

WILLMS, S.C.

LAW FIRM

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**TO:** Clients and Friends of Willms, S.C.  
**FROM:** Attorney Maureen L. O'Leary  
**DATE:** January 31, 2013  
**RE:** Estate Planning for Firearms

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Forty-three percent of households report having at least one gun in their home.<sup>1</sup> Some families own firearms as investments or as heirlooms they would like to keep in the family for multiple generations. Safe storage and handling of firearms are topics often addressed in firearm safety training. However, owners of firearms should also take care to provide for the safe, legal and efficient disposition of their firearms in the event of their death or incapacity.

Traditional trusts can own many types of assets, including many types of firearms. However, traditional trusts often do not include specialized provisions regarding the management and distribution of firearms. If you have a trust or are thinking of establishing a trust, consider including provisions in your trust agreement regarding the distribution of your firearms.

Depending upon the quantity, value and types of firearms you own, you may prefer to establish a dedicated Gun Trust to own your firearms, instead of combining your firearms with your other assets in a traditional trust. Gun Trusts are becoming increasingly popular for firearm owners. A Gun Trust provides detailed instructions regarding the disposition of your firearms in the event of your death or incapacity.

Federal, state and local laws strictly regulate gun transfers and possession. Convicted felons, certain persons with a history of mental illness, persons convicted of misdemeanor domestic violence offenses, convicted users of illegal drugs, dishonorably discharged veterans, and persons who have renounced their U.S. citizenship are prohibited from possessing firearms.

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<sup>1</sup> <http://www.gallup.com/poll/1645/Guns.aspx>

When an estate or trust includes firearms, it is very important to make sure the firearms are not distributed to anyone disqualified from gun ownership. Otherwise, your firearms could be confiscated by the government and your executor or Trustee could face civil and/or criminal penalties. Gun Trusts include specific provisions regarding the distribution of your firearms that can help protect your well meaning friends and family from accidentally transferring your firearms in violation of the law.

The Trustees of a Gun Trust have the right to possess, manage and use the firearms owned by the Trust. Trust beneficiaries can also use the firearms while they are owned by the Gun Trust, in the discretion of the Trustees. All Trustees must be at least 18 years of old. Trust beneficiaries can be any age. Gun Trusts name successor Trustees and successor beneficiaries in the event a Trustee or beneficiary becomes disqualified from possessing firearms.

Additional benefits of Gun Trusts can include the following:

- Gun Trusts can require your heirs to complete a certain level of firearm safety training before they receive a firearm from the Trust after your death.
- Gun Trusts can give the Trustee the discretion to determine when your heirs are sufficiently mature and responsible to receive a firearm, if ever.
- Gun Trusts can provide minor beneficiaries the opportunity to use your firearms for hunting or target shooting while they are minors, provided they are properly supervised and the Trustee determines it appropriate.

Gun Trusts can also provide increased privacy and ease of administration upon your death. Without a Trust, an inventory of all your firearms could become public record if your estate is subject to probate upon your death. Probate would involve a court overseeing the distribution of your firearms and can be a lengthy and expensive process. A Gun Trust eliminates the need for probate of your firearms upon your death. Instead, the persons you nominate in your Gun Trust as Trustees would simply distribute your firearms in accordance with the terms of the Trust Agreement.

Gun Trusts can provide for your firearms to be distributed outright to your heirs upon your death (subject to the provisions of the Gun Trust), or could provide for your firearms to remain in trust for one or more generations. Wisconsin even allows for perpetual Gun Trusts that potentially allow your firearms to remain in trust indefinitely. Firearms that

remain in a Gun Trust after your death are protected from the creditors and ex-spouses of your heirs.

Gun Trusts can be revocable or irrevocable during your lifetime. Revocable Gun Trusts can be amended or revoked during your lifetime, but are not protected from your creditors. Irrevocable Gun Trusts may not be amended or revoked during your lifetime, but can protect firearms from your creditors.

An Irrevocable Gun Trust could be particularly beneficial if you own a valuable firearm collection and might need Medicaid benefits in the future. Transferring firearms to a properly drafted Irrevocable Gun Trust at least 5 years before you need Medicaid benefits can transform the firearms into exempt assets the government will not be able to take away from you before you qualify for Medicaid benefits. Other people that could benefit from the potential asset protection benefits of an Irrevocable Gun Trust include professionals subject to a high risk of malpractice claims or married persons worried about potential divorce.

Gun Trusts also minimize the risk your firearms will be confiscated if a court appointed guardian is appointed in the event of your incapacity.

### **NFA Gun Trusts**

Gun Trusts can be customized to own firearms subject to NFA restrictions. The National Firearms Act (the "NFA") is a federal law that regulates the transfer of certain types of firearms. Examples of firearms covered by the NFA include short barreled shotguns, short barreled rifles, machineguns, and firearm mufflers and silencers (an "NFA firearm"). Even if such a firearm is incapable of discharging a shot and is incapable of being readily restored to a firing condition, such a firearm is still subject to the NFA.

In order to purchase or transfer a NFA firearm, an ATF Form 4 (Application for Tax Paid Transfer and Registration of Firearm) must be completed by the transferor and transferee.

If an individual is purchasing an NFA firearm, the ATF Form 4 requires the following to be included when the form is submitted:

1. A "Law Enforcement Certification" must be completed and signed by the chief law enforcement officer of the jurisdiction in the area of residence of the transferee. A chief law enforcement officer may include the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor.

2. A photograph of the transferee.
3. Official fingerprints of the transferee.
4. The transferee must answer a series of personal questions.

Transfer of the NFA firearm may then only be made upon approval of the ATF Form 4 by the NFA Branch of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

However, if a NFA Gun Trust (instead of an individual) purchases an NFA firearm, then the Trust completes the ATF Form 4 and the requirements to include the Law Enforcement Certificate, photograph, fingerprints and responses to various personal questions are waived (with some exceptions). Avoiding these NFA requirements expedites the purchase process and preserves confidentiality.

Similarly, if you leave NFA firearms to your heirs without a NFA Gun Trust, upon your death your heirs will be required to submit a Law Enforcement Certificate, photograph, fingerprints and answer personal questions before receiving the NFA firearms. If your NFA firearms are owned by a NFA Gun Trust upon your death, these requirements can be avoided (with some exceptions).

NFA Gun Trusts can also protect your family from the consequences of constructive possession of an NFA firearm. Only a registered owner of an NFA firearm may be in possession of that weapon. Illegal possession of an NFA firearm carries a prison sentence of up to 10 years and/or a fine of up to \$250,000. If an NFA firearm is titled in your individual name, something as simple as a spouse or adult child knowing the combination to your gun safe can result in their constructive possession of the NFA firearm and violation of the National Firearms Act. With an NFA Gun Trust, you can name multiple Trustees, which allows multiple people to legally possess, use, and know how to gain access to the NFA firearms. This significantly reduces the risk of accidental constructive possession.

Please let us know if you would like to discuss estate planning options for your firearms.

**END OF MEMO**