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Executor's Responsibility Under the New New York State Secure Ammunition and Firearms Enforcement Act (so called "Safe" Act)

The new Secure Ammunition and Firearms Enforcement Act became law on January 15, 2013. The act contains provisions for the regulation of guns owned by a decedent which must be disposed of by his or her fiduciary (Executor and Administrator) after death and also guns that are specifically bequeathed under a Decedent's Will.

NEW FILING REQUIREMENT FOR EXECUTORS AND ADMINISTRATORS. A new section has been added to the Surrogate's Court Procedure Act (SCPA) §2509 which now requires any fiduciary (or attorney of record for the fiduciary) that is required by regulation, rule or statute to file an Inventory of Assets with the Court must now include a separate Inventory of every firearm, shotgun and rifle. Not only is this new Inventory to be filed with the local Surrogate's (probate) Court, but a copy must also be sent to the Division of Criminal Justice Services in Albany. Once filed with the Court, the firearms Inventory is supposed to be kept in a secure location, separate from that part of the estate file available to the public. It is not supposed to be available for inspection except to persons legally interested in the estate proceeding itself or otherwise ordered by the Court. That is to say, your neighbors cannot see where your guns are, but government officials can.

WHAT IS A FIREARM? For the purposes of the new law, the term "firearm," "rifle" and "shotgun" are defined in Penal Law Section 265.00. These definitions contain the usual common sense understanding of what the names imply. A "firearm" is any pistol or revolver, a "sawed off" shotgun with a barrel of less than eighteen inches in length, a "sawed off" rifle with a barrel of less than sixteen inches in length, any modified or altered shotgun or rifle with a less than twenty-six inch overall length and any assault weapon. The terms "rifle" and "shotgun" are the usual weapons that one would commonly refer with those names.

SALE/TRANSFER AND STORAGE OF FIREARMS. The new law has created a new crime (Penal Law Section 265.17 - "Illegal Disposal of a Weapon") to sell or dispose a firearm, rifle or shotgun to a person knowing that the person is prohibited by law from obtaining such firearm, rifle or shotgun. This crime is a Class D Felony. A private sale of guns requires a federal background check under all circumstances, except for sales to "immediate" family members. Thus, applying the law to a fiduciary of an estate, he or she may not transfer such a weapon to a buyer until he or she has obtained a federal criminal background check of the buyer. As mentioned above, if the buyer is an "immediate family member" then a background check is not necessary.

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Free Workshops

February 16, 2016

Hampton Inn, Jamestown
6:30 to 8:30 p.m.

February 25, 2016

Bartlett Country Club, Olean
6:30 to 8:30 p.m.

March 8, 2016

White Inn, Fredonia
with Luke Buehler
Summit Wealth Management
6:30 to 8:30 p.m.

Executor’s Responsibility Under Safe Act, cont’d.

One concern that is apparent from the new law is whether or not a specific bequest of a particular weapon to a specific beneficiary who is not an immediate family member of the decedent would qualify as a private sale and thus be governed by the requirements of the new law. Does the Fiduciary in that case have to obtain a federal background check before he or she can transfer the weapon to the beneficiary? Since the penalty under the new law is a Class D Felony..... maybe the safe way to proceed is to do just that.

REGISTRATION AND CLIP LIMITATIONS.

The law, as written, required registration of ammunition and prohibited clips holding more than seven rounds of ammunition. The seven round limitation part of the law was struck down as unconstitutional in a federal court case (NYSRPA vs. Cuomo, NYLJ 2-1-14). The law further provides that sellers of any ammunition must register with the state police. This raises the question of whether a fiduciary is bound by this provision of the new law if he or she were to sell a weapon and ammunition to a buyer, even a family member.

SAFE STORAGE REQUIREMENT. The new statute also creates a burden for the safe storage of rifles, shotguns and firearms (Penal Law Section 265.45). A fiduciary who may come into possession of weapons owned by a decedent is bound by Section 265.45. This section specifically targets a household where Person No. 1 (the person in custody of the firearm, including a fiduciary) resides with Person No. 2 and Person No. 1 knows or has reason to know that Person No. 2 is prohibited from possessing a firearm pursuant to Federal Law §18 U.S.C. Section 922 (g) (1), (4), (8) or (9); *but, however, only if* Person No. 2 has been convicted of a crime under Section 1 of NYS Criminal Procedure Law Section 370.15 - actual or attempted menacing in the second degree, criminal obstruction of breathing or blood circulation (choking), forcible touching as defined in Sections 130.52 and 110.00 of the Penal Law.

So, if the fiduciary knows, or should have known, that he or she resides with the above Person No. 2 and further knows that Person No. 2 was convicted of the crimes identified above, then he or she must either have the weapons in his or a

her immediate possession or control or if not, he or she must store or otherwise leave the weapon in a locked container that only the fiduciary has control over. By the way, if a fiduciary violates Section 265.45, its a Class A Misdemeanor!

So, as we see, the job of a fiduciary is now even more complicated if the decedent owns weapons at the time of his or her death. The fiduciary is charged with some very specific duties and if not carried out correctly, could suffer a criminal charge and conviction against him or her.

Separated But Not Divorced? Beware of the Long-Term Care Planning Implications

For purposes of Medicaid eligibility, the regulations to the Social Services Law (18 N.Y.C.R.R. §360-4.3(f)) provide that the income and resources of “legally responsible relatives” are considered. The definition “legal responsible relatives” in the context of this article includes a person’s spouse. Thus, a spouse that is separated but not divorced, is a “legally responsible relative” whose income and resources are considered for Medicaid eligibility purposes for the other spouse applicant.

To make matters worse, a Pre-nuptial (or Post-nuptial) Agreement or a Separation Agreement wherein the spouses define the right and obligations to each other, does not help. If you are married, you are married! And, if you are married, your income and resources are taken into account for the other spouse’s Medicaid Application..... *Be guided accordingly!*

From a US Supreme Court Judge replying to criticism against him for switching legal positions from one case to another: “I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday.” - Justice Robert H. Jackson, (native of Jamestown, New York and chief prosecutor at the Nuremberg War Trials)