

# Firearms - Frequently Asked Questions - Unlicensed Persons

## Unlicensed Persons Questions

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### **Q: To whom may an unlicensed person transfer firearms under the GCA?**

A person may sell a firearm to an unlicensed resident of his State, if he does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law. A person may loan or rent a firearm to a resident of any State for temporary use for lawful sporting purposes, if he does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law. A person may sell or transfer a firearm to a licensee in any State. However, a firearm other than a curio or relic may not be transferred interstate to a licensed collector.

[18 U.S.C. 922(a)(3) and (5), 922(d), 27 CFR 478.29 and 478.30]

### **Q: From whom may an unlicensed person acquire a firearm under the GCA?**

A person may only acquire a firearm within the person's own State, except that he or she may purchase or otherwise acquire a rifle or shotgun, in person, at a licensee's premises in any State, provided the sale complies with State laws applicable in the State of sale and the State where the purchaser resides. A person may borrow or rent a firearm in any State for temporary use for lawful sporting purposes.

[18 U.S.C. 922(a)(3) and (5), 922(b)(3), 27 CFR 478.29 and 478.30]

**Q: May an unlicensed person obtain a firearm from an out-of-State source if the person arranges to obtain the firearm through a licensed dealer in the purchaser's own State?**

A person not licensed under the GCA and not prohibited from acquiring firearms may purchase a firearm from an out-of-State source and obtain the firearm if an arrangement is made with a licensed dealer in the purchaser's State of residence for the purchaser to obtain the firearm from the dealer.

[18 U.S.C. 922(a)(3) and 922(b)(3)]

**Q: May an unlicensed person obtain ammunition from an out-of-State source?**

Yes, provided he or she is not a person prohibited from possessing or receiving ammunition.

[18 U.S.C. 922(g) and (n)]

**Q: Are there certain persons who cannot legally receive or possess firearms and/or ammunition?**

Yes, a person who —

1. Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
2. Is a fugitive from justice;
3. Is an unlawful user of or addicted to any controlled substance;
4. Has been adjudicated as a mental defective or has been committed to a mental institution;
5. Is an alien illegally or unlawfully in the United States or an alien admitted to the United States under a nonimmigrant visa;
6. Has been discharged from the Armed Forces under dishonorable conditions;
7. Having been a citizen of the United States, has renounced his or her citizenship;
8. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or
9. Has been convicted of a misdemeanor crime of domestic violence
10. Cannot lawfully receive, possess, ship, or transport a firearm.

A person who is under indictment or information for a crime punishable by imprisonment for a term exceeding 1 year cannot lawfully receive a firearm.

Such person may continue to lawfully possess firearms obtained prior to the indictment or information.

[18 U.S.C. 922(g) and (n), 27 CFR 478.32]

**Q: Do law enforcement officers who are subject to restraining orders and who receive and possess firearms for purposes of carrying out their official duties violate the law?**

Not if the firearms are received and possessed for official use only.

The law prohibits persons subject to certain restraining orders from receiving, shipping, transporting or possessing firearms or ammunition. To be disabling, the restraining order must:

1. specifically restrain the person from harassing, stalking, or threatening an "intimate partner" of the person (e.g., spouse);
2. be issued after a hearing of which notice was given to the person and at which the person had an opportunity to participate; and
3. include a finding that the person subject to the order represents a credible threat to the "intimate partner" or child of the "intimate partner" OR explicitly prohibits the use, attempted use, or threatened use of force against the partner.

However, the GCA has an exception for the receipt and possession of firearms and ammunition on behalf of a Federal or State agency. Therefore, the GCA does not prohibit a law enforcement officer under a restraining order from receiving or possessing firearms or ammunition for use in performing official duties. Possession of the firearm for official purposes while off duty would be lawful if such possession is required or authorized by law or by official departmental policy. An officer subject to a disabling restraining order would violate the law if the officer received or possessed a firearm or ammunition for other than official use. (See question on officers' receipt and possession of firearms and ammunition after a conviction of a misdemeanor crime of domestic violence. The government exception does not apply to such convictions.)

[18 U.S.C. 921(a)(32), 922(g)(8) and 925(a)(1)]

**Q: May a nonlicensee ship a firearm through the U.S. Postal Service?**

A nonlicensee may not transfer a firearm to a non-licensed resident of another State. A nonlicensee may mail a shotgun or rifle to a resident of his or her own State or to a licensee in any State. The Postal Service recommends that long guns be sent by registered mail and that no marking of any kind which would indicate the nature of the contents be placed on the outside of any parcel containing firearms. Handguns are not mailable. A common or contract carrier must be used to ship a handgun.

