

Fiduciaries and Firearms

The Basics of the Safe Handling and
Legal Transfer of Firearms and
How you Can Help Your Fiduciary Client

Kelly L. O'Connor, esq., O'Connor & Bennett Law Firm, PLC
Owner, Two Alpha Auctions, LLC

Topics Covered

- ▶ Universal Gun Safety Rules
- ▶ Safe handling of firearms
- ▶ Laws Governing Firearms
- ▶ Federal Firearms License (FFL)
- ▶ Inventorying Firearms
- ▶ Transfer of Firearms and Background Checks
- ▶ Selling Ammunition and Class III Items
- ▶ Laws Governing Fiduciaries and Firearms
- ▶ Steps for Transferring Firearms Out of an Estate
- ▶ Options for Selling Firearms
- ▶ Gun Trusts

Universal Gun Safety Rules

- ▶ In the event that you are onsite with your client and there are firearms present, the 4 universal rules of gun safety are worthy of mentioning:
 1. Treat all firearms as if they are loaded.
 2. Always keep firearms pointed in a safe direction. Never point a firearm at anything you do not intend to shoot.
 3. Keep your finger off the trigger until you are ready to shoot.
 4. Always be sure of what your target is and what is beyond it.

The Safe Handling of Firearms

- ▶ First and most importantly, advise your client to ensure that firearms are immediately cleared (not loaded) and stored in a secure location.
- ▶ All ammunition should be secured separately from the firearms.
- ▶ Do not store firearms or ammunition at a vacant property.
- ▶ Do not be afraid to ask your client if they are comfortable handling firearms and understand the universal gun safety rules. If they are not, advise that they find someone that is to assist them.

Laws Governing Transfer of Firearms

- ▶ National Firearms Act of 1934
 - ▶ Imposes a tax on the manufacture and transfer of certain firearms and requires registration of those items.
- ▶ Gun Control Act of 1968
 - ▶ Federal law that regulates the firearms industry and firearms ownership
 - ▶ Regulates interstate commerce
 - ▶ Requires background checks for certain transfers
 - ▶ Defines “Prohibited Person”
 - ▶ Regulates Federal Firearms Licenses (FFL)
- ▶ Enforced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE)
- ▶ Rules promulgated by the Department of Justice
- ▶ Michigan’s Firearms Act 372 of 1927, as amended effective April 13, 2023
 - ▶ An act to regulate and license the selling, purchasing, possession, and carrying of certain firearms
 - ▶ Governs transfer of firearms to heirs of an estate

Laws Governing Fiduciaries and Firearms

Your client may be serving as a Trustee, Power of Attorney, Personal Representative, or Conservator. The Code of Federal Regulations tells us that:

“The executor, administrator, personal representative, or other person authorized under State law to dispose of property in an estate (collectively “executor”) may possess a firearm registered to a decedent during the term of probate without such possession being treated as a “transfer” as defined in § 479.11. No later than the close of probate, the executor must submit an application to transfer the firearm to beneficiaries. . .”

27 CFR § 479.90a

Federal Firearms License (FFL)

- ▶ An FFL allows an individual or a company to engage in the business of manufacturing, importation, or interstate/intrastate sale of firearms.
- ▶ Strict requirements
 - ▶ Maintain an Acquisition & Disposition book ("A&D")
 - ▶ All firearms are required to be recorded in the FFL's Acquisition & Disposition book ("A&D").
 - ▶ Maintain paper transaction records permanently
 - ▶ Subject to inspection of A&D book, records, and inventory by the BATFE at anytime during your normal business hours and without notice
- ▶ Wherever a customer leaves with a firearm, that premises must be separately licensed. In other words, a customer can only pickup a firearm at the premises.
- ▶ Unregistered firearms CAN be transferred to the FFL's A&D book

Prohibited Persons

- ▶ Term of art used in the Gun Control Act
- ▶ An FFL shall not transfer a firearm to a known Prohibited Person.
- ▶ A “Prohibited Person” is someone that is a convicted felon, has been convicted of certain misdemeanor crimes, adjudicated as a “mental defective,” or committed to a mental institution, among other enumerated offenses.

