

Presentation Handout:

“What Happens To My Guns When I Die?”

Estate Planning for Firearms Owners
and Their Families

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April 11, 2015

**Shooters Committee on Political Education Erie County Chapter
May 2015 Presentation**

Dear Friends in the Shooting Sports:

The enclosed materials consist of news articles of interest, forms, and other documents presented here for educational purposes. These are intended as a reference and illustrations of various problems and considerations an individual, such as yourself, begins to think about planning your Estate.

Forms, case law and other materials enclosed may not be applicable to you or your circumstances. Further, as time marches on, new developments are bound to occur in the law and these materials are sure to become outdated at some point. No legal advice is given herein.

You should consult with an attorney of your choosing before making any decisions about provisions for your Last Will and Testament, who you authorize to take possession of your property, and how you want your property handled in the event you are hospitalized or incapacitated.

I would be happy to help you or your family with these considerations on an individual basis. Further, I hope that tonight presentation is informative and useful.

Very truly yours,

LAW OFFICE OF PETER VASILION

A handwritten signature in black ink, appearing to read 'Peter Vasilion', with a long horizontal flourish extending to the right.

Peter Vasilion, Esq.
PV/arm

Basics of Estate Planning

1. What is an Estate?

- Accumulation of all your “stuff”
- Legal entity with rights and responsibilities

2. Why do Estate Planning?

- Control who receives assets
- Control costs of legal fees and taxes paid by the Estate or Heirs
- Plan for incapacity and emergencies
- Adaptable



ELVIS PRESLEY

Gross Estate	\$ 10,165,434
Debts	3,878,539
Administrative, Legal & Executor Fees	1,961,128
Estate Taxes	3,339,520
To Heirs	\$ 986,247

3. When should I start planning?

- Now
- Top 10 reasons why people fail to plan
 1. Will live forever
 2. Will never suffer a debilitating accident
 3. Will never require long term care
 4. Will never need another person to make medical decisions
 5. My wife/significant other/child/parent/sibling will do it
 6. I have enough money I don't have to worry about it
 7. Estate Planning is easy
 8. Only the wealthy have estates
 9. I can do it anytime, like tomorrow
 10. There is always tomorrow

4. Common estate plans

- Doing nothing
- Have a will
- Use joint ownership
- Making gifts
- Irrevokable trusts
- Revokable or "living" trust

5. Wills

- Names who you want to handle your final affairs
- Directs who you want to receive your assets after you die
- Only controls the assets that are titled in your name
- Probate proceedings
- Accountings

6. Joint Ownership

- Automatic transfer on death
- Question of control during lifetime
- What if co-owner is ineligible to own or incapacitated?
- Unintentional disinheritance problem
- Difficulty removing co-owner

7. Gifts

- Lifetime transfers
- Legal issues on how to transfer asset(s)
- SAFE Act protocol applies

8. Trusts - Living and Irrevokable

- Trusts only good for certain types of assets
- Ownership and control issues
- the “Gun Trust”

9. Probate

- Probate is a legal process to prove a Will is valid
- Probate process ensures your debts are paid
- Probate process ensures your assets are distributed according to your will.
- Probate is the ONLY legal way to change the title of an asset after death

