

NFA GUN TRUSTS

T. Michael Sullivan, Esq.



APPLICABLE GUN LAWS

- Federal – National Firearms Act of 1934 (NFA)
- Massachusetts
 - M.G.L. c 41 – Officers and Employees of Cities, Town and Districts
 - M.G.L. c. 140 – Licenses (Law)
 - 501 CMR 7.00 Approved Weapon Rosters Regulation
 - 501 CMR 13.00 Standard for Identification Cards for Retired Law Enforcement Officers
 - Acts 2014 Chapter 284 – An Act Relative to the Reduction of Gun Violence (August 13, 2014)
- City, Town, District, County Ordinances and Regulations

An Act Relative to the Reduction of Gun Violence

- Signed into law August 13, 2104 – “An emergency law, necessary for the immediate preservation of the public convenience.”
- Safer schools and modification to current laws affecting gun owners.

Major Changes Affecting Massachusetts Gun Owners

Slide 1 of 6

- Requires Massachusetts to submit more data to the Federal National Instant Check System (NICS), including state commitments for alcohol and/or substance abuse, commitments for mental illness or as dangerous persons, and *misdemeanor convictions for domestic violence cases*;
- Allows an individual who has been committed for certain mental health reasons for an alcohol use disorder, substance use disorder, or guardianship appointment to petition the court 5 years from the date of commitment requesting that his/her ability to possess a firearm, rifle, or shotgun be restored;
- Requires all Massachusetts licensed gun dealers to run criminal offender record information (CORI) checks on current and new employees;
- Requires all Massachusetts licensed gun dealers to post information about suicide awareness and prevention;

Changes go into effect January 1, 2015

Massachusetts Department of Criminal Justice Information Services

Major Changes Affecting Massachusetts Gun Owners

Slide 2 of 6

- Eliminates the requirement to obtain a Firearms Identification Card or License to Carry to purchase or possess self-defense spray, unless under the age of 18 or otherwise disqualified by law; *Effective Immediately*
- Requires personal sales/transfers of all firearms, rifles, and shotguns to be completed through a web portal to be developed by the Department of Criminal Justice Information Services; the portal will, among other things, verify the identity of both buyer and seller, and ensure the sale/transfer complies with the law; *Effective March 1, 2015*
- Expands the eligibility disqualifications for Firearms Identification Cards and Licenses to Carry; *Effective January 1, 2015*
- Allows licensing authorities to petition the district court to deny, suspend, or revoke firearms identification cards on the grounds of unsuitability; *Effective January 1, 2015*

Major Changes Affecting Massachusetts Gun Owners

Slide 3 of 6

- Requires that a licensing authority provide each applicant with a receipt indicating that either a new or renewal firearms license application has been received; *Effective January 1, 2015*
- Provides an indefinite grace period if an applicant submits a renewal application prior to the expiration of his/her current license; *Effective January 1, 2015*
- Exempts active duty military personnel from the requirement to take a Basic Firearms Safety Course before obtaining an FID or LTC; *Effective January 1, 2015*
- Reduces the firearms application fee to \$25 for retired law enforcement officers; *Effective January 1, 2015*
- Eliminates the Class B license to carry firearms, though current Class B licenses to carry will remain valid until the said expiration of the license; *Effective January 1, 2021*

Major Changes Affecting Massachusetts Gun Owners

Slide 4 of 6

TODAY

- 1) **Firearm Identification Card - Restricted (Mace and Pepper Spray)**
No Longer Required for 18+, Still required for 15 – 17 Years of Age
- 2) **Firearms Identification Card**
No Firearms, No Large Capacity Rifles or Shotguns, & No Large Capacity Feeding Devices
- 3) **License to Carry M.G.L. c. 140 § 131(a)-(c)**
 - Class A
 - Purchase, rent, lease, borrow, possess, and carry
 - Firearms - Large Capacity, Large Capacity Feeding Devices & Ammunition
 - Rifles and Shotguns - Large Capacity, Large Capacity Feeding Devices & Ammunition
 - Class B
 - Purchase, rent, lease, borrow, possess and carry
 - Firearms - Non-Large Capacity Firearms, Non-Large Capacity Feeding Devices & Ammunition
 - *Cannot Carry or Possess a Loaded Firearm in a Concealed Manner*
 - Rifles and Shotguns - Large Capacity, Large Capacity Feeding Devices & Ammunition
- 4) **License to Possess a Machine Gun – Green Card**

Major Changes Affecting Massachusetts Gun Owners

Slide 5 of 6

JANUARY 1, 2021

- 1) **Firearm Identification Card - Restricted (Mace and Pepper Spray)**
No Longer Required for 18+
Still required for 15 – 17 Years of Age
- 2) **Firearms Identification Card – No Change**
- 3) **License to Carry M.G.L. c. 140 § 131 (a)-(c) replaced with new (a)**
A license shall entitle a holder thereof of a license to purchase, rent, lease, borrow, possess and carry.
Firearms - Large Capacity, Large Capacity Feeding Devices & Ammunition
Rifles and Shotguns - Large Capacity, Large Capacity Feeding Devices & Ammunition
- 4) **License to Possess a Machine Gun – Green Card – No Change**

Major Changes Affecting Massachusetts Gun Owners

Slide 6 of 6

- Exempts law enforcement officers from the assault weapon and large capacity feeding device ban;
- Changes the definition and some punishments relative to firearms trafficking crimes;
- Creates several new crimes involving the use of firearms, including assault and battery with a firearm and disarming a law enforcement officer;
- Requires all licensing authorities to trace and collect specific data on any firearm used in a crime within its jurisdiction.

