Armed Citizens' Legal Defense Network, Inc.

Trusts for Armed Citizens

An Interview with Attorney John Harris

Interview by Gila Hayes

Armed citizens are familiar with using trusts to own restricted types of firearms but less knowledgeable about trusts for asset protection. Most of us are people of ordinary means, and the idea of trusts for asset protection sounds like a means for multi billionaires to shelter their money. Firearms attorney John Harris has a broader viewpoint and in the following Q & A he explains the overlap between trusts for asset protection and the armed citizens' concerns about personal liability.

Harris had hinted at a bigger subject in his response to our online journal's [June 2021 attorney question] of the month. When I commented that I thought trusts were primarily a vehicle to own restricted weapons, he graciously explained the wider uses of this legal tool and agreed to give an introductory interview about trusts for armed citizens.

eJournal: I think my idea that trusts are for Class 3 weapons possession or as a tool of the very wealthy is inadequate. What is the applicability of trusts in today's financial world?

Harris: I think there has been a history of trusts being used as you described by the rich and affluent, but for gun owners there are a lot of reasons why trusts are something that they need to be aware of and armed citizens need to consider how the trust can play a role in their asset planning.

For example, we do a lot of trusts for people who want to acquire items regulated by the National Firearms Act – the NFA – suppressors, short-barreled rifles, short barreled shotguns, even machine guns. With an NFA trust, they can have an alternative means of ownership and the benefits that go with that such as allowing more than one individual to be the "possessor" of the item and addressing the transfer of the item from generation to generation.

Another area where we see that gun owners and Second Amendment advocates can benefit from using or incorporating trusts into their planning is in asset protection. You need an understanding of how, in civil matters, assets can be subject to execution to collect judgments on liability matters. Say, for example, you're involved in a self-defense incident. You can successfully defend the self-defense incident, but in the self-defense situation, you accidentally or negligently injure a third party, or damage a third-party's personal property – say, for example, you put bullet holes in a car.

Defending the self-defense incident, itself, does not necessarily take care of the potential financial exposure – and we're not talking attorneys' fees, we're talking literally, judgments for damages to an individual or to an individual's property. By using trusts, it is possible, depending on each state's laws, to make the individual's or the family's assets less available for judgment creditors.

eJournal: That may be of interest to Network members because – as we have stressed from the very beginning – the Network pays the attorney fees, the costs of expert witnesses, private investigators and all the other costs that go into defending legitimate use of force in self defense, but if, despite it all, a civil court rules that the member is liable for damages, we cannot pay a judgment on behalf of a member. That is an insurance product, and we are not insurance.

How do trusts address the multitude of ways personal resources are held? Many folks have checking accounts for daily expenses, hopefully a rainy-day fund, investments and retirement accounts. Others have homes, land, automobiles and other valuable possessions. Can it all be sheltered?

Harris: The answer depends on each state because each state's statutes on assets with respect to enforceability of judgments can be different. What you do have is an opportunity by using planning and trusts to, essentially, change the ownership of your assets. In most instances, this needs to be looked at long before the self-defense incident arises.

For example, a husband and wife may own assets in their individual names. If they retitle those assets into joint names, that is a simple step toward asset protection. Many people do this with their homes but they may be unaware of the potential asset protection benefit that they are creating. For the gun owner, it would be rare for both the husband and the wife to be involved and exposed to a self-defense shooting. Jointly titling the assets could make it more difficult to execute upon their assets in the event that one of the spouses was involved in the self-defense incident and later found to be financially liable for causing harm to an innocent bystander or even liable on an "excessive force" claim.

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Taking the situation of joint ownership a step further, the trust is viewed in all states as a separate legal entity. You could set up a trust with multiple creators, multiple, different trustees, or multiple people responsible for administering the assets in the trust. You could have multiple, different beneficiaries. The trusts can have other characteristics such as being revocable or irrevocable and those features can impact whether creditors can reach the trust assets.

For example, a common format that we see is that a husband and wife might create a trust and identify themselves as the primary beneficiaries, then they name their children and heirs as the remainder beneficiaries. That means multiple, different parties have an ownership interest or a remainder interest in that pool of assets. That pool of assets could include homes, real estate and investment accounts. It could include some life insurance policies; it could include some vehicles. All these assets could be pooled within this trust so that the trustees are the owners. The trust creates multiple tiers of ownership and possessory interests that, depending on how the trust is structured, makes it more difficult for a judgment creditor to reach those assets and collect upon them.

eJournal: You just mentioned some terms that I don't completely understand: "revocable," and "irrevocable." When we are discussing trusts, what do those terms mean and how do they affect these multiple owners you've discussed?

Harris: In asset protection, the irrevocable trust – one that is permanent, so to speak – is clearly stronger because the people creating the trust, even though they may be a beneficiary of it, have given up the capacity to revoke or terminate it and draw those assets back into their personal ownership.

A revocable trust is better than nothing, but it does have a weakness. Depending on the facts, the court might find that the trust is still subject to the control or the discretion of the debtor and they could unwind or undo that trust to get to the assets. The question then becomes a much more complicated analysis of whether the court would consider an order to that effect, to take away rights that are vested in third parties like the beneficiaries or other people who contributed to the trust.

eJournal: Conversely, if the creator of the trust suffered a terrible financial setback or fell ill and needed to pay for medical treatment, can he or she access the resources held in the trust?

