

WHITE PAPER - 1001

TRANSFERRING AMMUNITION IN NEW YORK: WHAT YOU NEED TO KNOW

PART 5: Transferring Ammunition Feeding Devices; Transferring Ammunition; Bequests of Assault Weapons to Police Officers

SUBPART 2: Transferring Ammunition in New York: What You Need To Know

RECAP

In the previous post, **Subpart 1 of Part 5** of this multi-series Article on private property and bequests of firearms we discussed the issue of detachable magazines. We said a New York gun owner may be in lawful possession of a perfectly legal weapon, for example, a Glock 17 – a weapon that is perfectly legal to own because a Glock 17 isn't classified as an *assault weapon* under **the New York Safe Act**. The Glock 17 isn't, then, a banned weapon in New York. Nonetheless, a component of the Glock 17 – a critical part of the Glock 17 – the magazine – isn't legal. The magazine of the Glock 17 is defined as a large capacity ammunition feeding device under New York law because it is capable of holding more than 10 rounds of ammunition. So, a gun owner may lawfully transfer the Glock 17 to another eligible gun owner in New York, whether by sale, or by gift, or by bequest, but cannot also lawfully transfer the magazine that was manufactured with it. In fact, the original gun owner cannot lawfully retain ownership of the magazine either. He must dispose of it through a lawful transfer to someone outside New York, or he must transfer it to licensed gun dealer, or he must surrender it to the police. Thus, *the drafters of the Safe Act sneakily outlaw an entire category of firearms that are not also classified as assault weapons*. Any semiautomatic handgun, such as the popular Glock 17, becomes nothing more than a fancy and expensive club or paperweight under **the Safe Act** because the gun is manufactured with a magazine that is capable of holding a certain number of rounds – over ten rounds – which **the Safe Act** proscribes. For, in the case of semiautomatic handguns, possession by a New York resident of any magazine capable holding more than ten rounds of ammunition – whether or not the gun owner has in fact loaded the magazine with more than ten rounds – is, *ipso facto*, illegal even though the gun itself is not.

So, the law-abiding New York gun owner must be ever mindful of both the firearms he or she possesses and the component parts of those firearms. A firearm may, in fact, be lawful to own and to transfer *but* a component of that firearm may not be.

Do we fall into the same quagmire with ammunition? Let' see.

INTRODUCTORY REMARKS

We have looked at New York law in depth to uncover the traps and snares that can befall the unwary law-abiding gun owner. Since New York law has much to say about guns and components of guns and has much to say about the transfer of firearms, whether by sale or by bequest or by gift, we assumed New York law would have much to say about the disposition of

ammunition as well. And, it does, but issues remain.

COMMERCIAL TRANSACTIONS INVOLVING AMMUNITION

The matter of transactions involving ammunition is found and dealt with in *Section 50 of the New York Safe Act*. *Section 50 of the NY Safe Act is codified in the Penal Code of New York: NY CLS Penal § 400.03, titled, "Sellers of ammunition."* This is a brand new section of the Penal Code of New York. *Section 7 NY CLS Penal § 400.03, of says, in pertinent part, "No commercial transfer of ammunition shall take place unless a licensed dealer in firearms or registered seller of ammunition acts as an intermediary between the transferor and the ultimate transferee of the ammunition for the purposes of contacting the statewide license and record database pursuant to this section. Such transfer between the dealer or seller, and transferee must occur in person."*

So, what does this Section mean? *Section 50* basically means that, in order to comply with *the NY Safe Act*, anyone in New York who wishes to engage in a "commercial transaction" involving ammunition must do so through either through a licensed gun dealer or through a registered seller of ammunition. The key phrases here are 'commercial transaction,' 'licensed dealer in firearms,' and 'sellers of ammunition.'

In order, now, to get a handle on *Section 50 of the New York Safe Act*, we need first to ask, "What is a 'commercial transaction?'" The expression, 'commercial transaction,' as it appears in *Section 50 of the New York Safe Act*, refers specifically to the commercial transfer of ammunition from one person to another.

But, the phrase, 'commercial transaction,' while alluded to in *Section 50 of the NY Safe Act*, as *Section 50 of NY Safe is codified in the Penal Code of New York*, isn't itself defined in the New York Safe Act or in any Section of the Penal Code of New York. But the expression does have a general meaning in law. You will, in fact, find the phrase 'commercial transaction' and similar phrases alluded to in many Sections of *New York's Consolidated Laws Service*, especially in the *New York Uniform Commercial Code sections of New York's Consolidated Laws Service*. *New York's Consolidated Laws Service* embodies the totality of New York's State Statutes.

But the phrase, 'commercial transaction,' specifically, is not, unfortunately, ever explicitly defined in any section of New York's Consolidated Laws Service. Yet, the meaning of the phrase is extremely important to you, the lawful owner of a firearm, who, obviously, has need for ammunition and who, in fact, will require ammunition for your firearm if the firearm is to be of any practical use to you. And you will certainly acquire ammunition for it: first when you purchase a firearm or firearms, and, then, several times thereafter.

Black's Law Dictionary provides, perhaps, the single most concise and apt description of the phrase 'commercial transaction' although *Black's Law Dictionary* uses the word 'activity,' 'not transaction,' in the definition. The word, 'activity,' is essentially synonymous with the word, 'transaction.' So, then, what does the phrase, 'commercial activity,' mean?