10. Potential problems or concerns raised by Probate process

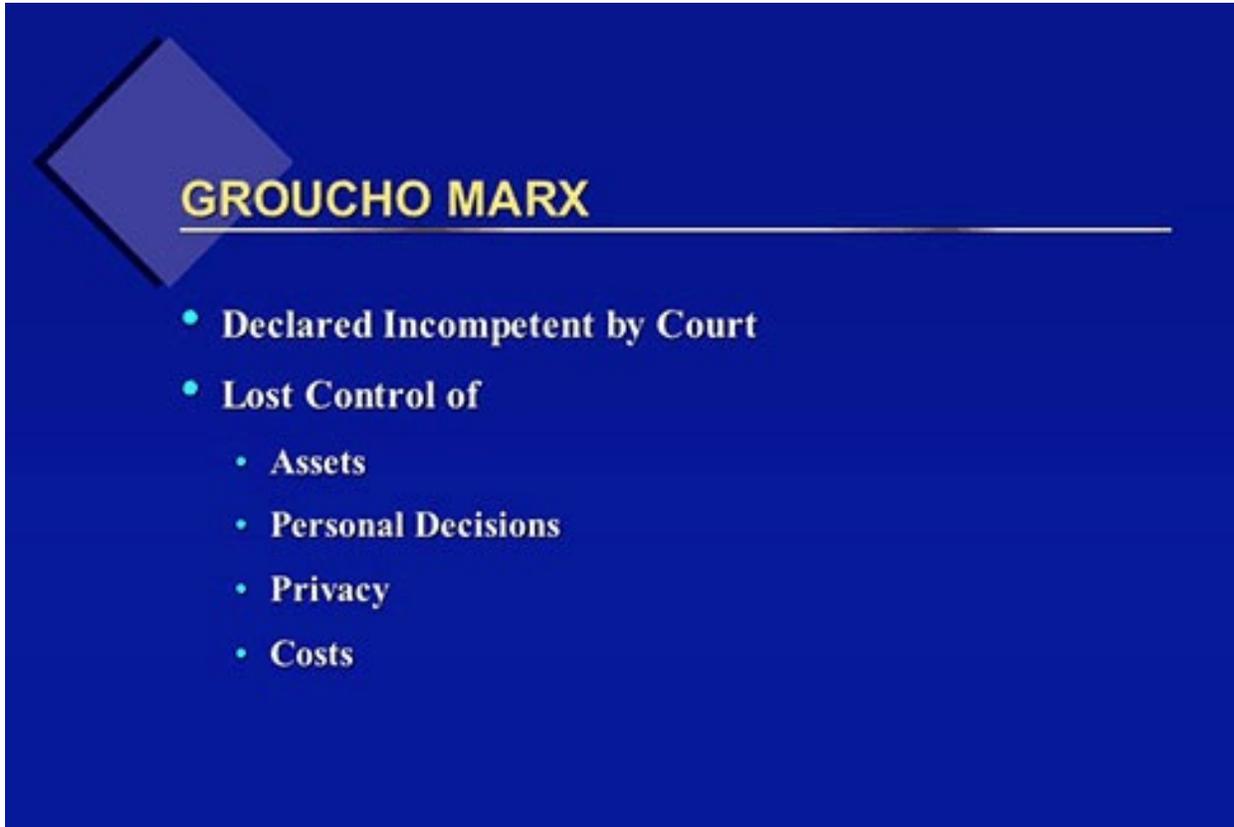
- Will contests
- Inventory of assets required by the Court.
- Accounting and privacy issues
- Receipts and releases
- Requires at least 7 months and could take years

11. What if I Do nothing

- You have no estate plan
- Assets will be distributed according to State law.
- Does not deal with incapacity during your lifetime
- Court will take control of your assets

11. Incapacity

- Mental Hygiene Law Article 81 - Guardianships
- Mechanism for appointing someone to make decisions and handle money
- Alternatives such as Powers of Attorney and Health Care Proxies
- Guardian is accountable to Court and Examiner
- Can make gifts during lifetime, so can Power of Attorney



GROUCHO MARX

- Declared Incompetent by Court
- Lost Control of
 - Assets
 - Personal Decisions
 - Privacy
 - Costs

12. Firearms Specific Issues Facing the Estate

- Specific and General Bequests
- Mandatory Inventory and reporting to State Police
- Handguns are unique problems
- Executor/Executrix has statutory privileges to take possession of firearms
- Police seizures
- Co-ownership problems

13. Specific Bequests

- Gives a specific item to a specific individual
- Firearm transferred by specific bequest must be declared in inventory
- Potential problems if the beneficiary is ineligible

14. General Bequests

- Gives a collection of items to either a specific individual or a group
- Firearms transferred by general bequest must be declared in inventory
- Fights over guns

15. Mandatory Inventories

- Imposed by Administrative Order February 2013
- Form prescribed by law
- Make, model and serial number are registered
- Must be filed with Department of Criminal Justice Services
- Open to inspection by “interested individuals”

16. Pistols are unique problems

- Pistol License valid until death
- Can be transferred to another permit holder after death
- Transfers to FFLs
- Transfers out of state
- Deceased permit holder can “appear” through his/her attorney
- Bill of Sale required

17. Penal Law 265.20 (1)(f):

“Exemptions”

“A person who possesses any such weapon, instrument, appliance or substance as **an executor or administrator** or any other lawful possessor of such property of a decedent may continue to possess such property **for a period not over fifteen days**.

