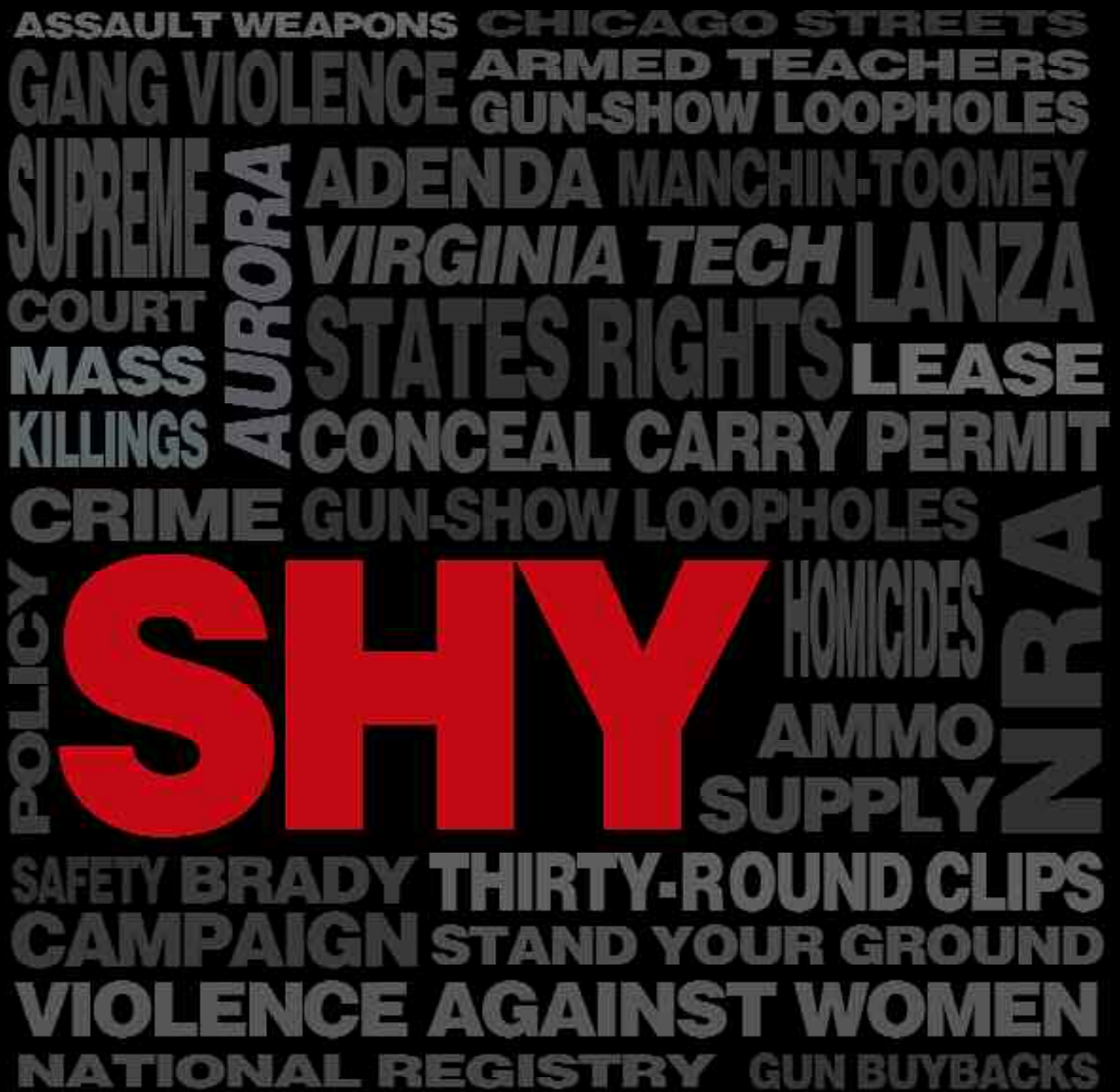


**Some apartment owners prohibit firearms at their communities; others say they have no right—or desire—to do so.**

*BY LAUREN BOSTON*

**H**e's found them in the bushes, in between mattresses and in plain sight on the kitchen table. He's heard them, too. And for independent rental owner Brent Sobol, they have no place at his communities. The owner of Atlanta-based Happy Home Communities bans firearms of any kind at his communities, and has removed 61 guns—ranging from pistols to pellet and toy guns—since he started working in the industry in 2001.

