

## **SETTING UP A LEGALLY BINDING NFA GUN TRUST IN OREGON**

### **1. INTRODUCTION: THE IMPORTANCE OF AN NFA GUN TRUST IN OREGON**

An NFA Gun Trust is a specialized legal entity, specifically a trust, designed to hold title to firearms, particularly those regulated under the National Firearms Act (NFA) of 1934 and the Gun Control Act (GCA) of 1968.<sup>1</sup> These include items such as machine guns, suppressors, short-barreled rifles (SBRs), short-barreled shotguns (SBSs), destructive devices, and "any other weapons" (AOWs).<sup>1</sup> Unlike standard trusts, gun trusts are specifically drafted to address the unique legal requirements associated with firearm ownership, possession, and transfer under both federal and state law.<sup>5</sup> The trust acts as a legal entity that can own firearms, allowing for benefits not available to individual owners.<sup>1</sup>

For firearm owners in Oregon, establishing an NFA Gun Trust offers several key advantages. It provides enhanced flexibility and allows for the shared use of NFA firearms by multiple individuals (co-trustees), a feature not permitted under individual registration.<sup>9</sup> This is particularly beneficial for families or groups of shooting enthusiasts who wish to collectively own and enjoy NFA items.<sup>1</sup> Furthermore, a gun trust streamlines estate planning and the inheritance process for firearms, including NFA items, by enabling their transfer to beneficiaries outside of the often lengthy and public probate process.<sup>1</sup> This ensures that firearms are passed down according to the owner's wishes with greater ease and privacy.<sup>1</sup> By establishing a legal entity that owns the firearms, a gun trust can also help prevent family members or others with access to individually owned NFA items from being deemed in unlawful "constructive possession".<sup>2</sup> In the event of the grantor's incapacitation, a gun trust allows appointed co-trustees to legally possess and manage NFA firearms, thereby avoiding potential ATF confiscation that might occur with individual ownership.<sup>17</sup> Additionally, by providing a clear legal framework for firearm ownership and transfer, gun trusts can decrease liability risks.<sup>27</sup>

This report will provide a comprehensive, expert-level guide on the process of establishing a legally binding NFA Gun Trust in Oregon that ensures validity both within the state and across the nation. It will delve into the specific legal prerequisites under Oregon law, identify the essential legal language and clauses required, explain the relevant federal regulations, detail the necessary ATF forms for NFA firearm registration under a trust, point to official resources from the ATF, analyze guidance from reputable Oregon legal experts, and clarify the procedures for facilitating firearm transfers upon the grantor's death or incapacitation within Oregon. The increasing popularity of NFA Gun Trusts in Oregon indicates a growing need among firearm owners for solutions that address the limitations of individual ownership, particularly concerning shared use and estate planning for regulated items, a trend supported by the services offered by various legal professionals in the state.<sup>27</sup> The emphasis on avoiding "accidental felonies" by Oregon legal professionals<sup>12</sup> highlights a significant concern among gun owners about unintentionally violating complex firearm laws, making the protective framework of a gun trust highly appealing. Furthermore, the availability of different tiers of gun trusts<sup>25</sup> suggests that the needs of firearm owners vary, with some seeking basic NFA

compliance while others require more comprehensive planning for both NFA and non-NFA items, including provisions for spouses and multiple trustees.

## 2. ESTABLISHING A LEGALLY BINDING GUN TRUST IN OREGON: KEY REQUIREMENTS

A trust, in its fundamental form, is a fiduciary relationship where a **grantor** (also known as a settlor or trustor) transfers ownership of assets, which in this context are firearms, to a **trustee**. The trustee then holds and manages these assets for the benefit of designated **beneficiaries**.<sup>1</sup> For a trust to be legally valid in Oregon, it must be established in writing, signed by the grantor, and typically notarized to ensure its enforceability.<sup>17</sup> The specific legal requirements for the formation of a trust in Oregon are detailed in the Oregon Trust Code, which is codified under ORS Chapter 130.<sup>35</sup> A gun trust is most commonly structured as a **revocable living trust**, which allows the grantor to retain control over the firearms during their lifetime. This type of trust also offers the flexibility to amend or even revoke the trust entirely should their circumstances change.<sup>1</sup>