If such property is not lawfully disposed of within such period the possessor shall deliver it to an appropriate official described in this paragraph or such property may be delivered to the superintendent of state police. **Such officer shall hold it and shall thereafter deliver it on the written request of such executor, administrator or other lawful possessor of such property to a named person, provided such named person is licensed to or is otherwise lawfully permitted to possess the same.**

If **no request to deliver** the property is received by such official **within one year** of the delivery of such property, such official **shall dispose of it** in accordance with the provisions of section 400.05 of this chapter.”

14. Police Seizures and confiscations

- Buffalo Police protocols (a story never carried in the Buffalo News)
- Cost of securing the home and firearms collection passed on to Estate
- Destruction of ammo and accessories
- Possible damage to collection
- Guns lost or stolen while in police custody

15. Co-Ownership Problems

- Co-owner eligibility issues
- Can be hard to get your stuff back
- Inadvertent disinheritance risk

CONCLUSION:

The death of a loved one is a very difficult time; your spouse or children may be unable to make good decisions regarding your firearms because of grief, anxiety and other problems. The grieving process is different for each person and can extend over years.

There are very specific laws that must be followed given the enactment of the New York State SAFE Act. If you make an Estate plan now, you can direct the proper transfer of ownership of your guns and help avoid legal pitfalls for the person who handles your affairs. Leaving detailed information for your executor will be a tremendous service to your family.

So, what can I do now?

1. Prepare an Inventory

Your future executor should be aware of what firearms you own, where they are located, how accessed, an approximate value of the guns, and licenses you hold.

Your inventory should be a complete list of all rifles, pistols, shotguns, airguns, AND ACCESSORIES that you own. Your inventory should list your guns by make, model, caliber, serial number, and estimated value. Your inventory could also include a reference as to whom you bequest the item. This would be helpful in guiding your executor to transferring the right item to the right person. Having the approximate value will help the executor if they must sell any of your firearms.

You should consider leaving a detailed memo for your family to follow. You may wish to establish a relationship with a licensed gun dealer who will help your executor with the transfer of guns or accessories.

2. Consider who you want your firearms to go to

Do I want my guns to go to my wife, husband, or children? If so, then this is considered a transfer to an immediate family member and is exempt from the SAFE Act protocol. However, what if my children or spouse doesn't have a pistol permit? What can I do with my handguns?

You should know who you are bequeathing your firearms to. Do they have a criminal history? If so, they are ineligible to receive any of your guns.

3. Consider who will handle your affairs

Not every person is suited to be an executor of an Estate. Does your proposed Executor have a criminal history? If so, they could be declared ineligible by the Surrogate's Court. Does your executor "have the stomach" to handle your estate? Is there an elevated risk that your proposed executor could die before the Estate is Settled? Could he or she fail to follow through and cease to act? Are they trustworthy? Is there an elevated risk that your proposed Executor would steal from your Estate?

Your proposed executor must know that sales of guns in New York State require federal background checks unless the sale is to an immediate family member. There are also specific rules on the sale of ammunition (while not enforced now, could be in the future).

4. Consider the current state of the law:

What if you own a firearm that could be defined as an assault weapon? What if you own a magazine with more than seven rounds capacity? Should I consider transferring these items out of state to another family member or sell them outright?

The New York SAFE Act requires Executors to file a firearms inventory with the Surrogate Court and with the Division of Criminal Services. This inventory includes all firearms (pistol, revolver or short barreled rifles and shotguns), as well as traditional long guns (shotguns and rifles). Realize that this information is going to go into a State database.

5. Consider transferring your firearms during your life.

While you give up control and ownership now, you escape all the potential problems of dying while owning guns.