Harris: The settlor or the grantor is the person that creates the trust and is the person that puts some or most of the assets into the trust. Technically, the owner of the assets becomes the trustee once the assets are transferred to the trust. The trust would commonly have language in it that would say that the trustee has the discretion to distribute payment to or for the benefit of any grantor beneficiary on a spendthrift grounds, or to take care of health, maintenance, education, or support for the people who are named as persons to be benefited by the trust's existence and purposes.

Even an irrevocable trust could have language in it saying that in the event one of the creators has, say, a severe medical problem – maybe he needs nursing home care or extended health care in a facility – the trustee, at their discretion, could pay for those benefits. The difference is whether the power is to be exercised by a trustee or a third-party, rather than the individual in his or her own capacity.

eJournal: Those variables suggest to me that setting up a trust could never be a one-size-fits-all endeavor. How technical is the establishment of a proper trust? Do we order a trust kit off the Internet or go down to Main Street and walk into a lawyer's office and ask to have a trust established?

Harris: No, this is not typically a do-it-yourself project. Lawyers, like doctors have a wide spectrum of practice areas. You would not want to go to a podiatrist for cataract surgery while, in terms of their licensure, they may be legally capable of doing it. In my world as an attorney, you have attorneys that do real estate closings, that do bankruptcies, and that advertise on television to do car wrecks and truck and motorcycle accidents. The fact that they are an attorney does not necessarily mean that they are outfitted to do trust work. You are better off if you look around and find one that has a broader practice spectrum or perhaps one that specializes in estates and trust work.

Even some of the attorneys specializing in estate work or trust work may be geared more toward the affluent, high-end client as opposed to someone that is looking for an asset protection trust because that is a subset of general trust practice. Not everybody who has experience setting up a trust is looking at the asset protection element of it. A trust might be, like we said earlier, an NFA trust, or a trust that is set up for testamentary purposes or trusts set up to hold assets multi-generationally, or assets in trust for college education purposes – those are all different goals.

eJournal: Another new-to-me term: What is a testamentary trust?

Harris: Testamentary trusts are typically the ones that are created in and as part of a will. Many times, you will see language in a will that says, "I'm leaving all of my assets to my spouse, but if we die in the same incident or she predeceases me, I'm leaving my assets to my children. But if my children are under age 25, I am going to leave the assets with so-and-so as a trustee to manage those assets until my children reach the age of 25." The example is a very simple formula, but that is it.

eJournal: Is that different than a multi-generational trust?

Harris: It can be. A testamentary trust could be complicated enough to be considered multi-generational, but it doesn't have to be. Frequently, those just cover getting the kids or the

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grandkids up to a certain age before you turn them loose with unlimited resources.

eJournal: A lot of people view trusts as for the extremely wealthy. Let's talk about common, everyday men and women. A lot of people really are living paycheck to paycheck. Maybe they rent an apartment, drive an old car, and really, they just don't own much. Should that person worry very much about a judgment against them? Is it worth it to take half a month's wages and pay an attorney to build an asset protection trust?

Harris: I will say this: a trust is something they need to be considering. A trust that has been in place for a while is more likely to be viewed by a court as being set up for appropriate, estate planning purposes rather than one that was set up recently when there has not been a change of circumstances – because you just won the lottery. Members and individuals who may live paycheck to paycheck are still accumulating assets. Maybe they are acquiring vehicles and those things aren't cheap these days, or they are buying their first or second home or they are starting a college savings account for their children. It doesn't take long to start accumulating significant assets, at least on paper.

Say a Network member gets involved in a self-defense incident. The issue is not the cost of the attorneys' fees in terms of the civil claim or the criminal claim, but the ability to settle that case or to deal with a potential adverse judgment does become an issue. If that happens, a trust that has been in existence for a number of years, I think, is a better situation to be in than having a trust that was just recently created, but even the recent one is better than nothing.

eJournal: I have wondered if establishing an asset protection trust may cast a shadow of doubt over the legitimacy of an armed citizen's actions. Did we shelter our assets because we were getting ready to kill someone? Of course, we were not, but false accusations can sure make you look suspect.

Earlier you painted the example of a perfectly legitimate self-defense shooting with pass through rounds that damaged a car. Worse, what if the bullet over-penetrates and goes through to harm an innocent bystander? Am I responsible for that harm? You bet I am, but does the existence of my trust make it look like I had a pattern of avoiding responsibility?

Harris: Well, that may be. Let's use Tennessee, for an example. Tennessee specifically has created legislation in the last few years that promotes or makes it easier to create asset protection trusts as a specific category of trusts. That also exists in other states. It is useful for a lot of reasons. For example, people have automobile liability insurance. A lot of people carry $300,000-$500,000 in limits and some people carry $1 million or more because they have an umbrella policy.

I will give you an example: we recently had a case I was involved with because the family had a car policy with $300,000 in limits but unfortunately the other person in the other vehicle died. He was a young, military helicopter pilot and the financial projections of what that individual might have earned during his lifetime had he lived a normal life span and served as a commercial pilot the entire time was millions of dollars in terms of earning capacity. Even a $300,000 liability policy doesn't go far if the earning capacity of the person – or their medical bills, say they become a quadriplegic – is millions of dollars.