While Oregon law does not have a specific statute that solely governs "gun trusts," the creation and operation of these trusts are subject to the general principles of Oregon trust law (ORS Chapter 130).<sup>35</sup> These principles must be applied in conjunction with Oregon's comprehensive firearms regulations, which are primarily found in ORS Chapter 166.<sup>27</sup> Notably, ORS 166.435<sup>38</sup> outlines the specific requirements for firearm transfers between unlicensed individuals, generally mandating the involvement of a licensed gun dealer for background checks. However, this statute includes crucial exceptions for firearm transfers between immediate family members and for transfers occurring due to the death of the firearm owner, provided these are facilitated by a personal representative or a trustee of a will to a beneficiary who is related to the deceased in a specified manner.<sup>38</sup> Furthermore, Oregon law concerning the secure storage of firearms, as detailed in ORS 166.395<sup>36</sup>, is directly relevant to how firearms owned by a gun trust must be stored when not in use. Recent legislative changes, such as Measure 114 (passed in 2022) and subsequent modifications like HB 3075<sup>37</sup>, have introduced a permit-to-purchase requirement for firearms in Oregon. This will impact trustees and beneficiaries of gun trusts, who will need to comply with these new regulations when acquiring firearms through the trust.

In the context of an Oregon NFA Gun Trust, the **grantor (settlor)** is the individual who initiates the trust and transfers their firearms into it.<sup>1</sup> They often assume the role of the initial trustee, retaining control over the trust assets during their lifetime. The **trustee(s)** are the individuals entrusted with the responsibility of managing the trust assets, including the firearms, in accordance with the terms of the trust agreement and with a fiduciary duty to the beneficiaries.<sup>1</sup> They hold legal possession of the firearms owned by the trust and are accountable for ensuring compliance with all applicable firearm laws. The appointment of co-trustees allows for shared possession and use of the firearms held within the trust.<sup>17</sup> **Beneficiary(ies)** are the individuals or entities who are entitled to benefit from the trust assets. In the case of a gun trust, these are typically the individuals who will ultimately inherit the firearms.<sup>1</sup> Lifetime beneficiaries may have the

right to use the firearms during the grantor's life under the trustee's authorization, but they do not gain legal ownership until a formal transfer occurs as stipulated by the trust terms and Oregon law.

For an NFA Gun Trust to be legally binding and effective in Oregon, it is paramount that the trust document is drafted with clear and precise language.<sup>27</sup> Oregon law mandates that trusts must be unambiguous and must clearly define the intentions of the grantor, the specific roles and responsibilities of the trustee(s) and beneficiary(ies), as well as the detailed management and distribution of the trust's assets.<sup>27</sup> In the context of a gun trust, the legal wording must specifically address the ownership, possession, and transfer of firearms, ensuring full compliance with the requirements outlined in ORS Chapter 166.<sup>27</sup> It is important to recognize that generic trust language, which may be suitable for other types of assets, might not be sufficient to adequately address the unique legal complexities associated with firearm laws, particularly those concerning NFA items.<sup>18</sup> Therefore, it is strongly recommended that individuals seeking to establish an NFA Gun Trust in Oregon consult with an attorney who possesses specific experience in drafting these types of legal instruments. Such legal professionals have a deep understanding of both Oregon trust law and the state's firearm regulations, as well as the intricacies of federal law under the National Firearms Act. This expertise is crucial to ensure that the gun trust is legally sound, comprehensively addresses the individual's specific needs, and fully complies with all applicable state and federal regulations.<sup>27</sup>

### 3. ESSENTIAL LEGAL LANGUAGE AND CLAUSES FOR OREGON NFA GUN TRUSTS

Establishing a legally binding NFA Gun Trust in Oregon necessitates the inclusion of several crucial legal clauses within the trust document. Firstly, a **Declaration of Trust** should clearly identify the document as a trust agreement and express the grantor's unequivocal intent to create a trust specifically for the purpose of owning and managing firearms.<sup>6</sup> The trust must also have a unique **Trust Name**, typically followed by the word "Trust".<sup>6</sup> The trust document should also include comprehensive **Grantor (Settlor) Information**, such as their full legal name, current address, and date of birth.<sup>17</sup> A critical component is the **Trustee Appointment and Powers** clause, which clearly designates the initial trustee (often the grantor) and provides a detailed enumeration of their powers and responsibilities. These powers must explicitly include the authority to acquire, possess, use, transfer, and manage firearms, encompassing both NFA and non-NFA items, while adhering strictly to all applicable federal, state, and local laws.<sup>1</sup> For trusts intended to hold NFA firearms, this clause should specifically authorize the trustee to undertake all necessary steps for registering such firearms with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

