



Warning For NY Firearm Owners: Don't Die.

SCOPE has been asked about leaving firearms to someone after death. This can be a very simple thing, in very limited cases, or very complex. SCOPE does not give legal advice. The following will clearly demonstrate why we do not give legal advice! But what we can do is make you aware of some of the pitfalls that you should avoid. Legal sites constantly advise you to consult a lawyer and, in this case, that's good advice. And of course, the laws on guns change constantly so what is correct and legal today may not be tomorrow (another reason we don't give legal advice and why you should talk to a lawyer)!

All of this assumes you have a Last Will and Testament. Bad assumption? If so, don't bother going any further. The laws covering dying without a Will can be very ugly and your guns are one of many problems. If you want to protect your firearms, go see a lawyer to discuss a Will, sooner rather than later.

If you have a Will, and it was written before the passage of the SAFE Act (or written without considering the effects of the SAFE Act), you should probably consider updating it.

Here are some the issues you need to go over with the lawyer:

- **Make an inventory of your firearms prior to death.** This will let the person responsible for probating (administering) your estate, usually referred to as the executor, know that you have firearms, where they are located, what licenses you hold, etc. The executor has several legal responsibilities regarding firearms. The Surrogate's Court Procedure Act (SCPA) governs estates and requires every executor to file an Inventory of every firearm, shotgun and rifle with the local Surrogate's (probate) Court, with a copy sent to the Division of Criminal Justice Services in Albany. The inventory must have the make, model, gauge, and value of each gun left in a decedent's personal belongings. Heirs to an estate holding firearms assets should be aware that failure to file the required inventories is a violation of New York Penal Law.
- **Is the gun legal and are you legally allowed to possess it?** If you fail on either of these questions, it would be best to resolve them before you die. Your executor's work and the cost of administering your estate will get infinitely worse if you don't resolve this and your gun may not end up where you want it to go.

- **Designating a beneficiary.** Even if you leave the gun(s) to a specific beneficiary, the executor cannot simply give them to the beneficiary without potential criminal liability. The executor must:
 - 1) have knowledge that you legally owned a gun;
 - 2) ascertain that the beneficiary of the gun(s) may legally own the gun(s);
 - 3) adhere to proper transfer procedures.

The beneficiary cannot take possession of the handguns until they are registered to the beneficiary's pistol permit. Encourage potential beneficiaries to obtain any needed permits as soon as possible!

- **Out-of-state heirs.** If beneficiary is living in another state, check with them to be sure that their state laws are also covered. Again, you will want a lawyer on this.
- **Is the gun co-owned (joint ownership) by another person?** It's probably like a joint bank account in which each person owns the gun and if one dies the other has 100% ownership. However, since this is New York, it's not a sure thing. Some people have reported that this arrangement works to keep firearm outside of the estate, in order to transfer them, but each case can be unique.

While counties will usually allow firearms to be "co-registered," each co-registered firearm must be listed on each person's pistol permit; often this is only allowed between immediate family members. Some counties also require that both co-registrants live in the same county, or even same household.

Of course, as with any joint ownership, the question is: who do you trust? The joint owner now jointly owns the weapon and any action you want to take with it (before or after your death) may require the joint owner's approval. And if you want to leave it to someone other than the joint owner...you definitely need a lawyer.

- **Transferring guns during your life, either by sale or lifetime gifts to family to avoid probate.** If you sell them, you need to follow the laws for gun sales (NICS check, eligibility, etc.).

If you gift them, check the gift tax laws. You can gift up to \$16,000 to one person in 2022 without that person owing tax on the gift. (The maximum changes almost every year. \$16,000 is the tax-free maximum for all gifts, not just firearms, to any one person in any one year.)

If you have multiple guns or valuable guns that have a total worth of more than \$16,000, you may be able to split the gifts over multiple years to stay below \$16,000 yearly and avoid a gift tax.

If your total estate is below the threshold for no estate tax, your gift will probably have no estate tax impact. Remember, there may be no estate tax in this case but if you gift more than \$16,000 to one person in 2022, they must pay a gift tax on the amount above \$16,000.

If your estate is above the estate tax threshold and may incur a tax, gifts below \$16,000 may or may not have an impact. You need a lawyer.

- **Handling firearms in the estate.** Each county in New York has its own specific rules on the exact procedure to handle the deceased's guns.

It is important to realize that the law does not make clear who is responsible for the guns after the death of a gun owner. The “person in charge of the decedent’s personal belongings” can be anyone who resides at the home where you stored your guns or it can be the executor of your estate or anyone else who may have a claim to your personal belongings. Any or all of the people who fall into these categories could be subject to criminal charges if the guns are not properly handled. Remember, anyone taking possession of the gun must be legally entitled to take possession, even temporarily!

The procedures to “lawfully dispose” of guns is again, not uniform throughout the state. The local police or sheriff’s department typically has jurisdiction to determine proper transfer procedures. In some counties, the department may send an officer to the decedent’s home to inventory the guns and take them for safekeeping until proper transfer procedures can be followed. In other cases, lawful disposal can be accomplished with the assistance of a licensed firearm dealer.

- **Other estate issues you should be aware of.** An executor may be able to legally possess the guns for up to 15 days in order to lawfully transfer, or dispose of them. If they cannot do so within that timeframe, they will need to give the firearms to law enforcement officials to hold for safekeeping while probate action is undertaken. Law enforcement holds the firearms either one or two years, depending on the county (one year is probably the safe bet). When an executor does not transfer or dispose of the firearms given to law enforcement, within that period, law enforcement officials can have the firearms destroyed.

Illegal possession or transfer of a decedent's registered firearm, without following statutory protocol for estate transfer to a beneficiary, is considered a misdemeanor offense "criminal possession of a weapon in the fourth degree".

An executor should never remove firearms from the home of the decedent or transport guns in their vehicle when turning guns over to the police. Call the local police or sheriff's department and ask for an officer to come to the decedent's home to inventory and collect the firearms.

- **What about a "gun trust"?** Some estate planning attorneys are solving these issues through the use of a "gun trust." A gun trust is typically set up as a living trust. It is made specifically to transfer firearms, with the gun owner set up as the trustee. Transferring the firearms to a gun trust, provided it is properly documented and reported (which, unfortunately, will probably engender some level of state review), should protect them from seizure by the local law enforcement upon death. Letting a trust control the disposition of a firearm collection also helps avoid probate. It should be noted, however, that in New York, the documentation regarding the transfer of the firearms is not part of public record in probate proceedings.

A trust does not always make sense for a person who wishes to pass down firearms. For example, if the dollar value of the collection is not very high or the guns do not come with federal restrictions, the benefits of a trust are diminished. Setting up these trusts is very complicated and, again, the services of an attorney will be required.

In 2022, the federal no tax estate maximum is around \$12 million and the New York State no tax estate maximum is around \$6 million.

As we all know, New York State is very gun-owner "unfriendly," and continues to be even after death. Many New York politicians, especially downstate, would be very happy to see your firearms destroyed when you pass away (if not before). Guns are valuable, both in terms of monetary value and, often, sentimental value; sometimes, guns have been in families for generations. Avoid their loss after your death and avoid criminal penalties for your loved ones. Don't hesitate. Ask a lawyer who works in estate law, preferably one who supports the Second Amendment, about the legal transfer of an estate owned firearm asset.