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Issue #2

Weapons Policies in Senior Housing Communities

What is your policy regarding possession of weapons by residents, employees, or visitors? Do you have a relevant policy in place? Are senior housing communities allowed to restrict or even prohibit people from possessing or carrying weapons on campus? Recently, these questions have garnered national attention. Unfortunately, the attention is due, in part, to several weapons-related incidents at senior housing communities. This issue of *Legal Lines* discusses the legal implications in Colorado for senior housing communities considering the adopting of weapons restriction policies.

The Colorado Constitution recognizes an individual's right to bear arms. Article II, Section 13 of the Colorado Constitution states, "The right of no person to keep and bear arms in defense of his home, person and property . . . shall be called in question." Citizens of Colorado are also allowed to carry a concealed handgun, if properly permitted, in all areas of the state, except as specifically limited by Colorado statute.

One such limitation on the right to bear arms or to carry a concealed weapon is the right of private property owners in Colorado to ban weapons from their property. The United States and Colorado Constitutional rights to bear arms do not extend to bringing firearms onto another's private property against the property owner's wishes. Furthermore, Colorado law provides that nothing in the Colorado concealed carry statute "shall be construed to limit, restrict, or prohibit in any manner the existing rights of a private property owner, private tenant, private employer, or private business entity." Although vague, this provision suggests that private property owners may exclude gun-carrying persons from entering onto their premises. Essentially this means that Colorado senior housing communities are free to set policies and rules that prohibit the carrying of weapons onto their campuses.

A "no-weapons policy" in a senior housing community could reduce weapon-related incidents which could occur in three different scenarios.

- In the first scenario, a weapons policy may deter *visitors or outsiders* from bringing weapons on the campus and committing crimes. On one hand, adopting a policy against guns appears to be a prudent step for facilities to take to deter outsiders from bringing weapons on to the premises. Conscientious gun carriers may



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voluntarily conform to the facility's "no-weapons policy," and leave their weapons at home when visiting. On the other hand, adopting policies and posting "No Guns Allowed" is not necessarily going to stop someone with malicious intent from bringing a gun into the facility. A criminal intent on committing a violent act, such as robbery, assault or homicide, is unlikely to be deterred by a sign at the door stating "No Guns Allowed."

- In the second scenario, a no-weapons policy may deter senior housing community *employees* from bringing weapons on the campus and committing violent acts. As a private employer, a senior housing community can enforce a "no-weapons policy" against its employees. When an employee is given proper notice that anything he or she brings to the workplace may be searched, employers may, in general, search the employee's belongings to make sure no weapons are being brought onto the premises. Employees found to be in violation of a facility's "no-weapons policy" may be disciplined or discharged.
- In the third scenario, a "no-weapons policy" would decrease the possibility of weapons-related violence committed by *residents* using their own weapons. Recently, there have been several well-publicized incidents of violence in communities where residents were able to commit violent crimes with weapons they kept in their rooms. In one such incident, in Michigan, a 67-year-old man shot his 65-year-old wife before killing himself. The couple had a history of marital problems and the woman recently told her husband that she was considering a divorce. The morning of the incident, the couple had a heated argument. The woman locked herself in the bedroom, but her husband pried the door open with a pipe and killed her with his own semi-automatic pistol before killing himself. In another incident, in Texas, a man aged 87, diagnosed with Alzheimer's and dementia, shot his 84-year-old wife in the head. His wife had taken him for a walk outside the nursing home where he had lived for over a year. The wife had visited him daily spending most of the day caring for him. The man gave no explanation for the murder and seemed to be unaware that it had happened. In a recent incident, a 77-year-old dementia patient shot and killed the C.E.O. of a large assisted living facility in California. The resident was prone to violent outbursts and consistently berated his caretakers. On the day of the shooting the resident hid the weapon in his sweater pocket, knocked on the C.E.O.'s door and shot him when he answered.



A “no-weapons policy” would be very effective in reducing weapon-related violence committed by residents. Cutting off access to weapons would render such horrific incidents nearly impossible. Although the incidence of weapons-related crimes by residents may be unlikely or infrequent, their severity warrants the adoption of a restrictive weapons policy in order to avoid any possibility of their occurrence. Senior housing communities who adopt a “no-weapons policy” could offer to lock-up residents’ weapons at an off-site facility. Or facilities could simply ban weapons outright and residents would need to find an alternative location to store their weapons.

Several states that have adopted concealed carry statutes provide statutory methods by which business owners, land-owners and employers may enforce their policies prohibiting weapons on their premises. Some require that to enforce a “no-weapons policy” the private property or business owner or employer must post signs or otherwise give notice to customers, visitors and employees that the carrying of firearms on the premises is prohibited.

Colorado’s gun laws do not provide a statutory method for enforcing a “no-weapons policy” by business and property owners or employers. Moreover, the laws do not mandate that to have a “no-weapons policy” a business or employer must post a no-gun notice. In the absence of a statutory method of enforcement, Colorado private property owners must rely on the law of trespass to enforce any no-gun policies.

There are no easy answers to the question of whether a senior housing community should adopt a “no-weapons policy.” Each facility should consider the benefits and detriments of such a policy and each institution will have to reach its own conclusions on whether a “no-weapons policy” makes sense in its particular circumstance. Questions pertaining to drafting “no-weapons policies” should be directed to your legal counsel.