

South Bay Estate Planning Council

Speaker: Matthew D. Kanin

Topic: Estate Planning & Firearms, 2026 edition

Title: "Essential Knowledge for Estate Planning and Probate Administration Involving Firearms"

Outline/Summary of Topics (exact order subject to change):

1. Introductory Comments - why this is important
 - a. Prevalence of firearms in the U.S.
 - b. Practical, legal, and moral consequences
2. Definitions and general concerns
 - a. What is a firearm?
 - b. What is a transfer?
 - c. Who is an eligible person?
 - d. Who is a prohibited person?
 - e. Who is authorized to handle transactions?
3. Transfer requirements and exceptions
 - a. General requirement
 - b. Exceptions relevant to decedent estate and intrafamilial transfers
4. More on operation-of-law transfers:
 - a. When it can and cannot be used.
 - b. How to use it, when applicable
5. Gun trusts - do you need them?
 - a. A brief introduction to the National Firearms Act and what it covers
 - b. Why "gun trusts" were invented
 - c. Who they serve and their limited utility for most owners and heirs
6. Drafting advice for estate planners, beyond gun trusts
7. CA-specific pitfalls
 - a. Exotic weapons (Assault Weapons Control Act, Large Capacity Magazines)
 - b. Application in other states
 - c. Solutions for avoiding waste

Selected Sections of the California Penal Code

I. Purchases, Sales & Transfers of Possession

A. Licensed Dealer Requirement [the general rule]

§ 26500. License required for sale, lease, or transfer of firearms; Misdemeanor

- (a) No person shall sell, lease, or transfer firearms unless the person has been issued a license pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2.
- (b) Any person violating this article is guilty of a misdemeanor.

§ 27545. Transaction where neither party holds a dealer's license

Where neither party to the transaction holds a dealer's license issued pursuant to Sections 26700 to 26915, inclusive, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer pursuant to Chapter 5 (commencing with Section 28050).

§ 28050. Private party firearms transaction (Effective Jan. 1, 2022)

- (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Sections 26700 to 26915, inclusive, in accordance with this chapter in order to comply with Section 27545.
- (b) The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm.
- (c) The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with Section 27540.
- (d) If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period [...] return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of Section 27500, 27505, 27515, 27520, 27525, 27530, or 27535.

Subdivisions (e) through (g), amended by 2021 SB 715, set forth procedures for the dealer to follow when it cannot legally or otherwise deliver the firearm to either the transferor or the transferee.

[Analysis: California has no “gun show exception”. See Penal Code §26525.]

§ 26515. Exceptions for firearms received by intestate succession or bequest, or as surviving spouse

Section 26500 does not apply to the sale, lease, or transfer of a firearm if both of the following conditions are satisfied:

- (a) The sale, lease, or transfer is made by a person who obtains title to the firearm by any of the following means:
- (1) Intestate succession or bequest.
 - (2) As the beneficiary of a trust that includes a firearm.
 - (3) As a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.
 - (4) As decedent's successor pursuant to Part 1 (commencing with Section 13000) of Division 8 of the Probate Code.
- (b) The person disposes of the firearm within 60 days of receipt of the firearm.

[Analysis: This section does not allow permanent transfers of possession outside of §26500, but it does allow a personal representative, trustee, or other successor in interest, a brief window of time to temporarily take possession, for purposes of orderly administration.]

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(b) The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm.

(c) The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with Section 27540.

(d) If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period [...] return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of Section 27500, 27505, 27515, 27520, 27525, 27530, or 27535.

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(2) As the beneficiary of a trust that includes a firearm.

(3) As a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(4) As decedent's successor pursuant to Part 1 (commencing with Section 13000) of Division 8 of the Probate Code.

(b) The person disposes of the firearm within 60 days of receipt of the firearm.

[Analysis: This section does not allow permanent transfers of possession outside of §26500, but it does allow a personal representative, trustee, or other successor in interest, a brief window of time to temporarily take possession, for purposes of orderly administration.]

B. Exceptions to Dealer Requirement

1. “Operation of Law Transfers”

§ 27875. Additional exception for transfer between immediate family members by gift, bequest, intestate succession or similar

(a) Section 27545 does not apply to the transfer of a firearm by gift, bequest, intestate succession, or other means from one individual to another, if all of the following requirements are met:

- (1) The transfer is infrequent, as defined in Section 16730.
- (2) The transfer is between members of the same immediate family.
- (3) Within 30 days of taking possession of the firearm, the person to whom it is transferred shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this subdivision shall be made available to them in a format prescribed by the department.
- (4) Until January 1, 2015, the person taking title to the firearm shall first obtain a valid handgun safety certificate if the firearm is a handgun, and commencing January 1, 2015, a valid firearm safety certificate for any firearm, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used.
- (5) The person receiving the firearm is 18 years of age or older.

(b) Subdivision (a) of Section 27585 does not apply to a person who imports a firearm into this state, brings a firearm into this state, or transports a firearm into this state if all of the following requirements are met:

- (1) The person acquires ownership of the firearm from an immediate family member by bequest or intestate succession.
- (2) The person has obtained a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used.
- (3) The receipt of any firearm by the individual by bequest or intestate succession is infrequent, as defined in Section 16730.
- (4) The person acquiring ownership of the firearm by bequest or intestate succession is 18 years of age or older.
- (5) Within 30 days of that person taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this subdivision shall be made available to them in a format prescribed by the department.