Although some owners find Sobol's policy to be controversial—



and potentially unlawful in certain states—he says it’s just another community rule, such as paying rent on time.

“My lease says we don’t allow firearms,” Sobol says. “It also literally says that we recognize that Americans have a constitutional right to bear arms, but because this is private property, residents are choosing whether or not they are willing to abide by our anti-gun provision. Prospective residents are explicitly made aware of this policy upfront, and nearly all approve of it. Those who don’t are told this isn’t a good fit for their housing choice.”

The U.S. Constitution does, in fact, allow for private contractors to create such provisions. The Bill of Rights restricts the government from violating specified rights of citizenship, such as the right to bear arms. However, residential leases are contracts between private parties who can agree to a variety of conditions, including banning firearms. If a resident fails to comply with these conditions, he or she could justifiably be evicted.

The NAA lease prohibits residents from firing a gun on the property or brandishing a weapon in a threatening manner.

**“There haven’t been any issues where a weapon was needed, but there have been occasions where a weapon would have given some comfort to staff simply by knowing it was available.”**

—*Suzanne Comer, CAPS  
Executive Officer, Lubbock Apartment Association*

It does not specifically address firearm possession, but allows a company to add its own lease addenda or community rules, which could include banning guns. It is up to each individual property owner as to how they want to address the issue.

However, some state laws complicate the matter, such as a recent Minnesota amendment that allows for the lawful possession of firearms in the parking lot of a private establishment, such as an apartment community (see “Sorting Out the Second Amendment” on page 50).

Furthermore, some owners say taking away a resident’s right to bear arms would not only infuriate and turn away many prospective residents—especially in states that are generally opposed to stricter gun-control laws—but could also introduce a

host of liability issues if a crime occurs on their property involving an unarmed resident.

Owners’ opinions on gun possession vary just as much as state-specific rulings on the subject, but apartment industry professionals do agree on one thing: they want their residents and employees to be safe.

### **Fake Guns, Real Danger**

Of the 61 guns Sobol has collected, many are fake guns or replicas that cannot discharge a bullet. Still, Sobol argues that these can be just as dangerous as the real thing.

“You can get yourself shot for brandishing a gun that simply looks real—especially at night,” Sobol says. “A significant number of crimes are commit-

ted with fake guns. Kids can buy them very easily, and they no longer look like Bozo-the-Clown guns with a bright orange tip. I’ve even handed fake guns to law enforcement officials who said they couldn’t tell the difference. It’s scary.”

Sobol doesn’t painstakingly canvass each of his Class “C” communities for firearms, but says they are often found in the property’s bushes. He also finds firearms thanks to tips from residents who hear gun fire. This is typically more frequent during the holidays when “irresponsible” gun owners discharge a round of celebratory gun fire on New Year’s Eve or Fourth of July, for example.

“Most residents don’t want to live in a community that tolerates crime, and will report such behavior,” Sobol says.

Other common hiding spots include

## Proper Gun Possession

**W**hen lawfully owning and storing a gun, residents should always follow these rules:

1. Before handling any firearm, understand how it operates. Not all firearms are the same.
2. Always safely store and secure the firearm, and lock and store bullets in a separate location.
3. Make sure children do not have access to the gun safe or cabinet keys.
4. Always treat every firearm as if it were loaded.
5. Never place your finger inside the trigger guard.
6. Do not handle a firearm while drinking.

*Source: Tennessee Department of Safety & Homeland Security*

under the couch cushions or between stacked mattresses. In such cases, Sobol discovers the firearms after the resident is evicted or skips out and their furniture is being thrown away.

“During our quarterly maintenance inspections, our maintenance technicians have seen guns sitting on the counter or right on the floor—sometimes even with children present,” Sobol adds.