The phrase, 'commercial activity' means, according to *Black's Law Dictionary, Ninth Edition (2009)*, "activity,' such as operating a business, conducted to make a profit." Now, that definition suggests a 'sale.' And, *Black's Law Dictionary*, also defines 'sale' with particularity. The legal definition of 'sale' is 'the transfer of property or title for a price,' or 'the agreement by which such transfer takes place.' And there are four elements to an agreement, as, for our

pertinent example, an agreement to purchase ammo. And those four elements are: ‘(1) parties competent to contract, (2) mutual assent, (3) a thing capable of being transferred, and (4) a price in money paid or promised.’”

What, now, can we conclude from the definition of ‘*commercial transaction*,’ as used in *Section 50 of the New York Safe Act, as codified in the Penal Code of New York: NY CLS Penal § 400.03*? We can infer that *Section 50 of the NY Safe Act, as codified in NY CLS Penal § 400.03* is referring only to *business sales (business transactions)* or, more generally, to *some sort of trade for or exchange of something of value other than money but which still involves a business transaction from the seller of ammunition to a competent buyer of it.*

Now that we have some idea what the phrase ‘*commercial sale*’ – or, more generally, a ‘*commercial transaction*’ – is, we need to consider what a ‘*dealer in firearms*’ or ‘*registered seller of ammunition*’ means. You won’t, though, find the answers in *the NY Safe Act*. Nonetheless, the answers are found elsewhere in *the New York Penal Code*. The phrase, ‘*dealer in firearms*,’ is defined with particularity in the *Penal Code of New York: NY CLS Penal § 265.00(9) (Definitions)*: ‘*Dealer in firearm means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any assault weapon, large capacity ammunition feeding device, pistol or revolver.*

And, what does the expression, ‘*Seller of Ammunition*’ mean? ‘*Seller of Ammunition*’ is also defined in *the Penal Code of New York: NY CLS Penal § 265.00(24) (Definitions)*, ‘*Seller of ammunition means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling or keeping ammunition.*’

So, with these definitions in hand, we have some idea what *Section 50 of the New York Safe Act* is telling us. *Section 50 of the NY Safe Act* sets forth in detail what a *licensed Dealer in Firearms* or a *Registered Seller of Ammunition* must do when engaging in ‘*commercial transactions*’ involving ammunition and, indeed, *Section 50 of NY Safe* also provides guidance to the New York gun owner, who wishes to purchase ammunition.

Now, a New York resident who holds a valid handgun license and wishes to purchase ammunition for that handgun may, of course, purchase ammunition directly from a licensed gun dealer or a registered seller of ammunition, whose duties, in transacting the business of selling ammunition to a lawful buyer of it – or in transacting business through the acceptance of something of value for that ammunition other than money – are set forth with particularity in *Section 50 of NY Safe, as codified in NY CLS Penal § 400.03*.

Can The Holder Of A Valid New York Handgun License Or, Where Required, Can The Holder Of A Valid New York Rifle And Shotgun Permit Lawfully Sell Ammunition To Another Holder Of A Valid New York Handgun License Or Holder Of A Valid Rifle And Shotgun Permit If Neither Person Is A Licensed Gun Dealer Or Registered Seller Of Ammunition? Or Must The Parties To That Transaction Employ The Services Of A Licensed Dealer In Firearms Or Registered Seller Of Firearms, Acting As An Intermediary, In Order To Complete That Transaction Lawfully?

It may appear, from our analysis of New York law, that any transaction pertaining to sales of ammunition for money or for something of value other than money – as in a “*swap*” or

"trade" of ammunition for other ammunition or for some other thing of value, whether that item for value be an object given in trade to another or service provided to another – constitute *"commercial transactions."* If so, then consistent with the *New York Safe Act*, the parties who wish to execute these transactions *must do so through the intermediary of a licensed dealer in firearms or through a registered seller of ammunition.* Still, a legal issue arises whether such transactions between persons who are not in the business of selling firearms or ammunition -- that is to say -- are not *in the business of* selling firearms or ammunition as a regular activity upon which their livelihoods depend -- constitute *commercial transactions.* And emphasis is here on the word, *'commercial.'* For, the phrase *'commercial activity,'* as defined in *Black's Law Dictionary*, is limited to activities *"such as operating a business, conducted to make a profit."*

So, if holders of valid New York handgun licenses or, where, required, holders of valid New York rifle and shotgun permits, wish to sell ammunition to each other, and those holders of valid New York handgun licenses or holders of valid New York rifle and shotgun permits *are not also in the business, conducted to make a profit, selling guns or ammunition,* then, do these holders of valid New York handgun licenses still have to utilize a licensed dealer in firearms or registered seller of ammunition in order to execute and complete the transaction lawfully? Well, we are stipulating here that the holders of valid New York handgun licenses or, where required, holders of valid New York rifle and shotgun permits, are not themselves, in this instance under discussion, either licensed dealers in firearms or registered sellers of ammunition and they are not in the business of selling ammunition to make a profit even if the particular transaction in question is one where one party, the seller of the ammunition, is in fact making a profit on that one particular transaction. *New York law is unclear on whether that transaction constitutes a commercial transaction since, according to Black's Law Dictionary, a commercial activity has two distinct elements: one of which involves the sale of something in order to make a profit and the second of which embraces the notion that one is selling an item in the usual course of conducting a business. This suggests that the sale of ammunition isn't a "one-off event."* So, given the vagueness inherent in New York law, *the better practice is for the parties here to engage the services of a licensed firearms dealer or registered seller of ammunition* because, if the issue arises in a court of competent jurisdiction in New York, the court may opine that it is enough that, if one person sells ammunition to another person, that sale amounts to a *'commercial transaction'* even if it is only a *"one-off sale."* That is to say, the party doing the selling of ammunition to another isn't doing so in the ordinary course of business because the seller of the ammunition isn't himself or herself engaged in the business of selling ammunition for a livelihood. That fact may not be consequential to a New York court. The court may conclude that the transaction still amounts to a *commercial transaction* or *commercial activity* insofar as an exchange of ammunition for money or for something else of value has taken place and one of the parties has made *a profit* from that sale of ammunition even if the seller is not engaged in selling ammunition for a living.