Inventorying and Appraising Firearms

- ▶ Inventory all firearms
 - ▶ Manufacturer, Model, Serial Number, caliber/gauge
 - ▶ For long guns: Type of Action (bolt, lever, single-action, semi-auto, breech)
 - ▶ For hand guns: semi-auto or revolver, barrel length, number of rounds
 - ▶ Tag each firearm corresponding with its number on the inventory form
- ▶ An appraisal may also be necessary. Contact an auction house or an FFL to locate a firearm expert that can provide this service.

Transferring Firearms Long Gun Form

Name: _____
Code: _____

INVENTORY LONG GUNS

+ □

#	Manufacturer	Model	Serial #	Type of Action	Caliber or Gauge	Rifle or Shotgun	Antique or B.P.	Notes

□

PAGE ____ of ____

Transferring Firearms Hand Gun Form

INVENTORY HAND GUNS

Name: _____

Code: _____



#	Manufacturer	Model	Serial #	Semi-Auto or Revolver	Caliber or Gauge	Shot	Barrel Length	Antique or B.P.	Notes

PAGE _____ of _____

Firearms Background Checks (NICS)

- ▶ National Instant Criminal Background Check System (NICS) administered by the FBI
- ▶ FFLs are required to undertake a NICS background check on prospective buyers before transferring a firearm.
- ▶ Prospective buyers complete a Firearm Transaction Record “ATF Form 4473” and that information is provided to NICS either over the phone or online.
- ▶ Effective in March 2020, a Michigan Concealed Pistol License (“CPL”) may no longer be used in lieu of a background check.

Firearms Background Checks (NICS) (cont.)

- ▶ If NICS provides a response of “Proceed,” the firearm can be transferred to the buyer.
- ▶ If NICS provides a response of “Delayed,” the firearm cannot be transferred to the buyer until either the NICS response is updated to “Proceed” or after the expiration of the “Brady date,” which is usually 3 business days.
- ▶ If NICS provides a response of “Denied,” the firearm may NOT be transferred to the buyer under any circumstance. This is usually pretty awkward!

RI-60 Pistol Sales Record

- ▶ For the transfer of handguns, the FFL must also prepare an MSP RI-60 Pistol Sales Record (“RI-60”), which is a Michigan State Police form, that records the transfer of pistols (aka handguns including revolvers).
- ▶ Three-part form for Seller, Buyer, and Local Law Enforcement
- ▶ The buyer is responsible for mailing a copy to their local law enforcement agency.

RI-60 Pistol Sales Record (cont.)

PISTOL SALES RECORD

AUTHORITY: MCL 28.422a COMPLIANCE: Required PENALTY: State Civil Infraction

PURCHASER INFORMATION				
Purchaser Name (Last, First, Middle, Suffix) or Business Name			Date of Birth	FFL Number
Race	Sex	CPL Number (if applicable)	MCOLES Number (if applicable)	
Street Address		Lot/Suite/Apartment	City	
County		ZIP Code	Phone Number	
Purchaser Signature				
PISTOL INFORMATION				
Serial Number		Manufacturer	Model	Caliber
Type: Semi-Auto Enter code if type is Other:	Shot	Barrel Length	Overall Length	Additional Notes
SELLER INFORMATION				
Seller Name (Last, First, Middle, Suffix) or Business Name (if FFL Dealer)			Purchase/Transfer Date	
Seller FFL Number (if applicable) Last 9 Digits		NICS Transaction Number		
Licensing Authority Copy				

RI-060 (07/2020) Michigan State Police

PISTOL SALES RECORD

AUTHORITY: MCL 28.422a COMPLIANCE: Required PENALTY: State Civil Infraction

PURCHASER INFORMATION				
Purchaser Name (Last, First, Middle, Suffix) or Business Name			Date of Birth	FFL Number
Race	Sex	CPL Number (if applicable)	MCOLES Number (if applicable)	
Street Address		Lot/Suite/Apartment	City	
County		ZIP Code	Phone Number	
Purchaser Signature				
PISTOL INFORMATION				
Serial Number		Manufacturer	Model	Caliber
Type: Semi-Auto Enter code if type is Other:	Shot	Barrel Length	Overall Length	Additional Notes
SELLER INFORMATION				
Seller Name (Last, First, Middle, Suffix) or Business Name (if FFL Dealer)			Purchase/Transfer Date	
Seller FFL Number (if applicable) Last 9 Digits		NICS Transaction Number		
Purchaser Copy				

