

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

SEAN P. HEALY

Healy Law Offices, P.C.
113 E. Houston St.
Tyler, Texas 75702-8130
(903) 592-7566
www.healylaw.com
genghis@healylaw.com

University of Texas School of Law
2021 Bernard O. Dow Leasing Institute

November 12, 2021
Houston

Table of Contents

1.	<u>Introduction</u>	5
2.	<u>Do we really want people carrying guns around?</u>	5
	a. LTC holders are among the most law-abiding citizens.....	5
	i. There is a stringent process to obtain a handgun license.....	5
	ii. LTC holders commit very few crimes..	6
	b. More guns lead to fewer crimes.....	6
3.	<u>Are there any laws preventing landlords from banning guns?</u>	7
	a. Federal Law.....	7
	b. Specific Locations..	7
	c. Texas and four other states specifically regulate “no guns” provisions in residential leases.....	7
	d. Residential property.....	8
	e. Public housing..	8
	f. General rule for commercial property and other states - it’s up to the parties..	8
4.	<u>What are the rights and responsibilities of gun owners?</u>	9
	a. <u>Federal Law</u>	9
	i. The Right to Keep and Bear Arms is protected by the U.S. Constitution.....	9
	ii. Federal law prohibits nine categories of persons, including felons, from possessing guns..	10
	iii. Federal law prohibits possession of firearms in certain places.....	11
	iv. The Firearms Owner’s Protection Act allows interstate transportation of guns..	12
	v. People under 18 are under special restrictions..	12
	vi. Federal law allows certain LEO’s and ex-LEO’s to carry concealed handguns nationwide..	12
	vii. Federal law restricts or prohibits certain types of guns.....	12
	(1) Federal law requires a background check to own NFA Firearms..	13
	(2) The expired “Assault Weapons Ban” outlawed certain cosmetic features..	13
	(3) Imported firearms are subject to special restrictions..	14
	(4) Antique firearms are not “firearms” under federal and Texas law..	14
	b. <u>Texas Law</u>	14
	i. Texans have the Right to Self-Defense.....	15
	ii. The Right to Keep and Bear Arms is protected by the Texas Constitution..	15
	iii. The Constitutional Carry law ended a 152-year ban on carrying handguns in Texas.....	15
	(1) Since 1836, “Carrying” a handgun was generally prohibited, with exceptions..	15
	(2) The current version of § 46.02 is a LOT more limited prohibition.....	16
	(3) The Constitutional Carry law allows handguns to be carried in most places..	16
	(4) Eligibility for LTC’s and Constitutional Carry - Categories of Persons.....	17
	iv. The concealed handgun law provides additional rights to licenseholders.....	18
	(1) The Open Carry law allows licensed open carry of handguns in a holster..	19
	(2) LTC’s provide significant advantages over unlicensed Constitutional carry.....	19
	v. The Motorist Protection Act authorizes people to keep concealed handguns in their cars..	20
	vi. Texas still places limits on possessing and carrying guns..	20
	(1) Texas prohibits three categories of persons from possessing guns..	20
	(2) Texas strictly prohibits guns in certain places..	21
	(3) A person caught carrying a handgun into a prohibited place should leave immediately.	21
	(4) It is illegal to carry a handgun while intoxicated..	21
	(5) Some traditional handgun laws still survive..	22
	(a) Rifles and shotguns are generally unrestricted.....	22
	(b) One may possess a handgun in his or her residence..	22
	(c) One may still possess a handgun while “traveling.”.....	22
	(d) <i>Moosani</i> allows limited carry of handguns between home and business.....	24
	(e) Other traditional exemptions from § 46.02 may still be good law..	25
	(f) “Necessity” sometimes justifies what would otherwise be unlawful conduct.....	26
	vii. State law preempts most local regulation of guns.....	27
5.	<u>What are the rights and responsibilities of a business owner?</u>	27
	a. A business owner can ban different categories of persons from carrying handguns on the property..	27

i.	A business owner can ban <u>unlicensed persons</u> from carrying handguns..	27
ii.	A business owner can ban LTC holders from carrying <u>concealed</u> handguns.....	27
iii.	A business owner can ban LTC holders from carrying <u>unconcealed</u> handguns..	28
iv.	A business owner can post signs marking places where <u>all guns</u> are prohibited..	28
b.	Any business licensed to sell alcoholic beverages must post appropriate signs..	28
c.	A business owner or manager can carry a handgun in the business..	28
d.	The owner or supervisor of a bar may possess a handgun.....	29
e.	The “parking lot law” allows employees to keep guns in their cars.....	29
f.	“Hotels” may not prevent guests from keeping guns in their rooms or vehicles..	29
g.	Any hotel with policies restricting guns must make efforts to notify its customers.....	29
h.	Texans can carry handguns while evacuating from disaster areas.	29
6.	<u>Victims can make premises liability claims against property owners who fail to protect them from crime..</u>	29
7.	<u>Conclusion</u>	31