But, then, finding a *licensed seller of firearms* or *registered seller of ammunition* who is willing to act as an intermediary to such a transaction raises another hurdle. And, we do not have a definitive answer for you on that score either. For, it is entirely up to the *licensed dealer in firearms* or *registered seller of ammunition* to agree to act as an intermediary to the transaction. And, that *licensed dealer in firearms* or *registered seller of ammunition* may very well charge the parties a fee for his or her services if that person is willing to do act as an intermediary at all because no New York Statute exists that requires any *licensed dealer in firearms* or *registered seller of ammunition* to act as an intermediary to a commercial

transaction involving the transfer of ammunition between two parties who are not themselves also licensed dealers of firearms or registered sellers of ammunition. And, if a *licensed dealer in firearms* or *registered seller of ammunition* does agree to act as an intermediary, New York law does not specify what that *licensed dealer in firearms* or *registered seller of ammunition* may charge in fees in order to make that commercial transaction in ammunition lawful. A *licensed dealer in firearms* or *registered seller of ammunition* may charge a fee that is so exorbitant that the transaction provides no benefit to the seller of the ammunition.

IMPORTANT NOTE: In a few jurisdictions, including New York City, a resident must also obtain a rifle and shotgun permit in order to lawfully possess a rifle or shotgun. However, whether or not a jurisdiction in New York requires a person to hold a valid permit to possess a rifle or shotgun, the parties who wish to engage in a commercial transaction involving ammunition -- whether the commercial transaction involves the transfer of rifle ammunition, shotgun ammunition, or handgun ammunition – should exercise caution. This means that a person who wishes to sell ammunition to another – assuming the parties are not themselves licensed dealers in firearms or registered sellers of ammunition should always engage a licensed dealer in firearms or a registered seller of ammunition as an intermediary for that commercial transaction, involving handgun ammunition, shotgun ammunition, or rifle ammunition. This will serve to obviate any possibility that the transaction may otherwise be unlawful under New York law. And, if the sale of ammunition is taking place in New York City, be advised that the parties must utilize the services of a licensed dealer in firearms only, not a registered seller of ammunition. More on this below.

WHAT ABOUT BEQUESTS OR GIFTS OF AMMUNITION?

Can A Holder Of A Valid New York Handgun License – Or Where Required, Can the Holder Of A Valid New York Rifle And Shotgun Permit – Lawfully Make A Gift Of Ammunition Or Bequest Of Ammunition To Another Holder Of A Valid New York Handgun License Or Holder Of A Valid Rifle And Shotgun Permit Without Employing A Licensed Gun Dealer Or A Registered Seller Of Ammunition, Acting As An Intermediary To That Transaction?

Now suppose you, as New York resident and holder of a valid New York handgun license, or holder of a valid rifle and shotgun permit wish to give or bequeath ammunition that you own and possess to another holder of a valid New York handgun license or holder of a valid New York rifle and shotgun permit; or, suppose you as a New York resident and holder of a valid New York handgun license or holder of a valid New York rifle and shotgun permit wish to take possession of ammunition from another New York resident, who also holds a valid New York handgun license or who also holds a valid New York rifle and shotgun permit and you wish to take possession of the ammunition through gift or bequest, rather than through a purchase and sale, but the presenter of that gift or bequest of ammunition is not also a licensed gun dealer or registered seller of ammunition. Must the transfer of ammunition still be conducted through the intermediary of a licensed dealer in firearms or registered seller of firearms if no commercial transaction is being entertained?

Now, *Section 50 of NY Safe* makes clear that, *if you are not also a registered seller of ammunition or a licensed gun dealer, who sells guns and/or ammunition for a livelihood, you are – in order to be absolutely prudent – only permitted to sell your ammunition*

through a registered seller of ammunition or through a licensed gun dealer, acting, then, as an intermediary for the transaction. You are, in our analysis of New York law, prohibited from selling your ammunition directly to another New York gun owner, whether or not that gun owner has a valid New York license to own and possess a handgun. And, if you wish to purchase one or more boxes of ammunition from someone other than a licensed gun dealer or registered seller of ammunition, you cannot lawfully do so. You are only lawfully permitted to purchase one or more boxes of ammunition from a licensed gun dealer or from a registered seller of ammunition. So, selling or exchanging ammunition in New York is no different than selling or exchanging a handgun to someone in New York, except for one caveat. In the case of selling or exchanging a handgun in New York, the transaction must be accomplished only through a licensed gun dealer. And, in the case of buying or selling ammunition the transaction can only be accomplished through a registered seller of ammunition or through a licensed gun dealer. You cannot lawfully buy or sell a handgun from a party who is a registered seller of ammunition and who is not also a licensed gun dealer. So, note the difference here.