[Ed. Note: This is the problem-solver for interspousal and first-degree relative transfers, as well as *some* second-degree (grandparent/grandchild permitted; sibling-sibling not permitted; Also see PENAL CODE § 27920 – additional operation-of-law transfers described.)

§ 27925. Exception for taking possession by operation of law and subsequent transfer to self

(a) Section 27545 does not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in an individual capacity.

(b) Until January 1, 2015, in the case of a handgun, the individual shall obtain a handgun safety certificate prior to transferring ownership to himself or herself, or taking possession of a handgun in an individual capacity. Beginning January 1, 2015, the individual shall obtain a firearm safety certificate prior to transferring ownership to himself or herself, or taking possession of a firearm in an individual capacity, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

C. Penalties For Violation

§ 27590. Punishment for violation of article

(a) Except as provided in subdivision (b), (c), or (e), a violation of this article is a misdemeanor.

(b) If any of the following circumstances apply, a violation of this article is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(1) If the violation is of subdivision (a) of Section 27500.

(2) If the defendant has a prior conviction of violating the provisions, other than Section 27535, Section 27560 involving a firearm that is not a handgun, or Section 27565 involving a firearm that is not a handgun, of this article or former Section 12100 of this code, as Section 12100 read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, or [Section 8101 of the Welf. & Institutions Code](#).

(3) If the defendant has a prior conviction of violating any offense specified in Section 29905 or of a violation of Section 32625 or 33410, or of former Section 12560, as that section read at any time from when it was enacted by Section 4 of Chapter 931 of the Statutes of 1965 to when it was repealed by Section 14 of Chapter 9 of the Statutes of 1990, or of any provision listed in Section 16590.

(4) If the defendant is in a prohibited class described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or [Section 8100 or 8103 of the Welfare and Institutions Code](#).

(5) A violation of this article by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(6) A violation of Section 27510 involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(c) If any of the following circumstances apply, a violation of this article shall be punished by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

(1) A violation of Section 27515 **[Ed. Note: Straw Purchasers]**, 27520 **[Ed. Note: Intent to violate law]**, or subdivision (b) of Section 27500 **[Ed. Note: Convicted Felons as purchasers]**.

(2) A violation of Section 27505 involving the sale, loan, or transfer of a handgun to a minor.

(3) A violation of Section 27510 involving the delivery of a handgun.

(4) A violation of subdivision (a), (c), (d), (e), or (f) of Section 27540 involving a handgun. **[Ed. Note: This section sets out several requirements for how a transfer is to take place under a dealer's supervision].**

(5) A violation of Section 27545 involving a handgun.

(6) A violation of Section 27550. **[Ed. Note: prohibition against collusion].**

(7) A violation of Section 27585 involving a handgun. **[Ed. Note: Importation of handgun].**

(d) If both of the following circumstances apply, an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(1) A violation of Section 27510 or subdivision (b) of Section 27500 **[Ed. Note: minors and convicted felons]**.

(2) The firearm transferred in violation of Section 27510 or subdivision (b) of Section 27500 is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

[Ed. Note: subdivision (e) is abridged.]

II. Assault Weapons & Large Capacity Magazines

§ 30600. Manufacture, distribution, sale or transport of assault weapon or .50 BMG rifle

(a) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for four, six, or eight years.

(b) In addition and consecutive to the punishment imposed under subdivision (a), any person who transfers, lends, sells, or gives any assault weapon or any .50 BMG rifle to a minor in violation of subdivision (a) shall receive an enhancement of imprisonment pursuant to subdivision (h) of Section 1170 of one year.

(c) Except in the case of a first violation involving not more than two firearms as provided in Sections 30605 and 30610, for purposes of this article, if more than one assault weapon or .50 BMG rifle is involved in any violation of this article, there shall be a distinct and separate offense for each.

§ 30605. Possession of assault weapon

(a) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) Notwithstanding subdivision (a), a first violation of these provisions is punishable by a fine not exceeding five hundred dollars (\$500) if the person was found in possession of no more than two firearms in compliance with Section 30945 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon.

(2) The person has not previously been convicted of a violation of this article.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to Section 30900.

(4) The person relinquished the firearm pursuant to Section 31100, in which case the assault weapon shall be destroyed pursuant to Sections 18000 and 18005.

Law Revision Commission Comments to Penal Code § 30605

Section 30605 continues former Section 12280(b) without substantive change. [* * *] For exemptions to this provision, see [Sections 30625-30675](#). For guidance in determining when a firearm has become an assault weapon for purposes of this chapter, see [Section 30620](#) (date that firearm becomes assault weapon). [¶] See [Sections 16520](#) (“firearm”), 16970 (“person”), 30510 (“assault weapon”), 30515 (further clarification of “assault weapon”). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

[Also see §30610 – Similar penalties for possession of a “.50 BMG Rifle”]

§ 30655. Exception for executor or administrator of estate

(a) Section 30600 shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Article 5 (commencing with Section 30900) or that was possessed pursuant to subdivision (a) of Section 30630 that is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(b) Sections 30605 and 30610 shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Article 5 (commencing with Section 30900) or that was possessed pursuant to subdivision (a) of Section 30630, if the assault weapon or .50 BMG rifle is possessed at a place set forth in subdivision (a) of Section 30945 or as authorized by the probate court.

§ 32310. (First of two) Large-capacity magazines; Prohibition; Removal and surrender requirements; Punishment

(a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(c) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who may not lawfully possess a large capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:

- (1)** Remove the large-capacity magazine from the state;
- (2)** Sell the large-capacity magazine to a licensed firearms dealer; or
- (3)** Surrender the large-capacity magazine to a law enforcement agency for destruction.