The trust document must also contain a clear **Beneficiary Designation** that identifies both the primary and any contingent (secondary) beneficiaries who are intended to inherit the trust property, including the firearms, upon the grantor's passing.<sup>1</sup> A detailed **Trust Property** section, often presented as Schedule A or an Inventory, should list all firearms (including make, model, and serial number) and any related accessories that

are being initially transferred into the trust. The trust should also include a clear mechanism for adding any firearms acquired by the trust in the future, such as through assignment sheets or a separate **Firearms and Accessories Memorandum**.<sup>10</sup> To ensure the continued management and distribution of the trust assets after the grantor's death or incapacitation, the trust must designate one or more **Successor Trustee(s)** who will assume the responsibilities of the trustee.<sup>17</sup> Furthermore, a standard **Amendment and Revocation Clause** should be included, specifying the grantor's right and the process for making changes to or terminating the trust during their lifetime.<sup>1</sup> To establish the legal framework for interpreting and administering the trust, a **Governing Law Clause** should explicitly state that the laws of the State of Oregon will govern the trust.<sup>13</sup> Standard boilerplate clauses such as a **Severability Clause**, which ensures the validity of the remaining trust provisions even if one part is deemed invalid, and optionally, a **Spendthrift Clause**, which may offer protection to beneficiaries from creditors, should also be included.

For trusts intended to hold NFA firearms, the legal language must specifically acknowledge their regulated status under federal law and clearly outline the trustee's responsibility to ensure ongoing compliance with the National Firearms Act and all relevant ATF regulations.<sup>4</sup> When defining the powers of trustees, it is crucial to explicitly grant co-trustees the authority to possess and use all firearms held by the trust, including NFA items, while adhering to both federal and Oregon law.<sup>9</sup> The provisions for beneficiary designation and firearm distribution should carefully consider Oregon's inheritance laws (ORS 166.435(4)(d) <sup>38</sup>) to ensure a smooth and legally compliant transfer of all firearms, including instructions for the successor trustee on the potential use of ATF Form 5 for tax-exempt transfers of NFA items to eligible beneficiaries.<sup>15</sup> The trust agreement should explicitly reference a separate written memorandum, titled something like "Firearms and Accessories Memorandum," which the grantor can use to provide specific instructions regarding the distribution of particular firearms and accessories to named beneficiaries.<sup>12</sup> This memorandum, which should be signed and dated by the grantor and kept with the trust documents, should be clearly referenced in the trust agreement, stating its purpose as a guide for the trustee in distributing assets according to the grantor's detailed wishes, to the extent legally permissible.<sup>29</sup>

#### **4. FEDERAL REQUIREMENTS FOR NATIONWIDE VALIDITY OF NFA GUN TRUSTS**

The National Firearms Act (NFA), enacted in 1934 and subsequently amended, is a federal law that governs the manufacture, transfer, and possession of specific categories of firearms and devices considered to be particularly dangerous or readily concealable.<sup>4</sup> These NFA firearms, also known as Title II weapons, encompass machine guns, short-barreled rifles (SBRs), short-barreled shotguns (SBSs), silencers (suppressors), destructive devices (DDs), and any other weapons (AOWs).<sup>1</sup> The NFA imposes a federal tax on the making and transfer of these firearms and mandates their registration with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the National Firearms Registration and Transfer Record (NFRTR).<sup>2</sup>

Under federal law, specifically within the definition provided in 26 U.S.C. § 5845(a) of the NFA, the term "person" is explicitly defined to include "a partnership, company, association, trust, estate, or corporation, as well as a natural person".<sup>5</sup> This broad definition clearly recognizes trusts as legitimate legal entities that are capable of owning NFA firearms. The ATF adheres to this definition, thereby permitting the registration of NFA firearms to a validly established trust.<sup>5</sup> When applying to either make or transfer an NFA firearm to a trust, the trust itself is identified as the applicant or the transferee on the required ATF forms.<sup>46</sup>

