

FACILITATING
PRIVATE
SALES:

A Federal Firearms Licensee Guide



Welcome

We've put together this guide to educate Federal Firearms Licensees (FFLs) on how to facilitate private party sales of firearms. When individuals decide to use FFLs to facilitate the private sale of their firearms, it can enhance public safety, assist law enforcement, and help ensure firearms end up only in the hands of those who are legally allowed to possess them.

Every day, many lawful transfers of firearms take place between unlicensed individuals who reside in the same state. These transfers take place at residences, at gun shows, and through classified and online ads. But these unlicensed sellers, who are not FFLs, may not have the ability to conduct complete background checks on potential buyers. This leaves these private sellers with no way to confirm whether or not the person to whom they are selling the firearm is prohibited from possessing it. Indeed, many of these sellers may not even be aware of all the circumstances that prohibit someone from possessing a firearm.

As an FFL, you play a key role in safeguarding the public from violent crime by maintaining accurate records, instituting internal controls, and performing background checks on potential firearms purchasers. These practices help prevent violent criminals from obtaining firearms and help reduce the possibility that firearms will be used in crimes.



Facilitating private sales is purely voluntary under federal law. Note that state laws may impose their own requirements, and you should ensure that you comply with the requirements in your state.

When a private transaction is completed through a licensed dealer, both the customers and the community have some assurance that the individual wishing to purchase the firearm is not prohibited by law from possessing or receiving a firearm. When a private seller goes through an FFL to transfer his or her firearm, it can also improve the ability of law enforcement to trace that firearm if it is later recovered during a criminal investigation.

This guide will cover the procedures to follow when facilitating private sales, as well as answer some frequently asked questions (FAQs). There is also a list of resources that can provide further guidance.

Federal law prohibits certain persons from shipping, transporting, possessing, or receiving firearms or ammunition including any person who:

- Has been convicted of a crime punishable by a term of imprisonment exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user of, or addicted to, any controlled substance;
- Has been adjudicated as a mental defective or committed to a mental institution;
- Is an alien illegally or unlawfully in the United States;
- Is an alien who has been admitted to the United States under a nonimmigrant visa (with certain exceptions);
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced United States citizenship;
- Is subject to a qualifying protective order;
- Has been convicted of a misdemeanor crime of domestic violence.

Further, Federal law prohibits the shipment, transportation, or receipt of firearms or ammunition by any person who is under indictment for a crime punishable by a term of imprisonment exceeding one year. Federal law also prohibits, with certain exceptions, the possession of handguns by any person under the age of 18.

Procedures for Facilitating Private Sales

FFL-facilitated sales between private individuals are subject to the same rules and regulations as any other sale conducted by the FFL. In all cases, the prospective buyer must complete Section A of the [Firearms Transaction Record, ATF Form 4473](#). The FFL must complete section B of the ATF Form 4473.

When an FFL contacts the National Instant Criminal Background Check System (NICS) (or the state point of contact) for a background check, there are several responses that it may receive, and the procedure for moving forward depends upon that response, as indicated below.



1. The FFL receives an immediate “Proceed” response from NICS:

- The FFL enters the firearm into its Acquisition and Disposition (A&D) records as an acquisition from the private party seller.
- The FFL completes Section D of Form 4473 and transfers the firearm to the buyer.
- The FFL records the disposition of the firearm out of the A&D record to the buyer, no later than seven days following the transaction.

2. The FFL receives a “Denied” or “Cancelled” response from NICS:

- The FFL cannot transfer the firearm to the prospective buyer.
- If the private party seller has not left the firearm in the exclusive possession of the FFL, the private party seller can leave the premises with the firearm.
- The FFL would not enter the firearm as an acquisition into the A&D record.
- If the seller has left the firearm in the exclusive possession of the FFL, the FFL must record the firearm as an acquisition in its A&D record as an acquisition from the private party seller.
- Prior to the FFL transferring the firearm back to the private party seller, the FFL must do the following:
 - Complete a Form 4473 to return the firearm to the private party seller.
 - Conduct a NICS background check on the private party seller. The FFL may transfer the firearm to the private party seller if it receives a “proceed” response or a “delayed” response with no response from NICS after three business days (or the appropriate state waiting period if more than three business days).

