



Managing Firearms in a Deceased Estate: A Guide for Financial Planners

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Introduction

Financial planners can play a crucial role in guiding clients through the complexities of estate planning and administration. Estate planning often involves various types of assets, but one asset that requires special attention in South Africa is firearms. Mismanagement of firearms in a deceased estate can lead to severe legal consequences, making it essential for financial planners and executors to understand the legal framework set by the Firearms Control Act,¹ hereinafter referred to as FCA.

The FCA outlines specific regulations regarding the transfer, storage, and disposal of firearms in such cases. It defines a firearm broadly to include any device capable of discharging a bullet or projectile through a barrel or cylinder by means of burning propellant, with a muzzle energy exceeding 8 joules (6 ft-lbs). This includes both commercially manufactured and handmade firearms. Therefore, if you possess a handmade gun, it must be licensed and registered according to the same regulations that apply to any other firearm. This includes passing a competency test, obtaining the appropriate firearm license, and ensuring proper storage and handling.

This article offers a comprehensive overview to assist financial planners in effectively advising their clients on firearms management within estate planning.

¹ 60 of 2000.

Immediate procedure to follow regarding inherited firearms

When a firearm owner passes away, the person who inherits the firearm is required to apply for an appropriate licence, permit or authorisation if they intend to keep it,² or dispose of it in terms of the Act if they don't want to keep it.³ They might be required to apply for and be issued a temporary licence, issued under section 21, to allow for a reasonable time to dispose of it.⁴

Executors of deceased estates must comply with both estate administration laws and the regulations set out by the FCA, including the prescribed storage and disposal of any firearms licensed to the deceased.⁵ Appointing an executor can be a lengthy and time-consuming process due to various factors, including the approval requirements of the Master of the High Court, who must formally appoint the executor. The executor's primary responsibility is to safeguard the assets of the estate, which include firearms until they are lawfully transferred or disposed of.

Temporary firearm possession before executor appointment

Before the appointment of an executor, an heir, next of kin or close relative of the deceased, who has proper storage facilities for firearms may, in terms of section 21 of the FCA, be granted a permit to possess the firearms of the deceased. If no proper storage facilities are available, the firearms must be stored with a licensed firearms dealer until licences are obtained. Storage costs will be for the estate account. One common misconception is that licensed firearms can automatically be passed on to heirs without additional paperwork. Inheriting a firearm involves specific legal requirements, which requires attention from the heir:

- Apply for a license: If the heir wishes to keep the firearm, they must apply for the appropriate license, permit, or authorization.⁶
- Obtain a competency certificate: For a muzzle-loading firearm, the heir must obtain the necessary competency certificate.⁷
- Deactivate or dispose: If the heir does not wish to acquire the firearm or fails to obtain the necessary license or competency certificate, the firearm must be deactivated or disposed of in compliance with the FCA.⁸

Application for temporary possession

Heirs can apply for temporary possession of the inherited firearm by completing a SAPS518 form (Application for a Temporary Authorisation to Possess a Firearm), which must be submitted to the designated firearms officer in the area to request to legally possess a firearm

² Section 148(1)(a).

³ Section 148(1)(b).

⁴ Section 148(2).

⁵ Section 147(1) and (2).

⁶ Section 148(1)(a).

⁷ Section 148(1)(b).

⁸ Section 148(1)(c).

for a specified period.⁹ The completed application must be handed to the relevant designated firearms officer in the area where the applicant resides. The temporary permit must be valid at least until the letter of executorship has been issued and the executor has been appointed, after which the executor will take ownership of the firearm.

If the objective is solely legal storage of the firearm, it is recommended that a person with the necessary competency and licenses for other firearms apply for a storage permit in terms of Regulation 86(4) by completing a SAPS 539 form at their local police station. The application form should be accompanied by a copy of the applicant's ID, proof of address and their SAPS-issued competency certificate. Documents required from the estate include the executor's ID, letter of appointment, the deceased's ID, death certificate and copies of the licenses for the firearms to be stored.

Legal responsibilities of executors regarding firearms¹⁰

After being appointed, the executor must be given full particulars of the deceased's firearms and ammunition to draw up an inventory.¹¹ The executor must also be given full particulars of the person who has the deceased's firearms and ammunition in safekeeping with a copy of the permit if such a permit was issued. The executor must take the necessary steps to ensure the firearms and ammunition are safely stored in a safe or strongroom that conforms to the prescripts of SABS Standard 953-1 and 953-2, unless other specifically provided in the Regulations.¹²

Regulation 103¹³ requires the executor to deliver a letter or document to the Registrar of Firearms (a position held by the National Commissioner of the South African Police Service)¹⁴ which must contain the following details:

- The full name, identity number and address of the deceased, who is the holder of the licence, permit or authorisation
- The address where the firearms and ammunition are stored
- A copy of the inventory of the firearms and ammunition
- A copy of the letter of appointment as executor, administrator, trustee or curator
- A copy of the death notice of the deceased holder of the licence, permit or authorisation
- The full names, identity numbers and addresses of all the beneficiaries, if the firearms and ammunition devolved by testamentary or intestate succession.

