

Estate Planning & Administration for Firearms

KEEPING YOU & YOUR CLIENTS OUT OF JAIL

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Federal Laws You Need To Be Aware Of

18 USC § 922: UNLAWFUL ACTS



Base Law, multiple sections



ATF regulations are still applicable (can be found at ATF website)



All subject to challenge with *NYSRPA v Bruen* 597 U.S. ____ (2022)
(More on this case later)

CA State Laws



Multiple codes:

- CA Penal Code
- Welfare and Institutions Code
- Local Ordinances (potentially)



Prohibited Status (This one is potentially expansive.....more on this in a bit)



Per Se Illegal guns (for that matter: what is a gun? [Slide 7])



NFA Weapons - These are unique guns, that are uniquely regulated by 18 USC § 922 (Generally illegal in CA)

Prohibited Persons

So....you have beneficiaries that are potentially “prohibited persons.”

What is a “prohibited person”?

1. Federal Law: Generally a felon — though potentially challenged through Bruen, with a shout out to Justice Barret’s dissent in Kanter v Barr (No. 18 - 1478) (7th Cir. 2019)
2. Lautenberg’s 18 USC § 922(g)(9) Misdemeanor Domestic violence - Banned for Life (also challengeable under Bruen)
3. 5150 / 5250
 - 5150 — Voluntary admission: 5 year prohibition
 - 5150 — Involuntary admission: life time prohibition
 - 5250 — Lifetime prohibition (often times challengeable due to clerical errors: Nunc Pro Tunc)
4. Certain misdemeanors carry specified time prohibitions
5. TRO / Permanent Restraining Order

HYPOTHETICAL:

You are administering the estate of Alpha.

The Estate contains one Mega Blaster 2000 pistol that has specific instructions to bequeath to Beta.

Alpha was a CA resident, and Beta is a CA resident. Can the pistol be simply handed over to Beta?

ANSWER:

Possibly, but with caution....

When both parties are CA residents there is no need for a firearms transference to go through an FFL.

However, Beta must be able to take possession (ie: not a prohibited person). FFL transference is advisable as it creates a background check.

QUESTION::

Are Gun Trusts advisable?

ANSWER:

Potentially, depending on the desires of the client, and the expansiveness of the collection.

Typically administrated by a third party.

Issue are named, and have a possessory interest in the firearms, but do not have the ability of alienation.

Often times yearly training is a requirement for continued possession.

Works well when the intent is multi generational growth of the collection.

It does not allow for the possession of per se illegal guns or for prohibited persons to have possession.

Ok....so what is a gun???

Generally.....and the air does get a little thin up here...a gun is a serialized receiver capable of deploying a projectile through the use of explosive force.

- × An air gun is not a gun
- × A gun manufactured before 1898 is NOT a firearm
- ? A chunk of metal that has a serial number on it might be a firearm
- ? A chunk of metal that does NOT have a serial number on it might be a firearm

Seek out advise from an FFL or firearms attorney to determine if what you have is actually a gun.

QUESTION::

Alpha passes testate. You are the administrator of the estate. All “guns” are designated to be bequeathed to Beta.

What issues might be involved in transferring to Beta who is a CA resident? The estate contains:

- 1) Springfield 1876 Trapdoor
- 2) “Old looking” lever action
- 3) Colt New Service Revolver
- 4) Cap lock pistol
- 5) AR -15 with a detachable magazine
- 6) Three lower receivers

ANSWERS:

Ok...not a “firearm”.

Needs to be determined by an expert what it is.

Manufacturing date needs to be determined and can range from 1890-1940.

Not a firearm.

DANGER DANGER DANGER!!!!
(We’ll look at this on the next slide)

These might or might not be considered “guns.” Even if they are “guns,” if they are homebuilt they might have to be destroyed & considered non-transferable.

CA Assault Weapons Laws

Current law: If it is a semi auto centerfire firearm, with a detachable magazine, and one or more “evil features” (collapsible stock, pistol grip, flash suppressor, or vertical stabilizer), then it IS an assault rifle”

The definition of assault weapons is being challenged and will probably be found to be unconstitutional see Miller v Bonta (currently in litigation)

“So complicated it would make an angel swear!” — Judge Roger Benitez

If it is a “fixed magazine” then it can have “evil features”

If it is a “registered assault rifle” it cannot be transferred, ever....even after death.

If it is a “registered assault rifle” it can be broken down to the receiver and all the cool parts can be transferred, just not the chunk of metal called a receiver.

QUESTION::

Should you have an FFL?

ANSWER:

Unless you are willing to become a specialist in firearms and willing to keep copious records in perpetuity, then no. Better to outsource.

If you do want to become one you will also have to become a CA dealer for it to have any value for your clients.

Everything is subject to MASSIVE CHANGE

So....every thing is now subject to a “New Constitutional Test” when it comes to 2A.

Π: This is what the plain text of the Second Amendment says

Δ: This statute should stand because it is consistent with the type of regulation that existed and continued to exist at the time of the ratification of the Constitution.

(There were very very few regulations of firearms ownership, possession or carriage at the time of the ratification. Most gun control laws are likely to be found to be unconstitutional....INCLUDING most of the 1968 Gun Control Act that gave us 18 USC 922.

Likely to be challenged piecemeal, though as applied actions.

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