owner, only that individual can legally use and possess the firearm.
2. Protection from prosecution: A Gun Trust protects other persons with access to the Title II firearms from arrest, prosecution, and conviction for having possession (or constructive possession) of them. Appointing those persons as trustees gives them the legal right to possess the trust property. A Title II firearm held in the name of an individual may only be lawfully possessed by that individual, which can place the owner's spouse, roommates and family members at risk. Furthermore, Gun Trusts can be drafted such that if a current trustee, successor trustee or beneficiary ever become a prohibited person (as defined in footnote 13 below), they are automatically disqualified from possessing, controlling, using or receiving any firearms held by the trust. This not only ensures that they themselves do not face the severe criminal penalties, but also

every other person associated with the Gun Trust.

3. CLEO notification instead of approval: While this is clearly a marked improvement from the nearly impossible task of obtaining a CLEO's approval, several commentators have expressed concern over the sensitivity of information that is provided to your local CLEO. Such as, information regarding the types of Title II firearms you own, confidential tax information within the ATF Application, and personal information such as your home address or address in which the Title II firearms are stored.

4. Continuity: If one or more of the trustees passes away, or ceases to be a trustee, the trust continues to exist. Control can be passed on by appointing other persons as trustees. In addition, if it ever becomes illegal to transfer Title II firearms (by a change in state, local or federal law), a trust may allow the principals to avoid losing the items. This is because the trust will continue to exist, and no transfer will be necessary, although the trustees may change. Of course this depends on the exact language of any changes to the law, which is impossible to predict.

5. Tax and change of ownership/registration savings: Normally, transfer of a Title II firearm requires payment of a \$200 stamp tax. Transfers through inheritance are treated as tax-free transfers, but every other transfer requires payment of this tax. Because control of trust property can be shifted by appointing other trustees, it is accomplished without the need for an actual "transfer" and therefore there is no need to submit an ATF form or pay an additional tax. This saves both time and money.

6. Twenty-four month notification rights that are not available for individual owners: Once a trust is properly registered, new Trustees can be added to have immediate rights to possession and use, but need not register unless or until the Gun Trust acquires new Title II firearms or changes the location in which they are stored. This treatment is significantly different from that of individual owners, who must be registered and approved before receiving ownership or control.

7. Estate Planning: A Gun Trust operates as a legitimate estate planning tool to determine the disposition of all types of firearms (Title I and Title II), upon the death or incapacity of a settlor, and allows the settlor to properly pass those firearms to future beneficiaries in a manner that protects them from any potential criminal prosecution. Within a properly drafted Gun Trust, there will be very detailed instructions on what to do in certain situations involving the death or incapacity of the settlor/trustee(s).

8. While the law will continue to allow LLC's and other entities to have managers or other officers who can have shared possession and control of firearms, and can basically follow the rules described above that apply to Gun Trusts and trustees, complex Operating Agreements will need to be put into place to assure appropriate successorship and compliance with the law, and the lapse of the charter for a corporate entity will cause a defacto and irreversible felony event, which will expose the LLC owners and officers to criminal prosecution for the possession of unregistered Title II firearms.

Conclusion

Despite the changes to current Gun Trust regulations that 41F will enact, some commentators wrongly assume that it means the end to Gun Trusts. However, the authors remain steadfast in their belief that for those who remain interested in genuine estate planning techniques designed to protect friends and family members, Gun Trusts will continue to provide benefits.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Alan Gassman

Lee-Ford Tritt

Sean Healy

Jonathan Blattmachr

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CITATIONS:

[1] “The terms ‘firearm silencer’ and ‘firearm muffler’ mean any device used for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.”

[2] 26 U.S.C. § 5845(a). This includes shotguns with a barrel or barrels less than 18 inches in length, or an overall gun length less than 26 inches.

[3] 26 U.S.C. § 5845(a). This includes rifles with a barrel or barrels less than 16 inches in length, or an overall gun length, including retractable stocks less than 26 inches.