History: Added [Stats 2010 ch 711 § 6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amended [Stats 2012 ch 43 § 107 \(SB 1023\)](#), effective June 27, 2012; [Stats 2013 ch 728 § 1 \(AB 48\)](#), effective January 1, 2014. Amendment approved by voters, Prop. 63 § 6.1, effective November 9, 2016.

§ 32310. Large-capacity magazines; Possession prohibited; Manufacture; Disposal, surrender and removal from state; Punishment

(a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) upon the first offense, by a fine not to exceed two hundred fifty dollars (\$250) upon the second offense, and by a fine not to exceed five hundred dollars (\$500) upon the third or subsequent offense.

(c) A person who, prior to July 1, 2017, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:

(1) Remove the large-capacity magazine from the state.

(2) Prior to July 1, 2017, sell the large-capacity magazine to a licensed firearms dealer.

(3) Destroy the large-capacity magazine.

(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.

(d) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(e) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of this code shall not be punished under more than one provision.

History: Added [Stats 2010 ch 711 § 6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amended [Stats 2012 ch 43 § 107 \(SB 1023\)](#), effective June 27, 2012; [Stats 2013 ch 728 § 1 \(AB 48\)](#), effective January 1, 2014; [Stats 2016 ch 58 § 1 \(SB 1446\)](#), effective January 1, 2017.

[Analysis:

- (1) California law governing assault weapons, .50 BMG, caliber weapons, and large-capacity magazines ("LCM"), are a potential pitfall for trust-and-estate attorneys. Differentiating a banned assault weapon from one that is legal to possess and transfer can require expert analysis. The penal consequences of a mistake can be serious.**
- (2) These laws are politically polarizing and controversial; one district court has found California's current assault weapons ban, and LCM bans, to be unconstitutional. *Duncan v. Becerra*, 366 F.Supp.3d 1131 (S.D. Cal. 2019); *Miller v. Bonta*, 542 F.Supp.3d 1009 (S.D. Cal. 2021). *Duncan* was briefly affirmed by the 9th circuit, but reversed by an *en banc* panel. 19 F. 5th 1087 (9th Cir. 2021). Subsequently, the *en banc* decision was vacated and remanded by the United States Supreme Court; the case is now back with the Southern District of California for further proceedings.**
- (3) LCM bans have been part of California law for over 2 decades, however, previous iterations did not have retroactive bans on possession, they banned only manufacture and transfer. So, "grandfathered" magazines continued to exist; and during the brief effectiveness of the Southern District's injunction, "millions" more flooded into the state (according to the DOH). So, do not assume that because they have been outlawed, your clients will not have them.**
- (4) Be mindful of ethical obligations when dealing with subjects covered by these laws.]**

State of California - Department of Justice
Form BOF-4544A

STATE OF CALIFORNIA
BOF 4544A (Rev. 01/2020)



DEPARTMENT OF JUSTICE
PAGE 1 of 4



CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
**Report of Operation of Law or
Intra-Familial Firearm Transaction**

California Penal Code sections 27875 or 27920, respectively.

A total processing fee of \$19.00 must accompany this report.

(Instructions on Page 2)

All fields marked with an asterisk (*) are mandatory

A. Owner Information							
*First Name:		Middle Name:		*Last Name:		Suffix:	
Alias First Name (if any):		Alias Middle Name:		Alias Last Name:		Suffix:	
*Residence Street Address:				*City:		*State:	*Zip Code:
Mailing Address (if different):				City:		State:	Zip Code:
*Date of Birth (mm/dd/yyyy):		*Place of Birth (state or country):		*Gender:	Height:	Weight:	*Phone No. (include area code):
*U.S. Citizen? <input type="radio"/> Yes <input type="radio"/> No		If no, enter Alien Registration No. or I-94 No.:			*Country of Citizenship:		
Enter your California driver license (CDL), California ID (CID), or Military ID (MIL) number in the ID number box to the right. If using military identification you <u>must</u> send a copy of your permanent duty station orders stating you are stationed in California.				*ID Type (check one): CDL <input type="checkbox"/> CID <input type="checkbox"/> MIL <input type="checkbox"/>		*ID Number:	*Firearm Safety Certificate (FSC) No.:

B. Firearm(s) Information (To report additional firearm(s) copy and attach additional applications)							
*Firearm Type: <input type="radio"/> Handgun <input type="radio"/> Rifle <input type="radio"/> Shotgun <input type="radio"/> Rifle/Shotgun Combo				*Category (select from list on page 3)		*Serial Number:	
*Make:		*Model:		*Caliber:	*Firearm Origin:		*Barrel Length: <input type="radio"/> IN. <input type="radio"/> CM.
*Firearm Self-Built? <input type="radio"/> Yes <input type="radio"/> No		*Did You Obtain A Serial Number From The DOJ? <input type="radio"/> Yes <input type="radio"/> No		*Frame/Receiver Only? <input type="radio"/> Yes <input type="radio"/> No		*Is Firearm In Law Enforcement Custody? <input type="radio"/> Yes <input type="radio"/> No	
*Color:	*Date Acquired (mm/dd/yyyy):		*Acquired From: <input type="radio"/> Spouse <input type="radio"/> Family Member (Specify Relationship): _____ <input type="radio"/> Estate Executor <input type="radio"/> Other _____				

