

Gun Trusts And Firearms



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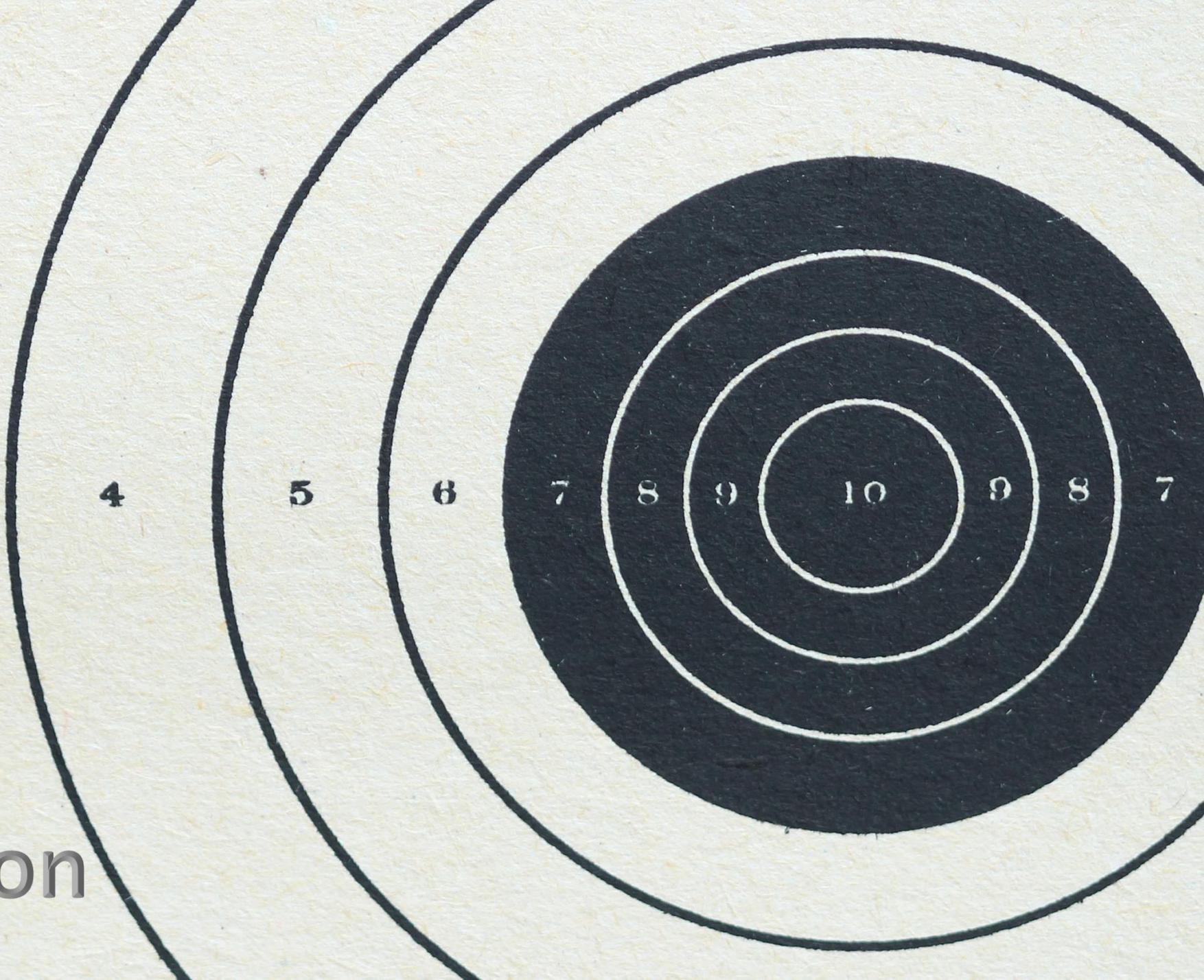
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In Estate Administration



Of Gun Trusts and Outlaws: The beginning



Not so much the people....



.... But the
WEAPONS



How it all began . . .

The **National Firearms Act (NFA)**, [73rd Congress](#), Sess. 2, ch. 757, 48 [Stat. 1236](#), enacted on **June 26, 1934**, currently codified as amended as [I.R.C. ch. 53](#), is an [Act of Congress](#) in the United States that, in general, imposes a statutory [excise](#) tax on the manufacture and transfer of [certain firearms](#) and mandates the registration of those firearms. The Act was passed shortly after the repeal of [Prohibition](#).

