

## Understanding the Impact of Florida's New Concealed Weapons Laws on Leasing

Article

Lowndes

08.03.2023

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Effective July 1, 2023, the Florida statutes were revised to allow people to carry concealed weapons without a permit. However, permits are still available for those interested, and qualified persons may obtain them from the Florida Department of Agriculture and Consumer Services.

It is important to note that not everyone may lawfully carry concealed weapons. Even without a permit, individuals are still required to meet the statutory conditions established for issuance of a permit. These conditions include being a U.S. citizen or permanent resident alien, being at least 21 years old, having no felony convictions, and meeting similar criteria intended to ensure that concealed weapons are not carried by inappropriate people.

Concealed carry of a firearm occurs when the firearm being carried is not visible to others. This is distinguishable from open carry of a firearm, where the firearm is visible. Generally, open carry is a misdemeanor except in certain cases, such as hunting and fishing. Another statutory exception allows a person to briefly and openly display a firearm to the ordinary sight of another person, unless it is intentionally displayed in an angry or threatening manner, not in necessary self-defense.

While the revised statutes do not significantly impact commercial or residential landlords or tenants, their adoption offers a chance to review the current interpretation of Florida statutes and cases dealing with concealed weapons.

In Florida, private property owners generally have the right to prohibit others from bringing firearms onto their property by designating the property as a so-called "gun-free zone." This usually involves posting signs to that effect on or about the premises. However, there are some exceptions to this general rule:

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1. Firearms are not permitted on properties designated as gun-free zones under Florida law, regardless of the owner's desires. Such locations include bars, schools, jails, courthouses, and meetings of governmental authorities;
2. Firearms can be kept in a locked vehicle parked on an owner's property, even if the owner has designated their property as a gun-free zone (called the "parking lot exception");
3. Firearms may be kept by an occupant in their rented home, whether a single-family house or an apartment unit, even if the landlord has designated the premises as a gun-free zone (called the "home exception"); and
4. Firearms may be kept by the operator of a business and its employees (if permitted by the operator) in their rented business premises even if the landlord has designated the premises as a gun-free zone (called the "place of business exception").

The exceptions listed in items 2 through 4 above have been recognized by the courts, even over the objections of the property owner. This recognition is based on the theory that the right to bear arms under the Second Amendment to the U.S. Constitution, trumps the property rights of an employer or landlord to prohibit firearms on their property.

The so-called parking lot exception was established by Florida Statutes Section 790.251. It specifically allows a customer, employee, or invitee to secure a firearm in their locked vehicle in any parking lot, whether public or private.

Individuals have the right to self-defense in their homes, under both the Second Amendment and Florida Statutes Section 790.25(2)(n). This means that a person may own, possess and lawfully use firearms in their own home, regardless of any other restrictions (like the landlord designating the premises as a gun-free zone). Ownership of the home is not required for a residence to qualify for the home exception. Even a rented apartment unit or hotel room meets the exception as long as it is where you reside.

While the yard and driveway of a single family home have been found to be part of the home exception because they are possessed exclusively by the home's occupant, Florida courts have ruled that the possession of a firearm in the parking lot (not in a locked vehicle) of an apartment complex which was designated by the landlord as a gun-free zone did not qualify under the home exception. This is because the parking lot was a common area of the complex and not possessed exclusively by occupant of the apartment unit claiming the exception.

The same statute allowing possession of firearms in one's home offers the exception to a person's place of business, even if rented. Unlike the home exception, the place of business exception has a broader interpretation, encompassing the workplace and its surroundings, such as the sidewalk adjacent to the business building. An employee is included in this exception, meaning business ownership is not required for a person to have the weapon at their workplace.

However, in Florida cases where this exception has been reviewed, it has only been done in cases where the employer operating the business has not objected to firearm possession by employees. If an employer objects (by declaring their place of business to be a gun-free zone), it is difficult to predict whose rights would triumph... the workplace is considered the employee's place of business, but the employer, as the operator of the business, would seek legal recognition of the gun-free zone designation they established for their business.

This raises an interesting issue which has not been the subject of any court cases. If a concealed firearm may lawfully be kept locked in a parked car within a landlord-designated gun-free zone, and it may also be lawfully kept in a rented apartment or rented place of business within that same gun-free zone, how can the firearm owner transport it to and from those permitted locations without carrying it through the common areas of the gun-free zone? This is a question that would involve balancing the Second Amendment rights of the firearm owner with the private property rights of the landlord. Might a court decide that the firearm may be transported by its owner through the common areas, but only if contained within a locked case? Who knows?

What are the options for an owner or landlord to enforce a gun-free zone? Unless covered by one of the exceptions listed above, a person who fails to comply with a gun-free zone and remains on the property after being requested to leave can be charged with trespassing. The owner or landlord would not necessarily know that a person was carrying a firearm weapon unless it was visible, which could result in an additional misdemeanor charge for openly displaying a firearm. In either of these instances, the owner or landlord would be justified in contacting law enforcement.

Based on Florida's statutes and cases, it is clear that the scope of gun-free zones has shrunk due to Second Amendment considerations. In any case, there are varying opinions on the effectiveness of gun free zones, with three general viewpoints:

- The first perspective, offered by proponents of gun control, views gun-free zones as a method of deterrence. They believe these zones prevent firearm use in areas designated as gun-free and eliminate potential mishaps related to improper handling of firearms.
- The second perspective, offered by proponents of Second Amendment rights, considers gun-free zones in the opposite manner. They see them as an encouragement or enticement to commit gun-related crimes because of the lack of protection for those who are within the gun-free zone. This is bolstered by the logical argument that if a criminal intends to commit a felony, they are likely undeterred from doing so because their intended target is in a gun-free zone.
- The third perspective holds that there is inconclusive evidence of the effectiveness of gun-free zones.

Proponents of each perspective offer various statistical data to support their respective positions.

Whatever your views on gun-free zones, and whether you are a landlord, tenant, employer or employee, it is important to keep the foregoing principles in mind when considering your options regarding allowing or prohibiting the concealed carry of firearms on or about your premises.

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