People can set up this asset trust hedge against automobile claims, firearms-related liability claims, or contractual liability claims, as we have seen in the last year with COVID-19. People out there had formed their own businesses – restaurants and what not – that they were unable to operate because of COVID-19. They lost their businesses, and creditors and landlords, are suing them for tens of thousands of dollars for things like broken leases. Asset protection trusts can be a tool to plan for those kinds of risk contingencies. They are not just for gun owners. Trusts are for anybody that engages in activities from driving a car to running a business that has the potential to create risk exposure.

eJournal: The broader application is very good. Sometimes just the way we describe what we do and why we do it defeats the accusation before it's ever voiced. As you indicated earlier, creating an effective trust is not necessarily a job for the Main Street lawyer who pretty much makes his or her living defending DUIs and filing divorces. If we work with a skilled trust specialist, what should we expect as an approximate cost?

Harris: What you need in an asset protection trust can vary from person to person quite a bit. It depends on the circumstances. You could be looking at a low range of $1,500-$2,000 to prepare a trust for a couple. It can go up from there. We have done trusts where, because of the number of trustees involved or the complexity of the trust, we were talking $25,000 to $30,000 for the attorney's fees.

eJournal: That would seem like an extraordinary situation. Conversely, for an ordinary working gal or guy, $3,000 might equate to the amount we have saved up for our next AR 15 rifle. Maybe we should think about having a lawyer help us set up a trust as having as much lifetime value as putting that second or third rifle in the gun safe.

Harris: In many instances it is not going to cost more than that second or third rifle; it may not cost more than the gun safe.

eJournal: This is your world … Definitely, it isn't mine! I had so much trouble trying to figure out what I needed to ask you, that I hope I have not missed the mark too badly. What questions did you hope to talk about? What else do we need to discuss?

Harris: I think one thing that people need to understand is this: if you are going to be engaged in public life – driving cars, con-

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tracting with third parties, carrying a gun for potential self-defense reasons, taking a gun onto a gun range where there is a possibility of accidental discharge, you need to do some estate planning. You need to do some asset planning. I think people need to be dealing with the contingency that if something goes wrong, can they afford to hire the attorney in a civil case, in a civil appeal; in a criminal case, in a criminal appeal?

Just affording the attorney fees is a big factor that they need to be able to deal with, but at the same time they could have another situation, just like with a car wreck that is purely an accident – you didn't mean to hurt anybody, yet someone still got hurt. Do you have your assets arranged and your plans made to deal with that risk contingency? You might have to deal with a judgment. We can't stop that possibility, other than through a bankruptcy, to wage garnish your assets, but we can protect against the judgment creditor's ability to issue an execution against your bank accounts or savings account or your mutual funds or whatever other assets you have accumulated to this point.

The point is that the laws are written in such a way as to create potential liability when things go wrong and someone is harmed but they are also written in ways that provide that some assets, under some circumstances, are not subject to the claims of creditors.

eJournal: Thank you for explaining that the law balances that way. You have given us some very useful details to ponder. There's something else that I keep hearing about you, so could you take a minute to tell me about your work with Tennessee Firearms Association?

Harris: In 1994, Tennessee passed its first shall-issue version of a handgun permitting law. The NRA came in and led the charge. What we realized almost immediately after they did that was that Tennessee had a large quantity of laws on the books that were written at a time when citizens couldn't carry guns. These laws made the penalty higher in certain places like school grounds and public parks than if you were just carrying the gun on the street. Once it passed the permit law, the NRA didn't really stick around and deal with the other issues. They sort of just abandoned us, as they have done in a number of other states, to the technicalities like what happens if you carry in a park even if you have a permit, and what happens if you carry in a restaurant that serves alcohol even if you are not drinking and you have a permit?

TFA was formed in 1996 to deal with the nuts and bolts of being a gun owner in Tennessee, a state that as of July 1st gives the capability through at least three mechanisms to carry a firearm. It has been primarily our mission to focus on Tennessee issues in terms of where you can carry, when you can carry, how do you get your rights restored, how do you protect gun rights, how do you build more gun rights?

Those are the issues the NRA really did not work with a focused effort to foresee or address after they came in and passed a permit law. That is mainly what TFA does, but TFA is also increasingly engaged in litigation since we know that some issues are better addressed in the courts than in the public policy arena of the legislature.

For 26 years now we have focused on those issues and developed expertise. The money that we have raised doing that stays in Tennessee. We are building relationships with legislators and financially supporting some of them when they need assistance to run or to hold office. More commonly we are trying to figure out which ones are the problems, who are not helping us to move things forward, and trying to find people that can replace them. We have great relationships with Gun Owners of America, Second Amendment Foundation, National Association for Gun Rights and have increasingly become allies of those organizations, primarily in federal litigation on Second Amendment issues. In three years, we have been involved in two Supreme Court cases that were initially brought by others and then we were asked to support them and then we did.

eJournal: What an excellent history of success, and a quarter-century into that story, you are still pushing forward so vigorously. Congratulations to you and TFA! You surely do keep busy, making me all that much more appreciative of the time you spent with us today helping us understand the value of planning for asset protection.

