

GUN LAWS: AN OVERVIEW OF THE RIGHTS OF LANDLORDS AND TENANTS

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Questions for Businesses and Landlords

- ▶ Should the business ban handgun licensees from carrying handguns in their establishments?
- ▶ Should such a business ban or restrict customers from bringing other firearms into their establishments?
- ▶ Are there any other steps the business can take to protect its customers and itself?
- ▶ The answers may be different for retail businesses, offices, hotels, apartments, and rented homes.
- ▶ Banning handguns in a person's residence is a serious infringement on his or her rights.

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Do We Want People Carrying Guns Around?

- Handgun licensees are more law-abiding than police officers.
- Concealed handgun laws reduce murders by 8%, rapes by 5%, and aggravated assaults by 7%.
- Guns are used defensively millions of times per year.
- Texans value their right to own guns.

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What Specific Laws Determine Whether Landlords Can Ban Guns?

- No federal law on this.
- Texas and four other states address this. Minnesota, Ohio, and Virginia generally require residential landlords to allow guns. Tennessee (according to an AG opinion) allows landlords to ban them.
- The other 45 states leave this up to tenants and landlords.
- Public housing authorities may not be able to ban guns because of the 2nd Amendment and governmental action.
- Case law allows premises liability claims.

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Residential Leases in Texas

- Landlords of residential properties can't prohibit tenants and guests from lawfully possessing, carrying, transporting, and storing firearms and ammo. Prop. C. § 92.026; Penal C. § 30.05(f-2).
- Landlords of manufactured homes are under the same restriction. Prop. C. § 94.257; see also Penal C. § 30.05(f-3).
- Condo owners and guests can carry guns even when legal “no-guns” signs are posted. Penal C. § 30.05(f-1).
- Condo owners, as co-owners of common areas, can carry handguns there. Chiarini v. State, 442 S.W.3d 318 (Tex.Crim.App. 2014); Penal C. § 46.02(a)(3).

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The Right to Keep and Bear Arms

- 2nd Amendment: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”
- The Texas Constitution has a similar provision.
- D.C. v. Heller, 554 U.S. 570 (2008): This protects an individual right to keep and bear arms.
- McDonald v. Chicago, 561 U.S. 742 (2010): States must respect the right.
- These apply only to governmental action.

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"Gun Rights: An Overview of the Rights of Landlords and Tenants"