

Benefits to Owning NFA Firearms in a NFA Firearms Trust (aka “Gun Trust”)

There are significant benefits to owning National Firearms Act (“NFA”) Firearms (a.k.a. “Class 3 Weapons”) in a Gun Trust rather than as an individual.

Benefit – Mechanics of Ownership

Individual Applying for Ownership of Class 3 Weapons	Trust Applying for Ownership of Class 3 Weapons
<ul style="list-style-type: none">- Need signature and approval of local Chief Law Enforcement Officer (“CLEO”) (e.g., Sheriff)- Must submit fingerprints with application- Must submit Recent personal photos with application	<ul style="list-style-type: none">- No signature or approval of CLEO required- No fingerprints required- No personal photographs required

Common Requirements

- Firearms located in a State where those weapons are legal (all Class 3 weapons are legal in South Dakota).
- U.S. Citizenship required. Minimum age requirement for individual and trustees.
- Never been: convicted of a Felony (or domestic violence); dishonorably discharged from the military; or adjudicated mentally defective.
- Same amount of tax due whether transferring to individual or to trust. However, once the weapon is transferred to a trust, different individuals may have access to and possess the weapon without a “transfer” occurring. The trust remains the sole owner, but the trustees and beneficiaries may change.

Benefit – More than one individual may possess the Firearm

If an individual owns a Class 3 weapon, only that individual who was approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) may possess the weapon. In general, it is a violation of Federal law to let any other person use the Class 3 weapon, even if in the presence of the approved individual. Additionally, each time the weapon is transferred from person to person a hefty tax must be paid. With a Gun Trust, the trust owns the weapon, and multiple persons approved by the trust may lawfully use and possess the Class 3 weapon independently of each other. Also, the persons approved by the trust to use the weapons may change without a “transfer” occurring, and therefore without a new transfer tax. Note the long-term cost savings with less transfer taxes (\$200 per transfer can add up).

Benefit – Privacy and Cost

If a trust is the entity applying for ownership of a Class 3 weapon, no CLEO signature is required. This is significant, as CLEOs have broad discretion, and many are apprehensive about providing a signature. With a Gun Trust, no one in the local community needs know that you are applying for ownership of a Class 3 weapon.

The trust only needs to submit information to the ATF pursuant to the NFA. The NFA is part of the Internal Revenue Code. Therefore, information submitted to the ATF is considered tax information, and the ATF is generally prohibited from disclosing tax information to anyone.

Unlike a limited liability company (LLC), a trust is a private entity in South Dakota that is not required to make annual public filings with the SD Secretary of State, nor is it required to pay the annual fees associated therewith.

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Note: NFA stands for the “National Firearms Act.” The NFA defines “Firearm” to include many weapons and accessories, from silencers to short barreled shotguns. *See* 26 U.S.C. § 5845. These “Title II” Firearms are also commonly referred to as “Class 3” weapons (Class 3 refers to the special occupational tax paid by a Federal firearms licensee engaged in dealing NFA Firearms).

Benefits – Estate Planning

What happens to your Class 3 weapon(s) when you become incapacitated or die? A Class 3 weapon cannot pass to your heirs in the same way as typical property (like vehicles or collections). A good Gun Trust will specifically address what happens in the event of your incapacity or death.

There are many other benefits to NFA Trusts not mentioned here.

“DIY” is Not a Good Idea

Penalties for violations of the NFA (even if unintentional) are: up to 10 years in prison, up to \$250,000 fine.

Anyone can create a trust that the ATF may approve for ownership of a Class 3 weapon. Unfortunately, very few people create a trust capable of holding Class 3 weapons without subsequently violating the NFA. ATF approval does not mean that the trust is valid (as trust law is a state-specific issue), and creation is the easy part. The problems arise later, regardless of whether the ATF approved the trust.

Filling out a form printed off the internet, or from a software program, or even provided to you by a Class 3 dealer may be sufficient to “create” a generic trust. The trust created by such form may be adequate to own cash or property with no problems. However, a Class 3 weapon is subject to extensive special regulation regarding its use, possession and transfer. Therefore, a Gun Trust is a rather unique animal. A Gun Trust must specifically provide for NFA compliance, guidance, liability protection, indemnification, and many other items not contemplated by the typical trust.

There are dozens of differences between a typical form trust and a Gun Trust. One example: Under South Dakota trust law, it may be a breach of a trustee’s fiduciary duty to the beneficiaries to depreciate trust assets, unless the trust so specifically provides. A typical revocable living trust does not have this language. The mere act of using a NFA firearm may cause depreciation of that weapon. Therefore, the trust needs to allow for such use by the trustee(s), otherwise the trustee may be breaching their duty and be liable. Another example: a Gun Trust should provide for liability protection among co-trustees for violations of the NFA. If there is more than one trustee at any point, and one of the co-trustees does something to violate the NFA (like certain inter-state transport without the proper authorization), the other trustee may be jointly liable. A third example: a Gun Trust will have unique language regarding the distribution to beneficiaries. Absence of such language can result in a NFA violation by the trustees or beneficiaries.

Those are just a few examples. Please feel free to contact me if you have questions or would like more information about Gun Trusts and the NFA.

GUNDERSON | PALMER | NELSON | ASHMORE LLP

Andrew J. Knutson, Attorney at Law

440 Mt. Rushmore Rd • P.O.Box 8045 • Rapid City, SD 57709-8045

Phone: (605) 342-1078 • Email: aknutson@gpnalaw.com • www.gundersonpalmer.com

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