*Firearm Type: <input type="radio"/> Handgun <input type="radio"/> Rifle <input type="radio"/> Shotgun <input type="radio"/> Rifle/Shotgun Combo				*Category (select from list on page 3)		*Serial Number:	
*Make:		*Model:		*Caliber:	*Firearm Origin:		*Barrel Length: <input type="radio"/> IN. <input type="radio"/> CM.
*Firearm Self-Built? <input type="radio"/> Yes <input type="radio"/> No		*Did You Obtain A Serial Number From The DOJ? <input type="radio"/> Yes <input type="radio"/> No		*Frame/Receiver Only? <input type="radio"/> Yes <input type="radio"/> No		*Is Firearm In Law Enforcement Custody? <input type="radio"/> Yes <input type="radio"/> No	
*Color:	*Date Acquired (mm/dd/yyyy):		*Acquired From: <input type="radio"/> Spouse <input type="radio"/> Family Member (Specify Relationship): _____ <input type="radio"/> Estate Executor <input type="radio"/> Other _____				

C. Declaration	
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I expressly authorize the Department of Justice to perform firearms eligibility checks of all relevant state and federal databases, including the Federal Bureau of Investigation's National Instant Criminal Background Check System. I also understand that if I currently possess or own firearms and the results of this check reveal that I am ineligible either to lawfully possess or purchase firearms, I must relinquish any and all firearms in my possession.	
Signature _____	Date _____

Mailing Standards of the United States Postal Service

431 Definitions

431.1 Firearm

The following definitions apply:

- a. Firearm means any device, including a starter gun, which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include antique firearms (except antique firearms meeting the description of a handgun or of a firearm capable of being concealed on a person).
- b. Firearm frame or receiver is the part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel. Frames and receivers usually (but not always) include the firearm serial number and are usually considered to be the regulated component of a firearm.

431.2 Handguns

Pistols, revolvers, and other firearms capable of being concealed on the person (for example, short-barreled shotguns and short-barreled rifles) are defined as handguns. The following definitions apply:

- a. Handgun (including pistols and revolvers) means any firearm which has a short stock, and is designed to be held and fired by the use of a single hand and subject to [431.1](#), or a combination of parts from which a handgun can be assembled.
- b. Other firearms capable of being concealed on the person include, but are not limited to, short-barreled shotguns and short-barreled rifles.
- c. Short-barreled shotgun means a shotgun that has one or more barrels less than 18 inches long. The term short-barreled rifle means a rifle that has one or more barrels that are less than 16 inches long. These definitions include any weapon made from a shotgun or rifle, whether by alteration, modification, or otherwise, if such a weapon as modified has an overall length of less than 26 inches. A short-barreled shotgun or rifle of greater dimension may be regarded as nonmailable when it has characteristics to allow concealment on the person.

431.3 Antique Firearm

Antique firearm means any muzzle loading rifle/shotgun/pistol, which is designed to use black powder or a black powder substitute, and which cannot use fixed ammunition (except those that incorporate a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof); or any firearm (including those with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898, or any replica thereof, if such replica:

- a. Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.
- b. Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

431.4 Rifles and Shotguns

A rifle is a shoulder weapon having a barrel that is 16 inches or more in length. A shotgun is a shoulder weapon having a barrel that is 18 inches or more in length. Rifles and shotguns have an overall length of 26 inches or greater and cannot be concealed on a person.

431.5 Federal Firearms Licensee (FFL)

Federal Firearms licenses are issued by the Bureau of Alcohol, Tobacco, and Firearms (ATF), U.S. Department of the Treasury, under the Gun Control Act of 1968, and are defined as follows:

- a. Federal Firearms Licensee (FFL) manufacturer, dealer, or importer of firearms means a manufacturer, dealer, or importer duly licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) under Chapter 44, Title 18, United States Code (U.S.C.).
- b. Curio and relic collector means an individual licensed by ATF to transfer or receive only those firearms defined as curios or relics by ATF under Title 27, Code of Federal Regulations (CFR), section 478.11.

431.6 Air Guns

Air gun means a gun that fires a projectile by means of compressed air or other gas (including paintball and pellet guns).

432 Mailability

432.1 General

Mailers must comply with the Gun Control Act of 1968, all of the provisions of postal law in 18 U.S.C. 1715, and all other all federal and state regulations and local ordinances affecting the movement of firearms. The following also applies:

- a. The Postal Service may require the mailer to open parcels containing firearms or air guns or give written certification that the weapon is unloaded and not concealable.
- b. Short-barreled rifles or shotguns that can be concealed on the person are nonmailable.
- c. No markings of any kind that indicate the nature of the contents may be placed on the outside wrapper or container of any mailpiece containing firearms.
- d. Mailable matter must be properly and securely packaged within the general packaging requirements in DMM 601.1-7.
- e. Except for shipments between licensed dealers, manufacturers, or importers, all regulated firearms must be mailed using a USPS product or Extra Service that provides tracking and signature capture at delivery.