ATF Rule 41F, which took effect on July 13, 2016, introduced significant changes to the application process for NFA firearms acquired by trusts and other legal entities.<sup>5</sup> This rule established the concept of a "responsible person," defining it as any individual with the direct or indirect power to manage the trust's policies and practices concerning the receipt, possession, shipment, transportation, delivery, transfer, or other disposition of firearms on behalf of the trust.<sup>5</sup> Typically, this includes the grantor, all trustees, and potentially other individuals with substantial control over the trust's firearm-related assets.<sup>5</sup> Under Rule 41F, all responsible persons are now mandated to complete ATF Form 23 (National Firearms Act (NFA) Responsible Person Questionnaire), submit fingerprint cards (FBI Form FD-258), and provide passport-style photographs when the trust applies to make (Form 1) or transfer (Form 4) an NFA firearm.<sup>3</sup> Furthermore, each responsible person is required to provide notification to their local Chief Law Enforcement Officer (CLEO) by sending them a copy of Form 23.<sup>5</sup> It is important to note that while CLEO approval is no longer a prerequisite, notification remains mandatory.<sup>5</sup>

An NFA Gun Trust that is validly established under the laws of any state within the United States, including Oregon, will generally be recognized as a valid legal entity by the ATF for the purpose of owning NFA firearms across all states.<sup>28</sup> However, to ensure nationwide validity for NFA purposes, the trust document must be structured and contain language that aligns with the specific requirements of the National Firearms Act and all pertinent ATF regulations.<sup>13</sup> This includes clearly identifying the trust as the legal owner of the NFA firearms, precisely defining the powers and responsibilities of the trustees concerning these regulated items, and ensuring full compliance with the "responsible person" requirements as outlined under Rule 41F.<sup>3</sup> While the trust itself is generally recognized nationwide for federal purposes, it is crucial to understand that the possession and use of NFA firearms owned by the trust remain subject to the specific laws of the state and locality where the trustee or beneficiary is situated.<sup>1</sup> For example, certain states may have outright prohibitions on the possession of particular types of NFA items, even if they are owned by a legally valid trust. Therefore, it is always essential to verify that the possession of the specific NFA firearms listed in the trust is legal not only in Oregon but also in any other state where a trustee or beneficiary might reside or intend to use them.<sup>8</sup>

## **5. FEDERAL FORMS REQUIRED FOR REGISTERING NFA FIREARMS UNDER A GUN TRUST**

When establishing an NFA Gun Trust and subsequently acquiring NFA firearms under the trust's name, several federal forms provided by the Bureau of Alcohol, Tobacco,



Firearms and Explosives (ATF) are mandatory.<sup>3</sup> The specific forms that will be required depend on whether the NFA firearm is being manufactured by the trust or is being transferred to the trust from a dealer or another individual.

**ATF Form 1 (Application to Make and Register a Firearm)**<sup>3</sup> is utilized by the trust to apply for official permission to manufacture an NFA firearm, such as constructing a short-barreled rifle (SBR) or a short-barreled shotgun (SBS) from an existing rifle or shotgun, or for the creation of a suppressor. This form also serves to register the newly made NFA firearm in the name of the trust within the ATF's National Firearms Registration and Transfer Record (NFRTR). On this form, the trust will be identified as the "Maker" of the NFA firearm. Detailed information about the firearm to be made is required, including its specific type (e.g., SBR, suppressor), caliber, barrel length, overall length, and the serial number. If the firearm does not yet have a serial number (as in the case of a newly manufactured item), one will be assigned by the applicant. The completed Form 1 application must be submitted to the ATF along with the applicable making tax (typically \$200, though it is \$5 for AOWs), ATF Form 23 for each responsible person associated with the trust, and the corresponding fingerprint cards and photographs for each responsible person.<sup>16</sup>

**ATF Form 4 (Application for Tax Paid Transfer and Registration of a Firearm)**<sup>3</sup> is used when the trust seeks to acquire an already manufactured NFA firearm, such as purchasing a suppressor or an SBR from a licensed dealer or another individual. This form facilitates the tax-paid transfer of the firearm to the trust and its registration in the NFRTR. On Form 4, the trust will be listed as the "Transferee." The application necessitates comprehensive details about the NFA firearm being transferred, including its manufacturer, model, caliber, and serial number.<sup>46</sup> The completed Form 4 must be submitted to the ATF accompanied by the applicable transfer tax (again, typically \$200, but \$5 for AOWs), ATF Form 23 for each responsible person of the trust along with their fingerprint cards and photographs, and a complete copy of the trust document itself.<sup>16</sup>

