



TEXAS FIREARMS LAWS 2019

BALANCING THE RIGHTS OF INDIVIDUALS

AND

EMPLOYERS/PREMISES OWNERS

Firearms and Gun Law in Real Estate and Beyond

By
Ross Asher & Marc Markel

MARC D. MARKEL
Roberts Markel Weinberg Butler Hailey PC

One of Roberts Markel Weinberg Butler Hailey's founding partners, Marc Markel has been practicing law for thirty eight years. Marc works with the firm's real estate and community association sections; he is experienced in handling all aspects of real estate transactions, litigation and community association representation. Marc has been listed on Thomson Reuters *Super Lawyers* for many years. Marc is Board Certified in Residential Real Estate, Commercial Real Estate and Property Owners Association Law by the Texas Board of Legal Specialization and a charter fellow of the College of Community Association Lawyers (CCAL). He is AV-rated by *Martindale-Hubbell*.

Mr. Markel has authored master deed restrictions for numerous large residential, commercial and mixed-use projects. He has actively defended community associations and their volunteers in litigation and frequently assists developers through their due diligence process and acquisition of title. His representation of developers, builders and associations involves litigation avoidance techniques in which he conducts a thorough risk analysis program.

Mr. Markel is also a frequent speaker on real estate topics for various bar organizations and the Community Associations Institute (CAI).

Practice Areas

Real Estate
Litigation and Transactions
Community Association Law

Education

J.D., South Texas College of Law, 1979
B.A., Fairleigh Dickinson University, 1976

Certifications and Designations

Board Certified in Commercial Real Estate Law by the Texas Board of Legal Specialization
Board Certified in Residential Real Estate Law by the Texas Board of Legal Specialization
Board Certified in Property Owners Associations Law by the Texas Board of Legal Specialization

College of Community Association Lawyers (CCAL)

Honors and Awards

Listed, Thomson Reuters *Super Lawyers* (Editions 2005-2012, 2014-2019)
Listed, Best Lawyers in America, 2018
AV Peer Review Rated by *Martindale-Hubbell*

Affiliations

Member, American Bar Association
Member, Houston Bar Association
Member, Fort Bend County Bar Association
Member, Dallas Bar Association
Member, Bexar County Bar Association

Bar Admissions

State Bar of Texas
United States Supreme Court
United States District Courts for the Northern, Southern, Eastern, Western Districts of Texas
United States Court of Appeals Fifth Circuit
United States Court of Appeals Eleventh Circuit

ROSS ASHER
Roberts Markel Weinberg Butler Hailey PC

Ross Asher is of counsel with the litigation section of Roberts Markel Weinberg Butler Hailey PC. His practice focuses on civil litigation in the areas of insurance defense, toxic torts, products liability, serious injury, wrongful death cases, and firearms laws. He holds an AV rating from *Martindale-Hubbell*, which is a testament that a lawyer's peers rank him or her at the highest level of professional excellence.

Mr. Asher has thirty years of experience defending products and premises liability cases related to claims of chemical exposure, including mass tort cases. He has argued before the 1st and 14th Courts of Appeal of the State of Texas as well as the Texas Supreme Court. Additionally, Mr. Asher has been admitted Pro Hac Vice and represented clients in the states of Louisiana, Arkansas, Oklahoma, New Mexico, New Jersey, Delaware, Illinois, Indiana, Michigan, California, Oregon, North Carolina, Kentucky, Pennsylvania and Washington.

Prior to entering law school, Mr. Asher spent eight years in the welding and steel fabrication trade. During this time he received valuable experience in numerous aspects of steel construction and fabrication including welding processes, metallurgy, destructive and non-destructive testing methods, metal fatigue, catastrophic metal failures, and forensic testing of materials. Mr. Asher has utilized these and other skills in the handling of cases involving claims of building defects, maritime structure defects, pressure vessel explosions and other types of structural failures.

Mr. Asher served on active duty as a United States Army Infantry Officer, including a tour of duty as a Rifle Platoon Leader in the Demilitarized Zone of the Republic of Korea. Mr. Asher has also served as an Adjunct Professor of Criminal Justice at Sam Houston State University.

Mr. Asher is the founder, owner and chief instructor of Pistolero Handgun Training, a firearms training firm based in Houston. He is certified by the Texas Department of Public Safety as a License To Carry Handgun instructor, and frequently is called upon as a speaker on firearms related subjects at community meetings, professional organizations, service and fraternal groups and other organizations.

Practice Areas

Products Liability
Litigation Practice
Toxic Torts
Insurance Litigation
Construction Law
Firearms Law

Education

J.D., South Texas College of Law, 1987

- Champion, Fisher, Gallagher, Perrin, and Lewis Mock Trial Tournament
- American Jurisprudence Award (Torts)

B.S., Sam Houston State University, 1974

Honors and Awards

AV Preeminent Peer Review Rated by *Martindale-Hubbell*
Member, American Academy of Trial Attorneys

Texas' Top Lawyers of 2016

Affiliations

Member, Houston Bar Association

Bar Admissions

State Bar of Texas

United States Supreme Court

United States Court of Appeals for the Fifth Circuit

United States District Courts for the Northern, Southern, and Eastern Districts of Texas

Introduction

For the past several decades, Texas law has become more and more friendly to the concept of individual rights to the public possession and carrying of firearms. While this comes as a welcome change to many, there are obviously those who are not as comfortable with these newly found firearms liberties. When new legal boundaries are established in any area, the law must make attempts to perform a balancing act which hopefully takes into account the concerns of all sides of the issue. These attempts are sometimes successful and sometimes not, depending upon each person's perspective. This paper will examine some of those recent attempts as well as present a broader look at firearms laws in general for the lawyer who does not regularly practice in this area.

Rights of Employers Regarding Carrying of Firearms

In the context of employer/employee relationships and rights, obvious conflicts may arise regarding the issue of carrying firearms on the job. Texas law has noted such foreseeable conflicts and has attempted to provide solutions which present something of a compromise on the matter. To begin with, an employer may make rules either allowing or prohibiting the carrying of firearms on the employer's premises or in a company owned vehicle. The workplace is either owned by the employer or under his control, therefore the same right to allow or prohibit firearms exists as with any other property owner.¹ The employer is not required to place signage on the premises in order to control employees' conduct in this regard. Personal notice through company meetings, employee manuals, face-to-face instruction or other means is sufficient for the employer to convey his intentions to the employee. However, employers must use the methods described in paragraphs below (30.06 and 30.07 signage) in order to prevent visitors to the premises from carrying handguns. It is important to point out that an employer has the right to not only totally prohibit the carrying of firearms by employees on its premises, but also to merely place certain restrictions upon such carrying. For example, some employers allow concealed carry by employees, but forbid open carrying or display of firearms upon the premises. Thus, there is flexibility in the rights of employers and those in decision making positions should examine all potential avenues in order to determine which policies are best for their particular organizations. The law does not require an "all or nothing" approach.

Rights of Employees to Keep Firearms in Cars on Company Parking Areas

While employers maintain the right to prohibit guns in the workplace, an employer may not prohibit an employee from keeping a firearm locked in the employee's private vehicle even if the vehicle is parked on company owned property such as a parking lot or garage.² There are a few exceptions which do not affect the vast majority of employers.³ Refiners or chemical plant operators may prevent such firearms

¹ See Tex. Lab. Code § 52.062(b).

² *Id.* § 52.061.

³ *Id.* § 52.062.

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