[4] 26 U.S.C. § 5845(b). This includes, “any weapon which shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger.” The term also includes “any part . . . or combination of parts . . . intended for use in converting a weapon into a machine gun.” This includes not only guns which continue firing as long as the trigger is held back, but also selective fire guns, which can fire in semi-automatic mode (one bullet per trigger pull), fully automatic mode (as many bullets as possible with one trigger pull), and “burst fire” guns (which usually fire three rounds each time

the trigger is pulled). In other words, a machine gun is any gun that is not solely semi-automatic.

[5] 26 U.S.C. § 5845(f)(1) – (3). “Destructive device means (i) 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; (ii) any type of weapon by whatever name known which will...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 (greater than .50 caliber), except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; BUT (iii) does not include (A) any device which is neither designed nor redesigned for use as a weapon; (B) 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; (C) surplus ordnance sold, loaned, or given by the Secretary of the Army; or any other device which the Secretary finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes.”

[6] 26 U.S.C. § 5845(e). This includes, “any weapon or device capable of being concealed on the person from which a shot can be discharge 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.” Common examples include smooth-bore pistols, pen guns, cane guns, and hand guns with a vertical fore-grip.

[7] Title I firearms are traditional guns, which include “long” rifles, normal-barreled shotguns (which are typically used for hunting or skeet and trap shooting), and non-automatic handguns (although many states and cities require a special license to possess and/or carry a handgun). The difference between a Title II regulated “machine gun” (automatic or three-round burst) item, and a semi-automatic pistol or rifle is that a Title II regulated automatic gun will fire two or more shots on the single pull of the trigger. A one shot per trigger pull pistol, or non-short barreled one shot per trigger pull rifle will not be considered a federally regulated Title II item.

[8] Individual applicants must obtain a chief law enforcement officer’s approval. In doing so, the chief law enforcement officer states that they “have no information indicating that the applicant will use the firearm or device described on this application for anything other than lawful purposes; and that they have no information that the receipt or possession of the firearm or device would place the applicant in violation of State or local law.

[9] See, 27 C.F.R. § 479.84(c).

[10] Several commentators also refer to these Title II/NFA firearms and items as “Class 3” firearms, which refers to the Special Occupational Tax stamp that weapon dealers who sell such firearms and items are required to pay.

[11] Gun Trusts are not required to submit fingerprints, photographs, or obtain the approval of a chief law enforcement officer, but must pay the \$200 stamp tax.

[12] The NFA is a part of the Internal Revenue Code (Title 26 of the U.S. Code), which defines “person” to include trusts, corporations, and other business entities. Therefore, they can legally transfer, make, or own Title II firearms.

[13] Prohibited persons include any person: (a) under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year; (b) convicted of a crime punishable by imprisonment for a term exceeding one year; (c) who is a fugitive from justice; (d) who is an unlawful user of or addicted to any controlled substance; (e) who has been adjudicated as a mental defective or has been committed to any mental institution; (f) who is an illegal alien; (g) who has been discharged from the military under dishonorable conditions; (h) who has renounced his or her U.S. citizenship; (i) who is subject to a court order refraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or (j) who has been convicted of a misdemeanor crime of domestic violence.

[14] This language can be found in the final rule at <https://www.atf.gov/file/100896/download>, page 199.

[15] This language can be found in the final rule at <https://www.atf.gov/file/100896/download>, pages 238-239.

[16] Compare this treatment to that when a single individual submits an application to make or transfer a Title II firearm where they had to include fingerprints, photographs, and submit to a background investigation. This is in addition to obtaining a CLEO’s signature, and paying the \$200 tax.

[17] See, ATF Form 5320.23. Furthermore, only on those ATF applications submitted after July 13th, 2016 must all responsible persons submit a Form 5320.23.

[18] This language can be found in the final rule at <https://www.atf.gov/file/100896/download>, page 243.

[19] In addition to filing the appropriate ATF Form to transfer or make a Title II firearm, the applicant Gun Trust must provide: (1) certification that the information had not changed since the prior approval; and (2) identification of the application for which the documentation had been submitted by form number, firearm serial number, and date approved.

0 Comments Posted re. *FLASH Alan Gassman, Lee-Ford Tritt, Sean Healy, Jonathan Blattmachr, Seaver Brown & Travis Arango: New Title II Firearm and Gun Trust Laws Set to Impact Thousands*

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Submit comment by Alan S. Gassman