



### **Liability issues with pawnshop selling firearms to the public**

Lawsuits against firearm dealers generally are filed under one of two theories: irresponsible distribution of firearms that arm those breaking the law and unsafe design of firearms. This latter category is applicable to not only a firearm manufacturer, but also to firearm sellers.

These above categories are generally based on one of two causes of action; negligence of the firearm seller and a public nuisance cause of action. By far the most frequent are allegations that a firearm seller was negligent in selling the firearm to the person that used it to injure him/herself or others.

Examples of irresponsible sales that allow firearms to enter a criminal activity and cause harm to the party suing the pawnshop can arise as follows:

- The sale of a firearm to an irresponsible party. This could be a sale to a customer who is mentally unstable, intoxicated or exhibits other dangerous signs at the time of the sale. Note that CCTV video will come into play here most often.
- “Straw Sales” to otherwise qualified buyers who are purchasing the firearm to give or sell to a prohibited party like a convicted felon, etc. Employees must be trained not to allow this type of sale. When the person not purchasing the firearm picks out what will be purchased and acts with knowledge of the various firearms, a warning should go off that a potential straw purchase may be about to occur.
- Multiple and/or repeat sales. Under federal law, multiple sales are defined as more than one firearm to an individual within five business days. Repeat sales of several firearms to the same person may be a sign of gun-trafficking. Federal Firearms Licensees (“FFL’s”) are required by law to submit a separate report for any transactions involving the sale and transfer of multiple firearms.
- Missing Firearms. Many firearms that have been sold by dealers “off the books” were claimed in the Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATF”) reports to be lost or stolen. A large number of “missing” firearms can be grounds of a court finding of public nuisance.

One of the most important measures for a seller is to comply with ALL federal and state requirements to sell firearms. FFL’s should be vigilant and proactive in legal compliance matters and also institute formalized training for all employees who sell firearms. The training should be recurring and documented for all employees who sell firearms.

Employers should also have a spot check compliance program on-going to verify employees who sell firearms are acting within federal, state and local laws.

### **Federal law that provides some protection to firearm sellers**

One federal law, The Protection of Lawful Commerce in Arms Act—15 U.S.C. sections 7901-03, may provide some relief to firearm dealers in the pawnbroker industry. This law was passed by Congress in 2005 to attempt to shield firearm sellers and manufacturers from liability. This law bars the filing of new firearms cases against firearm dealers unless certain exceptions apply.

This act is by no means a “free pass” when it comes to firearm-related liability issues, however. The issues that will allow a firearm lawsuit to proceed, despite this federal law are: An action against a firearm dealer for negligent entrustment or negligence per se; and an action against a firearm dealer who “knowingly” violated a state or federal statute applicable to the firearm sale and that violation was the cause of the harm.





For a more detailed case study of this principal in action, we can examine the Badger Firearms lawsuit. Despite the federal law, in 2009 the court allowed a \$6 million damage verdict to two Milwaukee police officers who were injured with a firearm that a local firearm shop sold to a straw buyer. For more information, please see the link at the end of this article.

Thus, although the federal law may help protect firearm sellers from liability and its application should be argued by counsel for a firearm seller in any lawsuit brought, most law suits now allege either negligent entrustment or negligence per se to allow a case to go to trial and avoid a summary judgment finding.

#### **“Pawn, Sell and Trade”**

As part of the pawn business model, it goes without saying that a shop can expect to not only see firearms heading out the door, but also being brought in by customers for pawning, sale, trade, or even gun-smithing services. Some risk-reducing measures to consider:

- Make sure conspicuous signs are posted on all entry doors telling customers bringing loaded firearms into store is strictly prohibited. Optimally, exterior signage should instruct patrons to advise and seek instructions from staff BEFORE bringing any firearms into the store. When this type of rule is obeyed, it allows for an opportunity for staff to prep for the transaction, as well as give one last reminder to ensure the firearm is unloaded.
- As another early layer of defense, post a guard at the door to ask each customer if they are bringing a firearm into the store and checking to make sure it is not loaded. At a minimum, if a guard is not feasible, ensure that all customers are properly greeted upon entering the store, and inquire if they plan to conduct a transaction with a firearm. Do not assume since you do not see a customer carrying a firearm, that they do not have it tucked in a pocket or carried loosely in a purse.
- Instruct customers that after obtaining permission, all unloaded firearms should be carried into the store in cases or containers. Ammunition should not be brought in at the same time or in the same container. In addition, if the pawnshop sells ammunition, it should be stored separate from firearms and out of the reach of customers.

