

We Understand
Community
Associations.

Lazega & Johanson LLC is a law firm dedicated to representing community associations. We believe in building and maintaining long-lasting relationships with community associations and their managers by providing personal attention and superior services. We take pride in being a part of the team of experts you rely on to ensure the successful operation of your community.

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PROHIBITING WEAPONS ON ASSOCIATION PROPERTY



Exactly What Can Associations Do?

The debate over gun control may rank amongst one of the most divisive issues across the nation. With tragedies such as Columbine, and the more recent Aurora, Colorado theater shootings, many groups are pushing for stricter gun control laws across the nation, while others are standing their ground to preserve their Second Amendment rights. Every year, new legislation is proposed at both the state and national level concerning guns and gun control.

During the 2011-2012 legislative session in Georgia, there were several bills proposed that would change various parts of the existing Georgia Firearms and Weapons Act. One bill in particular, HB 981, proposed sweeping changes to current laws by allowing people who are properly licensed to carry concealed weapons in a place of worship, state mental hospital, polling place, bar, school zone and governmental building (with the

exception of courthouses). However, the proposed bill would also allow private property owners to forbid the possession of concealed weapons on the owner's private property. The bill did not pass, but needless to say, it was polarizing for many residents across the State of Georgia.

The furor over this proposed legislation brought to the forefront the age-old question of infringement upon Second Amendment rights, and, more specifically, what constitutes unlawful infringement of rights versus reasonable regulations. In the context of community associations, this is a question that has been posed to many boards of directors and managers over the years. On the heels of the Trayvon Martin case, and with proposed legislation such as HB 981, the subject of gun control in the community association setting is both contentious and a source of confusion.

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We are committed to your success.

Our attorneys and staff have decades of experience and are proven leaders in their fields. Our attorneys are uniquely qualified and have been recognized on both a national and local level for their knowledge and commitment to their respective fields. We value the relationships we have with our clients. We are proud to be a part of the team of experts they rely on, and we work hard to maintain those relationships everyday.

Georgia law currently prohibits the carrying of a weapon or long gun, with limited exceptions, in any governmental building, courthouse, jail or prison, place of worship, state mental health facility, bar (unless permitted by the owner of the bar), a nuclear power facility or within 150 feet of a polling place. Otherwise, Georgia law state that a license holder is authorized to carry a weapon as provided under law and in every location in the state that is not listed above as being prohibited. The law further states, however, that private property owners or persons in legal control of property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such property shall have the right to forbid possession of a weapon or long gun on their property.

Some gun owners point to the blanket statement that, unless otherwise prohibited by law, a license holder may carry a weapon in any location at any time in arguing that they have the right to carry a weapon within a community. However, this ignores the clear authority of an association, as a property owner, to prohibit weapons on common property that is owned by the association, or on property under the association's management and control, such as common element property in a condominium. The law supports the ability of an association to prohibit

weapons on such common element or common element property.

Another argument that some gun owners may make in disputing association regulations prohibiting weapons on common property is that such prohibitions infringe Second Amendment rights to bear arms. This assertion is incorrect. First, only governmental entities or quasi-governmental entities can infringe upon the constitutional rights of a person. The infringement of constitutional rights does not apply to private persons or entities that are not governmental or quasi-governmental in function, unless it is discriminatory in nature. Courts have routinely held that a community association is a private entity that is not involved in state functions or actions. The courts do not recognize community associations as being governmental or quasi-governmental in





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nature. Accordingly, an argument of a violation of constitutional rights will not reach to the private covenants being enforced by a community association. Likewise, a case cannot be made that the prohibition of weapons on common areas is discriminatory, as gun bearers are not a protected class of people under the law.

Second, by choosing to move into a community governed by private covenants and conditions, an owner has essentially contracted to abide by such covenants, including any covenants which prohibit or otherwise limit the use of weapons. A parallel can be drawn between established case law upholding community association covenants prohibiting signs in the face of free speech challenges and covenants restricting the carrying and use of weapons. In cases dealing with private covenants restricting signs where challenges were raised claiming a violation of First Amendment free

speech rights, Georgia courts have been clear that they will not interfere with the freedom of parties to contract, through community covenants, on any subject matter and on any terms, unless prohibited by statute or public policy or otherwise clearly injures the public interest. Accordingly, the parties in a covenanted community can contract away any personal rights to bear arms on association property.

More likely than not, legislation similar to the HB 981 will continue to be proposed in the Georgia legislature. It should be noted, however, that all versions proposed so far have included the right of a private property owner to prohibit the display, use or carrying of weapons on private property or on property under that person's legal control. With this, it is unlikely that an association's ability to prohibit weapons on common property or common element property will change any time soon.

Lazega & Johanson LLC prides itself on taking chances and being the first to try something new that changes industry practices and opportunities. Our goal is to meet the goals of our clients and do whatever it takes to make sure that those goals are not compromised or neglected due to financial or other restraints. We consistently make efforts to think outside the box to find ways to assist our clients in meeting their goals.



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