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Articles

Concealed Carry: Landlord Rights and Developing Issues

By Andrew J. Annes and Allison M. Adams

Illinois' New Concealed Carry Act Allows Landlords Option to Opt-Out and Ban Concealed Carry on its Property—Which Raises Serious Liability and Public Perception Concerns

In early July, the Illinois General Assembly passed The Firearm Concealed Carry Act ("Act") (Public Act 098-0063), becoming the last state to allow concealed carry. Licenses are projected to be issued starting in April of 2014, although State's Attorneys for some counties have already publicly announced they will no longer enforce concealed carry bans. However, there is a caveat that allows private property owners to opt out and ban concealed carry on their private property. This opt out right immediately raises numerous tenant, liability, insurance, public perception and business issues.

The Act

The Act allows licensees to carry concealed firearms in most public places. See 430 ILCS 66/1.1 et seq. However, there are certain exempt or prohibited areas where not even licensed concealed carry holders may have a firearm, which include: schools, child care facilities, hospitals and nursing homes, bars, casinos, public transit, government buildings, public parks, sporting events, and other public gatherings.

In addition to the prohibited areas (as set forth above and further defined in the Act), a property owner/landlord may opt-out and prohibit the concealed carry of firearms on his or her property. If the property is a private residence, the property owner does not need to take any specific action to prohibit concealed carry. However, if the property is multi-unit housing or commercial property, the owner must clearly and conspicuously post a State Police established sign at the entrance of the building or property. If a person brings a concealed weapon on the property against the landlord's prohibition, the landlord may request that they leave the premises and may call the police for enforcement.

Developing Issues

First, the Act only gives the "owner" of the private property the right to prohibit concealed carry. The tenant is not afforded separate rights to opt-out. This may become an issue if a tenant has a strong preference on the issue that may be adverse to the owner's. The Act does not specify that the property owner must prohibit concealed carry on the entire property, so one option may be to permit each tenant to decide as that to what that tenant deems appropriate for their portion of the leased premises. Additionally, landlords should be mindful if a tenant is deemed to be an "exempted property" such as a bar or child care facility. While it is the responsibility of the license holder (the firearm carrier) to refrain from carrying a firearm into those exempted properties, it should be clear to all tenants and customers what the concealed carry policy is for common areas and parking lots.

Second, property owners and landlords may find themselves to be in a "Catch-22" as to their concealed carry position. On one hand, by electing to "opt out" and prohibit concealed carry, there is concern that a victim may seek to hold the property liable based upon the victim possibly claiming that they were prevented from defending himself or herself as a result of not being permitted to have a concealed carry.

On the other hand, if a landlord permits concealed carry, there is a fear that it may expose the owner or landlord to liability arising from any use of firearms on the property. With either decision, the issue becomes the adequacy of the measures taken, or not taken, by the property owners to ensure the safety of those persons lawfully permitted on the property. As this is a recent change to the law, there is very little case law as to how Illinois courts will come down on these issues as to the landlord's duties to its patrons. This concern has been playing out in the background of the Aurora, Colorado theater shootings. On July 20, 2012, a man entered a movie theater and began shooting into the crowd, killing twelve people and injuring approximately eighty. The theater in which the shooting occurred was in close proximity to other theaters playing the same movie at the same time that night. However, the theater in which the incident took place was the only one, out of seven nearby theaters, which prohibited concealed carry based on a policy of the theater's parent company. This has sparked debates as to the responsibility, if any, of the theater.

Third, some states, such as Wisconsin, specifically give statutory immunity to the owners for their decision to allow concealed carry. However, the Illinois Act does not [at least yet] provide for any such immunity.

Finally, there are also business, social and economic concerns relating to concealed carry which must be considered. Potential and actual customers, patrons, clients and tenants will have opinions on both sides of the debate. We find that most commercial landlords are hesitant to take a decisive stand either way for fear of alienating both actual and potential customers. This business concern is legitimate and should also be considered.

SATC is working closely with businesses, property owners and management companies on these issues and monitoring the application and enforcement of the Act. If you have any questions regarding Act, please do not hesitate to contact Andrew J. Annes at aannes@satcltd.com or 312.554.3110.