- Record the return as a disposition in the A&D records, no later than seven days following the transaction.

3. The FFL receives a “Delayed” response from NICS:

- The private party seller has two options:
 - He or she can leave with the firearm, if the private party seller has not left the firearm in the exclusive possession of the FFL. In this case, the FFL does not need to record the firearm in its A&D record. However, if the sale later occurs (because the FFL receives a “proceed” response from NICS or three business days — or the appropriate state waiting period — have passed) the private party seller must return to the business premises of the FFL to complete the transfer to the buyer. At that time, the FFL will need to record the transaction as an acquisition from the private party seller in its A&D records and record the disposition to the buyer no later than seven days following the transaction.
 - He or she can allow the FFL to keep the firearm at the business pending a response from NICS or until three business days (or the appropriate state waiting period if more than three business days) has passed with no response. In this case, the FFL has to take the firearm into inventory and record it as an acquisition from the private party seller in its A&D records. If NICS later issues a “proceed” response, or no response after three business days (or the appropriate state waiting period if more than three business days) and the FFL decides to go forward with the transfer, the seller does not need to return to the premises to complete the transfer. The FFL will complete the transfer of the firearm to the buyer and record the disposition to the buyer in its A&D record no later than seven days following the transaction.
- Note that the FFL is not required to proceed with the transfer after the three business days have passed with no response from NICS; the decision to transfer is at the discretion of the FFL.
- In the case of a later “denied” response, the firearm cannot be transferred to the prospective buyer:
 - If the private party seller has chosen to allow the FFL to retain the firearm pending a response from NICS, the FFL and private party seller must complete a Form 4473, and the FFL must conduct a NICS check and receive a “proceed” response or a “delayed” response with no response from NICS after three business days (or the appropriate state waiting period) before transferring the firearm to the private party seller.
 - The FFL must also record the return as a disposition in the A&D record no later than seven days following the transaction.