**ATF Form 23 (National Firearms Act (NFA) Responsible Person Questionnaire)**<sup>3</sup> is a critical form that must be completed by every "responsible person" associated with the trust. This typically includes the grantor and all current trustees. Form 23 is required whenever the trust submits either ATF Form 1 or ATF Form 4. Each responsible person must provide their full legal name, current address, date of birth, and other identifying information on the form.<sup>46</sup> They are also required to answer a series of questions pertaining to their legal eligibility to possess firearms. A section on the form requires the inclusion of the name, title, and full address of the Chief Law Enforcement Officer (CLEO) for the jurisdiction where the responsible person resides, as a copy of the completed Form 23 must be sent to the CLEO as a notification.<sup>29</sup> For the copy of Form 23 that is submitted to the ATF, each responsible person must attach two FBI Form FD-258 fingerprint cards and a recent passport-style photograph.<sup>5</sup>

In specific scenarios, **ATF Form 5 (Application for Tax Exempt Transfer and Registration of Firearm)**<sup>15</sup> may also be relevant. This form is used for tax-exempt transfers of NFA firearms. For example, it is typically used when an NFA item is being transferred from the estate of a deceased individual to a lawful heir or beneficiary. In the

context of an NFA Gun Trust, Form 5 would likely be utilized by the successor trustee to transfer ownership of NFA firearms from the trust to the designated beneficiaries after the grantor's death. This transfer may be eligible for tax-exempt status if it meets the specific criteria outlined in federal regulations.<sup>15</sup> The Form 5 application requires supporting documentation, such as a copy of the death certificate and the trust agreement, to establish the legal basis for the tax-exempt transfer.<sup>21</sup> Additionally, **FBI Form FD-258 (Fingerprint Card)** is a standard form that must be submitted with ATF Forms 1 and 4 for each responsible person of the trust. While there is no direct download link for this form, it is typically obtained from the ATF or through authorized fingerprinting services.

**Table 1. Important ATF Forms**

Form Number	Form Name	Purpose	Tax Implications
ATF Form 1	Application to Make and Register a Firearm	To register the making of an NFA firearm by the trust.	Making tax due
ATF Form 4	Application for Tax Paid Transfer and Registration of a Firearm	To register the transfer of an already manufactured NFA firearm to the trust.	Transfer tax due
ATF Form 23	National Firearms Act (NFA) Responsible Person Questionnaire	To provide information and background checks for all responsible persons of the trust.	No tax
ATF Form 5	Application for Tax Exempt Transfer and Registration of Firearm	To register the tax-exempt transfer of an NFA firearm (e.g., inheritance to beneficiaries).	Tax exempt
FD-258	Fingerprint Card	Required for each responsible person with ATF Forms 1 and 4.	No tax

## 6. OFFICIAL RESOURCES AND WEBSITES FROM THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF)

The primary online resource for all official information pertaining to firearms, including those regulated under the National Firearms Act (NFA) and gun trusts, is the official website of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): <https://www.atf.gov/>.<sup>23</sup> This comprehensive website offers dedicated sections on Firearms and Explosives (<https://www.atf.gov/firearms>), the National Firearms Act (NFA) (<https://www.atf.gov/firearms/national-firearms-act-nfa>)<sup>22</sup>, Rules and Regulations (<https://www.atf.gov/rules-and-regulations>)<sup>22</sup>, and a library of all necessary Forms (<https://www.atf.gov/resource-center/forms>)<sup>16</sup> and Publications (<https://www.atf.gov/resource-center/publications>).<sup>23</sup>

A primary source of information is the **ATF National Firearms Act Handbook**.<sup>22</sup> This handbook offers a comprehensive overview of the NFA, including definitions of key terms<sup>41</sup>, detailed explanations of transfer procedures<sup>41</sup>, and information on transfers by operation of law or by will.<sup>41</sup> The handbook is typically available for download in PDF format directly from the ATF website.<sup>59</sup> It is important to note that a printed version of the handbook may not be readily available.<sup>59</sup>

The ATF also provides an **eForms system** for the electronic submission of certain forms, which can potentially streamline the application process for NFA items.<sup>16</sup> Currently, ATF eForm 4, used for the transfer of NFA firearms, is available for electronic submission, although this often requires the involvement of a Federal Firearms License (FFL) holder.<sup>16</sup> Users can access the eForms system through the ATF website<sup>48</sup>, and it is advisable to check the website for the most current information regarding available eForms and any specific eligibility requirements.