⁹ The form is issued in terms of section 21 of the FCA.

¹⁰ The information provided serves as a basic guideline for what an executor should do in line with the provisions of the Act. However, inconsistencies may arise in practice. It is recommended that if firearms are present in the estate, the executor consult with a firearms expert to navigate these complexities effectively.

¹¹ Regulation 103(3)(a) of the Firearm Control Regulations (Hereinafter "Regulation"). This duty is also applicable to an appointed administrator, trustee, curator or liquidator of the estate.

¹² Regulation 86(1).

¹³ Regulation 103(3)(b).

¹⁴ Section 123.

The executor may hold the firearms in safekeeping under the authority of a permit ammunition devolved by testamentary issued in terms of section 21 of the FCA.¹⁵ If the heir of the deceased estate is a holder of a valid firearm license, they may apply for authorisation or a permit to be issued¹⁶ under the FCA to hold the firearms and ammunition in safekeeping. The executor must issue a letter of consent allowing the heir to store the firearm temporarily.¹⁷ This letter will only be issued to the relevant heir once the executor is satisfied that the firearms and ammunition are safely stored as prescribed by Regulation 86. A copy of the letter of consent needs to be lodged with the designated firearms officer in the area where the heir resides with a request for the officer to visit the person or heir who has been permitted to keep the firearms and ammunition in safe storage, to ensure that all the legalities and requirements are being complied with.¹⁸

The letter of consent must specify the following:¹⁹

- The reason for safekeeping
- How long the person concerned may hold the firearms in safe storage
- The name, identity number and physical address of the deceased license holder
- Adequate details and particulars to enable identification of the license, permit of authorisation and the firearm.
- The name, identity number and physical address of the person to whom permission has been given to hold the firearm in safe storage.
- It is important to take note of the fact that the letter of consent grants permission only for storage, not for use.²⁰ The Registrar of Firearms must be provided with the following information by the executor within 14 days of receipt of notification of appointment as executor:²¹
- Name and physical address of the deceased
- Inventory of all firearms and ammunition as referred to above
- A copy of the letters of executorship
- Address at which the firearms are stored
- Copy of the executor's letter of permission to the heir for storage
- Copy of the death certificate
- Names, addresses and ID numbers of all beneficiaries if the firearms and ammunition must be transferred as per testamentary disposition or law of intestate succession.

¹⁵ Section 21(5)(a) and (b).

¹⁶ SAPS 239 form.

¹⁷ Regulation 103(2)(b).

¹⁸ Regulation 103(2)(c).

¹⁹ Regulation 86(4)(c).

²⁰ South African Police Service FAQ: Safe storage of firearms and ammunition for estates of insolvent or deceased persons available at https://www.saps.gov.za/services/flash/firearms/faq_estate_firearms.php accessed on 21 November 2024.

²¹ Regulation 103(3)(b).

Complying with Firearms Control Act: Transfer and disposal options

The executor must ensure that firearms are transferred in accordance with the Act, which allows for several options:

- 1) **Transfer to an heir or legatee:** If the heir or legatee to whom the firearm was bequeathed, wishes to keep the firearm, they must apply for an appropriate licence, permit or authorisation in terms of the Act.²² The licence must align with the type of firearm they wish to inherit (i.e., defence, hunting, etc.). The following is a summary of common firearms and their associated licenses under the Act however, this list is not exhaustive. For a comprehensive understanding of all firearm types and the relevant licenses, individuals should refer to the FCA:
 - **Self-Defence:** Section 13 allows for the licensing of handguns specifically for self-defence purposes. The applicant must demonstrate a genuine need for protection and meet specific competency and background checks.
 - **Hunting:** Licenses issued under section 15 are for firearms intended for hunting. The applicant must provide proof of hunting activities, membership in a hunting organization, or other valid reasons for requiring a firearm for this purpose.
 - **Sport Shooting:** Section 16 permits the licensing of firearms for sport shooting activities. Applicants must be members of a recognized shooting club and provide evidence of participation in competitive shooting events.
 - **Collecting:** Firearms licensed under section 20 are for collectors, allowing ownership of specific historical or significant firearms. Collectors must demonstrate a legitimate interest in firearms as a collection and adhere to storage and display regulations.
- 2) **Sale of firearm:** If no heir or legatee is willing or able to inherit the firearm, the executor may sell the firearm to a licensed dealer or individual subject to the provisions of the Administration of Estates Act 66 of 1965 and the FCA. The purchaser must obtain or possess the relevant license before the firearm can be transferred.²³
- 3) **Surrender to the South African Police Services ("SAPS"):** If the firearm cannot be transferred or sold, the executor can surrender it to SAPS.²⁴