IMFL: Recently Passed Amendments To Strengthen Tenant Rights

By Phillip N. Coover

The Illinois legislature has recently sought to amend the Illinois Mortgage Foreclosure Law in order to strengthen the rights of residential tenants who have "bona fide" leases. Senate Bill SB 0056. These changes will prohibit the termination of bona fide residential leases by receivers, mortgagees in possession, and foreclosure sale purchasers, unless the termination is at the end of the lease term and if more than ninety (90) days' notice is given to tenant. There are, however, strict criteria to qualify as a "bona fide" lease as the tenant must not be the mortgagor's immediate relative (unless they prove the lease is legitimate), the lease must be an arms-length transaction, the rent must be fair market value or subsidized by a government subsidy, and other certain criteria—so sweetheart deals with the borrower's relatives, and below market leases, can still be terminated. The legislature also made it clear that none of these additional tenant-friendly requirements will diminish a receiver's rights to pursue a forcible entry and detainer action for non-payment of rent. These new tenant amendments do not affect commercial property.

In addition to being mindful of these proposed legislative changes when considering the possibility of terminating a lease, it would also be prudent to consider the impact of these changes on the front end of your leasing transaction.

The bill (SB 0056) has passed both the Illinois House and Senate, and was sent to the Governor on June 28, 2013 for signature before becoming law. The Governor has sixty (60) days from June 28, 2013 to take action on the bill; otherwise it will automatically become law.

On an unrelated note, the proposed amendments also clarify that a mortgagee cannot seek a deficiency judgment against a deceased mortgagor. Accordingly, lenders should be mindful to file an appropriate claim in the decedent's probate estate if they believe the decedent may have assets to satisfy the loan.

If you have questions regarding the new amendments, or other aspects of the Illinois Mortgage Foreclosure Law, please contact Phillip N. Coover at pcoover@satcltd.com or 312.554.3103.

Interns: To Pay or Not to Pay?

By Diane M. Crary and John W. Campbell, Jr.

A recent court ruling has called into question the legality of the unpaid internship position; a summer staple at many companies nationwide. A judge for the Southern District of New York recently held that two "interns" for Fox Searchlight Pictures were misclassified as unpaid interns since they functioned more like employees. Consequently, the company was deemed to have had violated both U.S. and New York minimum wage laws and were liable for back-pay. In reaching the decision, the court looked at the following six criteria laid out by the U.S. Department of Labor for determining who qualifies as an unpaid internship in the for-profit sector under federal minimum wage law:

(1) Whether the internship is similar to training that would be given in an educational environment;
(2) Whether the internship benefits the intern;
(3) Whether the company derives an "immediate advantage" from the intern's work;
(4) Whether interns displaced regular employees;
(5) Whether the intern isn't necessarily entitled to a job after the conclusion of the internship; and
(6) The understanding about no entitlement to wages.

The more the employer answers "yes" to these questions, the greater the likelihood that intern functions as an employee, which increases the likelihood that the company will be required to pay him or her minimum wage. Furthermore, the opinion explicitly noted that academic credit alone does not automatically bring an unpaid internship into compliance with the law. Eric Glatt, et al. v. Fox Searchlight Pictures Inc., et ano., Civil Action No. 11-6784, Memorandum & Order, Doc. No. 163, p. 32 (S.D.N.Y. June 11, 2013).

What this means for you: If your company retains unpaid interns, step one is analyzing your current program against the six factors of the Department of Labor test (listed above). This is an emerging issue for employers, and thus the outcomes are not entirely predictable. For example, a federal judge in a case against Hearst Corporation denied class certification in May 2013 for unpaid interns at Harper's Bazaar. Xuedan Wang v. The Hearst Corporation, Civil Action No. 12-793, Opinion & Order, Doc. No. 149 (S.D.N.Y. May 8, 2013). But in the wake of the news of the Fox Searchlight ruling, it can expected that more cases will filed and the law will continue to evolve. In fact, Condé Nast was recently sued by two former interns who are also seeking class certification. Lauren Ballinger and Matthew Leib v. Advance Magazine Publishers, Inc. d/b/a Condé Nast Publications, Civil Action No. 13-4036, Class Action Complaint, Doc. No. 1 (S.D.N.Y. June 13, 2013).

If you would like to discuss unpaid internships more specifically as they apply to your business, please contact John W. Campbell, Jr. at jcampbell@satcltd.com or 312.554.3126.

Julie's Law: Taking Away Court Supervision For Excessive Speeders

By John W. Campbell, Jr. and Diane M. Crary

As summer heats up and road trips become more prevalent, drivers must be aware of the following recent changes to Illinois traffic laws that have the potential of stopping drivers in their tracks. Effective as of July 1, 2013, if a driver is pulled over going more than 30 miles per hour over the speed limit (or 25 miles-per-hour or more above the posted limit in "urban districts," which includes cities and most small towns), the court is no longer permitted to enter an order of supervision to the driver. The legislation was introduced in response to the fatal accident involving Julie Gorczysnski, who was killed by a speeding motorists going 76 mph in a 40 mph zone. That motorists had previously received supervision on multiple occasions for excessive speeding.