

Expired firearm licence update

CURRENT POSSITION

In terms of the Firearm Control Act 60 of 2000, a firearm owner must apply for renewal of a firearm licence at least 90 days before it expires. This will also be applied to the current policy which dictates that once you applied for renewal of your firearm licence, this application will be considered by a committee in terms of a certain set of criteria.

When you find yourself in a position where you have an expired firearm licence, this firearm cannot be disposed of to the previous licensee, to a dealer or to a third party. This is very important to take note of, as this requirement caused a lot of concern amongst firearm owners with expired licences. The relevant SAPS directive still states that such firearms must be surrendered to the nearest police station for destruction.

AMNESTY

It is important to note that in terms of the SAPS' present policy, only an amnesty can provide a legal framework for an application for a new firearm licence which is in someone's illegal possession. As we all know, a specific condition of amnesty was that persons with expired licences must surrender the relevant firearm to the nearest police station, pending the outcome of the new licence application.

The last amnesty period expired on the 31st of January 2021 and there is currently no amnesty available. There are, however, talks and attempts by various hunting organizations to request an extension of this amnesty period due to various reasons such as Covid 19 restrictions and the availability of designated police stations. To date, there are no directives in this regard from the Minister of Police.

Therefore, when you find yourself in possession of a firearm with an expired white licence, you may be in illegal possession thereof and you may be committing an offence.

FIDELITY SECURITY SERVICES (PTY) LTD V MINISTER OF POLICE AND OTHERS

The Supreme Court of Appeal considered some aspects on 22 April 2021 with regards to the expired firearm licence situation. The judgment did not give clarity on what the process will be should one find yourself in possession of an expired licence. Currently, when one is in possession of an expired licence, that firearm must be surrendered to the nearest police station for destruction. You might be criminally prosecuted. However, in the case between *Fidelity Security Services (PTY) LTD v Minister of Police and Others*, the Supreme Court of Appeal changed this situation slightly.

Fidelity Security Services had various firearms with expired licences. They approached the High Court for an order to enable them to apply for new licences. Their application was, however, turned down. On appeal, the Supreme Court of Appeal held that there was neither anything in the Firearms Control Act, nor in the Regulations, to suggest that someone whose licence expired was forever precluded from applying for a new licence.

The Court ordered that Fidelity Security Services was entitled to apply afresh for new licences to possess the firearm, and that such applications must be accepted by the designated officers.

IMPORTANCE

The court was not tasked to make a ruling on what should happen to firearms of which the licence expired pending an application for a new licence. The court also did not give any directions in this regard.

The judgement further does not state that such applications must be granted. It merely states that such applications must be accepted. To do this successfully, the police will have to change their software program to allow the SAPS 271 form to enable the transfer of ownership for the previous owner to the same person. We have little doubt that presently an application for a new firearm licence which has lapsed will be unsuccessful until the policy has been changed.

RECOMMENDATIONS

At this stage, we still do not have any clarity on what the situation is regarding

expired white licences. Generally, it is recommended that you wait for the outcome of the request to change the policy or even a possible new amnesty period before any new licence applications are launched.

From the judgment, is it clear that the next step is to wait for SAPS to indicate how they will react to the judgment. And if they do, how they will manage the implied changes to their current administrative procedure.

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