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MEMORANDUM

Re: Obtaining Replacements for Defective Firearms

Date: April 17, 2012

I. Issue

Under California law, when a defective firearm is being replaced with a new firearm by the firearm manufacturer, must it be transferred back to its owner through a licensed firearms dealer?

II. Short Answer

Yes. Unlike federal law, California law requires that a replacement firearm be returned to its owner through a licensed California firearm retailer.

III. Introduction

Firearms can manifest a variety of defects, some of which do not affect the functioning of the firearm, and others that can render a firearm inoperable. Depending on the warranty, the firearm owner typically first takes the firearm back to the retailer or takes it to a manufacturer or retailer gunsmith for repair. The retailer, or gunsmith evaluates the problem and either repairs and returns the firearm, or informs the owner that the firearm cannot be fixed by a gunsmith. In the later case, gunsmiths and retailers often recommend that the owner send the firearm back to the manufacturer for evaluation and possible replacement. Again, depending on the warranty, the retailer or gunsmith may actually send the firearm to the manufacturer for the customer.

When the manufacturer acknowledges that the defect was their fault, the manufacturer

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may determine that the firearm is not worth repairing. In that case, the manufacturer may offer to replace the firearm with a new one of the same make and model.

In that case, if you reside in California the manufacturer should also inform you that the new firearm must be transferred back to you through a California firearm dealer and that associated transfer fees must be paid.

A *repaired* firearm can be immediately returned to the original possessor under both California and federal law provided there is no reason for the manufacturer/dealer/gunsmith to believe that the individual is prohibited from possessing firearms.

And under *federal* law (in most situations) firearm importers, dealers, manufacturers, and collectors can directly return a repaired *or replacement* firearm (of the same kind and type) to a non-licensed individual.¹

But under California law a *replacement* firearm must be transferred to the original owner through a licensed firearm dealer.

IV. Analysis

Under California law, with some exceptions all firearm transfers must be conducted through a California licensed firearm dealer.² And, unless an exception applies, no firearm shall be delivered within 10 days of the sale or transfer from the licensed dealer, unless unloaded and securely wrapped, the recipient presents clear evidence of identity and age to the dealer, the person is not prohibited, etc.³

One of these exceptions is for the *repair* of firearms. California law provides exceptions

¹ See 18 U.S.C. § 922(a)(2)(A), 27 CFR § 478.124-25.

² California Penal Code section (P.C. §) 27545(2012). Unless otherwise indicated all code sections refer to the 2012 California Penal Code.

³ P.C. §§ 26815, 27540, and 28050.

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for the delivery to (and return of) a firearm by a gunsmith⁴ for repair.⁵ But, the exception for repaired firearms does not mention replacement firearms. The natural conclusion, and one DOJ has made repeatedly in the past, is that a replacement firearm must go through a California licensed firearm dealer.

The following sections of the Penal Code address the *repair* of firearms:⁶

1. 26587 exempting persons from the requirement of possessing a California dealer's license for transferring firearms when loaning a firearm to a gunsmith for service or repair and the return of the firearm by the gunsmith.
2. 27105 exempting persons from the possibility of having their dealer's license revoked for unlawfully transferring a firearm, when the firearm is delivered to a gunsmith for service or repair, or the return of the firearm to the owner by the gunsmith, or delivery of a firearm to a licensed firearm dealer from a gunsmith and return of the firearm to the gunsmith.
3. 27705 exempting those from the criminal punishment for illegally transferring a firearm when the firearm is delivered to a gunsmith for service or repair, or the return of the firearm to the owner by the gunsmith, or delivery of a firearm to a licensed firearm dealer from a gunsmith and return of the firearm to the gunsmith.
4. 27825 exempting those from the CFLC⁷ requirement when the firearm is delivered to a gunsmith for service or repair, or the return of the firearm to the owner by the gunsmith, or deliver of a firearm to a licensed firearm dealer from a

⁴ A gunsmith does not need to be a licensed firearm dealer according to California law, but merely a federal firearms licensee (FFL) under federal law who is engaged primarily in the business of repairing firearms or making or fitting special barrels, stocks, or trigger mechanisms to firearms (or the agent or employee of that person). See P.C. § 16630.

⁵ P.C. §§ 27105 and 27705.

⁶ This list does not include exceptions to open/concealed carry of firearms, transportation of "assault weapons," large-capacity magazines, and display of imitation firearms in public.

⁷ California Licensee Check System. In order for a California FFL to receive firearms from another FFL (regardless if the shipping FFL is in California or another state) shipping FFLs must confirm that the receiving California FFL (except for licensed collectors and licensed ammunition manufacturers, 03 and 06 FFLs respectively) is on the Centralized List of firearm dealers or on the exempted FFL list. P.C. §§ 26715, 27555 and 28450 et seq.

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gunsmith and return of the firearm to the gunsmith.

5. 27890 exempting those from the crime of illegally transferring a firearm between two individuals who do not possess a California firearms dealer's license when the firearm is delivered to a gunsmith for service or repair, or the return of the firearm to the owner by the gunsmith, or delivery of a firearm to a licensed firearm dealer from a gunsmith and return of the firearm to the gunsmith.
6. 28100 exception to requirements that California firearms dealers keep a register or record of firearms transfers when delivering a firearm to a California firearms dealer for service or repair or the return of the firearm to the owner of the firearm (if the owner initially delivered the firearm to the dealer for service or repair).
7. 31050 allowing firearm dealers with assault weapon (AW)/.50 BMG permits to take possession of AWs from registered owners for repair and return them.
8. 31755 exception for the HSC⁸ requirement when the firearm is delivered to a gunsmith for service or repair, or the return of the firearm to the owner by the gunsmith, or delivery of a firearm to an FFL from a gunsmith and return of the firearm to the gunsmith.
9. 32110 exempting the restrictions and requirements concerning deliveries/transfers of "unsafe handguns" to California dealers for purposes of service or repair of that firearm and the return of the firearm to its owner.

V. Conclusion

Under California law, a replacement firearm must be transferred back to the firearm owner through a licensed firearm retailer, and associated fees must be paid.

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⁸ HSC stands for Handgun Safety Certificate, usually when one purchases or receives a handgun (except for antiques), they are required (with certain exceptions) to have a Handgun Safety Certificate. P.C. § 31645.