Moreover, note a further caveat involving handguns. A New York resident cannot lawfully transfer a handgun to another New York resident whether or not the transfer is in the nature of a commercial transaction -- that is to say, whether or not the transaction is one that involves a sale or purchase of a gun for money or for something else of value. Any kind of transfer of a handgun, whether by sale, gift, or bequest, must be handled -- unless, it involves an out-of-State transaction, which brings into play a host of other laws, both State and Federal -- by and through a licensed gun dealer.

The problem encountered with ammunition is, however, different because some transactions don't fall within the rubric of "*commercial transactions*" and the issue is whether a law-abiding New York resident and holder of a valid New York handgun license or holder of a valid New York rifle and shotgun permit may transfer ammunition *directly* to another law-abiding New York resident and holder of a valid New York handgun license or holder of a valid New York rifle and shotgun permit without going through a licensed gun dealer or registered seller of ammunition if the transfer of ammunition doesn't involve a *commercial transaction*, namely, and particularly, if the transfer of ammunition doesn't involve a *sale of ammunition for money* or, otherwise, does not involve a *transfer or sale of ammunition for something else of value, if other than money*.

Now, the notion of a transfer of ammunition for something other than money -- which, by definition, constitutes a commercial (or business) transaction, even if one or both parties aren't in the business of selling firearms and ammunition (at least as appears to be the case in New York, although, not strictly speaking as set forth in Black's Law Dictionary which says that a commercial activity involves not merely a "one-off" sale but a sale of something in the course of conducting one's business) -- still raises the issue whether a straightforward "swap" or "trade" -- say, one box of ammunition by one party for a box of some other kind of ammunition by the other party -- constitutes a commercial transaction in the legal sense. Since boxes of ammunition have value, an argument can be made that the "swap" of like kind things does amount to a commercial transaction. On the other hand, one might also reasonably argue that "swaps" of ammunition for ammunition is not the kind of transaction that, in law, is considered to be a commercial transaction, because no conventional "profit" is made through the transaction. So, then, if, say, I, who am a law-abiding citizen and resident of New York and holder of a valid New York handgun license, happen to have a box of .38 caliber special ammunition and I wish to swap that box of ammunition for a box of .

357 caliber Magnum ammunition that another law-abiding citizen and resident of New York and holder of a valid New York handgun license happens to have, do the two of us have to exchange those boxes of ammunition through a third-party licensed gun dealer or third-party registered ammunition seller in order to be in full compliance of New York law? We must do so if a "swap" of one box of ammunition for another box of ammunition is considered to be a commercial transaction. We may not have to do so, though, if a swap of one box of ammunition for another box of ammunition is not considered, under New York commercial law, to be in the nature of a commercial transaction, as the phrase 'commercial transaction' is understood in the law. We do not, unfortunately, have a clear answer for you. All we can do here is define the issue for you.

So, Then, What Is The Bottom Line On Those Transactions That Clearly Are Not In The Nature Of True "For Profit" Commercial Transactions? Can I, As A New York Resident, Who Holds A Valid New York Handgun License, Or, Where Required, Holds A Valid New York Rifle And Shotgun Permit, Lawfully Make A Gift Of Or Bequest Of Ammunition Directly To Another New York Resident, Who Also Holds A Valid Handgun License Or Who Otherwise, As May Be Required, Holds A Valid New York Rifle And Shotgun Permit, Without Using The Services Of A Licensed Dealer In Firearms Or Registered Seller Of Firearms, Or Must My Gift Of Ammunition Or Bequest Of Ammunition Always Be Completed Through A Licensed Gun Dealer Or Registered Seller Of Ammunition, Acting As An Intermediary For That Transaction, Just As A Commercial Sale Is Handled, So That The Transaction May Be Considered Lawful Under The New York Penal Code?

What does *the NY Safe Act* itself say about transactions, involving transfers of ammunition from one New York resident to another, where those transactions do not amount to a purchase and sale of ammunition? We have combed *the New York Safe Act* for an answer. What we have found is, that, while there is much law in *the New York Safe Act* directed to transfers of firearms and directed to so-called 'high capacity ammunition magazines,' you won't find a Section in the *NY Safe Act* – try as you might – *other than Section 50 of the Act* – that discusses simply the transfer of ammunition between New York residents who are licensed gun owners. And *Section 50 of the New York Safe Act* is the only *Section* that comes close to providing an answer for us. But that *Section* only talks about transfers of ammunition that amount to 'commercial transactions.' So the issue in *Section 50 of the New York Safe Act pertaining to the transfer of ammunition* explicitly and solely revolves around those kinds of transactions called 'commercial transactions.' So, there we are, faced with ambiguity and vagueness about what a holder of a valid New York handgun license, who is not also a licensed dealer in firearms or registered seller of firearms, if that holder of a valid handgun license wishes to transfer ammunition to another holder of a valid New York handgun license.

What Are The Penalties For Violation Of Section 50 Of The New York Safe Act?

what are the penalties for violation of *Section 50 of the New York Safe Act as codified in NY CLS Penal § 400.03(7)*? We look to *NY CLS Penal § 400.03(8)*, which sets forth, 'A seller of ammunition who fails to register pursuant to this section and sells ammunition, for a first offense, shall be guilty of a violation and subject to the fine of one thousand dollars and for a second offense, shall be guilty of a class A misdemeanor. A seller of ammunition that fails to

keep any record required pursuant to this section, for a first offense shall be guilty of a violation and subject to a fine of five hundred dollars, and for a second offense shall be guilty of a class B misdemeanor, and the registration of such seller shall be revoked.'

