



FIREARMS AND PROBATE: A PRACTICAL GUIDE FOR ESTATE PROFESSIONALS

ABSTRACT

This guide was developed for estate attorneys, fiduciaries, bank trust officers, and probate professionals. Firearms are not like other assets — they require registration, regulated transfers, and ATF approval in many cases. Mishandling can lead to delays, liability, or even legal penalties. This document provides a clear, lawful path forward

Drew McDermott
Author

Why Firearms Are Different

When settling an estate, firearms present a unique challenge. Unlike furniture or jewelry, their transfer is subject to an intricate web of state and federal regulations. Estate professionals must consider legal eligibility, federal registration, state-specific restrictions, and ATF compliance. Mishandling a firearm transfer isn't just a paperwork issue, it can result in serious legal consequences for the executor and unintended complications for the heirs.

What Makes Firearms Unique in Probate:

- Federal law restricts transfer and possession, including temporary handling.
- NFA-regulated items (suppressors, SBRs, etc.) require ATF approval before transfer.
- Firearms cannot be legally transferred until the estate is properly opened and the executor is appointed.
- Unregistered NFA items are contraband and must be surrendered.
- Storage must be secure and compliant, often requiring a licensed FFL.

Firearms often fall into two regulatory categories: Title I firearms (standard rifles, pistols, shotguns) and Title II firearms (regulated by the National Firearms Act).

Estate professionals unfamiliar with these distinctions may inadvertently create legal exposure for themselves and their clients.

Executor Compliance & Liability Risks

Executors have a fiduciary and legal duty to inventory, secure, and lawfully transfer any firearms in the estate. Under the Gun Control Act (GCA) and National Firearms Act (NFA), mishandling estate firearms can lead to:

- Felony charges (up to \$10,000 fine or 10 years in prison)
- Civil lawsuits from heirs or beneficiaries
- Permanent loss of estate firearms through government seizure

Executor Disqualification: An executor must be legally eligible to possess firearms. If the executor is a prohibited person (e.g., convicted felon, subject to restraining order, domestic violence charge), they must decline the role or delegate the firearm-related duties to someone legally qualified. Estate documents can and should include a disqualification clause.

Best Practices: Document all firearms with make, model, and serial number. Secure firearms in a locked safe or bonded storage facility. Avoid allowing family members or heirs

to access firearms without proper authority. Consult an FFL (Federal Firearms Licensee) or firearms transfer specialist (like MDRF) before facilitating any transfer

Estate Professionals: Your Role and Risks

- **Attorneys:** Ensure firearm-specific language is present in wills and trusts.
- **Trust Officers:** Avoid constructive possession and verify any NFA regulated assets.
- **Funeral Directors:** Do not move or accept firearms, refer to an FFL immediately.
- **Personal Representatives:** Never distribute firearms without ATF clearance and FFL coordination.

Risk Areas

- **Slayer Rule:** A person responsible for the death of the decedent may be barred from inheriting firearms, even without a formal conviction. This rule can trigger disqualification under both state and federal inheritance laws.
 - **Police Seizures:** In sudden or traumatic deaths, local authorities may remove firearms from the premises. Executors must contact law enforcement, present estate documentation, and arrange for compliant retrieval and storage.
 - **Interstate Transfers:** Federal law prohibits direct firearm transfers across state lines between private individuals. Even if the heir is a named beneficiary in the will, a transfer to another state typically requires coordination with a licensed FFL in both the origin and destination states. Exceptions may apply for inherited firearms, but documentation is critical.
 - **Form Errors or Late Filings:** Failure to file ATF Form 5 properly or within the probate timeline can lead to denial, tax exposure, or mandatory surrender of the item. Professionals should advise clients to act early in the probate process.
 - **Constructive Possession:** Executors, heirs, or professionals who access or store firearms (particularly NFA items) without authorization, may inadvertently commit a federal crime. Possession begins the moment someone has access or control. Secure storage with an FFL is often the safest path.
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Understanding Firearm Classifications in Probate

Not all firearms are treated equally under the law. In estate planning and probate, it's critical to distinguish between Title I and Title II firearms—each governed by different federal statutes with vastly different rules for possession, registration, and transfer.

