

Avoid "Felonious" [and some non-felonious] Fiduciaries

Do you routinely ask executors if they have a police record? Most people would consider such a question as a gross invasion of their privacy. Nevertheless, you must ask this sometimes delicate as a part of your initial estate settlement meeting. The mere possession of any type of firearm or ammunition by someone in one of the "prohibited classes" is a Federal crime. There is no exception for fiduciaries. That means that, upon accepting a fiduciary appointment, an executor may be an "instant criminal." The list of "disqualifiers" includes (and is not limited to): (1) Conviction of, a crime punishable by a term exceeding one year; (2) Being a fugitive from justice; (3) Having been dishonorably discharged from the military; (4) Being subject to a restraining order re: from harassing, stalking, or threatening; (5) Having been convicted in any court of a domestic violence misdemeanor.

"NFA" Weapons

Certain items are classified as "NFA weapons" under the National Firearms Act of 1934. These include pistols with detachable shoulder stocks and rifles and shotguns with barrels under a certain length. The mere possession of any of these items by anyone (not just convicted criminals) is a federal crime. As in almost any criminal matter, ignorance of the law is not a defense. If the decedent had lawfully possessed an NFA weapon, the executor must have the registration and tax documents. The Federal regulations allow an executor a "reasonable time" (generally, before the estate is closed) to transfer a lawfully possessed NFA weapon to an heir or beneficiary, provided that the recipient may lawfully possess it. The transfer must be made in accordance with all federal and state laws and must be properly documented. NFA Weapons include Deactivated War Trophies, sometimes known as "DEWATS."

What You Need to Know About NFA Weapons

If an executor has any NFA weapons and he cannot find any documentation, he should consider contacting the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) to find out if they were properly registered. If they were not, the executor should arrange with ATF for their "abandonment." Failure to comply with the regulations could have serious consequences for the fiduciary. Mere possession of an undocumented NFA weapon could result in confiscation of a car or house in which it was found. Other punishments may be even more draconian. For more information on Class III and NFA weapons, please see the materials on our website: www.CTGunLawyer.com and also David Goldman's site, www.guntrustlawyer.com.

Know What You Have

Duty to Obtain Highest Value. It is axiomatic that a fiduciary must do all that he or she can to maximize the value of the estate or trust assets. Small Distinctions. Sometimes, the difference between a valuable item and a “shooter” is an “attenuated subtlety.” NOTE: The expression “attenuated subtleties” was coined by Mr. Justice Holmes in *Lucas v. Earl*, 281 U.S. 111, 114 (1930). EXAMPLE: The Government had a huge number of .45 pistols manufactured during World War II. Industries rapidly converted from producing consumer goods to manufacturing pistols. Would you know the difference between a Remington Rand [typewriter manufacturer], a Union Switch and Signal and a Singer [sewing machines]. One is “garden variety” the second is a “collectible” and the third is a museum piece. As with other assets, failure to obtain proper appraisals can be costly.

The Appraisal Dilemma.

Obviously, a fiduciary must ascertain the value of the estate or trust assets and then either sell them or deliver them to the beneficiaries. Finding a competent appraiser is no more difficult with firearms than with any other type of asset. However, imagine bringing Aunt Hazel’s china to an appraiser and, after being advised of the value, being told that the appraiser could not return the china to the executor. Sound farfetched? Consider the following scenario: An executor delivers firearms to a dealer to have them appraised. The dealer says that he will accept the guns for sale on a consignment basis. The executor wants to obtain a “second opinion” and wants to take the guns to another dealer. The first dealer declines to give them back. What can the executor do? Nothing. Under Connecticut law, a handgun may only be lawfully “transferred” to someone who has a valid State pistol permit. Re-delivery to the executor by the appraiser-dealer is a “transfer” within the Statute. You should consult with a lawyer in your state regarding restrictions on transfer.

Transfers.

In addition to the prohibitions on transfers to felons, certain misdemeanants, etc., State law sometimes imposes even greater restrictions. For example, in Connecticut, transferees of pistols and revolvers must have a carry permit. This Statute applies to “recipients,” including estate beneficiaries, not just to “purchasers”. C.G.S., § 29-33(b) which provides: “No person...shall...transfer any pistol or revolver except upon written application on a form prescribed and furnished by the Commissioner of Public Safety. Such person...shall insure that all questions on the application are answered properly prior to releasing the pistol or revolver and shall retain the records for twenty years.

***** NOTE *****

THE MATERIALS ON THE "APPRAISAL DILEMMA" AND ON "TRANSFERS" ARE BASED ON CONNECTICUT LAW. YOU NEED TO CONSULT A LAWYER IN YOUR STATE WHO UNDERSTANDS BOTH FIREARMS LAW AND ESTATE PLANNING.

Effectuating Transfers -- Rifles and Shotguns

Rifles and Shotguns – In State. In Connecticut, most rifles and shotguns are freely transferable. But WATCH OUT ! Are you sure that the proposed transferee is not a disqualified person under Federal or State law? You are probably safe in selling most rifles and shotguns to someone with a Connecticut pistol permit without any governmental paperwork. Otherwise, you and your client may be acting at your peril.

Pistols and Revolvers -- In State.

The only people to whom you may lawfully transfer a handgun in Connecticut are those with carry permits or “eligibility certificates.”

So-Called "Assault Weapons"

General Prohibition. In Connecticut, it is a class “C” felony to transfer any so-called “assault weapon.” There is an exemption for Pre-1994 “Configuration” Firearms. § 53-202m exempts from the registration and requirements and transfer restrictions any so-called “assault weapon” described in § 52-202a(3), if they were manufactured before September 13, 1994. Some rifles can be classified as “listed” weapons. Anyone who lawfully possessed a listed firearm prior to October 1, 1993 could obtain a “Certificate of Possession” from the Department of Public Safety. Transfers prohibited. “Certificated” firearms may only be sold to a dealer or transferred out of state through a dealer. Transfers to Beneficiaries Excepted. Transfers by “bequest or intestate succession” are not subject to the general transfer prohibition. C.G.S. § 53-202b(b)(3) If the heir or beneficiary is a Connecticut resident and wishes to retain the item, he or she must obtain a certificate from the Department of Public Safety.

All Firearms – Out of State.

Suppose you want to, or have to, transfer firearms to a beneficiary in another state? What do you do? Give them to the beneficiary while he is in Connecticut, so that he may drive home with them? Send them by UPS? No. Have them transferred to a licensed dealer in the recipient state by a licensed dealer in this state? Yes. That is the only absolutely safe way to effectuate an out of state transfer.

Conclusion

Firearms are one of the most heavily regulated products in the country. Myriad federal, state and local statutes and regulations can easily make criminals out of uninformed fiduciaries and, possibly, their advisors. Sometimes almost imperceptible differences can separate a perfectly legal firearm from a prohibited one. These subtleties can also have a large effect on value. Be Careful.