You will notice that neither *NY CLS Penal § 400.03(7)* nor *NY CLS Penal § 400.03(8)* addresses penalties for transfers of ammunition between “ordinary” licensed New York gun owners. And neither one of those Penal Code Sections talks about any transaction other than a ‘*commercial transaction*’ – that is to say – a business transaction involving, then, the sale of ammunition for money or, otherwise, involving, then, the sale of ammunition for something else of value. But, penalties exist in other Sections of *the Penal Code of New York* for anyone who does not comply with New York firearms and related items, including ammunition and fireworks violations. But, that issue is beyond the scope of this article.

NY CLS Penal § 400.03(7) makes quite clear that, if a *commercial transaction* involving ammunition is taking place or is contemplated to take place, then a *licensed dealer of firearms* or *registered seller of ammunition* must act as an intermediary for and to that transaction. *But*, if the transfer does not involve a *commercial transaction*, as, for example, when one wishes to make a gift of ammunition to a friend, or a bequest of ammunition to a spouse or to the children, then *NY CLS Penal § 400.03(7)* is inapplicable. So, *does there exist any other Section in the New York Consolidated Laws Service that makes illegal a transfer of firearm ammunition that does not constitute a commercial transaction?* We attempted to find an answer to that question. We looked at the entirety of *Article 265 of the Penal Code of New York*.

Article 265 of the Penal Code of New York, titled, “*Firearms and Other Dangerous Weapons*” is an umbrella for every State Statute dealing specifically with the misuse of weapons. And *Article 270*, titled, “*Other Offenses Relating to Public Safety*” deals, among other things, with fireworks. But, nothing exists in either *Article 265* or *Article 270* -- *at least that we have been able to find* -- that deals with transfers of ammunition from one person to another when the transaction is not a business transaction -- that is to say -- when the transaction is not a commercial transaction.

The Crux of the Problem and Example

So, let’s drill down into this problem further. *Let’s say I am a licensed handgun owner in New York, and I wish to transfer two boxes of .38 caliber ammunition to another New York resident who also holds a valid New York handgun license. And let us say that I wish to bequeath two boxes of .44 caliber ammunition each to my son and daughter who also hold valid handgun licenses. And, let us say, further, that I wish to sell 5 boxes of .9mm cartridges to an acquaintance of mine who also holds a valid New York handgun license. We know that, by definition, bequests or gifts of ammunition are not commercial transactions and those sales of ammunition do amount to commercial transactions. So, in my example, if I am selling ammunition – in this case to an acquaintance – I cannot lawfully do so directly because the sale of ammunition is by definition a ‘commercial transaction.’ So, I can only sell my ammunition, lawfully, to another person through a New York licensed gun dealer or registered seller of ammunition. New York law is very clear about that. But, what does New York law say about transfers of ammunition that do not amount to a commercial transaction – that is to say – a sale of ammunition for money or for some other thing of value? If I wish, in my example, simply to make a gift of boxes of ammunition to a friend and I wish to bequeath several other boxes of ammunition to my son or daughter, can I do*

so without going through a licensed gun dealer or seller of ammunition? Section 50 of the New York Safe Act is silent on that question. So, what must I do? What must I know about transfers of ammunition that do not involve a transfer of ammunition qua 'sale' of ammunition or exchange of ammunition for some other thing of value? In the absence of an explicit law dealing with transfers of ammunition that do not amount to a "commercial transaction," the New York resident is, in our estimate, permitted to make the transfer of ammunition directly to another New York resident, but, only so long as that resident isn't a convicted felon or under a recognized disability as defined in the law. It doesn't even appear, at first glance, that the transferee – the person who is receiving the ammunition as a gift or through bequest, say – needs to have a valid firearm's license or that the ammunition transferred to another must be ammunition specifically designed for a firearm that the recipient of the ammunition owns. So a good rule of thumb, and the better and safer practice here is that you should not attempt to make a gift of ammunition or a bequest of ammunition to another New York resident if a licensed gun dealer or registered seller of ammunition could not lawfully transact business with the party who wishes to purchase ammunition. That is to say, a licensed gun dealer or registered seller of ammunition cannot lawfully sell ammunition to a person who, under New York law, is incapable of owning and possessing a firearm. So, you, the holder of a valid handgun license should not attempt to transfer ammunition, whether by gift or bequest, to another, who, as well, is incapable of owning and possessing a firearm. As a final note here: Keep ever present in your mind, too, that, if ammunition cartridges are "microstamped," they can always be traced back to you.