432.2 Handguns

Handguns and other firearms capable of being concealed on the person are nonmailable unless mailed between the parties listed in this section, after the filing of an affidavit or statement described in [432.22](#) or [432.24](#), and are subject to the following:

- a. Firearms meeting the definition of a handgun under [431.2](#) and the definition of curios or relics under 27 CFR 478.11 may be mailed between curio and relic collectors only when those firearms also meet the definition of an antique firearm under [431.3](#).
- b. Firearms meeting the definition of a handgun under [431.2](#), which are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest, may be accepted for mailing between governmental museums without regard to the restrictions provided for handguns in [432.21](#) through [432.24](#) and [Exhibit 432.25](#).
- c. Air guns (see [431.6](#)) that do not fall within the definition of firearms under [431.1](#) and are capable of being concealed on a person are mailable, but must include Adult Signature service under DMM 503.8. Mailers must comply with all applicable state and local regulations.
- d. Parts of handguns are mailable, except for handgun frames, receivers or other parts or components regulated under Chapter 44, Title 18, U.S.C.
- e. Mailers are also subject to applicable restrictions by governments of a state, territory, or district.

432.21 Authorized Persons

Subject to [432.22](#), handguns may be mailed by a licensed manufacturer of firearms, a licensed dealer of firearms, a licensed importer of firearms, or an authorized agent of the federal government or the government of a state, territory, or district, *only* when addressed to a person in one of the following categories for use in the person's official duties, *and* upon filing the required affidavit or certificate:

- a. Officers of the Army, Coast Guard, Air Force, Navy, Marine Corps, or Organized Reserve Corps.
- b. Officers of the National Guard or militia of a state, territory, or district.
- c. Officers of the United States or of a state, territory, or district, whose official duty is to serve warrants of arrest or commitment.
- d. USPS employees authorized by the Chief Postal Inspector.
- e. Officers and employees of enforcement agencies of the United States.
- f. Watchmen engaged in guarding the property of the United States, a state, territory, or district.
- g. Purchasing agent or other designated member of agencies employing officers and employees included in [432.21c](#) through [e](#).

432.22 Affidavit of Addressee

Any person proposing to mail a handgun under [432.21](#) must file with the Postmaster, at the time of mailing, an affidavit signed by the addressee setting forth that the addressee is qualified to receive the firearm under a particular category of [432.21a](#) through [432.21g](#), and that the firearm is intended for the addressee's official use. The affidavit must also bear a certificate stating that the firearm is for the official duty use of the addressee, signed by one of the following, as appropriate:

- a. For officers of Armed Forces, by the commanding officer.

- b. For officers and employees of enforcement agencies, by the head of the agency employing the addressee to perform the official duty with which the firearm is to be used.
- c. For watchmen, by the chief clerk of the department, bureau, or independent branch of the government of the United States, the state, the territory, or the district by which the watchman is employed.
- d. For the purchasing agent or other designated member of enforcement agencies, by the head of such agency, that the firearm is to be used by an officer or employee included in [432.21c](#) through [432.21e](#).

432.23 Manufacturers, Dealers, and Importers

Handguns may also be mailed between licensed manufacturers of firearms, licensed dealers of firearms, and licensed importers of firearms in customary trade shipments, or for repairing or replacing parts.

432.24 Certificate of Manufacturers, Dealers, and Importers

A federal firearms licensee manufacturer, dealer, or importer need not file the affidavit under [432.22](#), but must file with the Postmaster a statement on PS Form 1508, *Statement by Shipper of Firearms*, signed by the mailer that he or she is a licensed manufacturer, dealer, or importer of firearms. The mailer must also state that the parcels containing handguns, or parts and components of handguns under [432.2d](#), are being mailed in customary trade shipments or contain such articles for repairing or replacing parts, and that to the best of their knowledge the addressees are licensed manufacturers, dealers, or importers of firearms. Registered Mail service is recommended.

Postmasters may forward an unsatisfactory mailer statement to the PCSC for a ruling.

432.25 Federal and Other Law Enforcement Agencies

Handguns may be mailed without regard to [432.21](#) through [432.24](#) if the item is:

- a. Addressed to a scientific laboratory or crime detection bureau of any federal, state, or local law enforcement agency whose members are authorized to serve warrants of arrest or commitment.
- b. Sent by an authorized agent of the federal government as an official shipment to any qualified addressee in [432.21](#), or to a licensed manufacturer, dealer, or importer of firearms, or to a federal agency.

Mailability Requirements for Handguns

Addressee	Affidavit or Certificate Requirements
Officer of Air Force, Army, Coast Guard, Marine Corps, Navy, or Organized Reserve Corps.	Affidavit signed by the addressee and certificate signed by the commanding officer.
Officer of National Guard or militia of a state, territory, or district.	Affidavit signed by the addressee and certificate signed by the commanding officer.
Officer of the federal government or a state, district, or territory whose official duty is to serve warrants of arrest or commitment.*	Affidavit signed by the addressee and certificate signed by the head of the agency employing the addressee.
Postal Service employees specifically authorized by the Chief Postal Inspector.*	Affidavit signed by the addressee and certificate signed by the head of the agency employing the addressee.
Officer or employee of a U.S. enforcement agency.*	Affidavit signed by the addressee and certificate signed by the head of the agency employing the addressee.
Purchasing agent or other designated member of an enforcement agency employing officers and personnel included in (*) above.	Affidavit signed by the addressee and certificate signed by the head of agency stating the firearm is to be used by an officer or employee included in addressee column marked with an (*).
Watchman engaged in guarding federal, state, district, or territory property.	Affidavit signed by the addressee and certificate signed by chief clerk of department, bureau, or independent branch of the government agency employing the addressee.
Licensed manufacturers, importers, and dealers of firearms.	Signed statement on PS Form 1508, <i>Statement by Shipper of Firearms</i> . The mailer must be a licensed manufacturer, importer, or dealer mailing to another licensed manufacturer, importer, or firearms dealer.