Making lifetime transfers could bring money into your estate, however, and you should be mindful of medicaid planning issues or possible Estate tax issues.

6. Consider a “gun trust” or gift to an entity.

There are a number of organizations existing for the purpose of promoting firearms instruction and training. Among those are the CMP, NRA, SCOPE, the Boy Scouts, and even local gun clubs. Consider whether gifting firearms to an entity could help promote the next generation of sport shooting enthusiasts!

NOTES:

**LIST OF FEDERAL FIREARM LICENSEES
HANDLING PRIVATE SALE BACKGROUND CHECKS**

John W. Henrich Company, Inc.
Adam Henrich, Owner
2686 Green Street
Eden, New York 14057-1304
(716) 992-3985

On Target Gun Sales Inc.
Kevin Pontlitz, Owner
5032 seneca street
West Seneca, NY 14224
(716) 864-4438

Dan Bedell Firearms
Dan Bedell , Owner
3976 Walden Avenue
Lancaster, NY 14086
(716) 681-2248

DD's Ranch, LLC
Dean Adamski, Owner
12120 Westwood Road
Alden, NY 14004
(716) 937-7779

Freeman's Sport Shop
Mike Chesty, Owner
38 Main Street
Akron, NY 14001
(716) 542-4429

Wolcott Guns Inc.
Ken Wolcott, Owner
3052 Walden Ave.
Depew, NY 14043
(716) 901-7807

Lake Erie Arms
Ryan Acanfora, Owner
96 Brinker Rd.
Lackawanna, NY 14218
(716) 823-7933

Buffalo Arms Inc.
Dennis Hoban, Owner
121 South Long St
Williamsville, NY 14221
(716) 626-1022

Max T. France
Max T. France, Owner
8111 Cole Road
Colden, NY 14033
(716) 941-3946

JC Guns
John Krull, Owner
25 Malvern Curve
Tonawanda, NY 14150-8719
(716) 868-6328

SURROGATE'S COURT OF THE STATE OF NEW YORK _____ **COUNTY**

In The Matter of the Estate of _____

FIREARMS INVENTORY
(SCPA §2509)

_____ **Deceased.**

FILE NUMBER _____

The undersigned, [] a fiduciary, or [] an attorney of record certifies that the following firearms, as defined by Section 265.00 of the Penal Law, make up part of the decedent's estate.

Name of Fiduciary or Attorney: _____
(Address, if changed): _____

	Make:	Model:	Caliber or Gauge:	Serial #:	Valuation:
1					\$
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
			TOTAL: (as indicated in section F2 of Inventory of Assets)		

(mark box if more entries are necessary - and attach extra pages)

ATTORNEY

Certified to be true on _____, 20____

Name: _____

_____ **Signature**

Address: _____

_____ **Print Name**

Telephone: _____

A copy of this Inventory must also be filed with DCJS at:

*Division of Criminal Justice Services
Alfred E. Smith Building
80 South Swan Street
Albany, NY 12210*

Firearms Inventories filed with the Surrogate's Court will be kept in a secure location separate from the estate file and will be made available for inspection only to persons interested in the proceeding and their counsel, unless otherwise ordered by the Court.



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2160
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

To: Judges and Clerks of the Surrogate's Court

From: John W. McConnell
Holly Nelson Lütz

Re: Filing and Maintenance of Firearms Inventories

Date: March 28, 2013

As you may recall, section 53 of the New York Secure Ammunition and Firearms Enforcement Act of 2013 (L. 2013 c.1) amended the Surrogate's Court Procedure Act to require the filing of a particularized "Firearms Inventory" with each Inventory of Assets filed by an estate, and further required that the Firearms Inventory be filed with the Division of Criminal Justice Services.¹

Attached please find an Administrative Order signed by Chief Administrative Judge A. Gail Prudenti, issued at the recommendation of the Unified Court System's Surrogate's Court Advisory Committee, which directs that filed Firearms Inventories be kept in a secure location and made available to inspection only to persons interested in the proceeding and their counsel, unless otherwise ordered by the Court.