Special Requirements for New York City Residents Who May Wish to Transfer Their Ammunition to Another Person

Firearms regulations, including those for ammunition -- quite apart from State Statutes -- are set forth with particularity in New York City and they are even more restrictive, if somewhat less ambiguous and vague, than those operating throughout the State. We begin with one clear fact: A New York resident who lives in the City of New York cannot own and possess *any* firearm – rifle, shotgun, or pistol – unless that person holds a valid license (for that handgun) or valid permit (for that rifle or shotgun). And New York City, as a municipal corporation, has authority under State Statute to regulate firearms where State law doesn't trump such rules and regulations. Under *NY CLS Gen Mun § 139-d* “*Any municipal corporation may by local law or ordinance regulate the storage, possession and display of firearms, ammunition or explosives.*” New York City ordinances are even more draconian than those for the State. In particular, New York City regulates transfers of rifles, shotguns, pistols, and ammunition. If you live in New York City and you own and possess firearms and ammunition for those firearms, under no circumstance should you attempt to transfer to ammunition to another person. Of particular importance here is *Municipal Code 38 RCNY § 1-03*. Two subsections are particularly important in the matter of ammunition transfers. *38 RCNY § 1-03(k)* sets forth that, “*No ammunition suitable for use in a rifle of any calibre, or for a shotgun of any gauge, shall be sold, given away, or otherwise disposed of to any person who has not been issued a rifle/shotgun permit and a certificate of registration, and who does not exhibit the same to the dealer at the time of purchase. Rifle or shotgun ammunition shall not be sold to any such person except for the shotgun or for the specific calibre of rifle for which the certificate of registration has been issued.*”

What *38 RCNY § 1-03(k)* means is that a person who resides in New York City who wishes to obtain ammunition for one's rifle or shotgun or wishes to transfer to another person ammunition for a rifle or shotgun who also resides in New York City, that person must do so

through the intermediary of a licensed gun dealer. So, the requirement of using a licensed gun dealer to handle the transfer of ammunition for rifle and shotgun is not limited to those transfers considered to be “*commercial transactions*” – sales of ammunition for money or for something of value other than money. *Gifts or bequests of rifle and shotgun ammunition can only lawfully be made through a licensed gun dealer. That means that one gun owner cannot simply and directly transfer ammunition to another gun owner, unless at least one gun owner is, himself or herself, also a licensed gun dealer.*

But, Can I Still Give Or Bequeath Handgun Ammunition To Another Gun Owner Without Using A Licensed Gun Dealer To Make The Transfer If New York City Rules Are Only Talking About Transfers Of Ammunition Between Gun Owners, Not Involving Rifles And Shotguns?

The answer is a qualified, “no.”

Lest anyone think that the rule and regulations of New York City apply only to transfers of ammunition for rifles and shotguns because of the language of *38 RCNY § 1-03(k)*, we must read that New York City Rule in accordance with other Rules as set forth in *38 RCNY § 1-03 et. seq.* In particular, *38 RCNY § 1-03(l)* says, “*The Rifle/Shotgun Section advises all dealers that certain ammunition calibres are considered to be interchangeable between rifles and handguns. Sales of ammunition in these calibres shall be recorded by dealers.*” So, notwithstanding that *38 RCNY § 1-03(k)* discusses transfers of rifle and shotgun ammunition only – *38 RCNY § 1-03(l)* *does not limit the discussion only to ammunition for rifles and shotguns.* *38 RCNY § 1-03(l)* says that for those rifles that are capable of using handgun ammunition – for example, carbines – any and all kinds of transfers of that ammunition require, too, require a licensed gun dealer to effectuate the transfer. Note too: *you cannot effectuate a transfer of ammunition falling within the purview of 38 RCNY § 1-03(k) and 38 RCNY § 1-03(l) through a registered seller of ammunition because the Rules of New York City specify that the transfer must be effectuated only through a licensed gun dealer because the New York City Rules specify that transfers of ammunition must be handled through a licensed gun dealer. Since the New York Rules do not mention the transferring of ammunition through a registered seller of ammunition, unlike the New York State Penal code does, it would be wrong to conclude that a transfer of ammunition can lawfully be effectuated through a registered seller of ammunition as well as through a licensed gun dealer within the jurisdiction of New York City if the registered seller of ammunition isn't also a licensed gun dealer.*

*So, when read together, the City of New York makes abundantly clear that transfers of ammunition – whether for rifle, shotgun, or for rifles that can accept handgun ammunition – and whether by sale, gift or bequest, or even if the transfer involves trashing ammunition – must all be handled through a licensed dealer in firearms. So, if you are a licensed gun owner who resides in New York City or in a few other jurisdictions that require a person to obtain a rifle and shotgun permit, additional rules and regulations may exist that define how you may transfer ammunition for those specific weapons and those rules apply *whether or not the transfer of ammunition falls within the rubric of "commercial transactions."**

But Can I Transfer Handgun Ammunition To Another Person Without Using The Intermediary Of A Licensed Gun Dealer If The Particular Handgun Cartridges Cannot Conceivably Also Be Used For Any Kind Of Rifle Or Shotgun Or

Carbine?

The rules and regulations of the City of New York are silent on the matter that this question raises. But, since the Rules of the City of New York suggest an intent to regulate all types of disposition of ammunition and because, at least in theory, any handgun cartridge might conceivably be adopted for use in some kind of rifle or shotgun, the wiser approach here, for New York City residents, is this: never attempt to transfer ammunition of any kind to another person in New York City except through the intermediary of a licensed gun dealer.

What About "Blank" Cartridges? Are "Blank" Cartridges Considered Ammunition?

The answer is, "no." *Blank cartridges* are not defined as 'ammunition' in the Penal Code of New York, but *blank cartridges* are specifically dealt with in the Penal Code. *Blank cartridges* fall under the purview of *NY CLS Penal § 270.00, which deals with fireworks*. And the first sentence of *NY CLS Penal § 270.00(1)* reads, in pertinent part: "Definition of 'fireworks' and 'dangerous fireworks'. The term 'fireworks,' as used in this section, is defined and declared to be and to include any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are used, firecrackers, sparklers or other combustible or explosive of like construction, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance and the term "dangerous fireworks" means any fireworks capable of causing serious physical injury. . . ."