432.3 Rifles and Shotguns

Except under 431.2, unloaded rifles and shotguns are mailable. Mailers must comply with the rules and regulations under 27 CFR, Part 478, as well as state and local laws. The mailer may be required by the USPS to establish, by opening the parcel or by written certification, that the rifle or shotgun is unloaded and not ineligible for mailing. The following conditions also apply:

- a. Subject to state, territory, or district regulations, rifles and shotguns may be mailed without restriction when intended for delivery within the same state of mailing. These items must:
 0. Bear a "Return Service Requested" endorsement.
 1. Be mailed using a class of mail, product, or Extra Service that provides tracking and signature capture at delivery.
- b. A rifle or shotgun owned by a non-FFL may be mailed outside the owner's state of residence by the owner to himself or herself, in care of another person in the other state where he or she intends to hunt or engage in any other lawful activity. These mailpieces must:
 0. Be addressed to the owner.
 1. Include the "in the care of" endorsement immediately preceding the name of the applicable temporary custodian.
 2. Be opened by the rifle or shotgun owner only.
 3. Be mailed using a class of mail, product, or Extra Service that provides tracking and signature capture at delivery.
- c. Mailing of rifles and shotguns between licensed FFL dealers, manufacturers, or importers are not restricted. The Postal Service recommends that these items be mailed using a class of mail, product, or Extra Service that provides tracking and signature capture at delivery.
- d. Rifles and shotguns may be mailed by a non-FFL owner domestically to a FFL dealer, manufacturer, or importer in any state. These items must be mailed using a class of mail, product, or Extra Service that provides tracking and signature capture at delivery.
- e. Except as described in 432.3a, licensed curio and relic collectors may mail firearms meeting the definition of curios or relics under 27 CFR 478.11 domestically to licensed FFL curio and relic collectors in any state. These items must be mailed using a class of mail, product, or Extra Service that provides tracking and signature capture at delivery.
- f. Firearms meeting the definition of a rifle or shotgun under 431.4 which are certified by the curator of a municipal, state, or federal museum, which exhibits firearms to be curios or relics of museum interest, may be accepted for mailing without restriction when mailed between governmental museums.
- g. Air guns (see 431.6) that do not fall within the definition of firearms under 431.1a are mailable. A shipment containing an air gun with a muzzle velocity of 400 or more feet per second (fps) must include an adult signature service under DMM 503.8. Mailers must additionally comply with all applicable state and local regulations.

432.4 Indemnity Claims

When indemnity claims pertaining to regulated firearms are filed for loss or damage to contents, claims will only be paid for complete loss under either of the following conditions:

- a. The regulated firearm has been lost, or
- b. When the mailer has provided reasonable estimates of the firearm's value and of repair cost from a reputable dealer, and the repair cost exceeds the declared and/or actual value of the firearm at the time of mailing.

433 Legal Opinions on Mailing Firearms

Postmasters are not authorized to give opinions on the legality of any shipment of firearms. Mailers requesting additional information should be referred to the ATF. Further advice and ATF contact information is available at <http://atf.gov/firearms/faq/licensing.html>.

https://pe.usps.com/text/pub52/pub52c4_008.htm

Summary

This Strategy Note addresses estate planning involving firearms. While traditional scope of coverage has focused on gun trusts, this does not do justice to the great majority of transfers of firearms, which do not involve the types of specialized and exotic weapons for which gun trusts are adapted.

Carefully research and adapt the following material to the facts and circumstance of your case or matter and verify the currency of the legal authorities cited herein.

I. Fundamental Concepts of Firearms Transfers

How do transfers of firearms differ from other gifts in a donative instrument such as a will or trust? Firearms are items of tangible personal property, and can be provided-for in a client's will or trust through the same mechanisms as other gifts of tangible personal property, however, because firearms are also deadly weapons, they are subject to a host of federal and state laws, including provisions of the penal code. It is beyond the scope of this Strategy Note to summarize **all** laws applicable to firearms, but it will summarize the significant provisions that will often be encountered by estates that contain these assets, and some of the tools for dealing with them.

A. Firearm Defined

What is a firearm? The general definition is any "device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion" (Pen. Code, § 16520, subd. (a)). In addition, for several specified statutes, it specifically means the "frame or receiver" of the weapon. (Pen. Code, § 16520, subd. (b).) State law does not define "frame or receiver"; the common description is the part of the component of a firearm which houses or integrates the internal action components. Applying this definition in practice can be tricky. (See this [FAQ on Firearms Technology](#) by the Bureau of Alcohol, Tobacco, Firearms and Explosives.)

If in doubt as to whether a given item in an estate is going to be considered a firearm, it would be best to consult an expert.

State law imposes a license requirement on transfers of firearms (Pen. Code, § 26500) and criminalizes transactions between unlicensed parties. (Pen. Code, § 27545.) Some violations are a felony. (Pen. Code, § 27590.) These provisions ensure that all legal transfers of firearms—even private-party transfers and gifts—go through a licensed dealer holding a federal firearms license ("FFL"); this in turn ensures that the transferee complies with the requirements of the 10-day waiting period and one-gun-per-30-day rule, and a background check is completed to determine that the transferee is not a "prohibited person". (Pen. Code, § 28050.)

A "prohibited person" is someone who does not have a lawful right to possess a firearm, and whose taking possession thereof is in and of itself a crime. More information on what constitutes a "prohibited person" is available from the [Department of Justice](#). In general, any convicted felon, and several categories of convicted misdemeanor, will be prohibited from possessing a firearm, regardless of citizenship. Though there are some exceptions, many categories of non-citizen will also be prohibited.