You may wish to advise fiduciaries that the Inventory may be filed with DCJS at the following address:

~~*~~ Division of Criminal Justice Services
Alfred E. Smith Building
80 South Swan Street
Albany, New York 12110

¹Section 53 added a new section 2509 to the Surrogate's Court Procedure Act, providing as follows:

→ § 2509. Firearms inventory

Whenever, by regulation, rule or statute, a fiduciary or attorney of record must file a list of assets constituting a decedent's estate, such list must include a particularized description of every firearm, shotgun and rifle, as such terms are defined in section 265.00 of the penal law, that are part of such estate. Such list must be filed with the surrogate's court in the county in which the estate proceeding, if any, is pending and a copy must be filed with the division of criminal justice services.

MENU

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Regions

NEW YORK

Cold, dead hands: Buffalo to seize guns from families following owners' funerals

By Edmund DeMarche

Published November 14, 2014

FoxNews.com



FILE 2012: Buffalo police confiscated nine illegal handguns in connection with a gun trafficking operation that stretched from the Decatur, Georgia area to Buffalo. The city has been focused on reducing the number of illegal guns on the street. (Buffalo Police Department)

A plan by police in Buffalo, N.Y., to begin confiscating the firearms of legal gun owners within days of their deaths is drawing fire from Second Amendment advocates.

The plan is legal under a longstanding, but rarely enforced state law, but gun rights advocates say, with apologies to onetime NRA spokesman Charlton Heston, it is tantamount to prying firearms - some of which may have substantial monetary or sentimental value - from the cold, dead hands of law-abiding citizens.

"They're quick to say they're going to take the guns," said Tom King, president of the New York State Rifle & Pistol Association. "But they don't tell you the law doesn't apply to long guns, or that these families can sell [their loved one's] pistol or apply to keep it."

King said enforcing the state law is the latest example of authorities targeting law-abiding gun owners, while doing little to secure the streets.

"They're quick to say they're going to take the guns."

Buffalo Police Commissioner Daniel Derrenda said at a press conference last week that the department will be sending people to collect guns that belong to pistol permit holders who had died so "they don't end up in the wrong hands." The department will cross reference pistol permit holders with death records and the guns will be collected when possible, he said.

Derrenda said guns pose a threat if their owner is no longer alive to safeguard them, especially if a recently-deceased gun owner's home is burglarized.

"At times they lay out there and the family is not aware of them and they end up just out on the street," he said, [according to WGRZ.com](#).

The state law says that if the permit holder dies, the estate has 15 days to dispose of the guns or turn them in to authorities, who can hold the weapons up to two years. LoHud.com [reported](#) that violation of the law by survivors is a misdemeanor punishable by up to a year in jail and a fine.

Pro-gun websites took Derrenda's comments as an affront to the Second Amendment, with [BearingArms.com](#) claiming authorities could "use the relative's pistol permit as the proverbial camel's nose under the tent to get at every firearm they can, hoping to remove all the firearms from the home while the family is at their most vulnerable."

The state law has been in the books for years but not enforced, King said. The Erie County Sheriff's Office told FoxNews.com that it learned about the Buffalo police decision after the announcement, but has no plans to invoke it on a regular basis as the city of Buffalo does.

Dominic Saraceno, a Buffalo defense attorney, said he anticipates legal challenges. He is concerned that family members may simply allow police to retrieve the guns while not realizing their value.

"These gun collections can value into the hundreds of thousands," he said. "If a police officer came to my door without a warrant signed by a judge, I'm not giving them anything. Most people don't know that and get intimidated."

Calls to Buffalo's mayor's office and to the police department were not returned. But the city has employed other programs, including buy-backs, to help counter gun violence. One such program took place in August and netted 840 guns. Critics of these buy-back programs say most people who turn in their guns are likely law-abiding citizens and these numbers do not necessarily estimate illegal guns off the streets.

"I say to those critics, again, if we can get one of these guns off the streets that could be used to commit a crime or injure a member of our community, it's a good thing," Mayor Byron Brown told WIVB during the summer.

US Video



Census: More women without kids than any time since 1976



South Carolina Police officer charged with murder



Police officer charged in shooting death of unarmed man