Beyond the handbook and forms, the ATF website hosts a wealth of other relevant resources. These include the official **ATF Regulations**, published as Title 27, Chapter II of the Code of Federal Regulations (CFR), which can be accessed through the ATF website and the Government Publishing Office (GPO) website. The ATF also publishes **Rulings and Open Letters**, which provide interpretations and guidance on specific aspects of firearm laws and regulations; these are also available on the ATF website. Finally, the **ATF Forms Library** contains all the necessary forms for NFA and other firearm-related processes, readily available for download.

## **7. GUIDANCE FROM REPUTABLE LEGAL WEBSITES AND ORGANIZATIONS SPECIALIZING IN OREGON GUN TRUSTS**

Several reputable legal websites and organizations offer specific guidance on establishing NFA Gun Trusts in Oregon. **Northwest Gun Law Group (NWGLG)** provides Oregon residents with two types of gun trusts: the Bronze Edition, designed as an entry-level trust for NFA items, and the Silver Edition, a more comprehensive trust suitable for both NFA and non-NFA firearms, with options tailored for individual owners or joint ownership by married couples.<sup>25</sup> NWGLG emphasizes the flexibility that gun trusts offer for NFA item ownership, allowing multiple individuals to possess and use them, and they also provide planning options for spouses and the appointment of multiple co-trustees.<sup>25</sup> Their website offers FAQs and online intake forms to facilitate the process.<sup>25</sup>

**White Oak Wills & Trusts, LLC** are Oregon attorneys who specialize in estate planning, with a particular focus on gun trusts.<sup>27</sup> They highlight the significant benefits of using gun trusts for effectively managing and transferring firearms, especially those regulated under the NFA, while ensuring strict compliance with both Oregon state law and federal regulations, including the requirements of ATF Rule 41F.<sup>27</sup> Their guidance underscores the importance of precise legal wording in the trust document and emphasizes the advantages of gun trusts for achieving smooth transfers, maintaining privacy regarding firearm ownership, and providing flexibility in estate planning for firearms.<sup>27</sup>

**Short Law Group**, another Oregon-based law firm with offices in Portland and Salem, offers expertise in gun rights and the creation of gun trusts.<sup>18</sup> They advise individuals to consult with an experienced attorney when establishing a gun trust in Oregon due to the inherent complexities of both state trust law and federal firearm regulations, noting that generic gun trust forms may not adequately comply with Oregon's specific legal requirements.<sup>18</sup> Short Law Group provides customized gun trust creation services and



offers guidance to help gun owners avoid potential legal pitfalls associated with firearm ownership and transfer.<sup>18</sup>

**Olivia Wann, P.C.** offers comprehensive information on the various uses and benefits of gun trusts, including the legal acquisition and possession of both NFA and non-NFA firearms, the lawful sharing of firearms, and the advantages for estate planning purposes.<sup>29</sup> Their guidance stresses the critical importance of thoroughly understanding and complying with all applicable state and federal firearm laws and ensuring that the language and structure of the gun trust are fully aligned with these regulations.<sup>29</sup> They also provide detailed explanations of the roles and responsibilities of trustees and beneficiaries within a gun trust, including the concept of lifetime beneficiaries and the utility of a Firearms and Accessories Memorandum for specifying the distribution of particular firearms.<sup>29</sup>

**National Gun Trusts** is an organization that offers online Oregon NFA Gun Trust paperwork with a strong emphasis on ensuring ATF approval and ease of use for their clients.<sup>28</sup> They provide a range of services, including expedited processing, free lifetime changes to the trust document, ATF paperwork generators to assist with form completion, and ongoing customer support.<sup>28</sup> National Gun Trusts highlights their commitment to compliance with ATF 41F regulations and asserts the nationwide validity of their trust documents.<sup>28</sup>

**Gun Trust Guru** offers state-specific information on gun trusts, including detailed guidance for Oregon residents.<sup>17</sup> They emphasize the key advantages of using a gun trust in Oregon, such as enabling co-trustees to possess and use NFA firearms, facilitating the inheritance of firearms outside of the probate process, and providing protection for NFA items in the event of the grantor's incapacitation.<sup>17</sup> Gun Trust Guru also provides online services for creating attorney-drafted, state-specific gun trust documents.<sup>17</sup>

