

Auctioning of Firearms

(Editor's note: The following information appears online in the Feb./March 2009 e-newsletter of the State Board of Auctioneer Examiners at http://www.dos.state.pa.us/bpoa/lib/bpoa/20/auct_board/01_feb-march_09-auct.pdf)

There have been questions concerning the conditions that require an auctioneer to have a Federal Firearms License (FFL) and a state license to sell firearms.

Whether an auctioneer needs to have a license to sell firearms depends upon the auctioneer's possession and control of the firearms.

Estate Auctions

In estate auctions, the firearms belong to and are possessed by the owner or the executor of the estate. The auctioneer is acting as an agent for the owner or executor by assisting in the finding of buyers for the firearms. The estate is considered the seller of the firearms. Possession and control of the firearms is maintained by the owner or executor of the estate at all times. Under these circumstances, the auctioneer does not meet the definition of engaging in business as a dealer in firearms.

There are no requirements regarding the sale of antique firearms. Firearms that are classified as antiques do not have to be taken to a licensed dealer and may be handed over at the estate auction to the purchaser.

The same is true for long gun (rifles or shotguns) sales, as long as: 1) The owner/executor of the estate is available to turn over the firearm; 2) The auctioneer did not take possession of the weapon(s); and 3) The purchaser is a Pennsylvania resident.

Auctioneers are cautioned to advise the property owner that even though a background check is not required for transferring long guns in this scenario, individuals may not transfer the long guns to a prohibited person.

In Pennsylvania, the private transfer of handguns between Pennsylvania residents must take place at the premises of the licensed firearm dealer. The owner or executor of the estate and the purchaser must complete all necessary forms at the premises of the licensed firearm dealer. Also, a background check must be completed for each purchaser. If the potential purchaser is not a Pennsylvania resident, the transfer must be coordinated through a Federal Firearms Licensee (FFL) in the buyer's state of residence.

In a situation where an auctioneer is NOT a licensed firearm dealer, is assisting an estate to dispose of firearms and the estate maintains control and possession of the firearms, the firearms could be sold at a place other than the estate. However, the owner/executor of the estate must maintain control and possession of the firearms at all times.

At any point in this process, if the owner/executor of the estate is not present, it is understood that the auctioneer has taken possession of the firearms. If the auctioneer takes possession or control of the firearms at any time, the auctioneer would need to have both a federal and state

license in order to sell firearms, and the auction would have to be conducted at the auctioneer's place of business, or at a lawful gun show or meet.

Consignment Auctions

In consignment auctions, the auctioneer has possession and control of the firearms and generally acts as a dealer in firearms. These firearms are normally inventoried, evaluated and tagged for identification. The auctioneer receives authority to sell firearms when the individual with the firearms enters into a consignment agreement with the auctioneer. The auctioneer now has possession and control of the firearms, and needs to have a license to sell them.

Questions have also been asked about where firearm auctions can be held by auctioneers who are licensed firearm dealers.

In consignment auctions where the auctioneer has possession and control of the firearms, the actual sale and delivery of the firearms may take place only at the address as listed on the dealer's FFL and state license, or at a lawful gun show or meet. The federal definition of a lawful gun show or meet is:

An event sponsored by any national, state, or local organization devoted to the collection or sporting use of firearms or by an organization that sponsors functions devoted to the collection or sporting use of firearms in the community.

Under state law, licensed firearm dealers may not display firearms at an auction site away from the licensed premises. The display of firearms, as well as the actual sale and delivery of the firearm, can only take place at the dealer's license premises. The exception would be if an auctioneer who is licensed obtained a sponsor that would qualify the auction as a lawful gun show or meet as defined above.

Gun buyers who are not Pennsylvania residents must make arrangements to have any handguns that are purchased in Pennsylvania shipped to a licensed firearm dealer in their state of residence. Long guns purchased by out-of-state residents could be transferred through a Pennsylvania licensed dealer, if the purchaser's home state allows their citizens to purchase long guns out of state. If the purchaser's home state does not allow their citizens to purchase long guns out of state, the long guns would have to be transferred to a dealer in the purchaser's home state.

To apply for a Federal Firearm's License contact your local office of the U.S. Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives. To apply for a state license to sell firearms in Pennsylvania, applications must be made in the county where your business is located at the County Sheriff's Office or the Chief of Police of the City of the first class (Philadelphia).

Questions concerning the information contained in this article, or regarding any other firearm-related issue, may be directed to the Firearms Division of the Pennsylvania State Police at 717-783-5598 or 717-772-1896.