Firearms in Estate Planning

A little-discussed but important topic in estate planning is whether the client owns firearms of any variety. Although some estate planners view firearms just like all other tangible personal property (household items) owned by the client, ownership of guns needs to be specifically addressed in an estate plan.

**Firearms are subject to federal and/or state laws.**

Certain types of firearms are subject to federal law and some are subject to state laws. In some cases, the firearms must be registered with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). For ATF-registered firearms, a “gun trust” is most often the appropriate estate planning tool. Some firearms are banned altogether, such as ownership of semiautomatic assault weapons as mandated by the Brady Handgun Violence Protection Act. There are also firearms that classify as a “curio or a relic,” if it was manufactured more than 50 years ago, and others that are considered antiques. However, in most cases, unless the firearm is a machine gun, the Commonwealth of Virginia does not require firearms to be registered.

**The beneficiary must be able to own a gun or firearm.**

When a client is identifying the proper recipient of a handgun or a firearm collection (including ammunition), it is important to discuss the beneficiary's background. For example, the Federal Gun Control Act prohibits certain people from owning guns, such as felons or those deemed mentally incompetent. The Commonwealth of Virginia echoes those restrictions by prohibiting gun ownership by certain legally incompetent and mentally incapacitated individuals, those convicted of certain drug offenses indicated by recent repeated misdemeanors, and those under the age of 18 (with some exceptions, including hunting).

Further, the beneficiary of a particular firearm would be subject to the restrictions on gun ownership in the beneficiary's own state of residence. As a point of comparison, the Commonwealth of Virginia restricts certain firearm ownership for those who are not citizens of the United States or mentally incompetent individuals. Handguns cannot be given to minors. Other states may restrict gun ownership further.

**What happens if the firearm needs to be transported?**

An additional consideration is whether the firearms will need to be transported. If a beneficiary resides in another state, then the other state's firearm regulations need to be reviewed prior to delivery of the firearm to that beneficiary. It may not make sense to research the other state's laws at the time of the estate plan drafting since the beneficiary may move to another state prior to the owner's death, but certainly the executor or trustee needs to verify that the beneficiary is allowed to receive a firearm.
from a decedent's estate. Many states require a criminal history record check before certain firearms can be transferred, as is the case in Virginia for dealers. Although the Virginia statutes do not expressly hold executors or trustees liable for failure to check the criminal history of a beneficiary, the statute is written such that the fiduciary may be guilty of a felony if they transfer an estate firearm to a person they know is ineligible to receive one.

Nominating a Fiduciary.

All of these restrictions impact the nomination of an individual to serve as the fiduciary in an estate plan, meaning the individual who is nominated to serve as executor or trustee. For example, a sibling who had once been convicted of a felony would not be an appropriate person to serve as an executor of an estate, especially in an estate that includes a firearm.

Conclusion.

The estate plan should include appropriate provisions for the executor or trustee to use estate assets to investigate the laws that impact the transfer of firearms. The estate plan should require the executor or trustee to determine which state and federal laws apply to the ownership of the firearm, whether the beneficiary resides out of state and is subject to that state's laws, whether the beneficiary is prohibited from receiving the firearm, and whether transport of the firearm is allowed across state lines. Further, if a client owns or intends to purchase certain firearms that are regulated by federal law, then a gun trust needs to be considered as part of the client's estate plan.