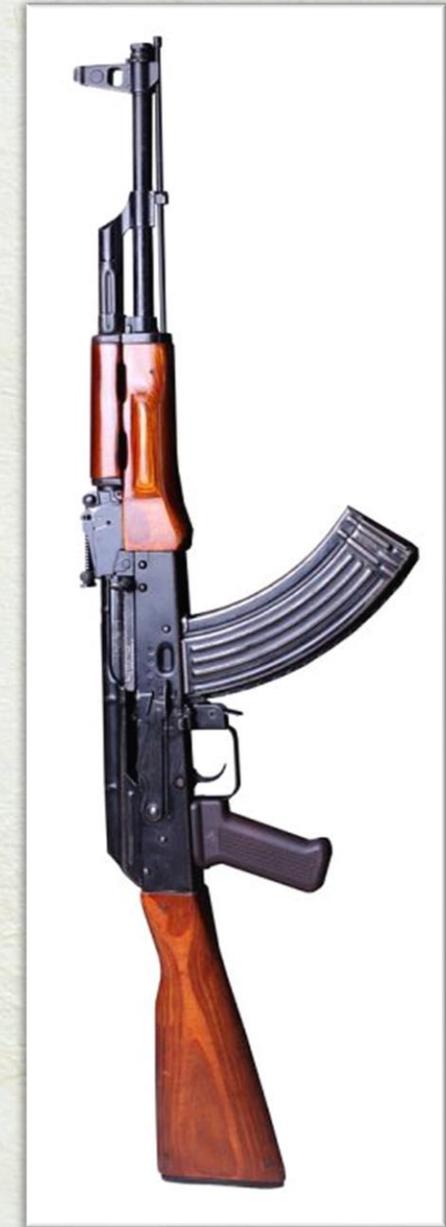
26 U.S. Code § 5811. Transfer tax



In order to get NFA items
(SBR, SBS, Silencers, MG's DD's etc.)

Machine Guns

This includes any firearm which can fire repeatedly, without manual reloading, "by a single function of the trigger." Both continuous fully automatic fire and "burst fire" (e.g., firearms with a 3-round burst feature) are considered machine gun features. The weapon's receiver is by itself considered to be a regulated firearm. A non-machine gun that may be converted to fire more than one shot per trigger pull by ordinary mechanical skills is determined to be "readily convertible", and classed as a machine gun, such as a KG-9 pistol (pre-ban ones are "grandfathered").



Short-barreled Rifles

This category includes any firearm with a buttstock and either a rifled barrel less than 16" long or an overall length under 26". The overall length is measured with any folding or collapsing stocks in the extended position. The category also includes firearms which came from the factory with a buttstock that was later removed by a third party.



Short barreled shotguns (SBSs)

This category is defined similarly to SBRs, but with either a smoothbore barrel less than 18" long or a minimum overall length under 26".



Suppressors

This category includes any portable device designed to muffle or disguise the report of a portable firearm. This category does not include non-portable devices, such as sound traps used by gunsmiths in their shops which are large and usually bolted to the floor.



Destructive Devices

- Destructive devices (DDs) - (added to the NFA of 1934 via the Omnibus Crime Control and Safe Streets Act of 1968)
- No need to worry about here in CA.
- Federally caliber over .50
- California over .60



You had to acquire a Federal “tax stamp”

26 U.S. Code § 5811. Transfer tax

The \$200 tax was quite prohibitive at the time (equivalent to \$3,822 in 2019). With a few exceptions, the tax amount is unchanged. Indexing for inflation counts.



