

BEST PRACTICES FOR GUN DOCX® TRUSTS (OR)

February 25, 2016

The Gun Control Act of 1968 has two titles, Title I State Firearms Control Assistance, and Title II the National Firearms Act, or NFA. Each plays a key, but different role in federal firearms law.

Title I regulates all firearms and ammunition in interstate commerce, provides requirements specific to handguns, and establishes the National Instant Criminal Background Check System, or NICs. Title II It regulates six categories of firearms which include silencers, machine guns, short barreled rifles, short barrel shotguns, destructive devices and “Any Other Weapons” (AOWS, ex. cane guns, pen guns, Serbu shorty, etc.) ATF Rule 41F requires documentation of each Responsible Person at the time an application is filed to make or transfer an NFA firearm when effective in July 2016.

Under the NFA, a trust is a “person” which may possess NFA firearms. Lawful possession by an authorized individual of a trust is required to avoid criminal liability. A trustee has the legal power to possess on behalf of a trust. A beneficiary is entitled to enjoy trust assets, but does not have the power to possess so a trustee must be present when firearms are involved. For that reason an individual may be appointed as both a trustee and beneficiary in a trust, but there are some issues to be aware of.

Each state may further regulate firearms. Oregon firearms law¹ restricts possession or transfer of handguns, regulates possession of NFA firearms, and establishes a background check system with exclusions and exceptions² for all firearms transfers within the state³. Lawful possession and transfer (use, enjoyment) of trust firearms must comply with both federal and state firearms law. This can be tricky due to inconsistent definitions and regulations.

THINGS TO REMEMBER ENJOYING YOUR OREGON GUN DOCX TRUST

- A prohibited person cannot ever possess a firearm or ammunition.
- The definition of possession includes both actual (physical control) or constructive (can access)
- A Trustee must possess trust firearms at all times; this is especially true for NFA firearms.

Things to do:

- Observe safety all time. Make sure firearms and ammunition are serviceable.
- Lawful possession of an NFA firearm requires proof of legal authority (trustee appointment) AND a copy of the NFA tax stamp for each NFA firearm. Access to the trust is recommended.
- Make sure an OFSA exclusion or exception applies to the beneficiary or the activity.
- Do not appoint unnecessary trustees or limit duration of trustee appointments.

¹ The 2015 Oregon Firearms Safety Act creates new provisions in ORS 166, amends ORS 166.250, 166.291, 166.412, 166.422, 166.432, 166.433, 166.434, 166.436, 166.438, 166.460, 166.470, 181.150, 181.740 and 426.133.

² OFSA requires criminal and public safety background checks for gun sales and transfers and prescribes penalties for violations. It provides exclusions and exceptions to the background check requirement.

³ A fiduciary (trustee, agent under durable power of attorney) general acts for the benefit of the owner. However, authority of a fiduciary to possess a firearm is not expressly stated in OFSA. It is our opinion that possession purely as a fiduciary does not meet the definition of “transfer” in the law, however this is uncertain. The safest course of action is to possess under an exclusion, exception or after a background check especially for both *possession and enjoyment* by a person other than the Grantor whether named as Trustee or not.