[18 U.S.C. 1715, 922(a)(3), 922(a)(5) and 922 (a)(2)(A)]

**Q: May a nonlicensee ship a firearm by common or contract carrier?**

A nonlicensee may ship a firearm by a common or contract carrier to a resident of his or her own State or to a licensee in any State. A common or contract carrier must be used to ship a handgun. In addition, Federal law requires that the carrier be notified that the shipment contains a firearm and prohibits common or contract carriers from requiring or causing any label to be placed on any package indicating that it contains a firearm.

[18 U.S.C. 922(a)(2)(A), 922(a) (3), 922(a)(5) and 922(e), 27 CFR 478.31 and 478.30]

**Q: May a nonlicensee ship firearms interstate for his or her use in hunting or other lawful activity?**

Yes. A person may ship a firearm to himself or herself in care of another person in the State where he or she intends to hunt or engage in any other lawful activity. The package should be addressed to the owner. Persons other than the owner should not open the package and take possession of the firearm.

**Q: May a person who is relocating out of State move firearms with other household goods?**

Yes. A person who lawfully possesses a firearm may transport or ship the firearm interstate when changing his or her State of residence.

Certain NFA firearms must have prior approval from the Bureau of ATF before they may be moved interstate. The person must notify the mover that firearms are being transported. He or she should also check State and local laws where relocating to ensure that movement of firearms into the new State does not violate any State law or local ordinance.

[18 U.S.C. 922(a)(4) and 922(e), 27 CFR 478.28 and 478.31]

**Q: What constitutes residency in a State?**

The State of residence is the State in which an individual is present; the individual also must have an intention of making a home in that State. A member of the Armed Forces on active duty is a resident

of the State in which his or her permanent duty station is located. If a member of the Armed Forces maintains a home in one State and the member's permanent duty station is in a nearby State to which he or she commutes each day, then the member has two States of residence and may purchase a firearm in either the State where the duty station is located or the State where the home is maintained. An alien who is legally in the United States is considered to be a resident of a State only if the alien is residing in that State and has resided in that State continuously for a period of at least 90 days prior to the date of sale of the firearm. See also Item 5, "Sales to Aliens in the United States," in the General Information section of this publication.

[18 U.S.C. 921(b), 922(a) (3), and 922(b)(3), 27 CFR 478.11]

**Q: May a person (who is not an alien) who resides in one State and owns property in another State purchase a handgun in either State?**

If a person maintains a home in 2 States and resides in both States for certain periods of the year, he or she may, during the period of time the person actually resides in a particular State, purchase a handgun in that State. However, simply owning property in another State does not qualify the person to purchase a handgun in that State.

[27 CFR 478.11]

**Q: May aliens legally in the United States buy firearms?**

Please read the Questions and Answers – Revised ATF 4473 (April 2012 Edition) for the answer to this and other nonimmigrant alien questions.

**Q: May a parent or guardian purchase firearms or ammunition as a gift for a juvenile (less than 18 years of age)?**

Yes. However, possession of handguns by juveniles (less than 18 years of age) is generally unlawful. Juveniles generally may only receive and possess handguns with the written permission of a parent or guardian for limited purposes, e.g., employment, ranching, farming, target practice or hunting.

[18 U.S.C. 922(x)]

**Q: Are curio or relic firearms exempt from the provisions of the GCA?**

No. Curios or relics are still firearms subject to the provisions of the GCA; however, curio or relic firearms may be transferred in interstate commerce to licensed collectors or other licensees.

**Q: What record-keeping procedures should be followed when two private individuals want to engage in a firearms transaction?**

When a transaction takes place between private (unlicensed) persons who reside in the same State, the Gun Control Act (GCA) does not require any record keeping. A private person may sell a firearm to another private individual in his or her State of residence and, similarly, a private individual may buy a firearm from another private person who resides in the same State. It is not necessary under Federal law for a Federal firearms licensee (FFL) to assist in the sale or transfer when the buyer and seller are "same-State" residents. Of course, the transferor/seller may not knowingly transfer a firearm to someone who falls within any of the categories of prohibited persons contained in the GCA. See 18 U.S.C. §§ 922(g) and (n). However, as stated above, there are no GCA-required records to be completed by either party to the transfer.

There may be State or local laws or regulations that govern this type of transaction. Contact State Police units or the office of your State Attorney General for information on any such requirements.

Please note that if a private person wants to obtain a firearm from a private person who resides in another State, the firearm will have to be shipped to an FFL in the buyer's State. The FFL will be responsible for record keeping. See also Question B3.

**Q: How do I obtain a classification from ATF for my "potato gun?"**

Any person desiring a classification of a "potato gun," "spud gun" or similar device must submit a written request (not e-mail) to the Director and include a complete and accurate description of the device, the name and address of the manufacturer or importer, the purpose for which it is intended, and such photographs, diagrams, or drawings as may be necessary to make a classification. A final determination may require physical examination of the device. Such requests for classification should be submitted to: Bureau of ATF, Firearms Technology Branch.

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