Legal consequences of non-compliance

Failure to comply with the provisions of the handling of firearms in a deceased estate according to the FCA can result in significant penalties. A person is guilty of an offence if, among others, they contravene or fail to comply with the provisions and directions of the Act, including possessing a firearm without a valid licence, permit or authorisation,²⁵ could face a fine of up to R100 000 or imprisonment for a period of up to 25 years.²⁶ Any individual who becomes aware of a firearm or ammunition in unlawful possession and fails to promptly report

²² Section 148(1)(a).

²³ Section 31(2) & (3).

²⁴ Section 147 and 145 read together with the Regulations.

²⁵ Section 120(1)(a), (b) and (c).

²⁶ Schedule 4 of the Act.

its location to a police official also commits an offence.²⁷ The executor must ensure that all actions taken in relation to the firearms are documented and performed in accordance with both the FCA and the Estate Duty Act.²⁸

If a person is convicted of a minor firearm-related offence, punishable by a fine or imprisonment of up to five years, the Registrar may issue an infringement notice (also referred to as an “administrative fine”) to the individual in person. This notice will include specific details about the alleged offence.²⁹

Practical examples

Example 1: Transferring a firearm to an heir

Peter, a licensed firearm owner, passes away, leaving behind a hunting rifle in his estate. His son John, who is 25 years old, is named as the heir to the rifle in Peter's will. John does not currently have a firearm license but wishes to inherit the rifle as he is a keen hunter.

The executor of the estate must inform the Registrar of Firearms of Peter's death within 14 days and submit the necessary documents, including the death certificate and details of the firearm. Since John is not yet licensed to possess the rifle, the executor has two options: apply for a temporary permit to store the firearm or arrange for a licensed firearms dealer or the police to store it.

John must then apply for a firearm licence, stating that he intends to use the rifle for hunting and sports shooting.³⁰ In his application, he must meet all requirements for firearm ownership, including demonstrating a valid reason for possession, passing competency tests, and undergoing background checks.

Once John is granted the license, the firearm can legally be transferred to him, and he can take possession of it. The executor will finalise the transfer of ownership with the CFR to ensure all legal records reflect the new owner, John.

As a result, John legally inherits the rifle after obtaining his firearm license and the estate is wound up without any legal violations. In practise, if John does not currently have competency for the specific category of firearm, the application process for competency can take approximately 6–8 months to be approved by SAPS. However, if he already has competency for other categories of firearms and applies for additional competency (specifically for this category of firearm), it may take around 6 months to obtain the additional competency.

²⁷ Section 120(2)(a).

²⁸ 45 of 1955.

²⁹ Section 122.

³⁰ Sections 15 and 16.

Unfortunately, the application for competency and the application for a firearm license cannot be submitted simultaneously. The net effect is that he will need to wait for the competency to be approved before he can apply for his license. The total process can therefore take approximately 14 months. The cost of firearm storage must also be considered. The option to store a firearm with an SAPS539 permit at the premises of a current license holder is thus a better choice.

Dual licensing³¹

If firearms are registered under a parent's name, it is advisable for the spouse to obtain the necessary competency certificate and apply for licenses in their own name. Doing so can significantly simplify the process of firearm storage in the event of the firearm owner's death and reduce the costs associated with administering the deceased estate.

The so-called "dual licenses" play an important role here. (Note: These "dual licenses" refer to additional licenses granted to individuals residing in the same household as the primary license holder, as permitted under Section 12 of the Firearms Control Act. However, this arrangement only applies if both parties meet the legal requirements for competency and licensing.)

With this arrangement, both spouses would legally hold licenses for all the firearms and be permitted to use them. This option eliminates the need for duplicate firearms to be purchased and registered solely under the spouse's name.

Upon the passing of the primary license holder, the surviving license holder retains their valid license. However, any heirs wishing to inherit the firearm must apply for a new license in their name.

Example 2: Sale of firearms due to heirs' ineligibility or refusal to accept them

Sarah, a registered handgun owner, passes away leaving her handgun as part of her estate. Her children, all majors, are named as heirs but are not interested in owning firearms and do not hold licenses.

The executor must notify the Registrar of Sarah's death and arrange for the firearm to be stored by a licensed firearms dealer until the estate is wound up. Since none of Sarah's children wish to inherit the handgun, the executor must arrange for its sale. He must find a buyer who is a licensed firearm holder. The buyer must apply for a separate licence for this newly acquired firearm.³² The buyer cannot take possession of the firearm until the transfer is completed and a valid license³³ is issued. Once the licence is approved, the handgun is transferred to the buyer, and the proceeds of the sale are paid into the deceased estate. These funds are then distributed according to Sarah's will.