RI-060 (07/2020) Michigan State Police

PISTOL SALES RECORD

AUTHORITY: MCL 28.422a COMPLIANCE: Required PENALTY: State Civil Infraction

PURCHASER INFORMATION				
Purchaser Name (Last, First, Middle, Suffix) or Business Name			Date of Birth	FFL Number
Race	Sex	CPL Number (if applicable)	MCOLES Number (if applicable)	
Street Address		Lot/Suite/Apartment	City	
County		ZIP Code	Phone Number	
Purchaser Signature				
PISTOL INFORMATION				
Serial Number		Manufacturer	Model	Caliber
Type: Semi-Auto Enter code if type is Other:	Shot	Barrel Length	Overall Length	Additional Notes
SELLER INFORMATION				
Seller Name (Last, First, Middle, Suffix) or Business Name (if FFL Dealer)			Purchase/Transfer Date	
Seller FFL Number (if applicable) Last 9 Digits		NICS Transaction Number		
Seller Copy				

RI-060 (07/2020) Michigan State Police

INSTRUCTIONS

This form is designed to be completed electronically. Information entered into each field on the Licensing Authority copy will automatically be copied onto the Purchaser and Seller's copies when the user moves on to the next field. Each of the three copies will need to be signed by hand. Signatures may not be entered electronically.

This sales record must be printed on white paper.

One of the following is mandatory to utilize this form: Purchaser Concealed Pistol License (CPL) Number, Purchaser Michigan Commission on Law Enforcement Standards (MCOLES) Number, or Seller Federal Firearms License (FFL) Number and National Instant Criminal Background Check System (NICS) Transaction Number.

The Seller shall complete the Purchaser Information, Pistol Information and Seller Information sections legibly and completely and may retain the Seller Copy.

The Purchaser shall return the Licensing Authority Copy to the Sheriff's Office or Local Police Department within 10 days of purchase or transfer. The purchaser shall retain the Purchaser Copy.

The Licensing Authority shall enter the pistol information into the MiPISTOL database within 10 days of receipt and forward the Licensing Authority Copy to the Michigan State Police, Firearms Records Unit for retention.

A person who forges any matter or makes a material false statement on this form is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

Selling Ammunition

Under the Gun Control Act:

- ▶ An 18-year-old can legally purchase a long gun and long gun ammunition.
- ▶ An individual must be 21 years old to purchase a pistol (handgun or revolver) through an FFL and ammunition for a pistol.
- ▶ For example, an 18-year-old can buy 12 gauge ammunition for his or her 12 gauge shotgun
- ▶ For example, A 20-year-old would be prohibited from buying ammunition that can only be used in a pistol

Class III/NFA Regulated Items

- ▶ A “Class III” item is a firearm and other firearm accessory that is regulated by the National Firearms Act.
- ▶ This includes suppressors, short-barrel rifles/shotguns, fully automatic firearms
- ▶ Can be legally owned with approval from the BATFE
- ▶ BATFE issues a “special tax stamp”
- ▶ This is a very lengthy process—usually upwards of a year to receive BATFE approval
- ▶ Manufacturing or selling a Class III item requires a Class III FFL

Steps for Transferring Firearms Out of An Estate

1. Ensure all firearms are cleared (not loaded), inventoried, and tagged.
2. Secure all firearms in a gun safe that is not in a vacant home. If necessary, firearms can be stored at an FFL during the pendency of administration of the estate.
3. Determine that the heirs and/or beneficiaries are not prohibited persons and are not underage (18 or older for long guns and 21 or older for pistols).
4. Either transfer to an heir/beneficiary and/or liquidate.

Steps for Transferring Firearms Out of An Estate (cont.)