Changes go into effect January 1, 2015

Massachusetts Department of Criminal Justice Information Services

What is a Trust?

- A legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument.

Black's Law Dictionary – 6th Edition

Parties to a Trust

- Grantor – also known as the donor or settlor is the person who creates the trust.
- Trustee – is the person or entity who administers the trust; the fiduciary.
- Beneficiary – the person for whose benefit the trust is created, who receives the benefits of the trust property.

NFA Firearms

- 18 U.S. Code § 921 defines firearms as 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.
- Under Federal law firearms are categorized as Title I or Title II firearms.
- Title I firearms are generally regulated by state law and include rifles, shotguns, and handguns.
- Title II firearms include machine guns, silencers, short barreled shotguns, short-barreled rifles, and destructive devices and are generally regulated by Federal law.

What is a NFA Gun Trust?

- There is no formal definition for a NFA Gun Trust, a/k/a Gun Trust, a/k/a NFA Trust.
- It is usually a revocable living trust that specifically states it is established to hold firearms as defined by Federal law for the recreational use and enjoyment of the beneficiaries.
- Cannot have the same person as Donor, Trustee and *sole* Beneficiary.
- Trustee must be licensed.

Why NFA Gun Trusts?

- To acquire machine guns, silencers, or other items whose sale is restricted by Federal Law by bypassing the Chief Local Law Enforcement Officer (CLEO).
- To allow multiple individuals to lawfully possess and use an NFA firearm.
- To avoid committing accidental felonies.
- To pass on a collection to the next generation as a form of Estate Planning.
- To protect against future legislation intended to prohibit the possession or sale of guns.

Avoiding the CLEO

- In order to obtain a Title II firearm, the ATF requires the *individual* to obtain approval from the CLEO, be fingerprinted and submit to a background check.
- To purchase a Title II firearm using a NFA Gun Trust, the Trustee does not need approval from the CLEO and although many gun dealers require fingerprints and a background check, the ATF does not. *****
- In many cities and towns across the US, the CLEO, sometimes an elected official, is very reluctant to sign off on allowing citizens to own these types of weapons.
- Many individuals also would like to keep their ownership discreet.

Multiple NFA Firearm Users

- An individual who owns a Title II firearm, is the only person permitted to use or have access to said firearm. It may even be considered a violation of law if your wife knows the combination to your gun safe.
- A NFA Gun Trust can be worded so that the beneficiaries are authorized users. In addition, the trust may allow for modification to allow new users and/or beneficiaries.

Incapacity

- The recently passed MA Act has a new section pertaining to guardianships and conservatorships allowing for the licensing authority to petition the court to order the suspension or revocation of the protected person's FID, LTC, or Green Card.
- If the guns are owned by the NFA Gun Trust, the trust can be written to give instructions as to how to proceed during a time of incapacity without breaking the law.
- For example, if a new Trustee is appointed at incapacity, the firearms may be moved to a new storage safe without creating an unapproved transfer.

Death

- An individually owned firearm at the death of the owner becomes part of the estate if not in a trust. The firearm will pass in accordance with the will or by the laws of intestacy if there is no will and as an asset of the estate subject to probate proceeding and thus public record.
- The Personal Representative (formerly Executor or Administrator) will inventory all assets of the estate and take possession for distribution.
- If the P.R. takes possession of an NFA Title II firearm they are violating Federal and MA law. If they take possession of any firearm without a license they are violating MA law and Federal law.
- If the firearms are owned by a properly written NFA Gun Trust, there will be instructions as how to proceed at the death of the Grantor and/or Trustee and the firearms will not be part of the probate estate.

NFA Gun Trusts vs. Corp. / L.L.C.

- Many of the benefits of a NFA Gun Trust also apply to a corporation or L.L.C.
- NFA Gun Trust advantage over Corp., L.L.C.
 - 1) No annual fees.
 - 2) No public record / reporting.
 - 3) Easier to amend trust than corporate docs.
 - 4) No annual meeting of directors/ shareholders.

Loophole Closing?

- *Obama administration closes two gun sale loopholes* www.washingtonpost.com, August 29, 2013.
 - Closed through executive authority (not by Congress) the loophole in which a Trustee could avoid background check and loophole concerning re-importation of military surplus – Delayed.
- *Obama plan to close gun loophole stalled by NRA and pro-gun opposition* www.theguradian.com, May 3, 2014.
 - ATF to push back June 2014 enactment of law closing loophole to 2015.
- *Nolo says don't create a Gun Trust with their Products* www.guntrustlawyer.com August 21, 2014.
- Last month it was reported that ATF approved the manufacturing of a machine gun by a NFA Gun Trust accidentally.
www.thetruthaboutguns.com www.bearingarms.com
www.guntrustlawyer.com

CAVEAT

- The laws concerning gun trusts are changing almost daily.
- The time to create a NFA Gun Trust for the purpose of avoiding the CLEO may have passed today or any day now!?
- NFA Gun Trusts can still be used to avoid the probate court, just like any other trust but will transfer rules change?
- Lawyers and Law Firms are becoming more hesitant to draft NFA Gun Trusts for fear of being liable if Trust is denied or if Trusts instruct Trustee(s) or Beneficiaries to act in a way that though once legal now becomes illegal.
- Some Firms may ask client to sign an acknowledgement of risk.
- Some Firms, including AndoverLaw, P.C., have decided to longer draft NFA Gun Trusts.