NY CLS Penal § 270.00(1)(a)(v) further says, although somewhat repetitively, "The expression, Definition of "fireworks" and "dangerous fireworks". (a) The term "fireworks," as used in this section, includes: any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are used, firecrackers, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance, other than sparkling devices as defined in subparagraph (vi) of this paragraph. . . ."

A person must obtain a permit in order to possess or use anything classified as 'fireworks,' or 'dangerous fireworks,' which includes, then, blank cartridges and the guns for those cartridges. NY CLS Penal § 405.00 sets forth the requirements for issuance of fireworks permits.

The penalty for unlawful use or possession of anything falling within the rubric of *NY CLS Penal § 270.00*, such as *blank cartridges and blank gun cartridges*, is set forth in *NY CLS Penal § 270.00(2)(a)*: "(a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00; (i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor; (ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous

fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor. . .
.”

So, Does A Loophole Exist In The Law That Permits A Person To Transfer Ammunition To Another Person So Long As The Transfer Does Not Involve A Sale Or Exchange For Something Of Value, That Is To Say, A Commercial Transaction?

We have combed New York law for a blanket provision pertaining to the transfer of ammunition between two law-abiding citizens and residents of New York that does not involve a *commercial transaction*. We have provided you with the laws you should be aware of. Curiously, at one point in time, at least, New York legislators that obviously oppose gun ownership did propose a bill that would clearly outlaw any transfer of ammunition between individuals who are not licensed gun dealers or registered sellers of ammunition. A *New York Assembly Bill, 1997 Bill Text NY A.B. 1585*, if enacted might have come close to closing what may be construed as a loophole for the transfer of handgun ammunition that does not require a third party *licensed gun dealer or registered seller of ammunition*. *A.B. 1585* would have added the following provision to the New York Penal Code, namely, *NY CLS Penal § 265.17*, which reads: “[A] > *'CRIMINAL SALE OF AMMUNITION. 'A PERSON IS GUILTY OF CRIMINAL SALE OF AMMUNITION WHEN HE SELLS, EXCHANGES OR GIVES AMMUNITION FOR A PISTOL OR REVOLVER WITHOUT THE PURCHASER PRESENTING A VALID LICENSE FOR SUCH FIREARM PURSUANT TO <A>*” That proposed bill, if enacted, closes the loophole in one area at least: the type of transfer made. For the Assembly bill applies to all transactions, not simply commercial transactions. But, if the transfer of ammunition doesn't involve a commercial transaction, there is still the issue whether a bequest of ammunition or a gift of ammunition may be undertaken between two holders of valid handgun licenses without necessitating the use of a licensed gun dealer or registered seller of ammunition as an intermediary to effectuate a lawful transaction.

Where Does All This Leave The New York Gun Owner And Holder Of A Valid New York Handgun License Who Wishes To Transfer Handgun Ammunition To Another Holder Of A Valid New York Handgun License?

It would appear at first glance that, since *the Penal Code of New York* is silent on the issue of some sorts of transactions involving ammunition -- namely, those that are not commercial transactions -- such transactions that are not clearly commercial in nature that do not require a licensed gun dealer or registered seller of ammunition to effectuate the transaction. But, since record-keeping chores are required of *licensed gun dealers and registered sellers of ammunition*, and, as no such record-keeping chores are required of the average holder of a valid handgun license who is not also a licensed gun dealer or registered seller of ammunition, *the question remains whether a lawful transfer of ammunition could ever be made by two holders of valid handgun licenses without necessitating the mediation of a licensed gun dealer or registered seller of ammunition to handle the actual transfer*. So, the bottom line here is this: be mindful that, except in certain jurisdictions within the State of New York, such as, for example, the City of New York, the direct transfer of handgun ammunition between two holders of valid handgun licenses and the lawful transfer of rifle and shotgun ammunition between two New York residents, neither one of whom is under a disability due to age or circumstances that precludes that person from owning firearms and possessing ammunition of any kind, *the transfer of ammunition that does not involve a commercial sale, is probably*

lawful between those two individuals and, so, does not, require the interposition of a licensed gun dealer or registered seller of ammunition to effectuate the lawful transfer between the two parties. But, and this is an important 'But,' the police who get wind of such a non-commercial transaction, might still beg to differ with you as to the lawfulness of that transaction, thus making the issue a very good one and one of first impression for the courts of New York.

Oddly enough, the matter of possession and transfer of blank cartridges and guns for blank cartridges are treated more unambiguously, if, curiously, more stringently than is the matter of possession of actual ammunition cartridges. For, a resident of the State of New York cannot possess blank cartridges or possess a gun for those blank cartridges absent a permit to possess blank cartridges and a blank cartridge gun. And *the Penal Code of New York, NY CLS Penal § 270.00(2)*, makes abundantly clear that no one – *absolutely no one*, can offer for sale, simply furnish, or even expose for sale anything defined in *NY CLS Penal § 270.00* as fireworks, absent a permit to do so or otherwise falls within a clearly demarcated exception. *NY CLS Penal § 270.00(2)(a)(i through iv)*, sets forth, in substantially clear and unambiguous language, “*Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00 of this chapter:*

(i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

(ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor;

(iii) any person who shall possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation;

(iv) any person who shall offer or expose for sale, sell or furnish, any dangerous fireworks, fireworks or sparkling devices to any person who is under the age of eighteen is guilty of a class A misdemeanor.”