1. Introduction

"No greater wrong can ever be done than to put a good man at the mercy of a bad, while telling him not to defend himself or his fellows; in no way can the success of evil be made surer or quicker." - Theodore Roosevelt

This paper discusses firearms law issues which apply to businesses, with a focus on landlords and tenants. It covers federal law and Texas law as of 2021. It is adapted from a paper presented at the Hospitality Law Conference in 2015, which focused on gun laws applicable to hotels and similar businesses.

As of 2021, a landlord in Texas has three decisions to make regarding the carry of firearms on its premises. First, should the landlord ban handgun licensees from carrying concealed handguns on the property? Second, should the landlord ban licensees from carrying unconcealed handguns on the property? Third, should the landlord ban unlicensed persons from bringing handguns on their premises? Finally, are there any other steps the landlord can take to protect its customers and itself? The landlord must consider a number of issues before making these decisions.

These considerations may be different for commercial and residential properties. A person may wish to carry a gun on the premises of a typical business (such as a retail business, service company, or office building) for self-defense. There are other legal purposes (such as keeping them in their direct control for later use), but self-defense is the most common legitimate reason. Persons may legally possess guns in their places of residence for any number of reasons, including self-defense, sporting purposes, collecting them, investment, and teaching their children and family members. If a landlord prohibits a tenant from possessing guns where the tenant resides, he or she may not have anywhere else to safely store them.

To make an informed decision, the business owner must have a general understanding of the restrictions imposed by federal and Texas law on possession of firearms. Whenever a lawyer advises a business on a legal issue, the purpose is to allow the owner to make a business decision. Therefore we must consider both legal implications and business implications.

This paper will discuss the general restrictions on possessing firearms, the specific firearms laws applicable to the tenant-landlord relationship, and some of the business considerations involved in such decisions.

A brief examination of my bio will demonstrate that I am not a neutral observer on this issue. In addition to

speaking and writing to attorneys and judges about firearms laws, I have trained firearms instructors for the National Rifle Association and for Texas 4-H Shooting Sports. I also teach the course to allow law-abiding citizens to carry handguns. I do this because I believe every person has the right to defend himself or herself, including the right to bear arms for that purpose. My legal opinions are affected by my philosophical views. But when an attorney advises a client on legal issues, his duty is to give accurate legal advice. The same principle applies when educating lawyers and judges. For that reason, I have made every effort to include all the applicable information in this paper, whether I agree with it or not.

For at least twenty years, it has been customary to refer to concealed handgun licenses as "CHL's." In 2015 Texas abolished the requirement for licensees to keep the handgun concealed, allowing them to carry handguns either openly or concealed. After 2015, the legal term for a handgun license is "license to carry a handgun," abbreviated as "LTC."

In this paper I will sometimes refer to "good guys" and "bad guys." This is not a reflection of a sexist attitude that only men can be good or bad. I choose those terms because everyone knows what they mean. Please make a mental note that the author understands there are male and female heroes and victims ("good guys") and villains ("bad guys").

2. Do we really want people carrying guns around?

You may ask whether it is a good idea to allow people to carry guns. If you don't ask this question, your clients may. Everyone has an opinion on this issue, but there are also indisputable facts.

a. **LTC holders are among the most law-abiding citizens.**

LTC holders commit very few crimes. There are a number of reasons why that is true.

i. **There is a stringent process to obtain a handgun license.**

To obtain a Texas license to carry a handgun, a person must complete a detailed application with fingerprints and photographs, pay a \$140.00 fee, submit to a background check, attend a four to six hour class that usually costs \$75 - \$100.00, and demonstrate proficiency on the range with a suitable handgun.