Learn more about our Affiliated Attorney John Harris and his work on behalf of TN gun owners at http://www.harrislawoffice.com/content/attorneys/john_i_harris.htm and his efforts at https://tennesseefirearms.com/ where he blogs, podcasts and posts news of concern to armed citizens.

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President's Message

Major Goal Achieved!

by Marty Hayes, J.D.

I am pleased to announce that the Legal Defense Fund is now fully funded with over THREE MILLION DOLLARS safely reserved for the defense of our members after legitimate acts of self defense.

Over the years, members have asked how the Fund is protected and others have asked how it is invested. We have it spread out between different financial institutions (taking into account the FDIC limit of $250,000.00 on federally-insured deposits). We currently keep approximately one million in accessible accounts at banks and credit unions and the rest is in certificates of deposit. As they mature, the CDs are reinvested under the watchful eye of an investment broker whom we trust implicitly.

What is next for the Legal Defense Fund? We will continue to add to the Fund, with the immediate goal of building up an additional liquid, working balance of about half a million for immediate payment of the normal legal fees that accompany member-involved incidents, and, of course, reserve the $3M for that extremely rare incident where the legal fees could run up to close to a million (think George Zimmerman, Kyle Rittenhouse).

Sitting here thinking about this, I vividly remember when we first started the Network, and what our goals were. I remember wondering if our goals were attainable. In fact, here is a paragraph I wrote outlining those goals from our February 2008 *eJournal*.

> *"We have lofty but realistic goals. Within the first year, we want to sign up at least 1,000 members, which will create a Legal Defense Fund of approximately $20,000. When it reaches this size, the Fund will become available to help, though on a limited basis. Within five years, we hope to have increased our membership to 10,000 members, which will swell the Legal Defense Fund to a quarter of a million dollars. At that time, we have some serious clout when it comes to defending a wrongfully prosecuted member."*

If you are one of the first 1,000 members, you can pat yourself on the back and feel satisfied that your contributions helped us reach and wildly exceed these goals. Gila, Vincent and I humbly thank you for your loyal support. If you are a relatively new member (and have not had the time to read the past *eJournals*), I hope you feel assured and comforted by our record of meeting our goals and keeping our promises to members.

As far as the future goes, we expect the Network to live long past Vincent, Gila and me. Currently, we are structured as a for-profit corporation, an entity with which I had previous experience as a corporation president. My legal education had provided a good understanding of the pluses and minuses of various legal entities, too.

As Vincent, Gila and I approach retirement age, we have been discussing how to insure the Network survives long past our hands-on involvement, and when we have all the details worked out, we will, of course, announce any structural changes we deem necessary to assure the Network a vital, thriving future. But be assured that our promise to you, our devoted members, is that we will (to borrow the immortal words of Captain Jean-Luc Picard) make it so.

No New News on the WA Insurance Commissioner Issue

Just to make sure we keep our members informed about this issue, I have absolutely nothing new to report! We are still going through the discovery process, which not unexpectedly is taking longer than we hoped.

"That Weems Guy"

Do you know the name Lee Weems? If not, you should. A friend and colleague of mine, Lee is a Network Affiliated Instructor who runs his own training school, First Person Safety (https://firstpersonsafety.com). Lee's shooting school is not the subject of this message, but instead, I wanted to mention the great work he is doing on YouTube. A few months ago he started posting short (30 minute average) videos on which he talked to other instructors around the nation, using Zoom to capture the conversations. From what I have seen these video segments are truly firearms instructor gold. I know and respect most of the guests he has on his channel and have trained with them or interacted with them in training venues, most notably at the RangeMaster Tactical Conference. Lee has been posting about one video a week from what I can see, and I anxiously await the weekly episodes.

I hope he will continue with the videos. I know he is busy with a full-time law enforcement job and his own training school, but what he is doing is very important work. To find his videos, simply search "Lee Weems" in the search bar on YouTube and start enjoying and learning.

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Vice President's Message

Join Us for the 150th NRA Meeting

by Vincent Shuck

After a one-year delay and the cancellation of the 2020 meeting, the 2021 NRA Annual Meeting & Exhibits will be held in Houston, TX at the George Brown Convention Center over the Labor Day weekend, September 3 to 5. The Network will be among the exhibitors along with guns and gear manufacturers, shooting accessory companies, hunting outfitters, and priceless firearms collector groups.

Attend exclusive seminars, luncheons, and celebrity and political presentations along with other NRA member patriots. Exhibit hours are:

Friday, September 3 – 9 a.m. – 6 p.m.

Saturday, September 4 – 9 a.m. – 6 p.m.

Sunday, September 5 – 10 a.m. – 5 p.m.

Admission is free to NRA members and family.

Houston – home of the Space Center, NASA's astronaut training and flight control complex – has plenty of space-related locations to visit, if you have time to spend away from the NRA meeting.

We will be in Booth #2331, spending time on our primary mission of recruiting new members and greeting our current members who stop by the booth. A special event will occur in the booth on Saturday afternoon when most of the Advisory Board members will be available to welcome Network members or respond to questions. Massad Ayoob, John Farnam, Jim Fleming, Manny Kapelson and Dennis Tueller are scheduled to be available. Stop in to say hello.