GUIDELINES FOR ALL FFL-FACILITATED TRANSFERS

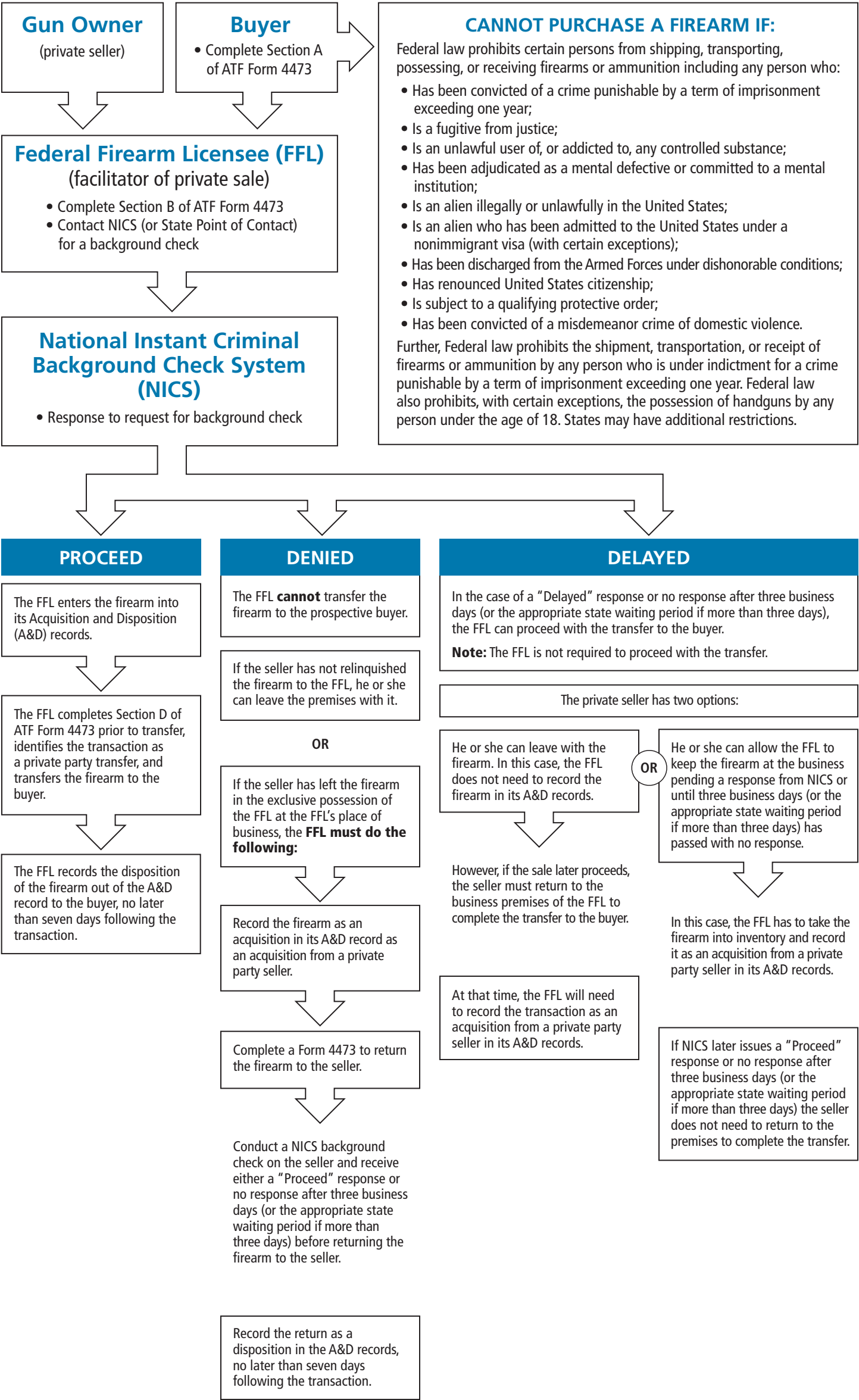
- The prospective transferee (buyer) must complete Section A of the ATF Form 4473.
- The FFL must complete Section B of the 4473, conduct a NICS check on the buyer, and record the response.
- The FFL must complete Section D of ATF Form 4473 prior to transfer, identify the transaction as a private party transfer on the ATF Form 4473, and record the disposition in its A&D record no later than seven days following the transaction.
- The FFL must maintain the Form 4473 in accordance with 27 CFR 478.129(b).
- The transfer must be completed within 30 calendar days of the date NICS was initially contacted. If not, the FFL must conduct a new NICS check.
- If the transfer takes place on a day different than the day the prospective buyer signed Section A of ATF Form 4473, the FFL must check the buyer's photo ID again and the buyer must complete the recertification in Section C immediately prior to the transfer.
- All other legal requirements (for example, providing secure gun storage or safety devices with each transferred handgun, and any applicable multiple sales reporting) apply equally to these transfers.

For a full description of the procedures applicable when facilitating private party sales, please see ATF Proc. 2013-1, <https://www.atf.gov/file/88181/download>

FFL-Facilitated Firearm Sales

GUIDELINES FOR ALL FFL-FACILITATED TRANSFERS

- The prospective transferee (buyer) must complete Section A of the ATF Form 4473.
- The FFL must complete Section B of the 4473, conduct a NICS check on the buyer, and record the response.
- The FFL must complete Section D of ATF Form 4473 prior to transfer, identify the transaction as a private party transfer on the ATF Form 4473, and record the disposition in its A&D record no later than seven days following the transaction.
- The FFL must maintain the Form 4473 in accordance with 27 CFR 478.129(b).
- The transfer must be completed within 30 calendar days of the date NICS was initially contacted. If not, the FFL must conduct a new NICS check.
- If the transfer takes place on a day different than the day the prospective buyer signed Section A of ATF Form 4473, the FFL must check the buyer's photo ID again and buyer must complete the recertification in Section C immediately prior to the transfer.
- All other legal requirements (for example, providing secure gun storage or safety devices with each transferred handgun, and any applicable multiple sales reporting) apply equally to these transfers.



Frequently Asked Questions (FAQs)

Is it legal for an FFL to facilitate private sales?

Yes. Not only is it legal for an FFL to facilitate private sales, it can help enhance public safety by ensuring a background check is run on the prospective purchaser.