27 CFR 479.84

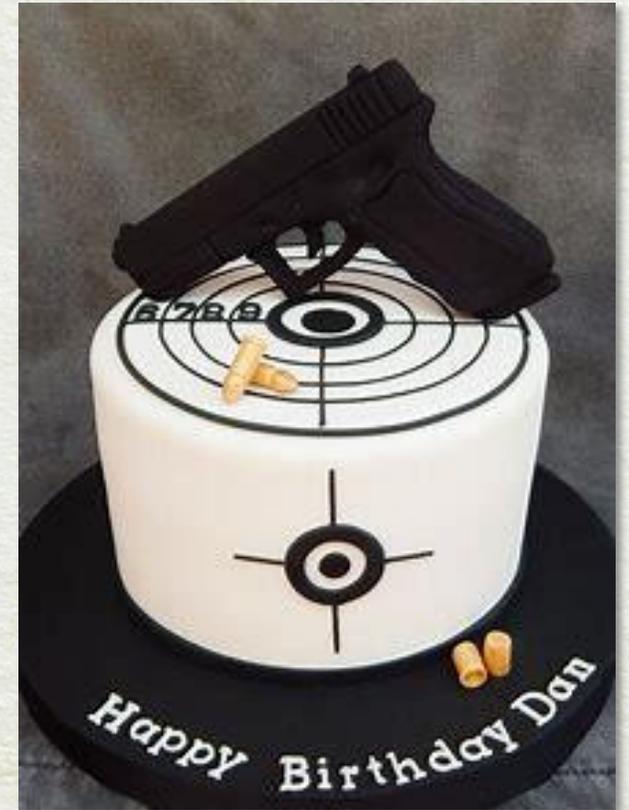
ATF Form 4. Forms 4, Application for Tax Paid Transfer and Registration of a Firearm, are for use in **ATF Form 4.** Forms 4, Application for Tax Paid Transfer and Registration of a Firearm, are for use in transferring serviceable NFA firearms in the following instances: transfers by non-FFLs/SOTs to other such persons; transfers by non-FFLs/SOTs to FFLs/SOTs; and transfers by FFLs/SOTs to nonFFLs/SOTs.¹⁶⁷ Appendix C contains a copy of the form. See also Sections 3.2.6.1 through 3.2.6.3. These transfers are subject to the NFA transfer tax, so the forms must be accompanied by the appropriate tax payment. Forms 4 transferring firearms to individuals other than FFLs/SOTs must also be accompanied by transferees' fingerprints and photographs on FBI Forms FD-258. If the individual's receipt or possession of the firearm would violate Federal, State, or local law, the form would be disapproved. In addition, an **individual transferee must have an appropriate law enforcement official execute the certification on the form.**¹⁶⁸

- Many CLEO'S refuse to sign off on NFA items. So....
- transfers are subject to the NFA transfer tax, so the forms must be accompanied by the appropriate tax
- 26 U.S. Code § 5811.Transfer tax
- The \$200 tax was quite prohibitive at the time (equivalent to \$3,822 in 2019). With a few exceptions, the tax amount is unchanged. Indexing for inflation counts.

27 CFR 479.85

9.4.2.2 Transfers of NFA firearms to persons other than an individual or an FFL and special (occupational) taxpayer. Section 479.85 of the Code of Federal Regulations requires the ATF Form 4 or Form 5 application to properly identify the transferee. Although transfers to natural persons (individuals) must include a recent photograph, duplicate fingerprint cards, and a certification from law enforcement, the NFA also defines a person to include a **partnership, company, association, trust, estate, or corporation**. The requirements for fingerprints, photographs, and the law enforcement certificate specified in § 479.85 are not applicable for transferee who is not an individual.

- Incorporation fees +800/yr est. tax for corps.
- So.... “gun trusts” are born.



No More LEO Sign off

Effective **July 13, 2016**, the final rule “[Machineguns, Destructive Devices and Certain Other Firearms; Background Checks for Responsible Persons of a Trust or Legal Entity With Respect to Making or Transferring a Firearm](#)” amends the regulations to eliminate the requirement for a certification signed by a chief law enforcement officer (CLEO) and instead adds a CLEO **notification** requirement.

Gun Trusts are not dead

But... are primarily testamentary in purpose now.



Gun Trusts are like any other Trusts But . . . There are other things to Consider

Who Should b your Trustee?

Wife, brother, cousin Earl?

- Your trustee should be the person whom you want to entrust your finances to may NOT be the person you want handling your firearms collection.
- Keep in mind many wives don't like, want or understand guns.
- The person whom you want to entrust your firearms collection to may not be ABLE to so serve as your Trustee.