## **8. FACILITATING FIREARM TRANSFERS UPON DEATH OR INCAPACITATION IN OREGON THROUGH A GUN TRUST**

An NFA Gun Trust offers a streamlined approach to transferring firearms to designated beneficiaries in Oregon, particularly when compared to individual ownership, especially for items regulated under the NFA.<sup>27</sup> The trust document itself outlines the specific process for transferring the firearms according to the grantor's expressed wishes, thereby potentially avoiding many of the complexities and delays that can arise in traditional estate planning scenarios.<sup>27</sup>

One of the significant advantages of utilizing a gun trust for estate planning is the ability to bypass the probate process for firearms held within the trust.<sup>1</sup> Probate is a public court proceeding that is often required to administer the assets of a deceased person. By holding firearms in a trust, their transfer to beneficiaries can occur privately and often more quickly, potentially saving both time and the costs associated with probate proceedings.<sup>1</sup>

Oregon state law, specifically ORS 166.435(4)(d) <sup>38</sup>, provides an exception to the standard background check requirements for firearm transfers that occur due to the death of the firearm owner. This exception applies when the transfer is conducted or facilitated by a personal representative (as defined in ORS 111.005) or a trustee of a trust created in a will, and the recipient is related to the deceased firearm owner in a specified manner.<sup>38</sup> Oregon law further clarifies that the transfer of a firearm due to the owner's death must be facilitated only by a court-appointed personal representative or a trustee of a trust created in a will, and the recipient must be related to the deceased owner as a spouse, domestic partner, parent, stepparent, child, stepchild, sibling, grandparent, grandchild, aunt, uncle, first cousin, niece, nephew, or the spouse or domestic partner of anyone listed.<sup>30</sup> Transfers to individuals outside of this defined list or by someone who is not a personal representative or a trustee of a testamentary trust must be conducted through a licensed gun dealer, requiring the recipient to undergo and pass the necessary background checks.<sup>30</sup> A well-structured gun trust, particularly a revocable living trust, can be designed to align with these state requirements, with the designated successor trustee fulfilling the role of facilitating the firearm transfer in a legally compliant manner.<sup>30</sup>

Upon the grantor's death or incapacitation, the **successor trustee** assumes a critical role in managing and ultimately distributing the trust's assets, which include the firearms.<sup>17</sup> The successor trustee is responsible for ensuring that the transfer of firearms to the named beneficiaries is carried out in full compliance with all applicable Oregon state laws and federal regulations.<sup>27</sup> For NFA firearms held within the trust, the transfer to beneficiaries after the grantor's death may be eligible for a **tax-exempt transfer** using ATF Form 5.<sup>15</sup> The successor trustee would typically be the individual responsible for completing and submitting this form to the ATF to legally transfer the NFA items to the beneficiaries without incurring the standard NFA transfer tax.

## 9. COMPILATION OF REQUIRED FORMS AND CRUCIAL LEGAL LANGUAGE FOR OREGON AND FEDERAL COMPLIANCE

The establishment of a legally sound and comprehensive NFA Gun Trust in Oregon requires the use of specific federal forms and the inclusion of crucial legal language within the trust document to ensure compliance with both Oregon state law and federal regulations.

### Required Federal Forms:

- **ATF Form 1 (Application to Make and Register a Firearm):** Used for registering the making of an NFA firearm by the trust. Link to download (check ATF website for the most current version): <https://www.atf.gov/firearms/docs/form/national-firearms-act-nfa-application-tax-paid-transfer-and-registration/download> (Note: This link is for Form 4, the correct link for Form 1 needs to be found on the ATF website). <sup>3</sup>
- **ATF Form 4 (Application for Tax Paid Transfer and Registration of a Firearm):** Used for registering the transfer of an already manufactured NFA firearm to the trust. Link to download: <https://www.atf.gov/firearms/docs/form/national-firearms-act-nfa-application-tax-paid-transfer-and-registration/download>. <sup>3</sup>

- **ATF Form 23 (National Firearms Act (NFA) Responsible Person Questionnaire):** Must be completed by each responsible person. Link to download: <https://www.atf.gov/firearms/docs/form/national-firearms-act-nfa-responsible-person-questionnaire/download>.<sup>3</sup>
- **ATF Form 5 (Application for Tax Exempt Transfer and Registration of Firearm):** Used for tax-exempt transfers, such as inheritance. Link to download (check ATF website for the most current version): Need to find the official link on the ATF website.<sup>15</sup>
- **FBI Form FD-258 (Fingerprint Card):** Typically obtained from the ATF or authorized services.<sup>5</sup>

