



Do You Need a Firearms Trust?



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The National Firearms Act (NFA) establishes a complex process for acquiring and owning Class III firearms. The Class III category includes, but is not limited to automatic firearms, short barreled rifles and shotguns, sound suppressors, and the broad category known as “all other weapons.”

Under the NFA, an applicant seeking to own a Class III firearm must submit a Form 4 to the Bureau of Alcohol Tobacco and Firearms (ATF) for review. Generally, there are three ways to submit an application for Class III ownership.

You may apply in your individual capacity. Applying in your individual capacity requires the submission of fingerprints and photographs to ATF. Additionally, applying in your individual capacity requires chief law enforcement officer (CLEO) approval (e.g. approval by county sheriff). Many CLEOs are not willing to approve these requests and there is limited recourse if CLEO approval is not given.

You may apply through a business entity such as an LLC. With this approach comes the annual filing requirements with the state of Florida and certain aspects of the business entity are public record. Additionally, a taxpayer identification number would need to be assigned to the entity and any associated income and sales tax reporting matters would need to be addressed. Generally, organizational documents for business entities do not address estate planning matters such as incapacity and death.

The final method for applying for ownership of a Class III firearm is to utilize a trust, commonly referred to as an NFA Firearms Trust. NFA Firearms Trusts are tailored to reduce the regulatory complexities associated with lawful possession of a Class III firearm.

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NFA Firearms Trusts are private instruments that are not filed with any state or federal agency. When the trustee of an NFA Firearms Trust is applying for ownership of a Class III firearm, CLEO approval is not required, nor is the trustee required to undergo ATF fingerprinting or photographing.

The terms of a properly drafted NFA Firearms Trust address the regulatory details of the NFA to ensure lawful ownership of a Class III firearm. The Trust should be customized to address who may be in lawful possession of the Class III firearm and to address estate planning aspects to ensure lawful possession in the event of the incapacity or demise of the trust's creator. These provisions can be modified by the Trust's creator without further ATF approval.

The Trust would be considered a "grantor" trust and would not require the procurement of a taxpayer identification number. In the event of the settlor's death, the NFA Firearms Trust would ensure that the Class III firearm would be distributed in a lawful manner to your intended beneficiaries without violating the NFA.

If you have questions regarding the legal and regulatory aspects of ownership of Class III firearms and implementation of NFA Firearms Trusts, you should speak to qualified legal counsel.

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