- **Persons Subject to a Protective Order**
- **Persons Subject to a Temporary or Permanent Restraining Order**
- **Persons Prohibited From Possession, Purchase of Firearms As a Condition of Probation**
- **Persons Convicted of Felonies or Other Specified Crimes**
- Any person who (a) has been convicted of a felony
- A *felony* conviction refers to a conviction of an offense that can only result in felony punishment under California law
- Any sentence to a federal correctional facility for more than 30 days, or a
- Fine of more than \$1,000, or both. (Penal Code § 12021(f).)
- Subject to more than one year in local jail or State Prison

PC12021.1

- **Any person convicted of a misdemeanor violation for one or more of the following offenses is**
- **prohibited from owning, possessing or having under his or her custody or control any firearm within 10 years of the conviction (Penal Code § 12021(c)(1)):**
- · Threatening public officers and employees and school officials. (Penal Code § 71.)
- · Threatening certain public officials, appointees, judges, staff or their immediate families. (Penal Code § 76.)
- · Possession of a deadly weapon with intent to commit an assault (Penal Code § 12024.)
- · Possession of a deadly weapon with the intent to intimidate a witness. (Penal Code § 136.5.)
- · Unauthorized possession/transportation of a machinegun. (Penal Code § 12220.)
- · Threatening witnesses, victims, or informants. (Penal Code § 140.)
- · Obstructing or delaying an officer or emergency medical technician and removing or attempting to remove a firearm from these individuals. (Penal Code § 148(d).)
- · Unauthorized possession of a weapon in a courtroom, courthouse or court building, or at a public meeting. (Penal Code § 171b.)
- · Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (Penal Code § 171c.)
- · Taking into or possessing loaded firearms within the Governor's Mansion or residence or other constitutional office, etc. (Penal Code § 171d.)

- · Supplying firearms to any street gang member for use in street gang activity. (Penal Code § 186.28.)
- · Assault. (Penal Code §§ 240, 241.)
- · Battery. (Penal Code §§ 242, 243.)
- · Assault with a stun gun or taser weapon. (Penal Code § 244.5.)
- · Assault with a deadly weapon or force likely to cause great bodily injury. (Penal Code § 245.)
- · Assault with a deadly weapon or instrument, by any means likely to produce great bodily injury, or with a stun gun or taser, on a school employee engaged in the performance of duties. (Penal Code § 245.5.)
- · Discharging a firearm in a grossly negligent manner. (Penal Code § 246.3.)
- · Shooting at an unoccupied aircraft, motor vehicle, or uninhabited dwelling house. (Penal Code § 247.)
- · Drawing or exhibiting any deadly weapon, including a firearm, in a threatening manner. (Penal Code § 417.)

- · Drawing or exhibiting a firearm or other deadly weapon with the intentional infliction of serious bodily injury. (Penal Code § 417.6.)
- · Bringing into or possessing firearms upon or within public or private schools, playgrounds and youth centers. (Penal Code § 626.9.)
- · Willful infliction of corporal injury of a spouse or cohabitant. (Penal Code § 273.5.)
- · Willful violation of a court order to prevent domestic violence. (Penal Code § 273.6.)
- · Stalking. (Penal Code § 646.9.)
- · Carrying a loaded firearm with the intent to commit a felony. (Penal Code § 12023.)
- · Driver or owner of any vehicle who knowingly permits another person to discharge a firearm
 - from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle. (Penal Code §§ 12034(b) and (d).)
- · Criminal possession of a firearm. (Penal Code § 12040.)
- · Selling a concealable firearm to a minor. (Penal Code § 12072(b).)

- · Possessing handgun ammunition designed to penetrate metal or armor. (Penal Code §12320.)
- · Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing, carrying a concealed loaded weapon, or wearing a peace officer uniform. (Penal Code § 12590.)
- · Possession of a firearm by a person ineligible to possess firearms because of his or her mental history. (Welfare and Institutions Code § 8100).
- · Providing a firearm or deadly weapon to a person who is prohibited from possessing firearms because of his or her mental history. (Welfare and Institutions Code § 8101).
- · Possession of a firearm by a person ineligible to possess firearms because of specific mental prohibitions. (Welfare and Institutions Code § 8103).
- · Bringing or sending firearms or other contraband into a juvenile detention facility. (Welfare and Institutions Code § 871.5)
- · Bringing or sending firearms or other contraband into youth authority institutions. (Welfare and Institutions Code § 1001.5.)

- · Violating Penal Code section 12072 involving sales and transfers of firearms, including:
 - - selling or furnishing a firearm to any person whom the individual has reason to believe is within a prohibited class;
 - - selling or furnishing a handgun to a minor;
 - - selling or furnishing a firearm to any person whom the seller knows, or has cause to believe, is not intended to be the actual purchaser or transferee;
 - - acquiring a firearm for the purpose of providing it to a prohibited individual;
 - - selling or transferring a firearm without having the transaction processed through a licensed dealer or law enforcement agency;
 - - committing any act of collusion relating to a Handgun Safety Certificate.
- · Intimidating a witness or victim. (Penal Code § 136.1.)
- · Threatening to cause death or great bodily injury to another person. (Penal Code § 422)

So how does this manifest itself in your gun trust?