### Crucial Legal Language and Clauses:

- **Trust Purpose Clause:** "The purpose of this Trust is to acquire, own, possess, and transfer firearms, including those regulated under the National Firearms Act (26 U.S.C. § 5845), in compliance with all applicable federal, state, and local laws."<sup>6</sup>
- **Trustee Powers Clause:** "The Trustee shall have the power to acquire, hold, possess, use, maintain, repair, modify, transfer, sell, or otherwise dispose of any firearms or accessories held by the Trust, subject to all applicable laws and regulations. This power specifically includes the authority to register firearms with the Bureau of Alcohol, Tobacco, Firearms and Explosives in accordance with the National Firearms Act."<sup>1</sup>
- **Successor Trustee Clause:** "Upon the death, resignation, or incapacitation of the Grantor as Trustee, shall serve as the Successor Trustee(s) and shall have all the powers and responsibilities granted to the Trustee under this Agreement, including the authority to distribute the trust assets to the beneficiaries in accordance with the terms herein and applicable law."<sup>17</sup>
- **Beneficiary Designation Clause:** "Upon the death of the Grantor, the firearms and accessories held by this Trust shall be distributed to the Beneficiaries named in the attached Firearms and Accessories Memorandum, or as otherwise specified in this Trust Agreement, in accordance with applicable state and federal law."<sup>1</sup>
- **Oregon Governing Law Clause:** "This Trust shall be governed by and construed in accordance with the laws of the State of Oregon."<sup>6</sup>
- **Firearms and Accessories Memorandum Reference:** "The Grantor may, from time to time, execute a written memorandum identifying specific firearms and accessories and designating the beneficiaries to receive such items upon the Grantor's death. This memorandum shall be kept with the Trust documents and shall serve as a guide for the Trustee's distribution of those specific items to the extent legally permissible under Oregon and federal law."<sup>12</sup>
- **Compliance with National Firearms Act:** "The Trustee shall take all necessary actions to ensure that the ownership, possession, and transfer of any firearms regulated under the National Firearms Act comply fully with the provisions of that Act and all applicable regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives."<sup>4</sup>
- **Transfer of Firearms:** "The Trustee is authorized and directed to transfer any firearms held by this Trust to the designated beneficiaries upon the death of the Grantor in a manner consistent with Oregon law, including but not limited to ORS

166.435(4)(d), and federal law, including the National Firearms Act. For any NFA firearms, the Trustee is authorized to utilize ATF Form 5 for tax-exempt transfer, if applicable." <sup>15</sup>

## **10. CONCLUSION: ENSURING A LEGALLY SOUND AND COMPREHENSIVE NFA GUN TRUST**

Establishing an NFA Gun Trust in Oregon requires careful attention to several critical steps and considerations. It is essential to understand the specific benefits and limitations of such a trust under both Oregon state law and federal regulations. Compliance with the fundamental principles of Oregon trust law, alongside the state's unique firearm regulations, is paramount. The inclusion of precise and comprehensive legal language and clauses tailored to firearm ownership, possession, and transfer, particularly for NFA items, is crucial for the trust's validity and effectiveness. Furthermore, adherence to federal requirements under the National Firearms Act and ATF Rule 41F is necessary for nationwide recognition. Utilizing the correct ATF forms for registering NFA firearms under the trust is a mandatory part of the process. Leveraging official ATF resources, such as their website and the NFA Handbook, along with seeking guidance from reputable Oregon legal experts specializing in gun trusts, is highly advisable. Finally, planning for the transfer of firearms upon death or incapacitation must be done in strict accordance with Oregon law and federal regulations.

Given the inherent complexities of navigating state and federal firearm laws and trust regulations, it is strongly recommended that individuals in Oregon seeking to establish an NFA Gun Trust consult with an attorney who specializes in this specific area of law. Personalized legal counsel can ensure that the trust document is legally sound, comprehensive, and meticulously tailored to the user's specific needs, circumstances, and the nuances of Oregon law. A well-established NFA Gun Trust offers significant peace of mind by ensuring that the user's firearms collection is managed and transferred according to their wishes, while also providing valuable legal protection against potential unintended violations of both state and federal firearm laws.

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