

### ***Navigating the rules and paperwork of the National Firearms Act!***

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The National Firearms Act of 1934 was one of the first federal laws legislating the possession and transfer of a broad class of firearms. In the intervening 75 years since the law's passage, the NFA (National Firearms Act) has become one of the most cited, yet least understood laws that govern firearms. As a potential buyer of a firearm governed by the NFA, there are several aspects that potential buyers should be aware of prior to taking the leap and making a first purchase. The process of acquiring an NFA weapon can be time consuming and frustrating, but it is well worth the effort.

#### **Title I Vs. Title II**

The process for purchasing an NFA firearm is not unlike that of purchasing a semi-automatic firearm. With several exceptions, the basic premise is the same: the buyer identifies and pays for the desired firearm, undergoes a background check, and assuming the background check is approved, picks up the firearm. The difference between purchasing a Title I (semi-automatic) firearm and a Title II (NFA firearm) lies in the process and timing. Rather than undergoing a background check through NICS (National Instant Check System) when buying a Title I firearm, buyers of NFA firearms must submit a number of official ATF forms with payment of a transfer tax as part of the buying process.

#### **Form 4 & Additional Requirements**

In order to purchase an NFA firearm, the buyer must complete an ATF Form 5320.4, commonly known as a Form 4. Similar to a Form 4473, filled out for the purchase of a Title I firearm, a Form 4 asks for the buyer and seller's personal information, including the buyer's physical home address. In addition, the Form 4 requests a description of the firearm being purchased and confirms that the buyer is not a felon or otherwise prohibited from possessing a firearm. Unlike a 4473, the Form 4 contains four additional requirements.

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First, if the buyer is buying a machine gun, short-barreled rifle, short-barreled shotgun, or a destructive device from a dealer, the buyer must certify in Block 15 of the form that the purchase will comply with local law, and provide a purpose for possessing the NFA firearm. While this may seem like an ominous request, the buyer need only provide a rational purpose for the purchase. Common responses to this question include investment, collecting, or all lawful purposes.

Second, the buyer must affix a color photograph taken within the past 12 months in Block 16 of the Form 4. A passport photo is sufficient. If a color printer is available, a digital photo may be imbedded within the electronic version of the form and printed out as part of the form.

Third, the buyer must complete an easy to complete, certification of citizenship form, via ATF Form 5330.20. Federal law prohibits non-immigrant aliens from possessing firearms and completion of the certification assures ATF that the buyer is a legal US citizen, in compliance with federal law.

Finally, the buyer must get the chief law enforcement officer (or their designee) that has jurisdiction over the buyer's residence to certify that the buyer is not currently under criminal investigation, and that possession of the NFA firearm is legal within the jurisdiction. While this may seem easy, in reality the law enforcement certification is the most difficult aspect of completing the Form 4. In the event that local law enforcement will not sign the Form 4, the buyer may request that the state police, a criminal prosecutor, or a judge with criminal jurisdiction sign the certification for the buyer.

### **Completion and Submission**

As part of the approval process, the US Department of Justice will complete a background check on the buyer. In order to accomplish this, the buyer must complete two fingerprint cards for submission with the Form 4. The fingerprint cards are available from most dealers that sell NFA firearms.

Once the Form 4 is completed, the form is submitted in duplicate with the completed fingerprint cards and payment of a \$200 transfer tax. For the purchase of an Any Other Weapon, the transfer tax is \$5. Once submitted, ATF will review the paperwork and return it, typically within 90 days. The actual time frame for a response from ATF may vary, depending in part upon the number of forms submitted, and the time of year. If no response is received within 90 days, ATF has a customer service phone number where buyers and/or sellers may check on the status of

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the transfer.

### What Ifs?

What happens if a buyer cannot get a local official to certify the law enforcement section within the Form 4? In some jurisdictions, local law enforcement will refuse to sign the certification, and it can be almost impossible to complete the form. In these instances, some buyers have resorted to using corporations, limited liability companies, or a trust to avoid the law enforcement certification requirement. When a non-person entity (i.e., a corporation, limited liability company, or trust) is used to purchase NFA firearms, the requirements for a photo and law enforcement certification are waived by ATF.

If the buyer is self-employed, he may have already formed a corporation or limited liability company. In other cases, buyers often form corporations and trusts solely for the purchase of NFA firearms. If a buyer lives within a jurisdiction where a law enforcement certification is difficult or impossible to obtain, he may wish to explore one of these options. Buyers should speak with a lawyer about potential advantages and risks when considering the use of a corporation or a trust. Potential risks include the loss of all firearms possessed by a corporation or trust if the formation and administrative procedures required of the entity are not followed properly.

### No Short Cuts

Some states prohibit, or severely restrict the possession of NFA firearms. California comes to mind as one of the most restrictive states within the Union, but is certainly not the only state that disallows NFA firearms. What are residents that live in restrictive states to do? If an enthusiast has a legitimate vacation home or an out-of-state residence in a less restrictive state, it may be possible to purchase an NFA firearm within the jurisdiction of the second residence. The procedure for purchasing an NFA firearm would be the same. However, the NFA firearm most likely could not be taken back to the primary residence due to the restrictive nature of the original home state.

Some buyers may be tempted to use the address of a relative or friend that lives in a less restrictive state, but this is ill advised. Doing so would likely be a violation of 26 USC 5861(l), which makes it a crime to knowingly provide false information to the US government. Still tempted? Prosecutions have occurred against persons that have knowingly lied to ATF in an effort to purchase an NFA firearm. Don't do it.

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The purchase of an NFA firearm can require some effort to complete the transfer process. The process can be frustrating and difficult. It may be impossible to obtain the law enforcement certification. Nevertheless, the benefits of owning a highly specialized and unusual NFA firearm are usually worth the effort. Happy shooting!