And, *NY CLS Penal § 270.00(2)(b)* sets forth, “*A person who has previously been convicted of a violation of subparagraph (iv) of paragraph (a) of this subdivision within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.”*

NY CLS Penal § 400.10(1)(a) says, “*Any owner or other person lawfully in possession of: (i) a firearm, rifle or, shotgun who suffers the loss or theft of said weapon; (ii) ammunition as well as a firearm, rifle or shotgun who suffers the loss or theft of such ammunition as well as a firearm, rifle or shotgun; or (iii) ammunition and is a dealer in firearms or seller of ammunition who suffers the loss or theft of such ammunition shall within twenty-four hours of the discovery of the loss or theft report the facts and circumstances of the loss or theft to a police department or sheriff's office.” (1)(b) further adds requirements that officials must undertake. “Whenever a person reports the theft or loss of a firearm, rifle, shotgun or ammunition to any police department or sheriff's office, the officer or department receiving such report shall forward notice of such theft or loss to the division of state police via the New York Statewide Police Information Network. The notice shall contain information in compliance with the New York Statewide Police Information Network Operating Manual, including the caliber, make, model, manufacturer's name and serial number, if any, and any*

other distinguishing number or identification mark on the weapon.” And, under NY CLS Penal § 400.10(3), failure to comply with 400.10 is a Class A misdemeanor.

So, under New York law, the mere possession of blank cartridges and blank cartridge guns without a permit, issued by the State, constitutes a crime.

If My Firearms Or Ammunition Are Lost Or Believed Stolen, What Do I Need To Do In Order To Comply With The Laws Of New York?

Section 51 of the New York Safe Act, codified in Section 400.10(1)(a) deals with the theft or loss of a firearm or ammunition. And, Section 400.10(1)(a) sets forth, “Any owner or other person lawfully in possession of: (i) a firearm, rifle or , shotgun who suffers the loss or theft of said weapon; (ii) ammunition as well as a firearm, rifle or shotgun who suffers the loss or theft of such ammunition as well as a firearm, rifle or shotgun; or (iii) ammunition and is a dealer in firearms or seller of ammunition who suffers the loss or theft of such ammunition shall within twenty-four hours of the discovery of the loss or theft report the facts and circumstances of the loss or theft to a police department or sheriff’s office.” NY CLS Penal § 400.10(3) sets forth the penalty for failure to timely and properly report the loss or theft of firearms or ammunition. NY CLS Penal § 400.10(3) says, “Notwithstanding any other provision of law, a violation of paragraph (a) of subdivision one of this section shall be a class A misdemeanor.” Originally, failure to timely report the loss or theft of a firearm or ammunition simply subjected the possessor of that firearm or ammunition to a fine, not to exceed one hundred dollars. Today, conviction of a Class A misdemeanor can subject a person to a term in prison, not to exceed one year.

The Difficulty in Assessing the Meaning of New York Statutes Related to Firearms Matters

As you can see the lawful possession and ownership of firearms, ammunition does not provide for easy analysis. Ambiguity, vagueness, incompleteness, and incomprehensibility are pervasive. Whether this is by design or the result of the sheer size and complexity of the subject matter that the New York State Legislature has taken upon itself, the regulation of firearms, fireworks, and ammunition creates an imponderable uncertainty on law-abiding gun owners. Simply owning a firearm, or a blank cartridge firearm, or the necessary ammunition and blank cartridges for the firearm or blank cartridge firearm, is fraught with peril. In the Quixotic World of New York firearms’ laws and related fireworks’ laws, a New York resident can never be sure where he or she stands.

The plain truth here is that the drafters of *the Penal Code of New York* do not wish for the average law-abiding New York resident and U.S. citizen to own and possess firearms and ammunition or to own and possess anything remotely like firearms and ammunition. And traps and snares exist for both the unwary and alert gun owner alike. As issues invariably arise involving firearms and ammunition, those issues require microscopic examination to resolve. It is no small matter to take on, and no small feat to overcome. What we do here is provide the law-abiding U.S. citizen and firearms’ owner in New York with a careful examination of the laws impacting and imperiling their sacred Constitutional right to keep and bear arms. Eventually, what we will provide for the law-abiding citizen and firearms’ owner in other States is a careful examination of the laws impacting and imperiling their Constitutional guarantee in their own States. If we do not simplify the understanding of firearms’ laws, it is because we cannot do so. And, this is due to problems inherent in the laws

themselves. Unfortunately, we do not have control over that. But, we will never make a pretense of simplifying a matter that is not capable of simplification. At best, we will simply highlight where problems in analysis of the laws exist. Hopefully, we have done that here.

LOOKING AHEAD

In the next and last section of this multi-part series Article we will look at the manner in which transfers of “*assault weapons*” to active duty or retired New York police officers and peace officers are impacted by the New York Safe Act. Are transfers of “*assault weapons*” to police officers and peace officers, *in their personal capacity*, permitted? To what extent does the New York Safe Act sections dealing with the transfer of “*assault weapons*” impact police officers and peace officers, *outside of* their professional duties? We shall take a look.

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