

Guns & Real Estate: Are Your Buildings On Target?

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Handguns have recently been the focus of extensive global debate. Regardless of your personal or political views on the subject, a lot of Texans liken the right to carry a gun with the right of childbirth. An example of this sentiment is the popularity of Texas' 20-year-old law allowing its residents to carry a concealed handgun. In fiscal year 2014, Texas issued nearly 250,000 concealed handgun licenses (CHLs). That number is significant especially considering the process of obtaining a CHL is filled with tests, fees, background checks, and other restrictions. Additionally, Texas has reciprocity with about 30 other states, which allows those states' CHL holders to carry concealed weapons in Texas, and vice versa.

A CHL holder is legally permitted to carry a handgun in many public places. That gun must be concealed at all times and the holder must carry their CHL with them if they have a gun with them. CHL holders cannot, however, be intoxicated when they are carrying, and handguns cannot be carried at schools or on school buses, at polling places, in courts and court offices, at racetracks, or at secured airport areas. The law also specifically prohibits handguns from businesses where alcohol is sold if more than half of the establishment's revenue is from the alcohol sales, and from locations

where high school, college, or professional sporting events are taking place. You may not carry handguns in hospitals or nursing homes, amusement parks, places of worship or at most government meeting.

→But what if you own or manage a commercial property that is not on the list of prohibited locations? In those cases, the landlord has the ability to prohibit or permit handguns on at their properties. For those landlords that permit tenants to carry handguns, then they do not have to take any action to permit this because the law already allows it. However, if a landlord wants to prohibit handguns at the property, then it must take some affirmative steps to do so.

In order to aid those landlords that want to prohibit handguns, Texas Penal Code Section 30.06 allows a landlord or a tenant to post a notice prohibiting CHL holders from carrying a handgun, and violations of this law are a misdemeanor. The notice must be posted in both English and Spanish. The notice may be presented orally or in writing (however, the author strongly advises the notice be in writing). The writing must be in contrasting colors with block letters at least 1" high, and must be conspicuous and visible to the public. It is advisable to post multiple notices in

conspicuous parts of your buildings and by all entrance ways. The 30.06 notice must include the following language: **“PURSUANT TO SECTION 30.06, PENAL CODE (TRESPASS BY HOLDER OF LICENSE TO CARRY A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (CONCEALED HANDGUN LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN”**. As an aside, the legislators who drafted Section 30.06 probably had a sense of humor because the statute number matches one of America’s most famous rifle calibers, the .30 caliber Springfield of 1906 (hence .30-06).

→Keep in mind, however, that the 30.06 notice only serves to create a misdemeanor offense for its violators. Therefore, if you desire to take aim at prohibiting tenants and invitees from carrying handguns on your properties, then in addition to posting the 30.06 notice, landlords and tenants should also consider adding prohibitive language in their leases and their rules and regulations. These rules and regulations should also be reinforced and followed and tenants should be aware that they exist. But be careful: attempting to disarm someone in any circumstance should not be taken lightly and if such a situation arises, the police should be contacted immediately. Police will typically be responsive in this situation especially if you posted the proper 30.06 notice. This is why the 30.06 notice should be used as part of your “no gun” policy, but merely posting the 30.06 notice should not be the only action taken by a landlord looking to prohibit handguns.

The decision to actively permit or prohibit handguns carries its own set of legal issues. For example, if a landlord enacts a “no handgun” policy and posts the proper notice but does not follow or enforce the policy, they could be opening themselves up to additional liability. Consider this scenario: suppose a landlord properly posts the 30.06 notice and adds language to all of its leases prohibiting tenants from carrying handguns at the property. However, the property manager or the landlord is fully aware that some of its tenants have handguns on property, but nothing is done about it. If the handgun goes off (intentionally or inadvertently) and injures or kills someone, can the landlord be liable for the injury or death? Alternatively, if a landlord prohibits handguns, can the landlord be liable if a crime occurs on the property and a tenant claims they were unable to protect themselves because they were prohibited from carrying a handgun? Answers to these questions depend largely on whether or not the landlord or property manager were negligent, and the determination of negligence will greatly depend on the facts of the situation. Regardless, owners should be mindful and should not be a loose cannon in their policy decisions.

Owners and managers should consider the following points before deciding to permit or prohibit handguns on their properties:

1. Beware of Hair-Trigger Policies. When it comes to policy making, landlords are cautioned not to just have a blanket policy for all their buildings. Instead of a one-size-fits all policy, you should consider such things as the type of building and type of permitted uses, location, and tenant mix. For example, an owner of a busy retail

center is probably less inclined to allow handguns due to the sheer number of citizens walking about; however, an owner of an industrial property in a rough neighborhood may feel much differently.

2. Ready, Fire, Aim. Before enacting a handgun policy, you need to understand what policies, if any, your tenants have in order to avoid getting in your tenants' crosshairs. For example, if a tenant openly encourages weapons, but the landlord is vehemently opposed to it, then a shootout (hopefully just figuratively, not literally) with that tenant could be looming.

3. Consult With Police. Most major metropolitan police departments openly work with building owners on policy enforcement and training. Also, this is a good time to mention that many police departments are eager to train building owners on what to do when an active shooter situation arises. With the number of active shootings on the rise, we should all be educated on what to do if an active shooting arises. Some police departments liken this training to practicing a fire drill.

4. Out-of-State Owners. If you manage property for an out-of-state owner, they need to understand Texas' concealed handgun laws and laws surrounding negligence and premises liability in order to make an informed decision. Failure to understand Texas' law can lead you to enact a half-cocked policy.

5. Examine Your Leases. Most commercial leases have outdated and insufficient language when it comes to handguns, and security in general. Owners should consult with counsel on this issue and make sure the leases are on target.

In closing, Landlords and property managers cannot be gun shy about this topic. You need to bite the bullet and address these issues right now, especially considering that, as the author is writing this, the Texas Legislature is considering laws that would allow "open carry" (instead of just concealed carry) of firearms, as well as a separate law that would allow Texans to carry guns without a permit.