There are numerous factors that render a person ineligible for a license, including any felony conviction,

any Class A or B misdemeanor convictions within the last five years, any conviction for disorderly conduct within the last five years, being subject to a protective order, being chemically dependent, or having a condition that renders the person incapable of exercising sound judgment in gun storage and use. Government Code § 411.172.

The bottomline is that they don't give LTC's to bad guys.

ii. LTC holders commit very few crimes.

When states started passing laws allowing citizens to carry concealed handguns, critics predicted gunfights in the streets and other mayhem. This never happened. In 2020 (the most recent year for which the report was available), the Texas Department of Public Safety reported a total of 26,304 criminal convictions in Texas. During that year only 114 of those convictions were of holders of handgun licenses. "Conviction Rates for Concealed Handgun License Holders, Reporting Period: 01/01/2020-12/31/2020," posted at <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/convictionratesreport2020.pdf>. In past years, this has meant LTC holders were about 17 times less likely to be convicted of a crime than the population as a whole. This is despite the fact that merely carrying a gun subjects a person to an increased chance of being arrested. Here is a link to a story discussing these numbers (not available 11/9/21):

<http://www.everythinglubbock.com/news/kamc-news/report-shows-chl-holders-commit-less-crimes>.

If you know nothing about a person except that he or she holds an LTC, you know that person is *much* less likely to commit a crime than the average person in Texas.

b. More guns lead to fewer crimes.

In deciding whether it is good policy to allow people to carry concealed handguns, one should use a balanced approach that considers the costs and benefits.

Professor John Lott, Jr. published a landmark study which analyzed *all* of the crime data for all 3,054 counties in the United States, during a 29-year period (from 1977 to 2005). John R. Lott, Jr., More Guns, Less Crime (3rd Edition, 5/24/10). He found that "[a]llowing citizens to carry concealed handguns reduces violent crimes, and the reductions coincide very closely with the number of concealed-handgun permits issued." (p. 20). He concluded that the data "clearly imply that nondiscretionary [concealed carry] laws coincide with fewer murders, aggravated assaults, and rapes" (p. 57). Specifically, he

found that "[w]hen state concealed-handgun laws went into effect in a county, murders fell by about 8 percent, rapes fell by 5 percent, and aggravated assaults fell by 7 percent" (p. 59).

These conclusions have generated a great deal of discussion, including some criticism and some support. One of the more serious criticisms came from the U.S. National Research Council, which issued a 2004 report entitled "Firearms and Violence: A Critical Review." That report found "no credible evidence that the passage of right-to-carry laws decreases or increases violent crime."

A study conducted in 1993 (the National Self-Defense Survey) found between 2.2 and 2.5 million defensive gun uses per year in the United States. Gary Kleck & Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," 86 J. Crim. L. & Criminology 150 (1995). This means approximately 1% of the guns in the U.S. are used defensively each year. In a recent column, Mr. Kleck concluded, "at least 18 national surveys have consistently confirmed that DGUs [defensive gun uses] are very common, probably more common than criminal uses of guns." Gary Kleck, "Defensive Gun Use Is Not a Myth," 2/17/15, posted at:

<http://www.politico.com/magazine/story/2015/02/defensive-gun-ownership-gary-kleck-response-115082#.VOfbVvnF-So>

Professor Lott found that merely displaying a gun stops an attack 98% of the time. Lott, More Guns, Less Crime (2d Ed. 2000).

The National Rifle Association has documented over 5,000 specific defensive gun uses reported in the press. These accounts are posted in The Armed Citizen, <https://www.nrila.org/gun-laws/armed-citizen>. These accounts have been published in at least two books, including The Armed Citizen (National Rifle Association, 1989). There are many books that provide in-depth accounts of specific defensive gun uses. Two of the best are The Best Defense, by Robert Waters (Cumberland House Publishing, 1998), and Thank God I Had a Gun, by Chris Bird (Privateer Publications, 2014).

After reading any one of these accounts, it is indisputable that having a gun saved *that* person's life on *that* occasion. Any decision to ban guns, including a decision by a business to post "no guns" signs, will affect only law-abiding citizens. In addition to costing business, a decision to ban guns on the premises of a business could cost the customers their lives. In addition, the other (unarmed) customers may be in greater danger because

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Gun Laws: An Overview of the Rights of Landlords and Tenants

Also available as part of the eCourse

[2021 Bernard O. Dow Leasing Institute eConference](#)

First appeared as part of the conference materials for the
2021 Bernard O. Dow Leasing Institute session

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