Train employees to use proper procedures to accept firearms from customers wishing to sell, trade or pawn. This includes safe handling of firearms and ensuring all firearms are unloaded. Firearm safety training is critical for all employees handling firearms. All employees must always assume a firearm is loaded and follow the proper procedures to ensure it is clear each time it is handled. Standard practice, such as keeping the barrel pointed in a safe direction and trigger discipline, must always be observed. For personnel carrying firearms, consideration should be given to including classroom and range training. Classroom training should include, but is not limited to:

- Statutory requirements
- Use of deadly force
- Company policy on the use of force
- Firearms safety
- Safety practices both on-duty and at home
- Written examination

Range training should include, but is not limited to:

- Shooting stance
- Breathing control
- Trigger control





### **Physical and procedural security measures for FFL pawnbrokers**

It has been stated that each year the BATF receives thousands of reports of the theft/loss from federally licensed firearms dealers. As a pawnbroker, the risk of criminal activity for those that deal in firearms increases for those individuals seeking to target that aspect of the business. In many incidents, the criminal will spend a considerable amount of time casing (evaluating) the business to determine their weaknesses or vulnerabilities only to later try and capitalize on these. While it may be impossible to eliminate all risk, as a pawnbroker with an FFL there are many ways to reduce the risk by "hardening the target" and making criminals think twice about their activity. The following are considered the best practice physical security and procedural controls to reduce that risk. While some of the following measures require time and capital expenditure, others can be implemented at no cost and in little to no time.

- Only show one firearm to a customer at a time. If the customer requests to see another firearm, that firearm should be adequately secured first prior to showing the other one.
- Install trigger locks or plastic ties on all firearms; at a minimum, on all firearms on display. In addition, trigger locks should be available for purchase where firearms are sold in accordance with federal law.
- Ensure that the showroom floor/retail firearms storage/display area is constantly staffed while customers are in the store. Generally, two employees are recommended. Note: CCTV coverage alone would not suffice for the mere presence of an employee.
- All firearms should put on display and removed from displays when no customers are present; before business hours or after business hours. All perimeter doors should be locked during this time and if the premises alarm system is setup in such a manner, the premises perimeter contacts should be armed. If it is not feasible to secure all retail long guns in a secure room at night, low value retail long guns may be left in the showroom if there is adequate facility perimeter hardening (i.e. doors, walls, roof, other accessible openings, etc.) and the long guns are adequately and securely cabled to a fixed structure (i.e. wall) within the showroom during non-operational hours.
- All showcases should be secured with a high security lock and remain locked when not in immediate access. Smash resistant glass or glazing should be installed on the top and all four sides in order to slow access to firearms and deter thieves, forcing them to spend minutes, rather than seconds, breaking through. In addition, all firearms should be adequately and securely cabled to a fixed structure (i.e. wall or showcase) within the showroom during operational hours.
- All permanently issued access control devices (keys, cards, alarm codes, combinations) should be issued formally by receipt, to include the date, signatures of the persons involved, and a statement advising the recipient of their responsibilities to protect the device. A register should be used to document the location and issuance of all access devices providing access to the facility and firearms storage (to include access device storage containers). All locks (entrance and those providing access to firearms), alarm codes, and combinations should be routinely changed annually or sooner if an access code holder is terminated, there is suspected compromise, or there is a change in employment status where the person issued no longer requires such access. Restricted access keys should be audited monthly, where the daily activity does not suffice for accountability, with the results documented.
- Ensure all ingress/egress facility access points, firearms transaction areas, firearms storage (i.e., showcases, safe/vault, etc.) and handling areas (i.e., gun-smithing) are covered by adequate CCTV camera coverage. Make sure video recordings are retained for at least 30 days. Should any incidents occur, they should be reported for insurance purposes. In addition to the 30 day storage of video recordings, these incidents should be saved on a separate storage device for future use and investigative purposes.





- Follow state and federal requirements pertaining to legally accepting or transferring firearms from customers, to include the proper reporting, serial number checks, and actions related to suspicious sellers.
- A register of all firearms should be kept on-site to include the make, model, caliber, serial number, and other identifiable features of the firearm. Furthermore, all firearms should be audited (inventoried) under dual control (by two people) on a specified and frequent basis.
- Ensure the layout of the store allows for unobstructed views of all firearms and remove any items that may cause blind spots.

#### **Other considerations**

Please consider that in states permitting concealed and open carry of firearms, there is a reasonable expectation by the public that firearms dealers are “2<sup>nd</sup> Amendment Friendly” and permissive of carry in their stores. While this may be the case, continue to ensure safe practices are made known and enforced. Ensure that all firearms remain holstered at all times. Firearm aficionados can be eager to show off their new “pieces” or latest custom modifications. While firearm handling safety is of primary concern yet again here, also consider how an onlooker might view this scene from a distance – in the worst case, this could be mistaken as a robbery in progress!

#### **Badger Firearms lawsuit:**

<http://archive.jsonline.com/watchdog/watchdogreports/wounded-officers-lawsuit-against-badger-guns-settles-for-1-million-b99632780z1-361609031.html>

