

The Myth of Purchasing a Title II Firearm

By:

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With the advent of the National Firearms Act (“NFA”) came a great deal of regulation on a citizen’s ability to purchase certain types of firearms commonly referred to as Title II, (Class III) Firearms. Under the NFA, a firearm is defined as a machine gun, sound suppressor, short-barreled shotgun, short-barreled rifle, destructive device and "any other weapon". When a purchaser decides they would like to obtain a firearm that is regulated under the NFA they have options regarding how to purchase such a firearm. Most gun enthusiasts either (a) do not know they can legally purchase such a firearm or (b) are unaware of some of the benefits to structuring the purchase through what is commonly referred to as a NFA Trust. Under the NFA and CFR, a person is defined as a partnership, company, association, trust, estate, or corporation, as well as a natural person. This allows for the creative structuring of a purchase.

INDIVIDUAL PURCHASE (“NATURAL PERSON”)

A typical purchase of a Title II firearm begins with the decision on what firearm to purchase and from where to purchase it. With an individual purchase, two copies of the BATFE form 4 or form 1 are required at the time of transfer. Along with the forms, the purchaser must submit a passport sized photo, a fingerprint card and a CLEO certification. A CLEO certification is a Chief Law Enforcement Officer’s certification. Oftentimes, the law enforcement officer in your county may be unwilling to certify your purchase due to various reasons including political views. Once the purchaser has all of the necessary documentation it is submitted to the BATFE along with a \$200.00 transfer tax. If approved, after a background check the BATFE will issue a “tax stamp” along with the appropriate paperwork. The stamp is evidence that the transfer or purchase of the Title II firearm has been approved. It is advisable that the paperwork with the stamp is stored and maintained with the weapon at all times. The purchaser should also maintain copies of the paperwork in the event that the paperwork is lost or destroyed. The NFA does provide recourse if loss or destruction of paperwork occurs.

CORPORATE PURCHASE

A Corporation or a Limited Liability Company is a legal entity established under state law. The benefit of purchasing a Title II firearm by way of an entity or trust is that the purchaser (the entity) does not have to obtain a photograph, fingerprints, or a CLEO certification. This can be extremely useful if the chief law enforcement officer has reservations about signing off on a purchase.

Forming an entity for the purchase of a Title II firearm is the same as forming an entity for any other business purpose. One should always consult a competent attorney when desiring to do so. The process is relatively simple. The purchaser will meet with an attorney and explain his or her

intentions. Various documents will be drawn up to include the articles of incorporation and Bylaws or Corporate Regulations. These documents will establish the corporate structure to include the appointment of a President, Vice-President, Secretary and other positions necessary to maintain the entity. After the appropriate paperwork is complete there are filing fees associated with registering the entity with the state.

Once the Corporation is established and registered, it may now purchase a Title II firearm. The appropriate paperwork will still be required to include the two copies of form 4 or form 1. The entity will have to submit the corporate documents along with the form 4 or form 1 to the BATFE so that it can verify it is the entity purchasing the weapon. It is advised that the firearm be purchased from a corporate bank account and not a personal bank account. This avoids what could be seen as an illegal transfer of the firearm.

There are downsides to purchasing a firearm via a corporate entity. First, the entity must register with the state and is therefore not confidential. Along with registering with the state, certain entities in Ohio must pay a Biennial reporting fee. Also, in the event one decides to move out of state various corporate laws can become rather cumbersome. If a purchaser is concerned with cost, time and privacy, they should consider a final alternative, the NFA Trust.

NFA REVOCABLE TRUST

As with a corporate entity, a Revocable Trust provides the same benefits that allow a purchaser to avoid fingerprinting, photographs and a CLEO certification. The NFA Trust, however, brings with it added benefits. It allows for more privacy than that of a corporate entity and the cost can be much lower. Generally, to form a corporate entity the cost may range from a few hundred dollars into the thousands, not to mention possible filing fees. An NFA trust is generally a one-time fee paid to an attorney who draws up the document. The cost is normally around six hundred dollars.

A common problem with a revocable trust is that many are not set up properly to deal with the National Firearms Act (NFA). If the NFA is ever violated the repercussions can be substantial to include, criminal charges, fines and forfeiture of all weapons.

The NFA revocable trust organizes who will maintain the firearms and for whose benefit they will be so maintained. It is important that the trust be drafted carefully so that the parties to the trust understand both federal and state firearms regulations.

After a NFA Revocable Trust is drawn up by a competent attorney, the process is the same. The Trustee of the trust will submit two copies of form 4 or form 1 along with a copy of the entire trust, any additional amendments or assignments of other weapons notated in a separate document, and the \$200.00 transfer tax. It is again important that any Title II firearms are paid for out of a bank account set up in the name of the trust to avoid possible NFA violations. After the trust purchases the weapon, the Trustee is under a fiduciary obligation to maintain all property within the trust for the benefit of the beneficiary as outlined within the trust.

CONCLUSION

The common misconception is that Title II firearms are improbable or illegal to obtain. As discussed, this is untrue as there are many options when considering such a purchase. A NFA purchase can be complicated, and although this article has outlined some of the basics of the process, it in no way encompasses all of the intricacies associated with the law. A potential purchaser should always consult competent legal counsel when going forward with a Title II purchase.

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