We don't look a lot different than we did when we gathered in 2019! Shown left to right: Network President Marty Hayes, Advisory Board members Dennis Tueller, Emanuel Kapelsohn, Jim Fleming, John Farnam, Massad Ayoob and Network Vice President Vincent Shuck.

For more information about the meeting, pre-register or to obtain housing or travel information, go to https://www.nraam.org .

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Attorney Question of the Month

Occasionally, members ask for information about the rights of a legally armed citizen who resides with a person who is prohibited by court order from possessing firearms. This month, we continue with a question we asked our affiliated attorneys in July –

If the spouse of an armed citizen is under court order that makes it illegal for the spouse to own or possess firearms, in your state may the armed citizen have his or her firearms in their shared residence?

If so, what safeguards do you suggest to prevent a claim that the prohibited spouse was in possession of firearms? What advice would you offer a young mother whose husband is ineligible to possess a firearm, for example, who wanted a gun to defend herself and her family?

We were delighted to receive a good number of responses from a variety of states. This month we share the second half of the responses to this interesting question, having started the discussion in our July 2021 edition.

Alex M. Ooley and E. Michael Ooley
Ooley Law, LLC
P.O. Box 70, Borden, Indiana 47106
812-967-4939
https://www.ooleylaw.com

In Indiana, the spouse who is not prohibited from possessing a firearm can have a firearm. However, this creates some risk because the prohibited spouse cannot own or possess the firearm. To understand why this can be problematic, it is important to know that there are two types of "possession," constructive possession and actual possession. Actual possession is where the individual has dominion and control over the item. Constructive possession is where the individual has the intent and capability to maintain dominion and control over the item. As you can imagine, the concept of constructive possession could cause some pitfalls in a household where one spouse owns a firearm and the other spouse is prohibited from possessing a firearm.

The best way to mitigate this risk is to avoid situations where the prohibited possessor could be seen as having even constructive possession of the firearm. Basically, any time the firearm is not under the direct control of the spouse who is not prohibited from possessing the firearm, it needs to be locked in a safe for which the prohibited possessor has no access. The prohibited possessor cannot know the code or have a key to access the safe. The spouse wanting to keep a firearm in the home might even consider a biometric safe that is only accessible with the fingerprint of the spouse who can possess a firearm.

Thomas C. Watts III
Thomas C. Watts Law Corporation
8175 Kaiser Boulevard Suite 100, Anaheim Hills, CA 92808
714-364-0100

This is a subject that comes up quite a bit. Regrettably, I have to give the same advice to clients as my father gave to me about playing with fire: Don't. There is a case or two where the ex-felon has beaten the charge by showing the weapon was in a safe that the husband could not access the weapon, but this was on the thinnest reasoning. The fact is that if a felon is charged as being in possession and the spouse is charged as an accessory, they wind up in the untenable position of having to prove themselves innocent rather than the reverse.

Bruce Finlay
P.O. Box 3, Shelton, WA 98584
360-432-1778
https://websitesbycook.com/brucefinlay/

In Washington state, there is no prohibition against the spouse from possessing firearms but there are practical considerations such as danger to the prohibited spouse.

Unless police have a reason to come into the house, they may never know that the prohibited person had guns in his house. But, if police do come to the house and see guns, or a person with a grudge against the prohibited person calls police and tells them about the guns, there will probably be problems such as a charge of unlawful possession of firearms, contempt of court, or a probation violation. All of those are avoidable through one of two simple methods: get the guns out of the house in someone else's possession, or lock them in a safe that only the spouse who is not prohibited from firearms possession has access to.

The court or police cannot order the non-prohibited spouse to give up the constitutional right to possess firearms, but they can make the prohibited spouse's life miserable. The safest thing to do is remove all guns from the house; however, if that is not a desirable option, the guns should be stored in a locked safe with only the non-prohibited spouse having access to the key or combination. The key should be kept in the non-prohibited spouse's possession at all times and should not be left out where the prohibited spouse might find it and use it.

John R. Monroe
John Monroe Law, PC
156 Robert Jones Road, Dawsonville, GA 30534
678-362-7650
http://johnmonroelaw.com

My state (Georgia) has few provisions prohibiting possession of firearms that are greater than federal law, so my response is co-

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existent with what my response would be for both Georgia and federal law. The non-prohibited spouse may possess firearms as long as the firearms are not accessible to the prohibited spouse.

In the home, this is going to mean keeping the firearms on the non-prohibited spouse's person or locked in a safe or storage facility to which the prohibited spouse does not have the key/combination/code.

In the vehicle context, the non-prohibited spouse should keep the firearms on his or her person. They could theoretically be locked in a vehicle in a way so as not to be accessible to the prohibited spouse, but I would avoid such scenarios – the likelihood of an encounter with law enforcement is too great in a car.

