

# In the Crosshairs: Guns in Estate Planning

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When engaging in the estate planning process, it's easy to focus exclusively on the big assets such as real estate, retirement assets, investment accounts, and life insurance. It's equally easy to discount the importance of planning for items of personal property. This is a mistake, because personal items can often times carry value far beyond what can be measured by dollars and cents.

Therefore, we encourage all clients to spend time planning for items of personal property, but certain items demand special attention. Firearms are unique in this regard; guns are the only item of personal property that carry an inherent risk of legal peril including potential criminal liability, so careful and deliberate planning is warranted.

## **Roles of Personal Representative**

Your Personal Representative or successor Trustee is the person that you appoint to step into a fiduciary role to administer your estate according to your instructions. A seemingly innocuous transfer of your favorite Remington 870 shotgun to your nephew John can lead to serious legal problems if nephew John turns out to be a "prohibited person." The Gun Control Act of 1968 made it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition. Among these categories are felons, illicit drug users or persons with mental illnesses, dishonorable discharges or domestic violence convictions. Unless your fiduciary has intimate knowledge of what is happening in nephew John's life, a simple transfer of possession of the shotgun can create serious legal problems for both of them as both the transfer and the receipt constitute criminal behavior.

## **Geography Matters**

Another potential pitfall facing your fiduciary is simple geography. The Gun Control Act of 1968 restricted the movement of firearms between states. Your fiduciary must utilize the services of a federal firearms license holder to facilitate the transfer of the shot gun if nephew John lives in a different state. Add the fact that the United States has become a patchwork quilt of wildly varying state gun laws and firearms transfers becomes even more perilous.

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What's perfectly legal in one state might be wholly illegal in another. So even if nephew John has a squeaky-clean record and is not a "prohibited person", possession of an AR-15, while legal in Wisconsin and Wyoming, is a potential felony in California or New York.

### **Laws Change**

Changes over time also have the potential of working against the fiduciary and the future owner. What's legal today might be illegal tomorrow and that process rarely works in reverse. A device known as a "bump stock" is a good example. The bump stock is a simple device made primarily of plastic that allows a user of an AR-15 style firearm to shoot more rapidly. The device was used primarily as a novelty but, because of its inherently negative impact on accuracy and the rising cost of ammunition, it never acquired a prominent spot in most gun enthusiasts' collections. Then, in 2017 a bump stock was used in a mass shooting event in Las Vegas and ATF moved to make the device illegal. This ban included the rarely used ban on possession, meaning there was no "grandfathering" for devices owned prior to the enactment of the ban. Owners were instructed to surrender or destroy their existing bump stocks under threat of felony prosecution. If the fiduciary is not a "gun person" he or she might have no idea that the harmless-looking piece of plastic is a felony waiting to happen.

The prevalence and ease of online shopping and the modular, customizable nature of firearm platforms such as the AR-15 have also had an impact on the risks associated with the transfer of firearms. A perfectly legal AR pistol can become a highly restricted weapon under the National Firearms Act of 1934 by the addition of a simple plastic vertical foregrip that can be purchased online and delivered to your door.

### **So... What's the Answer?**

Fortunately, the risks and pitfalls introduced by the unique nature of firearms can easily be addressed with careful planning and thorough instruction. For special items such as properly registered machine guns, suppressors, short barrel rifles and short barrel shotguns, we have long utilized a tool known as a gun trust to protect and plan. Items of this type can often be of extraordinary value. A registered M-16 for example can be valued in excess of \$25,000 so care must be taken to preserve that value. The gun trust is the perfect platform to preserve the value and safety for your loved ones.

More recently, gun trust use has expanded to collectible firearms in an effort to preserve use and access for future generations and act as a hedge against potential law changes that make future management uncertain.

When all is said and done, the advice is clear: make the effort to plan carefully for your firearms collection, because the risks are just too high to ignore.

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