COMMUNITY ASSOCIATIONS AND THE FIREARM CONCEALED CARRY ACT
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On July 9, 2013, the Illinois Firearm Concealed Carry Act (Public Act 98-0063) went into effect, under which, subject to certain licensing requirements and restrictions, a person will be allowed to carry a concealed loaded firearm. In the Act, the term “firearm” is used interchangeably with “handgun”.

BACKGROUND

This law has been very publicized and is rooted in the ongoing controversy over the Second Amendment to the U.S. Constitution’s reference to the “right to keep and bear arms”. In the McDonald v. City of Chicago case, the U.S. Supreme Court ruled that a citizen has the right to own and keep a handgun in his/her own private residence, thereby striking down the City of Chicago’s strict handgun ordinance. Subsequently, in the Moore v. Madigan case, the federal Court of Appeals struck down the Illinois criminal statutes regarding unlawful use of weapons as being overbroad and in violation of the Second Amendment. In response, the Illinois Legislature enacted the Firearm Concealed Carry Act.

WHAT THE LAW PROVIDES

Under the Illinois Firearm Concealed Carry Act, a person may carry a concealed loaded handgun, if the person meets certain licensing and training requirements. Note that the Department of State Police has 180 days (about 6 months) from the effective date of the Act by which to have license (to carry a concealed firearm) applications available to the public. However, the right to concealed carry of a handgun is not absolute, but instead the law specifically identifies circumstances in which the carrying of concealed handguns is or can be prohibited.

In particular, Section 65 of the Act sets forth numerous “prohibited areas” where a person cannot knowingly take a concealed firearm (such as in schools, courthouses, governmental buildings, correctional institutions, hospitals, public playgrounds, public parks etc.), which also includes the situation where “the owner of private property of any type may prohibit the carrying of concealed firearms on the property” under its control (specifically, Section 65(a-10)). There is an exception to such a prohibition with regard to a person having the firearm in a vehicle and storing it in that vehicle. The owner must post a sign indicating that firearms are prohibited on the property”. The sign must be “clearly and conspicuously posted at the entrance of a building, premises, or real property . . . specified . . . as a prohibited area”. The signs “should be a uniform design as established by the Department [of State Police] and shall be 4 inches by 6 inches in size.” The Department of State Police is to adopt rules for standardized signs to be used”. However, no sign is required for a “private residence.”
WHAT ASSOCIATIONS CAN DO

Initially, there is the technical issue that the association may not be the “owner” of the property; however, under applicable statute and covenants, the association has the legal standing to act on behalf of the individual unit owners. Thus, a condominium, common interest community (townhome or homeowners), cooperative or master association can prohibit persons from carrying concealed firearms on the property.

Clearly, such prohibition can be adopted for common areas and facilities. What about the individual unit or private residence of the owner? While the Firearm Concealed Carry Act does not expressly address it, it is our opinion that the answer is “yes”.

To begin with, the Second Amendment (right to bear arms) is part of the Bill of Rights which are limitations on governmental action, not private action. While Section 18.4(h) of the Illinois Condominium Property Act expressly states that the association cannot adopt rules that impair the First Amendment, it makes no mention of the Second (or any other) Amendment.

Second, the courts have recognized that living in a close community setting requires each owner to give up certain rights and privileges (that her/she would otherwise enjoy in separate, privately owned property), for the benefit of the community as a whole.

Third, given the close proximity of individual residences, which indeed may share walls, ceilings and floors, the discharge of a firearm in one residence could literally result in a bullet going through into the adjacent unit(s).

Finally, if the prohibition or restriction will be done by rulemaking, the rules must be reasonable under the circumstances. Thus, what is reasonable in a highrise may not be reasonable where detached homes are situated on 5 acre lots.

PRACTICAL GUIDANCE

A. Amend the Declaration/Covenants

The Association can amend its declaration/covenants to restrict or even prohibit firearms on the premises (both common areas and individual residences); of course, the Association would have to follow the procedures set forth in its documents, which typically requires approval by a supermajority of all the unit owners.

OR

B. Adopt Rules and Regulations

1. The Board of Directors can adopt a rule pursuant to the applicable procedure (for condominiums, Section 18.4(h) of the Illinois Condominium Property Act; for other associations, check the declaration and by-laws).

2. To prohibit concealed carry of firearms, the Rule could state simply that “Pursuant to Section 65(a-10) of the Illinois Firearm Concealed Carry Act, [Section 18.4(h) of the Illinois Condominium Property Act] [for condominiums], and Article __, Section ___ of the
Declaration and By-Laws of the Association, the Board of Directors adopts the following rules, effective immediately upon adoption:

a. No firearm (whether loaded or unloaded) may be carried either partially or wholly concealed on a person in, on or through the [Condominium] [Association] common areas at any time.

b. This rule does not apply to law enforcement or other governmental personnel who are authorized and required to carry firearms on private property, including the Association’s premises.”

Pursuant to the Act, the Association must post conspicuous signs at the entrance of buildings and other areas of its premises. The Department of State Police has published the prescribed signage (minimum 4” x 6” size) that must be used and included as part of any larger signage; see below:

OR

3. To prohibit firearms COMPLETELY, the Rule should include a definition of “firearm” and could state:

“a. No firearm of any kind may be kept, maintained, stored or transported in any unit or common elements [area] of the [Condominium] [Association property].

b. No ammunition for a firearm of any kind may be kept, maintained, stored or transported in any unit or common element [area] of the [Condominium] [Association property].”

Of course, the foregoing generic examples in Alternatives #2 or #3 above should be reviewed by the individual association’s legal counsel prior to implementation.

Enforcement of the rule can be done by calling local law enforcement and also by the Association’s internal disciplinary action (including fine, injunction lawsuits etc.).
CONCLUSION

Each association must decide for itself as to how its community expects to deal with firearms (whether concealed or not), and in that regard, a discussion of this matter with the unit owners would be appropriate.