Jerold E. Levine, Esq.
Attorney At Law
5 Sunrise Plaza, Suite 102, Valley Stream, New York 11580
212-482-8830
https://thegunlawyer.net

New York law addresses this matter precisely. Penal Law § 265.45 (Failure to safely store rifles, shotguns, and firearms in the first degree) contains the following relevant language:

"No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who...such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm (handgun) pursuant to a temporary or final extreme risk protection order issued under (New York law), ...or 18 U.S.C. § 922(g)(1), (4), (8) or (9); ...or such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense (certain New York misdemeanors), shall store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon. For purposes of this section 'safe storage depository' shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein."

Violation of the law is a misdemeanor, and local governments can impose their own additional storage restrictions as well.

At least one court has ruled on the meaning of "safe storage depository," finding that a wooden gun cabinet with glass windows is not sufficient security.

The main concern for non-prohibited family members is that they do not allow the prohibited person any access to the storage depository. This means, at least, that the prohibited person does not know the combination to the safe, or have access to the key, etc. It must be made practically impossible for the prohibited person to gain access to the safe contents. And it should be a safe; specifically, something sold as a "gun safe."

Lastly, the prohibited person never should be allowed to handle the guns. As part of any investigation by authorities, it will be asked of all involved whether the prohibited person ever handled the guns. That answer always must be no.

Thomas F. Jacobs, Esq.
Law Office of Thomas Jacobs
271 North Stone Avenue, Tucson, AZ 85701
520-628-1622
http://www.thomasjacobslaw.com/

In Arizona, the spouse of a prohibited possessor may have a firearm within a shared residence. While not illegal, it is not recommended absent appropriate safeguards to ensure 1) that the prohibited party does not have access to the firearm and 2) that the prohibited party is able to objectively demonstrate lack of access to avoid criminal exposure.

In the situation proposed, I would recommend that the firearm be stored in a locked container or area of the residence to which the prohibited party does not have access. For any firearms, a safe with a combination which is not provided to the prohibited party works. For pistols, a pistol lock box with fingerprint or combination lock access would be adequate. No matter what precautions are taken, however, it is never possible to eliminate all possibility that law enforcement may gain access to the firearms during a lawful search and accuse the prohibited party of having access. In such case any correspondence between cohabitants regarding the access codes or methods of access would create exposure to criminal prosecution.

We extend a hearty "Thank you!" to our affiliated attorneys who contributed comments about this topic. Reader, please return next month when we discuss a new question with our affiliated attorneys.

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Book Review

Washington: A Life

By Ron Chernow
928 pages paperback, Sept. 2011 by
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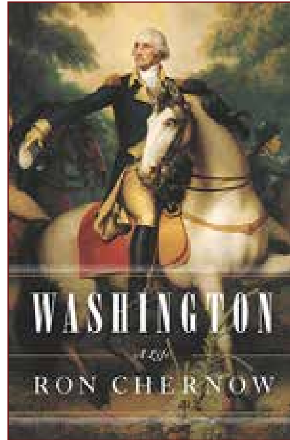

Reviewed by Gila Hayes

The book I chose for my Independence Day reading about our nation's founders was a whopping 900+ page biography of our nation's first president written by Ron Chernow. In *Washington: A Life,* the biographer replaces the image of a remote, austere commander in chief suggested by paintings and history books with a very human but determined individual who vowed not to be ruled by his temper or his social reticence. That Washington had flaws is, of course, not surprising; I was not aware of characteristics the book describes and came away feeling I knew more about the person he was.

Born to a Virginia landowner, the future president was only a boy when his father died. Lacking formal education, Washington hoped to join England's royal navy, but his domineering mother prohibited it. Instead, he earned recognition in the Virginia Regiment during the Indian Wars. There, under command of British Major General Braddock, he "acquired a powerful storehouse of grievances that would fuel his later rage with England," the biographer notes.

When England tried to recoup the expense of the Indian Wars by taxing essential commodities, the colonials revolted. Washington, serving in the Virginia House of Burgesses, was reluctant to foment rebellion and discouraged early acts of insurrection. "Washington knew how indomitable the British military machine was and how quixotic a full-scale revolution would be," observes Chernow. By 1774, even Washington was fed up. He supported bans on imports of English goods and traveled to Philadelphia as a delegate to the First Continental Congress.

Washington was uncomfortable among the other delegates. "The taciturn Washington, at forty-two, found himself in an assembly of splendid talkers who knew how to pontificate on every subject." His silent demeanor inspired confidence and his military prowess was well-known. Patriots looked to him for leadership even as he hoped to avoid "the horrors of civil discord." Nonetheless, bowing to public pressure, Washington accepted command of four companies of militiamen whom he encouraged to train and study military science.

When British frigates disgorged soldiers onto American soil, Washington agreed to command the Continental Army. Worried about appearing to exploit the revolution for personal gain, he refused a salary. His preoccupation with his reputation is a repeating theme throughout this biography. He probably shouldn't have worried; congress failed to pay its army or the officers more often than not, and even when army disbanded in the fall of 1783, there was no money in the federal treasury to pay its officers and Washington, never good with his own budget, was near personal bankruptcy.

Washington's war councils reveal character traits I'd not read about before. His was a consultive style of leadership and he was slow to make decisions without hearing all sides. Once he made up his mind, though, Washington was nearly impossible to dissuade.

