

# WHAT IS A “GUN TRUST” AND DO YOU NEED ONE?



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All gun owners, whether a collector, enthusiast, or one just getting started with heavy ordinance, should consider a Gun Trust. A “Gun Trust” is a type of trust created by a weapon owner (a “grantor”) to deal with the issues of owning, possessing, using, shipping, transporting, receiving, delivering, transferring, or otherwise disposing of firearms, especially Title II firearms. Title II firearms include short-barreled rifles and shotguns, as well as machine guns, and silencers. In addition to routine Title I firearms such as revolvers, pistols, and rifles, Florida law allows residents to possess certain firearms (and accessories) that are regulated under Title II of the National Firearms Act (“NFA”). However, the ownership and transport of Title II firearms is highly regulated and violation of laws relating to Title II weapons are often felony level crimes.

FLORIDA LAW ALLOWS RESIDENTS TO POSSESS CERTAIN FIREARMS THAT ARE REGULATED, HOWEVER, THE OWNERSHIP AND TRANSPORT OF TITLE II FIREARMS IS HIGHLY REGULATED AND VIOLATION OF LAWS RELATING TO TITLE II WEAPONS ARE OFTEN FELONY LEVEL CRIMES.

In creating a Gun Trust, the grantor will name a trustee (or trustees) who can then legally possess, manage, and use any firearm or accessory held within the trust. Generally, the grantor will at least name him or herself as an initial trustee or co-trustee. In order to serve as trustee, a person must be eighteen years or older and not legally prohibited from possessing a firearm. Once the Gun

Trust is set up, the grantor is no longer the registered owner of the weapon(s) and there is no limit to the number of trustees named or the amount of Title I or Title II firearms that can be held by the trust.

The grantor will also name a beneficiary (or beneficiaries) of any age, that will receive the firearm(s) upon the grantor’s death, incapacity, or the occurrence of some other specific event or date. In addition to the benefits of use during the grantor’s life, a Gun Trust also allows for legal possession and orderly distribution of the firearms to the beneficiaries while avoiding probate. Avoiding probate has the added value of privacy. Probate documents are public documents filed with the court and can be available for anyone to see. Florida probate requires the filing of an inventory of the decedent’s assets. The inventory would include a list of all firearms owned by the decedent and the value of each. Trust administrations are private. The only parties that would know about the firearms and their values would be the grantor, trustees and beneficiaries.

The Gun Trust will allow for legal transfer of all Title I and Title II firearms pursuant to the terms of the trust established by the grantor. Beneficiaries must still go through the background check and identification process before the trustee can turn over possession to the beneficiary, so the grantor should be mindful in choosing those persons to inherit the firearms. Undoubtedly, a Gun Trust is a valuable tool to provide for transfer of weapons for any owner, particularly collectors, enthusiasts and Type II weapons owners.

A Gun Trust is separate from all other estate planning documents, thus the grantor can choose trustees and beneficiaries they know will handle firearms properly. Gun Trusts are typically revocable, thus as long as the grantor has capacity, amendments can be made to the Gun Trust, including a change to the weapons, the trustees, and/or the beneficiaries. A Gun Trust also provides protection against the grantor’s incapacity. An incapacitated person cannot own a firearm. With a Gun Trust, if the grantor or trustee becomes incapacitated, the co-trustee or successor trustee simply takes possession of the firearms in trust and administers them according to the terms of the trust.

If you legally own a Title II weapon, you should have a Gun Trust. If you are a collector of firearms, you should have Gun Trust, even if you do not own any Title II weapons. The cost of creating and administering a Gun Trust is a small price to pay to avoid the issues created by leaving behind a collection of Title I weapons or a single Title II weapon.