A White Paper on
Property Management and Firearms in Georgia
Produced by the BOMA Georgia Foundation
Overview

This white paper was created to assist property owners and managers in understanding Georgia’s firearm laws as they pertain to the ownership and management of buildings in the state. This document is for informational purposes only and does not constitute legal advice. Users should consult their own legal counsel for advice regarding the application of this law.

About the BOMA Georgia Foundation

The Building Owners and Managers Association of Georgia Foundation advances real estate education and research. It provides scholarships for individuals to enroll in real estate designation and certificate professional development programs. Foundation research provides tools to real estate professionals that add value to the properties they own, manage, and operate. And the foundation's research studies and white papers also help real estate professionals and companies stay competitive in the continually evolving real estate marketplace. To learn more, visit www.BOMAGeorgiaFoundation.org

Property Management and Firearms in Georgia

“The ‘Georgia Safe Carry Protection Act,’ became law in Georgia on July 1, 2014. The Safe Carry Protection Act (SCPA) is comprehensive legislation that materially impacts the ability of licensed gun owners in Georgia to legally carry their weapons into a variety of places that were previously off limits, including bars, public housing, churches (at the discretion of the governing body), and all government buildings without screening checkpoints. The law also allows persons to carry firearms at airports in areas that are outside of federal security checkpoints. Additionally, there are detailed rules regarding the carrying of weapons on school property. Prior to the enactment of this law, licensed gun owners in Georgia already were able to legally carry their weapons in a variety of places, including public parks and recreation areas. Furthermore, under both the existing and newly enacted law, an unlicensed gun owner who is otherwise not prohibited from carrying a gun, can carry a gun on his or her property, or inside his or her home, motor vehicle, or place of business.”¹

1. Parking areas

Under the SCPA, both licensed and unlicensed gun owners are able to carry guns in their private passenger motor vehicles, “provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21, except as

provided in Code Section 16-11-135.” O.C.G.A. § 16-11-126(d). O.C.G.A. § 16-7-21 is the criminal trespass statute, which, among other things, makes it a crime to come on to another’s property for an unlawful purpose, when such entry has been expressly forbidden, and/or when the owner/occupant/representative has given the person notice to depart.

Another statute affecting owners/managers, O.C.G.A. § 16-11-135, was enacted in 2008, and it prohibits employers from maintaining or enforcing an employment policy banning concealed weapons from the employer’s parking lot, and limits the employer’s right to search locked, privately-owned vehicles of employees or invited guests on the employer’s parking lot. It has a provision which allows an employee to maintain a concealed firearm in their private vehicle, but that provision only applies to employees that possess a Georgia firearms license. The statute also does not apply to situations where the employer provides the employees with a secure parking area, restricted from general public access, and the employer’s policy regarding vehicle searches is applicable to all vehicles entering the property. This statute also provides exceptions to the prohibition, including:

- if the employer maintains secure parking areas restricting public access;
- if the vehicle is owned or leased by the employer and the employee uses it in the course of business;
- if the employee is restricted from possessing a firearm due to pending or past disciplinary action; if the employer is a penal institution or confinement alternative; or
- if possessing a firearm on the premises is otherwise prohibited by state or federal law.

2.) Properties/Buildings

O.C.G.A. § 16-11-135(k) states that nothing in that statute will restrict private property owners’ rights to control access to their property, and seems to indicate that an employer who is also the property owner continues to have rights that are superior to those created by the rest of the statute which permit access to their property for employees with guns. This interpretation of the statute has been upheld in at least one case by the Eleventh Circuit Court of Appeals. See GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244, 1265 (11th Cir. 2012). So while the statute restricts policies regarding searches of vehicles, it does not appear to restrict an owner/manager from expressly prohibiting weapons on the properties themselves. The statute also does not prohibit lease language which prohibits employees from carrying weapons, except as provided in § 16-11-135(b), which prohibits banning weapons in locked, private vehicles in the parking lot as a condition of a person’s employment.

There is no provision in the statute for the manner in which notice must be given to those who might come upon a property where the owner/manager has banned weapons. However, a potential analogue can be found in the Georgia criminal trespass statute (noted above), as referenced in § 16-11-135(k) itself. The Georgia courts have interpreted the notice requirement under the criminal trespass statute to “be reasonable under the circumstances, as well as
sufficiently explicit to apprise the trespasser what property he is forbidden to enter.” Love v. State, 302 Ga. App. 106, 108, 690 S.E.2d 246, 249 (2010). This is not very specific guidance, but at least provides a rough rule of thumb for the notice that must be provided to persons with weapons.

3.) FAQ for owners/managers

- Can I restrict firearms in my building/parking area/property?
  
  o Yes, with some limitations. You can prohibit weapons in the building, on the property, and in the parking area. However, for the parking area, you can’t prohibit a concealed-carry-license-holder from having a weapon in their vehicle, but you can if the parking area has restricted access. You also can’t search vehicles in your parking area, unless the parking area has restricted access and the search policy applies to all vehicles. In unrestricted parking areas, there are the following exceptions to the prohibition on vehicle searches (i.e., searches in these circumstances are allowed):

  (1) searches by certified law enforcement officers pursuant to valid search warrants or valid warrantless searches based upon probable cause under exigent circumstances;

  (2) searches of vehicles owned or leased by an employer;

  (3) searches in any situation in which a reasonable person would believe that accessing a locked vehicle of an employee is necessary to prevent an immediate threat to human health, life, or safety; or

  (4) searches when an employee consents to a search of his or her locked privately owned vehicle by licensed private security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property.

Finally, you can’t, as an employer, condition employment on the potential employee agreeing not to bring weapons into the parking lot.
• How do I give notice of the policy prohibiting weapons?
  
  o As mentioned above, the notice has to “be reasonable under the circumstances, as well as sufficiently explicit to apprise the trespasser what property he is forbidden to enter.” What is “reasonable” is subject to interpretation, but common methods of notice include, for example, signs posted on entry doors and in parking areas.

• What is my recourse for someone who does carry a firearm in any of the areas above?
  
  o It is the same as it would be for any other violation of policies regarding your property.

• Is my premises liability exposure increased by this statute?
  
  o O.C.G.A. § 16-11-135(e) specifically states the following: “No employer, property owner, or property owner's agent shall be held liable in any criminal or civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm, including, but not limited to, the theft of a firearm from an employee's automobile, pursuant to this Code section unless such employer commits a criminal act involving the use of a firearm or unless the employer knew that the person using such firearm would commit such criminal act on the employer's premises. Nothing contained in this Code section shall create a new duty on the part of the employer, property owner, or property owner's agent.” However, owners and managers should consult with their counsel about the potential exposure at any of their properties.

**Disclaimer**
This document is for informational purposes only and does not constitute legal advice. Users should consult their own legal counsel for advice regarding the application of this law.