Trustees:

Any trustee nominated and so willing to serve as a trustee as to this trust must:

1. NOT have been convicted of a felony.
2. NOT be the subject of a restraining order
3. NOT be prohibited from owning or possessing weapons as a condition of probation
4. NOT have been convicted of a crime involving:
 - Domestic Violence – (no guns in CA for 10 years) LIFETIME Federal
 - Assault, battery or other misdemeanor subject to the provisions of Penal Code sections **12001.6** and **PC12021.1**.
 - (see hand out)

Powers of Trustee(s)

- Specifically with regard to firearms or other weapons which may be placed into this trust, or otherwise acquired by or for the trust, the trustees may purchase, sell, trade or otherwise legally acquire and/or dispose of, register, de-register, transfer or handle in any other legal manner firearms and weapons; and are charged with proper and secure storage of the firearm(s). Trustees are empowered to spent funds as they see necessary and proper for the acquisition, transfer, disposal or other legal handling of firearms, and the secure and proper storage of the firearm(s) including but not limited to: obtaining gunsafe(s), gun room(s) or other secure storage facilities, obtaining, maintaining or acquiring legal license to further the purposes of this trust.
- Trustees may, from time to time, as they see fit, handle, transport, display and/or operate trust firearm(s) at any legally designated shooting location, event or at any such other place as they are lawfully allowed to do so without limitation as to the amount of such operation even at the risk of denigration of the value of trust assets as marksmanship, the collection, study and academic appreciation of firearms and the general advancement of the sport of shooting are the primary purposes of this trust.
- Trustees may purchase, sell, transfer, or register said firearm(s) with State, Federal or other law enforcement entities or governmental bodies as they see fit. 5. Sell firearms to the trust at a price not in excess of their fair market value.

Revocation of Trust

- Any and all NFA or other firearms required by law to lawfully be in the trust must be sold or otherwise transferred from the trust prior to termination of the trust under any circumstances. No person either beneficiary, settlor or trustee shall have the authority or right to terminate the trust prior to the proper disposal of all NFA firearms.



Firearms in The Context of Trust and Estate Management:

- Father/Grandfather dies:
 1. Find and catalog the collection
 - a. Check gun safes, closets, under beds etc. Look for “on duty” weapons
 - Unload them! Or ask for help in doing so.
 2. Get Make Model and SN of each gun on spreadsheet.
 3. Take pictures of all guns and talk to qualified firearms attorney about:
 - a. Assault weapons
 - b. .50 cal. BMG
 - c. NFA items
 - d. Off Roster Pistols.
 - e. Rare, historical, unique = valuable.
 4. Ammunition
 - a. Prison cigarettes
 - b. FFL to transfer (black letter law vs. “self help”)



Guess the AW?



1. 1988 Ca Bans “Assault Weapons” by Name (Penal Code §**12276.1**)
2. 2000 – California Starts the “Safe Handgun Roster” **Penal Code Section 23635**
3. 2000 – California Bans more “assault weapons” by feature
4. 2000- CA bans the importation , sales and mfg of high capacity magazines. **Penal Code 32310(a)**
5. 2013 CA requires “micro-stamping” for handguns to get on the safe handgun roster (ending virtually all importation)
6. 2017 CA creates a third class of AW’s
7. 2017 CA requires BG check for ammo

NFA Items



How to transfer firearms in CA:

- Line of consanguinity (parent child, grandparent child)
- Up and down vs. side to side.
- Transfers to parent, child, grandchild etc. – OK to direct gift with NO FFL but need OP LAW
- Transfers between states MUST have FFL. (Federal Law)
- Recipient must have FSC

Age issues:

- Generally 18 for long gun 21 for pistols, but:
- 27875 also means parents or grandparents can transfer handguns to children or grandchildren 18 or older. Since it's illegal for dealers to transfer handguns to people under 21, this is the way people 18, 19 and 20 can legally receive handguns. (Penal Code 25605 is quite clear that those 18 and over can "own, possess, [and] keep ..." a pistol or revolver.)