Through this process, the firearm is lawfully sold and is kept out of unlicensed hands.

³¹ Section 12.

³² Section 11.

³³ Section 3(1)(a).

Example 3: Surrendering firearms to the police for destruction

David, a retired security officer, passes away leaving behind two firearms—a revolver and a shotgun. The executor establishes that none of the beneficiaries in David's will are interested in acquiring the firearms and they do not want them to be sold.

The executor must still notify the Registrar of Firearms of David's death within 14 days, as required under the FCA. The executor has the option to temporarily store the firearms with the SAPS or with a licensed dealer, in accordance with the Act. Alternatively, the executor may surrender the firearms to the SAPS for destruction.³⁴ To do so, the executor contacts the SAPS to arrange the surrender of the firearms.³⁵ The firearms and ammunition, along with any documentation verifying ownership by the deceased estate, should be handed over to the designated police station.

The SAPS will then provide the executor with confirmation that the firearms have been received.³⁶ The firearms will be safely destroyed, and the estate avoids the potential risks associated with unlicensed ownership or illegal possession. By following these steps, the executor fulfils their legal duty as executor and complies with the provision of the FCA.

Example 4: Handling unlicensed firearms discovered during estate administration

Donavan passes away and during the winding up of his estate, the executor discovers an unlicensed antique or collectable firearm in his house that was not mentioned in his will. The executor immediately informs the Registrar of Firearms of the discovery of an unlicensed firearm in the estate.

The SAPS will verify whether the firearm is listed in the Central Firearms Registry and assess whether it can legally be classified as an antique or collectable. Firearms classified as collectables must be licensed under Section 17 of the FCA. If the firearm is not classified as a collectable, the executor, in consultation with the heirs of Donovan's estate, may choose to surrender it to SAPS for destruction. or Alternatively, if the firearm qualifies as an antique with significant historical value, the executor can arrange for its preservation through a legal transfer to a museum or public collector, provided this complies with the FCA's licensing and transfer requirements.

By ensuring the unlicensed firearm is handled in accordance with the law, the executor prevents it from being illegally possessed or used, thereby avoiding potential legal consequences for Donovan's estate and heirs.

These case studies illustrate the practical steps and legal procedures required for handling firearms in an estate. Whether firearms are transferred to heirs, sold, surrendered, or destroyed, compliance with the FCA is essential to avoid severe penalties. Executors must act responsibly and follow due process to ensure that firearms are lawfully managed as part of the estate.

³⁴ Regulation 94.

³⁵ Regulation 94(2).

³⁶ Regulation 94(5).

Conclusion

Handling firearms within a deceased estate in South Africa requires meticulous attention to both legal and procedural requirements. Executors play a vital role in ensuring compliance with the FCA and other relevant legislation, such as the Administration of Estates Act and Estate Duty Act. From securing the firearms, applying for the necessary permits and notifying the authorities to ensuring lawful transfer or disposal, each step carries significant legal responsibilities.

Financial Planners play a crucial role in assisting clients with the inclusion of firearms in their wills. When firearms are part of an estate, financial planners must ensure that these assets are handled in compliance with the FCA, which requires that firearms are properly licenced and registered. The planner must work closely with legal professionals to ensure that the transfer of firearms, whether through inheritance or sale, adheres to legal requirements. This includes ensuring that the beneficiaries possess the necessary competency certificates and licenses to own firearms. Additionally, the financial planner may advise clients on the proper storage of firearms, possible restrictions, and tax implications of inheriting firearms. Proper planning ensures that the firearms are transferred without legal complications, safeguarding the interests of both the client and beneficiaries.

The consequences of non-compliance are severe, with penalties ranging from hefty fines to lengthy prison terms under section 120 of the Firearms Control Act. Executors, heirs, and financial planners must understand these complexities to avoid potential legal pitfalls.

For this reason, executors are strongly encouraged to seek the guidance of legal professionals and firearms experts. Their specialised knowledge ensures that firearms are lawfully dealt with, protecting both the estate and its beneficiaries from unnecessary risk. Financial planners, in particular, must proactively assist clients in preparing for the transfer of firearms, ensuring that all necessary documentation and licensing requirements are met well in advance.

By handling firearms with diligence and foresight, executors can effectively protect the estate's interests, preserve the value of these assets, and protect all parties from unintended legal consequences. Proper planning and strict adherence to the law ensure that firearms are either seamlessly passed on to the next generation or disposed of appropriately, without compromising the legacy or wishes of the deceased.

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