From fighting for England during the Indian Wars, Washington knew the British Army could throw nearly endless men and munitions into the fray. By contrast, the Continental Army fought the entire war with severe food shortages, were poorly clothed and sheltered, sometimes armed only with spears and arrows when there was not enough gunpowder. His soldiers were committed to only a year's service. When the army went unpaid, Washington had endless difficulty keeping troops. "For Washington, the failure to create a permanent army early in the war was the original sin from which the patriots almost never recovered," the biographer writes. This influenced Washington's later preference for a strong central government.

Telling of Washington's experiences during famous Revolutionary War battles, Chernow portrays American troops numbering only several thousand battling tens of thousands of English soldiers and mercenaries. If the British army's superior numbers and better armament didn't kill you, the lack of sanitation and disease in the camps likely would. By mid-August of 1775 over a quarter of Washington's troops were sick and outnumbered 4:1, the biographer observes. Conditions at Valley Forge, the battle for Long Island, and the Siege of Yorktown to name only a few, made the eventual victory truly remarkable.

Out of economic necessity, American farmers sold produce to the better-funded British army. Washington deplored wartime plundering of livestock and supplies from citizens and punished his starving men when they stole food. When the French were finally persuaded to join the fight, the dreadful condition of Washington's army dismayed the new ally. The French treated Washington disrespectfully, but loaned much needed money and temporarily dispatched part of their West Indies fleet, making the Yorktown victory one of the war's most decisive.

If the French treated Washington badly, backstabbing was worse among Americans vying for top military positions and he was sabotaged by subordinates. A number of colonists remained loyal to England; others aimed to profit from the war by backing the presumptive winner. Who can forget the story of the spy Benedict Arnold? Chernow writes an interesting chapter that tells how Arnold's wife deceived Washington, Lafayette and Hamilton to assure her traitorous husband's escape.

[Continued next page]

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Washington feared “massive desertion or even full-blown defection to the British” who lured American soldiers to abandon the revolution. Without funds for food and supplies, the cause seemed doomed. Providentially, the Americans began to win in the South, but an empty treasury made Washington anxious that the revolution would fizzle out before winning independence.

Finally, on November 1, 1783, word reached Washington of the treaty that ended the war. He resigned his commission and spent several years working his plantation and other lands before bowing to pressure to lead the Virginia delegation at the Constitutional Convention in 1786. Shays’ Rebellion demonstrated that without substantial reforms a civil war was likely. He went to Philadelphia where, with Ben Franklin too sick to serve, he reluctantly assumed leadership of the convention. The non-partisan role fit Washington’s “discreet nature” well and Chernow writes, that Washington’s leadership “reassured Americans that the delegates were striving for the public good” despite considerable suspicion. Outside the convention hall, he shrugged off the role of impartial arbiter, conversing in tea rooms and taverns with the other delegates and the locals.

After the constitution was ratified, Washington’s name arose as the natural choice for president. He was conflicted, but felt he dared not seek advice for fear of appearing to campaign for election. Lafayette, Hamilton and others endorsed him and the public liked the idea because he had no children to create a dynastic monarchy. Chernow writes that accepting the presidency was Washington’s most painful decision. He estimated that he could serve two years, then hand off the presidency to another; little did he know eight years of “arduous service” would follow the electoral college’s unanimous vote for him.

Washington’s presidency relied on numerous advisors – Adams, Madison, Hamilton, Jay and others. “The hallmark of his administration would be an openness to conflicting ideas,” Chernow writes. He appointed strong, intelligent men to his cabinet and was unafraid to ask for guidance from them. His administration was a “model of smooth efficiency,” although he demanded much of his subordinates. “Washington encouraged the free, creative interplay of ideas, setting a cordial tone of collegiality. He prized efficiency and close attention to detail.” Washington wrote, “Much was to be done by prudence, much by conciliation, much by firmness.” He preferred deliberation to fast decisions, valued silence over speech and hated boasting.

Taxation to pay the government’s debts caused the first big row in the cabinet. Chernow details additional growing pains the new nation faced, including great distress over slavery, relocating the capital, creating a federal treasury, bloodshed with the Indians over land, and foreign policy, to name only a few. Washington aspired to operate above backbiting and political power mongering, seeing his leadership role as “surmounting partisan interests,” but was sorely challenged to meet that ideal.

A “venomous split” between the Federalists and the Republicans pressured the 60-year-old Washington to stay on for a second term, a period complicated by war between the English and the French. Despite a masterful neutrality proclamation, Washington’s cabinet fell prey to manipulation, especially by the French foreign minister. The European war was a reminder of the risks the new nation faced due to a weak army and nonexistent navy. Funds were authorized for ships and soldiers, but that alarmed those who feared “an oppressive military establishment that might be directed against homegrown dissidents.”

That threat manifested in the Whiskey Rebellion of 1791-94, which Washington viewed as a test of the constitution, saying it would show if a few citizens could dictate to the entire nation. “He faulted the insurgents for failing to recognize that the excise law was not a fiat, issued by an autocratic government, but a tax voted by their lawful representatives.” When it was over, he gave clemency to all but two of the rebellion’s leaders, but his actions further alienated him from Madison and Jefferson who condemned Washington’s speech against “societies” acting against the government. They said he had abandoned his nonpartisan ideals and joined the Federalists. Was the outcome that bad? “Given the giant scale of the protest and the governmental response, there had been remarkably few deaths … showing it [the government] could contain large-scale disorder without sacrificing constitutional niceties,” Chernow writes.

