

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
Firearms Law and Probate Concerns

WARNING

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code, federal law, or the law of other states. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

YOU SHOULD NOT RELY SOLELY UPON THIS INFORMATION SHEET. RATHER YOU SHOULD OBTAIN LEGAL ADVICE FROM AN ATTORNEY WHO IS COMPETENT TO PROVIDE LEGAL ADVICE TO A FIDUCIARY OF A PROBATE ESTATE IF THE DECEDENT DIED OWNING OR POSSESSING FIREARMS (INCLUDING DESTRUCTIVE DEVICES) BEFORE MAKING ANY DECISIONS OR TAKING ANY ACTION REGARDING THE FIREARMS.

It is critical that a Fiduciary understands and abides by applicable state and federal law, especially if the Decedent owned or possessed ATF Firearms (described below). If a Fiduciary violates or fails to comply with 26 U.S Code Chapter 53, then that Fiduciary may be subject to a fine of \$10,000 or imprisoned for 10 years.¹

Background

The ownership, possession, use, transfer, or sale of firearms are regulated by both state and federal law. If a Decedent dies owning or possessing a firearm, then there are several legal concerns that a Fiduciary²³ must address during the administration of the decedent's probate estate. If the Decedent dies owning or possessing a "firearm," then once again the Court HIGHLY RECOMMENDS that the Fiduciary obtain legal advice from an attorney familiar with state and federal firearm laws applicable to a probate estate before you take any action or make any decision. Any Firearms that are owned and held in a trust are not the concern of this information sheet and should not be a concern for the Fiduciary of the probate estate.

¹ See 26 U.S. Code Section 5871.

² The two primary federal laws that regulate firearms are: (1) the National Firearms Act (NFA) and (2) the Gun Control Act (GCA).

³ "Fiduciary" is the person appointed by the probate court to handle the probate estate, which includes is a Full Administration (in which case the name of that person is the Executor, Administrator, or Administrator with Will Annexed), the Commissioner of a Release from Administration, or the applicant of a Summary Release from Administration.

Firearms Definitions. For the purpose of this article, we will use following definitions:

1. Firearm.- mean a GCA Firearm, an ATF Firearm, or a Relic Firearm.
2. GCA Firearm⁴ – means any weapon (including a hand gun, rifle, or shotgun) that is used to expel a projectile (e.g., “bullet) by the action of an explosive (e.g., gunpowder), including the frame of any such weapon. This includes “semi-automatic” guns that, when the trigger is pulled, will automatically eject a spent cartridge and reload another round in the chamber, but does not include “assault weapons” or fully automatic weapons described below.
3. ATF Firearm⁵ – means a weapon that meets the definition of a GCA Firearm, but has the following characteristics:
 - Assault weapons (e.g. M16, AR-15, AK-47, etc.) or fully automatic weapons, which will discharge multiple rounds with a single pull on the trigger.
 - Short-barreled Shotguns (e.g. a shotgun with a barrel less than 18 inches).
 - Short-barreled rifle – (e.g., a rifle with a barrel less than 16 inches).
 - Silencer – a device that silences or muffles the sound of the firing of a firearm.
4. Relic Firearms – means a Firearm of historical significance, typically non-operational and a collector’s item (e.g., musket, flintlock pistol).
5. Destructive Devices⁶ - means (1) any explosive, incendiary, or poison gas (a) bomb, (b) grenade, (c) rocket having a propellant charge of more than four ounces, (d) missile having an explosive or incendiary charge of more than one-quarter ounce, (e) mine, or (f) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter

Fiduciary Duties and Concerns. (for the remainder of this Information Sheet, the word Firearm means a Firearm that the Decedent owned or possessed).

1. Identify. If the Decedent owned or possessed any Firearms, then promptly the Fiduciary should determine as to each Firearm, whether it is a GCA Firearm, an ATF Firearm, or something else. Moreover, as to each Fireman the Fiduciary should obtain the serial number and a detailed description (e.g., the manufacturer, model, etc.).
2. Safekeeping of Firearms.
 - a. Possession. The Fiduciary should take possession of all of the Firearms for safekeeping only.⁷ In doing so, the Fiduciary should be mindful of the basic guidelines for firearm safety. The Fiduciary should not use the Firearms in any manner. If the Firearms include any Destructive Device (including an explosive device), then the Fiduciary should promptly contact local police officials or the federal Bureau of Alcohol, Tobacco, Firearms

⁴ “GCA” refers to the *Gun Control Act of 1968*.

⁵ “NFA” – refers to the *National Firearms Act of 1934*.

⁶ See U.S. Code Section 5845(f)

⁷ Dept of Justice Regulation 479.90a permits a Fiduciary to possess (not use) a firearm in a probate estate.

and Explosives (AFT) before touching or possessing a Destructive Device in any manner.⁸

Basic Firearms guidelines include:

- i. Remove all ammunition from all Firearms and store the ammunition as provided below.
- ii. Treat Firearms as though they are loaded.
- iii. Never point a Firearm at something or someone that you don't intend to destroy, wound, or kill.
- iv. Store the Firearms in a locked container so they are unavailable to any unauthorized person.
- v. Store ammunition in a separate locked container so they are unavailable to any unauthorized person.
- vi. The Court recommends that the locked containers are stored at a private facility and not in the Fiduciary's residence or that of another family member or a friend.

There may be a cost to possess and store the Firearms safely, but that is a proper cost of administration and may be paid for from estate assets.

- b. Non-Use. The Court recommends that the Fiduciary neither use, nor permit any other person to use, any Firearm.
3. Transfer of Firearms. The following applies to a transfer to (1) next-of-kin or beneficiary under Decedent's will, or (2) a purchaser resulting from a sale.
- a. Intrastate Transfer. The intrastate transfer of a Firearm to another person (an Ohio resident), whether by distribution or sale, is regulated by state law and in some cases federal. There may be legal issues regarding the transferee (e.g., age,, criminal background, drug use, mental illness, subject to court restraining order, fugitive from justice, or citizenship status). The Court recommends that the Fiduciary make the transfer using a Federal Firearms Licensee (FFL). Perhaps a local gun shop can assist you to find a local FFL. The FFL will do the required background check on the transferee and the cost is modest. Again, the cost is an estate administration cost to be paid from probate assets. Using the FFL is especially important if the Firearm is an ATF Firearm. While the transfer of a GCA Firearm requires a background check on the transferee using the National Instant Criminal Background Check System (NICS), the transfer of an ATF Fireman requires a more comprehensive background check using the National Firearms Registration and Transfer Record (NFRTR).
 - b. Interstate Transfer. An interstate transfer of a Firearm (e.g., the beneficiary resides in California) is more complex legally. A Fiduciary must consider (i) Ohio law, (ii) federal law, and (iii) the law of the state where the transferee resides. Again, because the law of the state where the transferee resides must be considered, the use of a FFL to make the transfer is highly recommended. It may be easier if the out-of-state transferee travels to Ohio to take possession of the Firearm, but again you should discuss that option with your attorney.

⁸ Also consider Ohio law R.C. 2909.26(A), which regulates explosive devices.

4. Other Concerns.

- a. Relic Firearms. If the Decedent owned any Relic Firearms, you should discuss this with your attorney or perhaps your local FFL.
- b. Destructive Devices. – Again, if the Decedent owned or possessed a Destructive Device, then you should NOT touch it in any manner and promptly contact the local police department or the AFT.

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.