Paul Rhodes, CAMT, NAA Education Institute’s National Maintenance & Safety Instructor, says he has found hidden firearms while inspecting utility rooms located in the hallways of apartments, in particular.

In every instance that he discovered a firearm—typically a rifle or shotgun—Rhodes says he went to the office and reported it, as outlined in that management company’s policies. In one case, a note was made in that resident’s file; in another, an incident report was filed and the police were notified. The police verified legal ownership and did not confiscate the gun.

“I’ve also responded to an emergency maintenance call in the middle of the night where a water leak was seeping into the downstairs apartment,” Rhodes says. “After I corrected the problem, I went downstairs and knocked on the door. I heard a “click-click” behind the door as the resident told me to go away. I did—and quickly.”

In such situations, Rhodes says maintenance technicians should default to the policies put in place by the man-

agement company. However, Rhodes says employee safety should always be the first and last concern.

“A maintenance technician should be able to speak freely with their management team about what is seen in an apartment—not to gossip or tell secrets, but to ensure that the community remains a safe place for residents and employees alike,” he says.

“Frequently, the occupant and owner of the gun is not someone on the lease; or, no one present wants to claim ownership of the gun,” Sobol adds. “In some states those persons are trespassing. We would then call law enforcement and ask them to assess the situation for public safety.”

Sobol says unauthorized occupants who own firearms are of real concern in the apartment industry.

“We’ve seen residents who know they are going to be evicted—and know they have a few months while the eviction is worked through the courts—sell their key via an illegal sublet, and the person who buys the key typically has very little respect for the lease agreement because they didn’t sign it,” he says. “They may not even know that my community has a no-gun provision.”

When an authorized resident is known to lawfully possess a firearm, Sobol politely asks them to remove it from the property—which works the majority of the time, he adds.

Sobol says he typically only involves the police when he believes that the resident in possession of the firearm is

# Sorting Out The Second Amendment

Owners' rights to restrict gun possession vary by state.

BY WARD A. KATZ

**M**ost apartment leases have an implied duty to maintain safe premises. So doesn't the reasonable regulation of guns on one's private property come within the purview of that duty? Or, by some stretch of the imagination, are gun owners—or owners of loaded guns—a protected class?

While common sense and some state laws clearly affirm the right of owners to adopt reasonable regulations governing gun possession, others seem to cloud the issue.

One very clear ruling was by a federal judge who held that the Wilmington (Del.) Housing Authority's policy of prohibiting residents from openly carrying firearms in "common areas" of public housing buildings is reasonable and does not unduly restrict residents' second amendment rights.

In Tennessee, State Attorney General Tom Humphrey issued an opinion stating, "A landlord can prohibit tenants, including those who held handgun carry permits, from possessing firearms within leased premises." He cited the Uniform Residential Landlord & Tenant Act (URLTA), stating that an owner and resident are free to establish terms governing the use of the property (Tennessee Opinion No. 09-170).

On the other hand, in an amendment to Minnesota's law governing the issuance of permits to carry pistols, the right of any "private establishment" to generally prohibit the right to carry or possess a firearm was reiterated. However, it also provides that a private establishment may not prohibit the lawful possession of firearms in a parking facility or parking area. It then goes further to say, "A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests."

States which have adopted URLTA, such as Kansas, have a statutory provision permitting owners to adopt rules and regulations, and any such rule and regulation is enforceable against the resident if:

"(a) Its purpose is to promote the convenience, safety, peace or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of

services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all tenants in the premises equally;

(d) it is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what such tenant must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time such tenant enters into the rental agreement."

In other states, parties may generally waive constitutional rights by contract if they entered into the contract with relatively equal bargaining powers, the contract is not otherwise void or against public policy, and the parties willingly and knowingly agreed to the waiver.

When determining whether a resident has the requisite understanding to render an affirmative knowing voluntary and intelligent waiver, courts do not require the resident to know if the source of the right being waived is the Constitution or a statute; instead, the relevant assessment is whether the resident understood the consequences of the right when he or she gave it up.