- ▶ If liquidating firearms, determine how your client intends to do so:
 - ▶ Consignment at public auction with a reputable auction house that has an FFL
 - ▶ Selling the entire collection to a buyer that has an FFL
 - ▶ Selling the entire collection to a buyer that does not have an FFL but conduct a NICS background check and paperwork through an FFL
 - ▶ Listing firearms individually on gunbroker.com
 - ▶ Consigning for sale at a retail gun shop

Do Your Research!

If liquidating through public auction, advise your client to do their research!

Look for....

- ▶ A reputable auction house that handles firearms on a regular basis. How many firearm auctions do they conduct each year?
- ▶ Ensure they have a valid FFL and that they follow all applicable local, state, and federal laws and rules. Have they ever been the subject of a BATFE audit?
- ▶ Do they conduct firearm-only auctions? Or do they include firearms in with other personal property?
- ▶ Where do they hold their auctions? If at a different location than their main office, do they have a separate FFL for the auction location?
- ▶ Where do they also advertise? How far in advance do they advertise?

Do Your Research! (cont.)

- ▶ Do they have a mailing list geared toward customers interested in firearms?
- ▶ Do they use an online bidding platform to draw a nationwide audience?
- ▶ How do they secure and store firearms once in their possession?
- ▶ How do they ensure that the firearms are described accurately?
- ▶ How many pictures of each firearm do they take?
- ▶ Ask to see a catalog from a previous gun auction.
- ▶ Ask to see their auction statistics including, average hammer price, average number of lots per auction, average number of attendees.
- ▶ What are their commission rates for Sellers? What is their buyer's premium and shipping and handling terms?

Steps for Transferring Firearms Out of An Estate (cont.)

If transferring firearms to a qualifying heir or beneficiary:

- ▶ Contact a local FFL and have them handle the NICS background check and all of the transfer paperwork.
- ▶ The heir/beneficiary will have to go to the FFL and complete the Form 4473 and have their background check ran. It cannot be done remotely. The firearm must be taken to the FFL, must be placed on the FFL's A&D books, and can only leave the premises with the individual that completed the Form 4473.
- ▶ If the heir/beneficiary resides out-of-state and does not have an FFL in their name, pistols MUST be shipped from a Michigan FFL to an FFL in their state of residence where the paperwork will be filled out and the background check ran.
- ▶ For long guns, out-of-state heirs/beneficiaries CAN travel to a Michigan FFL to have their background check ran, because individuals are permitted to cross state lines with long guns.
- ▶ NO FORM 4473 OR BACKGROUND CHECK REQUIRED IF the firearm is a black powder (either a long gun or hand gun) or is an "antique" (manufactured in or before 1898).

Gun Trusts

- ▶ A highly tailored revocable living trust covering firearm laws, defining terms of art and conditions of ownership and possession.
- ▶ Allows for firearms to be aggregated and inventoried in one trust for accountability purposes.
- ▶ Provides for the legal co-ownership and possession of firearms and other related accessories owned by the trust by anyone that's listed as a grantor/settlor and, if drafted correctly, successor trustee(s).
- ▶ The best way (not not necessarily the most efficient) to own NFA-regulated items.
- ▶ Trust language precludes ownership and/or possession of a trust asset to a "prohibited person."

Gun Trusts—What Can It Own?

- ▶ All firearms (obviously)
- ▶ NFA-regulated items (National Firearms Act)
 - ▶ BATFE (Bureau of Alcohol, Tobacco, Firearms, and Explosives) governs the legal possession of certain items. In Michigan, this includes silencers (suppressors), fully automatic firearms, and short-barrel rifles/shotguns, and “any other weapon” (pen gun, umbrella gun, receiver)
 - ▶ Requires lengthy application process to acquire the “tax stamp”
- ▶ Ammunition (and other revolving inventory)
- ▶ Reloading equipment
- ▶ Gun safes (most have serial numbers)
- ▶ Any other sportsman-related equipment
- ▶ Bill of Sale with language covering categories

Thank you for your time!

Presented by Kelly L. O'Connor, Owner and Attorney-at-Law

Two Alpha Auctions, LLC

O'Connor & Bennett Law Firm, PLC

1106 South Kalamazoo Avenue

Marshall, MI 49068

(269) 781-8460

www.oconnorbennett.com

kelly@oconnorbennett.com

