



## ASK AN ATTORNEY

# GUN TRUST

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**T**he ownership of firearms in Arizona is part of our culture. It does not matter whether it is for self-defense, hobby, hunting or just plain fun; we love our firearms. In the last decade the ownership of firearms through a trust has become a new phenomenon. Specifically, the ownership of regulated or restricted firearms through a trust has increased exponentially. The National Firearms Act of 1934 (NFA) restricts the ownership of Title II firearms: machine guns, short barreled shotguns, short barreled rifles, destructive devices, suppressors/silencers and "any other weapon." These weapons are governed through a tax stamp system, which is the process to obtain these items in Arizona and is still in place today. This article will not discuss non-NFA firearms.

### WHO CAN OWN THESE NFA FIREARMS?

Individuals, business entities, and trusts are permitted to purchase NFA firearms in Arizona. The transfer of NFA guns requires registration with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). This process requires an application along with payment of \$200.00 for a tax stamp before a purchaser can take possession and ownership.

### WHAT IS A LIVING TRUST?

You can think of a trust as your own private company that owns substantially all of your assets. As trustee of your trust, you have 100% control over the assets. When you die, the trust declaration creating your trust provides who takes your place as the successor trustee and where those assets are distributed. This successor trustee immediately has control of the assets in the trust estate without going to court to get that authority. In most cases a trust administration will have no court or lawyer involvement. The purpose of a general revocable living trust is to avoid probate. See [wbmlaw.com](http://wbmlaw.com) for more information.

### WHAT IS A GUN TRUST?

A Gun Trust is a purpose-built revocable living trust designed to help clients and their loved ones to comply with the unique and complex state and federal regulations governing the ownership and transfer of firearms. A properly drafted Gun Trust helps heirs avoid problems relating to state and federal laws, as improper transfer of regulated firearms can constitute a criminal offense. Essentially, a Gun trust is a separate entity specifically created to hold ownership of your NFA firearms. The trust is revocable; therefore, you are free to make changes or revoke it at any time. This allows you to retain complete control of the firearms while you are alive and the flexibility to choose who will be the beneficiaries after you pass.

### WHY CREATE A GUN TRUST?

There are several advantages compared to individual ownership. The Gun Trust is not considered an individual; therefore, it is not required to comply with certain criteria in the application process with the ATF. Because the Gun Trust is a separate legal entity, it is not required to provide passport pictures, a background check and obtain the local Chief Law Enforcement Officer's (CLEO) signature acknowledging you will be possessing the NFA gun. Most dealers perform the background check on the trustee even though they are not required to. This does not give a blanket shield for felons: the trustee will be in violation federal law if they allow a prohibited person to possess the firearm. The Gun Trust can reduce the hassle and the wait time to receive your tax stamp from the ATF because of the reduced paperwork. The Gun Trust also provides the ability to set up a specific plan if something happens to you. Applying as an individual, means only that individual will be entitled to possession of the NFA gun. Technically, if your wife has access to your safe (where the NFA items are stored) it is considered constructive possession, which could be a felony. If you become incapacitated or pass away, the firearm cannot be possessed until that person obtains a stamp from the ATF. If your estate goes through the probate process, the Will (containing your guns) is entered into public record, which can be viewed by anyone. Lastly, a benefit is the option to keep the firearms in the family trust and leave a dynastic legacy.

### DO I NEED A GUN TRUST TO OBTAIN PROHIBITED FIREARMS?

No. An individual may obtain a NFA firearm in Arizona if he/she obtains a passport photograph, background check/fingerprint card and the CLEO's signature.

### CAN I PUT MY NFA GUNS IN MY REVOCABLE LIVING TRUST?

Maybe, it depends on the language of your trust. It is suggested to create a trust specifically for NFA items.

### DO YOU NEED TO HIRE AN ATTORNEY TO CREATE A NFA TRUST?

No, but it's highly recommended. There are websites, software programs, forums, and templates online; however, the price difference is usually not worth the risk of an error. There is value in asking the attorney questions related to the process. For example, if you purchase a NFA weapon and obtain a tax stamp through the ATF, it does give any governmental agency the right to search your property without a warrant.

### WILL THE LAW CHANGE?

The ATF has proposed a change to the current law. There were more than 9,500 comments to this proposal. The ATF plans to issue their decision in May 2015. As this article is published, the law could begin to change. You can Google "ATF 41p" or call the author of this article for more information.

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