This means the lease provision or addendum which contains the waiver should be written very clearly, and initialed and signed by the resident so that there can be no doubt that the resident understands the substance of the waiver.

For state-specific information on gun possession and landlord/tenant rights, contact Nicole Upano, NAA's Manager of State & Local Government Affairs, at [nicole@naahq.org](mailto:nicole@naahq.org).

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committing a crime or their demeanor is one of "potential harm" to staff and residents.

Approximately 40 percent of the residents found with guns are minors, Sobol says. If a minor is carrying a fake gun, Sobol asks them to turn it over to onsite staff for safe keeping until Sobol can talk to his or her parents. Sobol will return the gun if the parents ask for it, but he says the majority support his position and tell him they don't want any guns in their house, either. Often, they don't know how the child got it in the first place.

"It became a necessity for me to be vigilant about gun safety because of the implications that guns can have in a lower-income community, where many of my properties are located," Sobol says. "There is more access by everyone to firearms today—both real and fake. I believe that what renters want more than anything is a safe home."

## Leery of Liability

Damned if you do, damned if you don't.

That's how many apartment owners and managers feel about firearm restrictions—or a lack thereof—within their communities.

"Perhaps brandishing a firearm is not a sufficient reason for a lease termination, but what happens if that same person does so a second time, an accident occurs and now someone is hurt?" says Patrick McCloud, CEO of the Central Virginia Apartment Association. "At what point do we pass a liability threshold where one now has the ability to claim a foreseeable risk was present and management engaged in an unreasonable response by not having terminated the lease agreement? There are some very real management concerns surrounding this issue."

Others fear potential legal concerns on the opposite side.

“If we prevented an individual from defending themselves and they were injured or killed in their home, it would open up a whole host of liability issues,” says one Vice President of a Houston-based property management company.

This vice president adds that it would be nearly impossible to ban firearms because many of her Texas residents have concealed gun permits.

Frank Barefield, President of Birmingham, Ala.-based Abbey Residential, LLC, says he has no lease restrictions regarding gun possession. “Attempting to enforce a gun ban in Alabama would be counterproductive to the operation of my properties there because it’s an “open carry” state, where a gun can be openly carried without a permit, but cannot be carried concealed without a permit,” says Barefield, who uses the NAA lease in all five states where he owns properties.

Unfortunately, there is no clear answer when it comes to owner liability. It is often on a state-by-state and case-by-case basis. Furthermore, each owner believes he or she knows better than anyone else what is best for his or her community and residents—so long as it is within their legal rights.

But regardless of what side of the issue apartment industry professionals fall, most would agree that resident and employee safety is their No. 1 concern. Many say industry best practices must be put in place to protect all involved. However, this is easier said than done.

“The reality is that encounters with firearms are a very real part of property management,” McCloud says. “Whether it’s maintenance staff walking into a unit to complete a work order and finding firearms laid out on a coffee table, or incidents where two residents get into a dispute and one of them brandishes a firearm—our community managers do encounter these situations. They need fellow owners and managers to share their policies and perspectives in order to think through these situations and find the best way to deal with them.”

Sobol says decisions regarding gun possession should be specific to the property and management company, because there are many factors to consider.

“Our policy has worked well for us and for our circumstances, but it won’t work for everyone,” he says.

## **Working With Weapons**

Many management companies have safety policies in place for their residents—but what about their employees?

Jennifer Staciokas, Vice President of Marketing & Training for Dallas-based Lincoln Property Company, says Lincoln forbids its employees from possessing any deadly weapons—including, but not limited to, knives, clubs, guns and explosives—while on company premises.

Another Vice President of Training and Development for a southeast REIT says her company policy states that employees cannot carry weapons on the grounds—or in the office—of any community. However, no policy is in place that forbids employees from storing (legally owned) firearms in their vehicles. (One REIT restricts this as well.)

That southeast REIT’s lease forbids residents from discharging

or displaying legally owned weapons, but does not prevent them from owning firearms. There is no policy that addresses vendors and contractors who bring weapons on the property, though the Vice President of Training and Development says her company has discussed this.