Title I firearms are the most common and include standard handguns, rifles, and shotguns. These are regulated under the Gun Control Act of 1968 (GCA) and, in most cases, can be transferred like other personal property—provided the recipient is legally eligible.

Title II firearms, often referred to as NFA items, fall under the National Firearms Act of 1934. These include machine guns, short-barreled rifles (SBRs), silencers, and other restricted items. They must be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and cannot be transferred—even to heirs—without prior federal approval using the appropriate ATF forms.

Category	Title I Firearms	Title II Firearms (NFA)
Governing Law	Gun Control Act (GCA)	National Firearms Act (NFA)
Common Examples	Handguns, rifles, shotguns	Machine guns, short-barreled rifles (SBRs), short-barreled shotguns (SBS), silencers, destructive devices, "any other weapon" (AOW)
Registration	Not federally registered	Must be federally registered with the ATF
Transfer Process	Standard FFL or private sale (state laws vary)	Requires ATF approval and tax stamp (Form 1, 4, or 5)
Tax Requirement	No federal tax (may be subject to state sales tax)	\$200 tax stamp (or \$5 for AOWs) for most transfers
Waiting Period	Varies by state, generally minimal	Several months for ATF background check and approval
Transfer During Probate	Can be transferred like other personal property (to eligible individuals)	Requires ATF Form 5 and supporting documents (death certificate, will, etc.)
Possession Restriction	State-dependent	Only lawful, ATF-vetted individuals may possess
Trust Compatibility	Revocable trust or will is typically sufficient	Requires NFA-compliant gun trust or direct heir transfer

Handling High-Value or Antique Firearms

Antique and collectible firearms often have significant monetary or historical value. These items should be treated with the same care and due diligence as fine art or valuable jewelry.

Checklist for Appraisal: - Determine if firearm qualifies as an antique (pre-1899) or modern regulated item - Research historical provenance and collector demand - Obtain professional valuation from a firearms-experienced appraiser - Document condition, originality, and any custom modifications - Capture high-resolution photographs for inventory and estate records

Many estate professionals make the mistake of underestimating the value of inherited firearms, especially military memorabilia or limited-production models. MDRF Enterprises works with appraisers and collectors to assess, value, and market unique pieces responsibly.

Top 5 Misconceptions About Firearms in Estates

1. You can transfer a firearm the same day the person dies — FALSE.
2. If someone is named in the will, they automatically own the gun — FALSE.
3. Suppressors can be kept if the family wants to — FALSE.
4. Executors can hold firearms until they find a buyer — FALSE without FFL involvement.
5. A local police station can take them for you — SOMETIMES, but this may not resolve liability.

Executor's Firearm Checklist

- ☑ Confirm executor is legally eligible to possess firearms
 - ☑ Inventory all firearms (make, model, serial number)
 - ☑ Identify NFA vs Title I firearms
 - ☑ Secure firearms in a bonded location or FFL facility
 - ☑ Use ATF Form 5 for NFA transfers to heirs
 - ☑ Consult with a firearms specialist for appraisals or transfers
 - ☑ Avoid informal or undocumented handoffs to family or heirs
 - ☑ Retain transfer records and ATF approvals for estate files
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How MDRF Can Help

MDRF Enterprises is a licensed FFL with 12+ years serving Missouri families, estate attorneys, and fiduciaries. We offer:

- Secure firearm removal and bonded storage
- Professional appraisals (including antique collections)
- ATF-compliant estate and trust transfers
- Multi-state logistics with trusted partner FFLs
- Discreet, liability-free liquidation or inheritance solutions

Our experienced team understands the unique legal and logistical issues that arise during probate involving firearms. We work hand-in-hand with estate professionals to ensure no detail is overlooked, from proper inventory and valuation to legally compliant distribution or disposal.

Contact MDRF Enterprises Today



MDRF Enterprises

www.mdrfenterprises.com

(314) 397-0942

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Legal Disclaimer

This guide is for general informational purposes only and is not legal advice. Consult a qualified estate or firearms attorney regarding specific cases.