Nuts and bolts of transfer:



- *IF* you have “in line” transfer:
 - *IF* all parties are in CA and are CA residents
 - THEN you can have direct transfer **w/o FFL** of both rifles and pistols BUT recipient has to have FSC.
 - No 10 day wait no 1 in 30 and no Roster and under 18/21 is OK
 - THEN recipient can file the “OP LAW” form: Cal. DOJ BOF form 4544A (\$19.00)
- *IF* one party is out of state:
 - *THEN* under both State and Federal law, you **MUST** have the weapons sent to an FFL in CA (either through FFL in other state or not).
 - Recipient must have FSC BUT
 - 1 in 30 and roster does not apply BUT:
 - AW/.50 cal laws as well as hi cap laws **DO** still apply.

PERSONS INELIGIBLE TO POSSESS FIREARMS AND AMMUNITION

Any person who (a) has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, or (b) is addicted to any narcotic drug may not own or have in his or her possession, custody, or control **any firearm**. (Penal Code § 12021(a).)

Whether as a felony or misdemeanor, may not lawfully possess or have under his or her custody or control any firearm if convicted of:

- Murder or voluntary manslaughter.
- Mayhem.
- Rape.
- Sodomy or oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- Lewd acts on a child under the age of 14.
- Any felony punishable by death or imprisonment in the state prison for life.
- Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which has been charged and proven.
- Attempted murder.
- Assault with intent to commit rape or robbery.
- Assault with a deadly weapon or instrument on a peace officer.
- Assault by a life prisoner on a non-inmate.
- Assault with a deadly weapon by an inmate.
- Arson.
- Exploding a destructive device or any explosive with intent to injure or murder.
- Exploding a destructive device or any explosive causing great bodily injury.
- Robbery.
- Kidnapping.
- Taking of a hostage by a state prison inmate.
- Attempting to commit a felony punishable by death or imprisonment in the state prison for life.
- Any felony in which the defendant personally used a dangerous or deadly weapon.
- Escape from a state prison by use of force or violence.
- Assault with a deadly weapon or force likely to produce great bodily injury.
- Any attempt to commit any of the above crimes other than an assault.
- Assault upon a person with a firearm.
- Shooting at an inhabited dwelling house or occupied building.
- Drawing, exhibiting, or unlawfully using any handgun or firearm in a rude, angry, or threatening manner in the presence of a peace officer regardless of whether the firearm is loaded.
- Carjacking.
- Two or more convictions for drawing or exhibiting any firearm in a rude, angry, or threatening manner in the presence of another regardless of whether the firearm is loaded.

Persons Convicted of Misdemeanor Violations of Specified Offenses

Governing law is PC §29805 (Relief can be had per §29860)

Any person convicted of a misdemeanor violation for one or more of the following offenses is prohibited from owning, possessing or having under his or her custody or control any firearm within

10 years of the conviction (Penal Code § 12021(c)(1)):

- Threatening public officers and employees and school officials. (Penal Code § 71.)
- Threatening certain public officials, appointees, judges, staff or their immediate families. (Penal Code § 76.)
- Possession of a deadly weapon with intent to commit an assault (Penal Code § 12024.)
- Possession of a deadly weapon with the intent to intimidate a witness. (Penal Code § 136.5.)
- Unauthorized possession/transportation of a machinegun. (Penal Code § 12220.)
- Threatening witnesses, victims, or informants. (Penal Code § 140.)
- Obstructing or delaying an officer or emergency medical technician and removing or attempting to remove a firearm from these individuals. (Penal Code § 148(d).)
- Unauthorized possession of a weapon in a courtroom, courthouse or court building, or at a public meeting. (Penal Code § 171b.)
- Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (Penal Code § 171c.)
- Taking into or possessing loaded firearms within the Governor's Mansion or residence or other constitutional office, etc. (Penal Code § 171d.)
- Supplying firearms to any street gang member for use in street gang activity. (Penal Code § 186.28.)
- Assault. (Penal Code §§ 240, 241.)
- Battery. (Penal Code §§ 242, 243.)
- Assault with a stun gun or taser weapon. (Penal Code § 244.5.)
- Assault with a deadly weapon or force likely to cause great bodily injury. (Penal Code § 245.)
- Assault with a deadly weapon or instrument, by any means likely to produce great bodily injury, or with a stun gun or taser, on a school employee engaged in the performance of duties. (Penal Code § 245.5.)
- Discharging a firearm in a grossly negligent manner. (Penal Code § 246.3.)
- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house. (Penal Code § 247.)
- Drawing or exhibiting any deadly weapon, including a firearm, in a rude or threatening manner. (Penal Code § 417.)
- Drawing or exhibiting a firearm or other deadly weapon with the intentional infliction of serious bodily injury. (Penal Code § 417.6.)
- Bringing into or possessing firearms upon or within public or private schools, playgrounds and youth centers. (Penal Code § 626.9.)
- Willful infliction of corporal injury of a spouse or cohabitant. (Penal Code § 273.5.)