“Our policies regarding weapons were in effect when I joined the company 13 years ago,” she says. “They were implemented for the safety of our employees, but also to prevent a liability issue for the owner. Like many of our policies that were put into place, this is an area that is gaining focus in light of all the recent events involving gun violence.” The company plans to revise its policies and procedures in the next three months.

Dallas-based Milestone Management has a Weapons Free Workplace policy in the Associate Handbook that restricts employees from bringing weapons of any kind on company premises, or storing them in company-owned areas or facilities. Associates are prohibited from carrying any weapons, even if licensed, in their personal vehicles while on company property, unless specifically authorized by state law. This includes parking lots, walkways, buildings and offices.

at an apartment community—though every circumstance is different.

To foster a better relationship with the police, Sobol suggests creating an open line of communication with the precinct leader.

“Proactively engage them when you suspect any illegal activity in general,” Sobol says. “Most police officers are more than willing to work with a property manager who shows serious interest in reducing criminal activity on their property. Police won’t be that interested if they perceive the landlord to be insincere and self-serving with crime reporting solely for economic reasons.”

Sobol says crime prevention is a partnership, yet many owners want police and prosecutors to do the bulk of law enforcement.

“If you care and are willing to do some safe reporting of suspicious activity, with a genuine goal of neighborhood safety, police will bend over backward to help,” Sobol says. “Police generally perceive that rental housing communities have a higher propensity for gun crime and other acts of aggression because they see dense living coupled with a renter vs. owner mindset, and the possibility of lower household income and lower education as crime drivers.”

In addition to working with law enforcement, Sobol says

**“If you care and are willing to do some safe reporting of suspicious activity, with a genuine goal of neighborhood safety, police will bend over backward to help.”**

*—Brent Sobol, Owner  
Happy Home Communities*

As for residents and vendors, the handbook states, “Resident associates may retain licensed weapons within the confines of his or her home, subject to statutory compliance. During off-duty hours, they may carry a licensed weapon in their vehicle or possession only in compliance with statutes governing such possession. This policy also applies to the Company vendors.”

Associates who become aware of violations of this policy are instructed to notify their supervisor and Human Resources.

Suzanne Comer, CAPS, Executive Officer of Texas’ Lubbock Apartment Association (LAA), says LAA has wording in its employee handbook that restricts “unauthorized possession of dangerous or illegal firearms, weapons or explosives on association property or while on duty.”

However, Comer says the biggest concern is staff safety.

“There haven’t been any issues where a weapon was needed, but there have been occasions where a weapon would have given some comfort to staff simply by knowing it was available,” she says. “We often have upset people in the office who are having issues with their apartment management company. Telling someone you cannot help can lead to even more frustration and anger on their part. Our board is currently looking into allowing concealed carry license (CCL) holders the ability to carry while at work and on association business.”

## Safe Surroundings

In his experience, Sobol says there is a 50 percent chance that the local police will become involved in the removal of firearms

management companies can build in simple processes at the operations level to effectively reduce crime. Sobol’s company performs routine maintenance inspections, requires that exterior light fixtures be fixed within 48 hours of a problem being reported, and asks its patrol officers to report obvious lease violations.

“You don’t just have a sudden surge in criminal activity—it’s a build-up of a perceived permissiveness on the part of the management not acting when visible rules are being broken,” Sobol says. “There is a lot of truth to the broken window theory. If you allow a place to be run-down physically, you are much more likely to experience people violating social norms. You have to have crime-prevention policies built into day-to-day operations.”

Rhodes agrees, and says not reprimanding residents for dog waste, abandoned cars or improper trash disposal—as well as an absentee courtesy officer—all contribute to a permissive attitude.

In addition to enforcing community rules, Sobol also requires site management to live on the property. He believes onsite employees are less likely to lease an apartment to a questionable person when they may have to live next door to them.

**“Most owners want a peaceful community but aren’t sure how to go about it, especially when they sense their crime problem has already gotten out of control,” Sobol says. “My feeling is, study the problem and then try something that gets to the root cause. To do nothing costs everyone in the long run.”**

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