

# NFA TRUSTS

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1

## Crimes with Machine Guns

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From [http://www.guncite.com/gun\\_control\\_gcfullau.html](http://www.guncite.com/gun_control_gcfullau.html)

- Two documented murders with legal machine guns since 1934. One was by a police officer.
- Four police officers killed with illegally owned machine guns between 1983 and 1992, out of a total of 713 officers killed.
- ATF Director testified to Congress in 1987: “Registered machine guns which are involved in crimes are so minimal so as not to be considered a law enforcement problem.”

2

# Number of Registered NFA Firearms

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- 2007: Approximately 2 million firearms registered in the National Firearms Registration and Transfer Record ("NFRTR")
- 1995: Approximately 240,000 registered machine guns
- May, 2019: 6,058,390 registered firearms in NFRTR, including:
  - 2,977,630 destructive devices
  - 1,750,433 "silencers"
  - 699,977 machine guns.
- Form 1 and 4 applications:
  - 1990: 7,423
  - 2000: 12,580
  - 2010: 38,228
  - 2016: 183,896
  - 2018: 149,904 (more than twenty times the number in 2000)
- Revenue to ATF:
  - 1984: \$596,000 occupational taxes, \$666,000 transfer and making tax
  - 2018: \$6,753,000.00 occupational taxes, \$33,371,000.00 transfer and making tax

3

# Summary of Legal Principles

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- 1. Prohibited Persons: It is illegal for any Prohibited Person (felons and nine other categories of people) to possess any type of firearm or ammunition.
- 2. Possession of NFA Firearms: The NFA prohibits any person other than the registered owner to possess an NFA firearm (machine gun, silencer or suppressor, short-barreled rifle or shotgun, destructive device, or "any other weapon").
- 3. Application and Transfer Tax: To legally transfer an NFA firearm, one must submit an application, pay the tax (\$200.00, except for "any other weapon" the tax is \$5.00), and have the application returned by ATF with a tax stamp. Beginning on July 13, 2016, each application must include additional information on "Responsible Persons, and the chief local law enforcement officer (CLEO) must be notified of each application..
- 4. Trust Requirements: A trust or business entity owning NFA firearms must be legally valid, and remain in existence during the entire time it has NFA firearms registered in its name. It should be drafted with specific provisions to meet legal requirements for owning NFA firearms.
- 5. Trusts are Persons Too: The Tax Code (which includes the NFA) defines "person" to include trusts, corporations, and other business entities, so they can own NFA firearms.
- 6. State Law: State law may be more restrictive, or even prohibit ownership of NFA firearms

4

## Definitions of NFA firearms

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26 U.S.C. § 5845

- Machine guns
- Suppressors and silencers
- Short barreled rifles (and weapons made from a rifle)
- Short barreled shotguns (and weapons made from a shotgun)
- Destructive devices
- “Any other weapon”

5

## Prohibited Weapons

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Texas Penal Code § 46.05

- Any of the following, unless curios, relics, or registered) :
  - Explosive weapons
  - Machine guns
  - Short-barrel firearms
- Armor-piercing ammunition
- Chemical dispensing devices
- Zip guns
- Tire deflation devices
- Firearm silencers, except curios, relics, comply with fed law

6

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First appeared as part of the conference materials for the  
23<sup>rd</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
"Getting Started Drafting Gun Trusts, and Avoiding Lethal Pitfalls"