Are FFLs required to facilitate private sales under federal law?

No. Facilitating private sales is purely voluntary under federal law. Note that state laws may impose their own requirements, and you should ensure that you comply with the requirements in your state.

Why should an FFL facilitate private sales?

Although it's legal under federal law for a private seller to sell a firearm to a resident of his or her own state, private sellers have no way of checking to see if the buyer is legally able to possess a firearm. Private sellers generally do not have access to complete background checks. Note, however, that some states may require potential purchasers to undergo background checks, and have set up systems to meet that requirement.

Can I charge a fee for facilitating private sales?

Yes. An FFL can charge a fee as long as it is consistent with the FFL's state law requirements.



What's the procedure for facilitating private sales?

ATF has developed a procedure to assist FFLs who choose to facilitate private sales. See ATF Proc. 2013-1, <https://www.atf.gov/file/88181/download>. The steps are also outlined in this guide on pages 4-5 and in the flow chart on page 7.

For more information, visit the [Conduct of Business](https://www.atf.gov/conduct-of-business) section of www.atf.gov.

Is there anything different I should do on the ATF Form 4473?

The FFL must identify the transaction as a "Private Party Transfer" in Section D of the ATF form 4473 to ensure transaction records correspond with private party transfers in the FFL's Acquisition and Disposition record.

If I receive no response from NICS, or my state point of contact (POC), within three business days after initially receiving a “delayed” response, do I have to complete the transfer?

If you initially receive a “delayed” response from NICS (or your state point of contact) and have not received a further response,

it is legal for you to complete the transfer after three business days (or the appropriate state waiting period if more than three business days). However, the law does not require you to complete the transfer.

For answers to more of your questions, visit the ATF’s FAQs:
<https://www.atf.gov/questions-and-answers/firearms-qas>

Resources

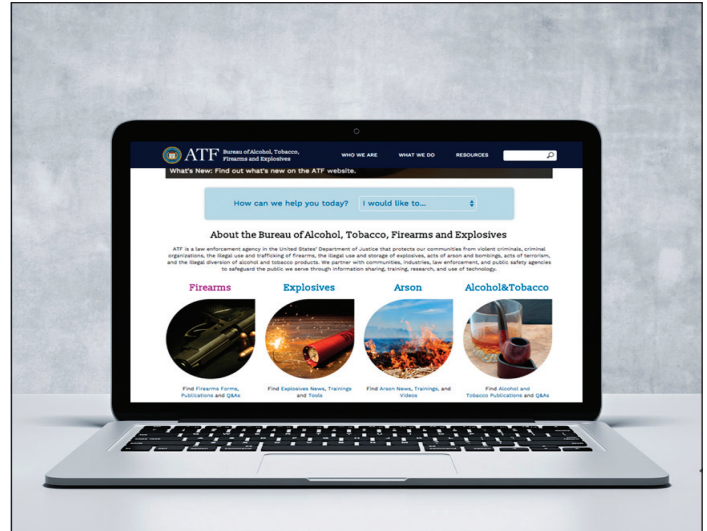


Bureau of Alcohol, Tobacco, Firearms and Explosives

Website: www.atf.gov

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is a law enforcement agency in the United States Department of Justice that protects the public from crimes involving firearms, explosives, arson, and the diversion of alcohol and tobacco products; regulates lawful commerce in firearms and explosives; and provides worldwide support to law enforcement, public safety, and industry partners.

- Federal Firearms Transaction Record: <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>
- Federal Firearms Regulations Reference Guide: <https://www.atf.gov/file/11241/download>
- The Gun Control Act of 1968: <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title18/pdf/USCODE-2015-title18-part1-chap44.pdf>
- Federal Firearms Licensee Quick Reference and Best Practices Guide: <https://www.atf.gov/file/58681/download>
- Firearms Industry Programs Branch, 202-648-7090



Federal Bureau of Investigation

Website: www.fbi.gov

As an intelligence-driven and a threat-focused national security organization with both intelligence and law enforcement responsibilities, the mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

- National Instant Criminal Background Check System (NICS): <https://www.fbi.gov/services/cjis/nics>