

# NW Gun Law Group Memorandum

## The Benefits of an Oregon Gun Docx® Trust

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February 25, 2016

### INTRODUCTION AND DISCLAIMER

This Memorandum describes how a Gun Docx® Trust helps gun owners lawfully enjoy their firearms in Oregon. It discusses compliance under the Gun Control Act of 1968 and Oregon law, more specifically the Oregon Firearms Safety Act (the “Act”<sup>1</sup>) which added enhanced criminal background checks for **private-party firearms transfers** to existing law. **Failure to comply with Oregon firearms transfer requirements risks criminal liability.** Oregon law contains both exclusions and exceptions to the background check requirement. Entity ownership of firearms provides flexibility with some added complexity.

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### A GUN DOCX® TRUST PROTECTS OREGON GUN OWNERS

If you read our Memorandum on the Oregon Firearms Safety Act of 2015, you may be wondering if you “need” a gun trust, or you may already have one. Do you need one prepared by attorneys who know state firearms and trust law? Can you just download one or write one yourself? A trust is just a trust, right? What could go wrong with firearms and a trust?

You be the judge after reading our memoranda and doing some research on Oregon law and gun control laws being adopted nationally about the transfer of a firearm to another person. Get it wrong and you could face criminal charges for unlawful possession or transfer of a firearm. So could family and friends.

For years now savvy gun owners have used gun trusts to avoid a turn down by local law enforcement when acquiring Title II “NFA” firearms such as silencers, short barreled rifles, machine guns, etc. But there is far more to a gun trust when it is purpose-built, especially in such states as Oregon and Washington. A **gun trust helps avoid** criminal liability from **unlawful possession and transfer** of a firearm between persons.

Both an individual and an entity (partnerships, corporations, trusts, etc.) can meet the definition of “person.” Entity firearms ownership provides greater flexibility at the cost of some complexity.

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<sup>1</sup> The 2015 Oregon Firearms Safety Act creates new provisions to ORS 166, and 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.

A Gun Docx® Trust<sup>2</sup> is designed from the ground up for firearms law and is the best bang for the buck for most personal firearms collections. Given the complexity of federal and state firearms possession and transfer laws, the risk of committing an unlawful transfer is higher than ever before. We call these “accidental felonies<sup>3</sup>” because normal, everyday gun owners, doing normal everyday firearms activities... that inadvertently and unintentionally cross the line.

Since you created your trust primarily for YOUR benefit during your lifetime, merely appointing a Trustee or Cotrustee to benefit YOU (rather than somebody else) should not be a “transfer” as defined in Oregon law. ATF defines a conveyance as not being a “transfer” for NFA firearms. The IRS recognizes that grantor trusts are not separate from the taxpayer who owns them. Corporations, partnerships, trusts and other entities lawfully own firearms and directors/officers/partners/trustees have to possess them. There may be no certainty here, but this position has considerable legal authority.

A Gun Docx Trust is created to own firearms and ammunition. Common sense and safety dictate that your Trustee must be competent to possess this kind of trust property to perform his or her fiduciary duty. Trust property must be safely stored and mechanically sound. It’s a Trustee’s legal obligation.

Any individual appointed as a Trustee of your trust has these fiduciary obligations. So far, using entity law appointment and performing fiduciary duties cannot be a transfer so no statutory exclusion or exception would be required. That’s not to say that you should ignore them if they apply!

A trust must have more than one beneficiary or it is *legally invalid*. Most gun owners want to “share” their firearms anyway, and the trick is to provide benefits to family and friends while living, to provide binding distribution instructions for firearms if you are not, while complying with state firearms law.

## Critical Issues to Understand

*Possession of trust property by an individual trust beneficiary other than you for their benefit/enjoyment rather than yours likely IS a “transfer” even if you appoint them as a Trustee. A transfer requires a background check or an exclusion or exemption to avoid criminal liability under Oregon law.*

A trust is not defined as a person under Title I of the Gun Control Act which also established the FBI National Instant Criminal Check System (NICS). So a background check cannot be run on a trust or trustee. Even though a trust can own handguns, rifles, shotguns under state law, a trust cannot acquire them under a background check requirement. An individual must acquire the conventional firearms, and then transfer (“convey” or “fund”) them to the trust.

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<sup>2</sup> Gun Docx™ is a purpose-built revocable trust and ancillary documents to help you lawfully possess, enjoy, and transfer your firearms collection. We invented it and it’s available through hundreds of attorneys nationwide.

<sup>3</sup> An “accidental felony” is the inadvertent but unlawful possession or transfer of a firearm between persons without actual criminal intent, under seemingly “normal” or “usual” circumstances for gun owners.

Paradoxically, Title II of the Gun Control Act (the National Firearms Act) defines person differently. A trust IS a person under Title II, so acquisition of an NFA firearm such as a silencer from an FFL requires a background check. A background check is run on individuals acting as Trustee.<sup>4</sup> To avoid perjury on the Form 4473 the ATF has the individual sign a separate writing stating his or her legal capacity to act for the entity receiving the NFA firearm.

## **AVOIDING AN ACCIDENTAL FELONY WITH YOUR GUN DOCX™ TRUST**

### **First, map out your intended and typical firearms transactions.**

Identify each person, firearm, and the place/activity at which a transfer could occur.

### **Second, apply federal and state law.**

What individuals are involved? (State or out of state residents, aliens, minors, etc.)

What firearm is involved? (Title I firearm (handgun, rifle, shotgun) or a Title II (NFA) firearm)? Is it a firearm in Oregon?

Is this a transfer to another person (whether an individual or entity)? If yes, does an exclusion or exception apply? Does federal law require a background check?

What kind of documentation is recommended or required to support the transfer?

**For a consultation on how to protect and enjoy your firearms under Oregon law, call the NW Gun Law Group at (855) 486-3629 or contact us on the web at [www.nwgunlawgroup.com](http://www.nwgunlawgroup.com).**

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<sup>4</sup> ATF announced final rule 41F on January 4, 2016, concerning a requirement for background checks on “responsible persons.” It goes into effect on July 13, 2016 (i.e. 180 days after publication in the Federal Register). Text is available at <https://www.atf.gov/file/100896/download>.