B. Exempt Transfers of Firearm Under California Law

California law does provide for an exception to this requirement that is of great utility to estate planning attorneys: **transfers by operation of law**. This exempts from Penal Code sections 26500 and 27545 transfers of a firearm between “immediate family” members, if all applicable requirements are met. (Pen. Code, § 27875.)

The requirements of a valid transfer under Penal Code section 27875 are as follows:

- The transfer must be “infrequent”, defined in Penal Code section 16730 to be less than “six transactions” and “no more than 50 total firearms” per calendar year;
- The transferor and transferee must be “immediate family”, defined in Penal Code section 16720 to be parent-and-child, or grandparent-and-grandchild (note: this excludes transfers between siblings from the exemption);
- The transferee is over age 18 and has obtained a “firearms safety certificate” (see Pen. Code, § 16535); and finally
- The transferee must report the transaction to the DOJ using the appropriate “Operation of Law” form and paying the specified fee within 30 days of taking possession.

In addition, two separate sections of the code also exempt “transfers by operation of law” from the licensee requirement of Penal Code section 26500: Penal Code sections 26505, subdivision (a), and 26515. The latter covers temporary transfers of possession to a surviving spouse or personal representative, who dispose of the firearm within 60 days. Penal Code section 26505, subdivision (a), however extends to all of the “operation of law” transfers defined in Penal Code section 16960, which encompasses personal representatives, trustees of trusts, bankruptcy trustees, interspousal transmutations, powers of attorney, and a host of other similar transactions.

C. Risks in Estate Planning and Transfers of Firearms

Careful adherence to the requirements of the laws governing transfers of firearms is essential for any personal representative or trustee who is going to handle an estate with firearms. When advising such an individual, be mindful of the serious consequences (in terms of criminal jeopardy and potential hazard to life and limb) of carelessness with respect to firearms transfers. At the estate planning stage, you can add value by educating yourself and client alike as to the concerns that will be incumbent upon the successor-in-interest when these assets transfer.

In particular, care should be taken to avoid putting a personal representative or trustee in the invidious position of being commanded by a document to transfer a firearm to a prohibited person, if that can be avoided. Fortunately, for simpler situations, such as estates where a small number of firearms are being transferred to immediate family, the “Operation of Law” reporting obviates the time-consumption and expense of transferring the firearms through a FFL. If the client’s notional transfer fits within these requirements, and all other issues are avoided, more elaborate planning, such as a Gun Trust (explained more fully below), may be entirely unnecessary.

Finally, be cautioned that California law also bans transfers of possession (and in some cases, possession itself) of various types of weapons and parts that it considers unusually dangerous, such as “assault

weapons”, “large capacity magazines”, “.50 BMG rifles”, and various other items. It is not possible in the course of this Strategy Note to cover all such regulation, or address the extensive litigation addressing the constitutionality of these laws. However, be aware that while some clients may believe that they have “grandfathered” items, or lawfully possess a “registered assault weapon”, often times these items cannot legally be transferred, even when “operation of law” requirements are satisfied, and transfer or possession of (for instance) an “assault weapon” or “large capacity magazine” could expose the transferee to significant criminal jeopardy. That does not necessarily mean that these contraband items must simply be disposed of; firearms experts will be able to advise you or the client on strategies for lawfully obtaining value, even for firearms that cannot legally be transferred in the condition that the deceased person owned them.

II. Use of Standalone Gun Trusts in California

When a client owns firearms and ammunition as part of their estate, certain provisions should be included in a trust to ensure that proper possession and transfer rules are followed. In most states, the use of a standalone National Firearms Act (NFA) (Int.Rev. Code, §§ 5801–5872) "Gun Trust" has gained popularity as it presumes to circumvent the need for each co-trustee or successor trustee to obtain the appropriate permits for owning or possessing certain firearms classified "dangerous weapons." In California, "dangerous weapons" means "machineguns as defined in Penal Code section 16880, destructive devices as defined in Penal Code section 16460, short-barreled shotguns and short-barreled rifles as defined in Penal Code sections 17170 and 17180, and assault weapons as defined in Penal Code sections 30510 and 30515." (Cal. Code Regs, tit. 11, § 4127, subd. (f).)

In general, any owner of a firearm must comply with federal and state guidelines for ownership and possession, which generally provides that the owner or "responsible person" must comply with certain identification and background check requirements. Under the commonly referred-to "Gun Trusts," the "responsible person" serves as the original trustee of the "Gun Trust" and all co-trustees and successor trustees presumably will be disregarded for purposes of determining the "responsible person" for the firearm. This is possible in certain states because the federal regulations' definition of "person" includes a trust. (27 C.F.R. § 479.11.) In 2016, the Department of Justice attempted to address this issue by enacting 27 Code of Federal Regulations part 479 (commonly known as Rule 41F), which expanded the definition of a "responsible person" to ensure that identification and background checks apply to all persons possessing firearms. Other states appear to continue to utilize these "Gun Trusts" for their intended purposes.

In California, however, such trusts would run afoul of California's trust and criminal laws. Specifically, in California, a "trust is not a person but rather 'a fiduciary relationship with respect to property.'" [Citations.] Indeed, 'an ordinary express trust is not an entity separate from its trustees.'" (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548.) For purposes of possessing a "dangerous weapon," a "person" must obtain the appropriate permit. (Cal. Code Regs., tit. 11, § 4128.) Accordingly, **be wary** about the use of "Gun Trusts" for the purpose of circumventing the appropriate permit requirements under California state law.