By 1797, Washington was truly ready to retire to his beloved Mount Vernon. Instead of addressing congress, he submitted his farewell speech directly to the American citizens, printed first in the Philadelphia newspapers. In his message, he challenged Americans to be better citizens, to support the Union and he continued to endorse a strong central government. “For opponents who had spent eight years harping on Washington’s supposed monarchical obsessions, his decision to step down could only have left them in a dazed state of speechless confusion,” Chernow writes.

The first president’s remarkable “catalog of accomplishments” is crowned by showing “a disbelieving world that republican government could prosper without being spineless or disorderly or reverting to authoritarian rule. In surrendering the presidency after two terms and overseeing a smooth transition of power, Washington had demonstrated that the president was merely the servant of the people,” the biographer concludes.

Several chapters about Washington’s return to Mount Vernon and his later life debunk some of the myths that have risen up around our first president. Chernow writes of Washington’s largely unsuccessful attempt to distance himself from politics, continued budgetary problems on his properties, and his evolving relationship with Jefferson, Hamilton, Knox and others.

I learned a number of new details about the Father of our Country in this long biography and gained a new appreciation for his sacrifices and his determination.

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Editor's Notebook

Everyone, Just Stop Obsessing!

by Gila Hayes

Talking with attorney John Harris earlier this month turned my thoughts to the way people on both sides of the pro-gun/anti-gun divide worry about guns and gun-related issues so much more than life's more common risks—like obesity, careless driving, heavy smoking or excessive alcohol use, to name only a few.

I wonder why an inanimate tool appears at the top of so many "to worry about" lists. Politicians stir up the flocks of *Ovid aries* because rabble rousing on an anti-gun platform raises more money than the hard work and sacrifice required to solve real, human problems. As gun enthusiasts, we all too often elevate firearms – these mere mechanical objects – to iconic status of far greater importance than the useful tool that a gun, realistically, is. It's equipment, folks.

By comparison, responsible people don't leave sharp chef's knives where their children may inadvertently cut themselves, so fortunately, state legislatures have not yet deemed it necessary to pass laws ordering cooks to securely lock up kitchen knives when not in use. There's no background check or waiting period to purchase a power saw but responsible parents don't leave them plugged in and ready to rip where small children can get their hands on them. You don't have to get a license to own and you don't have to register drip torches, power saws and a host of other useful if dangerous tools, even though if misused, all are capable of causing tremendous mayhem.

Parenthetically, I've always wondered why gun enthusiasts name their firearms. I have never understood naming inanimate objects – be that cars or guns. While there's great satisfaction in tools that work well, I doubt many cooks name their best knife, carpenters don't name their power saws and I doubt foresters give nicknames to drip torches used to get rid of underbrush thus saving thousands of acres from wildfire.

I heard an echo of this obsession with guns when Harris wryly observed that asset protection planning is a good idea for people who participate in many common activities: driving, running a business, or, yes, using a firearm. Many aspects of life are fraught with risk. I'd like to see us adopt a more realistic view of firearms as just one of a dozen devices we use in daily life that requires us to balance the risk of use against the tool's beneficial purpose– be that a mower, a car, a rifle, a chain saw, a cleaver or a torch.

There Must be Fifty Ways to Fight a Mugger

Safety is about so much more than carrying guns! While age, infirmity, risks of multiple assailants and other disparity of force issues make firearms our preferred means of self defense, we short change ourselves when we are blind to the many other aspects of personal safety, including my favorite, avoidance, but also de-escalation, verbal intervention, non-gun defense options, physical force and improvised weapons, all of which, I would wager, have been used in defense of innocent life with far greater frequency than firearms.

In highly restrictive situations where concealed carry rights are impinged, members resort to non-gun defense methods. The Network certainly pays for legal representation for members who use pepper spray, a knife, or other legal weapon where they are prohibited from carrying their gun.

A repeating theme in questions I've been answering recently concerns what assistance the Network could or could not provide for a member who shoots in self defense after carrying a gun into one of the multitude of so-called gun free zones. Personal decisions to knowingly violate laws are strictly the business of the individual. Individual choice, though, requires concurrent individual responsibility – the kind of responsibility that you can't pay someone else to take off your shoulders. As an attorney friend once told me, "Before you get on the carnival ride, make sure you can afford the ticket."

Here's the Network's stand on willful violations of the law: We cannot and will not encourage members to break a law by paying attorneys to argue that the scofflaw's actions were justified. Deciding to violate a law is a very slippery slope. If today the Network funds a case where someone was carrying illegally, tomorrow will it be use of a prohibited weapon? Where does it end? The Network was founded and we have worked tirelessly to build up the Network for the legal defense of legitimate use of force in self defense by law-abiding Americans. That is our mission. If we funded legal defense of willful violations of the law, the Network itself would soon be outlawed and unable to fulfill that important primary mission. Let's not go there.

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Marty Hayes, President

J. Vincent Shuck, Vice President

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Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.