- Willful violation of a court order to prevent domestic violence. (Penal Code § 273.6.)
- Stalking. (Penal Code § 646.9.)
- Carrying a loaded firearm with the intent to commit a felony. (Penal Code § 12023.)
- Driver or owner of any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle. (Penal Code §§ 12034(b) and (d).)
- Criminal possession of a firearm. (Penal Code § 12040.)
- Selling a concealable firearm to a minor. (Penal Code § 12072(b).)
- Possessing handgun ammunition designed to penetrate metal or armor. (Penal Code § 12320.)
- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing, carrying a concealed loaded weapon, or wearing a peace officer uniform. (Penal Code § 12590.)
- Possession of a firearm by a person ineligible to possess firearms because of his or her mental history. (Welfare and Institutions Code § 8100).
- Providing a firearm or deadly weapon to a person who is prohibited from possessing firearms because of his or her mental history. (Welfare and Institutions Code § 8101).
- Possession of a firearm by a person ineligible to possess firearms because of specific mental prohibitions. (Welfare and Institutions Code § 8103).
- Bringing or sending firearms or other contraband into a juvenile detention facility. (Welfare and Institutions Code § 871.5)
- Bringing or sending firearms or other contraband into youth authority institutions. (Welfare and Institutions Code § 1001.5.)
- Violating Penal Code section 12072 involving sales and transfers of firearms, including: selling or furnishing a firearm to any person whom the individual has reason to believe is within a prohibited class; selling or furnishing a handgun to a minor; selling or furnishing a firearm to any person whom the seller knows, or has cause to believe, is not intended to be the actual purchaser or transferee;
 - acquiring a firearm for the purpose of providing it to a prohibited individual;
 - selling or transferring a firearm without having the transaction processed through a licensed dealer or law enforcement agency;
 - committing any act of collusion relating to a Handgun Safety Certificate.
- Intimidating a witness or victim. (Penal Code § 136.1.)
- Threatening to cause death or great bodily injury to another person. (Penal Code § 422)

Persons Prohibited From Possession, Purchase of Firearms As a Condition of Probation

Any person convicted of any crime for which the express condition of probation prohibits or restricts the possession of firearms may not lawfully own, possess, control, receive or purchase a firearm for the duration of the probation. (Penal Code § 12021(d).)

Persons Subject to a Protective Order

Persons who are subject to a protective order issued by a court pursuant to section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of the Penal Code, or

by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, may not own, possess, purchase, or receive a firearm for the duration of the order. (Penal Code § 12021(g).) This includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

- A court-issued order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party. (Family Code § 6320.)
- A court-issued order to exclude a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence. (Family Code § 6321.)
- A court-issued order enjoining a party from other specified behaviors as determined by that court. (Family Code § 6322.)
- A court-issued order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, or coming within a specified distance of, and elder or dependent adult. (Welfare and Institutions Code § 15657.03.)

The court, upon issuance of a protective order shall additionally require the respondent to sell any firearms in that person's control to a licensed firearms dealer or relinquish them for the duration of the protective order. (Family Code § 6389(c).)

As of January 1, 2007, any person subject to a protective order which includes the relinquishment of firearms must immediately surrender his or her firearm(s) in a safe manner, upon the request of any law enforcement officer, or within 24 hours when no request for relinquishment is made by a law enforcement officer (FC § 6389).

Any person subject to a protective order must file a receipt with the court acknowledging the surrender of his or her firearms within 48 hours after being served with the order. Failure to file a receipt with the court in a timely manner constitutes a violation of the protective order (FC § 6389).

Persons Subject to a Temporary Restraining Order

Persons who are subject to a temporary restraining order issued pursuant to section 527.6 or 527.8 of the Civil Code for harassing behavior may not own, possess, purchase or receive a firearm for the duration of the order. (Penal Code § 12021(g).)