III. Use of Gun Trust Provisions in California

Unlike standalone "Gun Trusts," the inclusion of firearm and ammunition possession and distribution provisions into trusts are useful in California and may provide additional protections to trustees and

beneficiaries. The provisions can be included as instructive provisions or as a separate subtrust created in the event that different trustees are necessary for the trust's administration. Gun trust provisions can also be used to ensure that trustees are provided guidance on the proper handling, transporting, and transferring or distributing of firearms owned by the initial settlor of the trust.

The laws governing owning, possessing, and transferring firearms and ammunition in California change frequently and throughout any given year. Providing certain guidelines in a trust will allow trustees and beneficiaries to understand the weight of owning, possessing, and transferring firearms and ammunition and assist in the prevention of an unintended commission of a misdemeanor or felony.

A. Trustee Qualifications

To assume the role of trustee of a trust that owns firearms, the person must comply with the qualifications for firearm possession as mandated by the Code of Federal Regulations and the California Penal Code in effect at the time of possession. This includes complying with both federal and California state mandated identification and background check procedures and maintaining all requisite licenses for the firearms the trustee will be possessing. In order to comply with the background check procedures and obtain the appropriate licenses, a trustee must not be a prohibited person as defined in Penal Code sections 29610–30105. This includes, but is not limited to:

- Minors (Pen. Code, § 29610; 18 U.S.C. § 922(x));
- Persons convicted of specified offenses (Pen. Code, §§ 29800–29830; 18 U.S.C. § 922(g));
- Persons convicted of violent offenses (Pen. Code, §§ 29900–29905);
- Persons subject to restraining orders (Pen. Code, § 29825); and
- Persons adjudicated or confined due to mental disorders or mental illness (Welf. & Inst. Code, § 8103; 27 C.F.R. § 478.11).

A trust should also include provisions that address administration on a trustee becoming disqualified to act based on a change in the trustee's circumstance or a change in the law. For example, if a trustee becomes temporarily disqualified, the law provides that a person may "loan" the firearm to a person specified in Penal Code section 27880. Eligible persons are limited to being a spouse or registered domestic partner, parent, child, sibling, grandparent, or grandchild. (Pen. Code, § 27880, subd. (a).) In order to allow for such a loan, the trustee must become eligible to act again within 30 days. (Pen. Code, § 27880, subd. (d).) In the event of more permanent disqualification, instructions for notification and resignation as trustee in possession of the firearm(s) and ammunition should also be included in the trust.

The trust should also provide the trustee with guidance concerning additional issues related to possession of firearms and ammunition. For instance, the trust should require the trustee to become knowledgeable of the current laws related to issues such as transportation of the firearms and ammunition, the types of classifications of the trust's firearms and the effects of any alterations to the firearms, and proper storage.

B. Beneficiary Issues

In considering who to name as the beneficiary of the firearms in a trust, the client must consider whether the potential beneficiary is legally authorized to possess a firearm or whether they are a prohibited person as defined in Penal Code sections 29610–30105 or under federal law. This includes, but is not limited to:

- Minors (Pen. Code, § 29610; 18 U.S.C. § 922(x));
- Persons convicted of specified offenses (Pen. Code, §§ 29800–29830; 18 U.S.C. § 922(g));
- Persons convicted of violent offenses (Pen. Code, §§ 29900–29905);
- Persons subject to restraining orders (Pen. Code, § 29825); and
- Persons adjudicated or confined due to mental disorders or mental illness (Welf. & Inst. Code, § 8103; 27 C.F.R. § 478.11).

The client must also consider whether the type of firearm is transferable in California. For example, Penal Code section 30915 prohibits the transfer by bequest or intestate succession of assault weapons unless they are rendered permanently inoperable. Under Penal Code section 30915, subdivisions (a)–(d), the beneficiary in receipt of the assault weapon has 90 days to

- Render the weapon permanently inoperable;
- Sell the weapon to a licensed gun dealer;
- Obtain a special permit from the Department of Justice; or
- Remove the weapon from California.

Before a trustee distributes any firearms or ammunition to a beneficiary, the trustee should confirm that the beneficiary has the appropriate permits and safety certificates. The use of a Federal Firearm Licensee (FFL) will provide the trustee with the appropriate confirmation of identification and background checks to ensure that a bequest was not made to a prohibited person. FFLs are located throughout the state and, depending on the type of transfers, their use may be mandatory.

With regard to a firearm going to an out-of-state beneficiary, it is possible that a firearm prohibited in California is allowable in another state. When discussing with the client their wishes as to the continued use of the firearm, it may be best for the client to consider naming beneficiaries in states that allow the specific firearm or that do not have gun laws that are in a constant state of change. For example, a dispute over California's restrictions on the allowable capacity of a firearm's magazine has been ongoing since 2016, when California voters approved Proposition 63, which prohibited possession of magazines that can hold more than 10 rounds of ammunition. For more information, see *Duncan v. Becerra* (9th Cir. 2020) 970 F.3d 1133, vacated, rehearing granted (9th Cir. 2021) 988 F.3d 1209; *Duncan v. Bonta* (9th Cir. 2021) 19 F.4th 1087 (opinion after rehearing en banc, petition for certiorari filed Feb. 28, 2022).