

p.s.

Poyner Spruill^{LLP}
ATTORNEYS AT LAW

You Can “Just Say No” To Weapons At Your Facility *Shorts on Long Term Care July/August 2010*

07.12.2010

Kenneth L. Burgess

There is NO constitutional right under the U.S. or North Carolina Constitutions for any person to possess a firearm or other weapon on the campus of your assisted living community or nursing facility. That means that you can develop, implement and enforce facility policies preventing residents from having guns or other weapons in the facility and in their rooms or living units.

The recent tragic shootings at long term care facilities around the U.S. and in North Carolina have brought this issue to the forefront, prompting some residents to insist they have a right to weapons because your facility is their home. Is this true? It is not. In the same way the owner of a private apartment complex can preclude weapons possession or use on site, so can the owner/operator of a long term care facility.

Several high profile court cases and political campaigns focusing on the Constitutional right to bear arms have created the notion among many that no individual has the right to restrict another person's possession or use of a gun for legal purposes. This is incorrect. The U.S. Constitution's guarantee of the people's right to bear arms is found in the Second Amendment to the Constitution. Its reach is limited in that it only prevents the Government from infringing on a citizen's right to possess guns for legal purposes. It does not reach private action by private persons, including those who operate residential or health care facilities.

So you can “just say no” to the possession or use of firearms or other weapons on your long term care facility campus. If this is your policy, it should be committed to writing and residents should be informed of this at or before admission.

A simply policy is all you need to enforce this restriction. One that we recently drafted reads as follows:

No person, including residents or family members, may possess or carry, whether openly or concealed, any guns, rifles, pistols, or firearms of any type on the premises of _____ (name of facility or property). Violation of this policy shall be deemed a violation of the applicable rental agreement or admission agreement and may constitute grounds for discharge or cancellation of the resident admission or rental agreement.

If you prefer a policy that is broader and addresses firearms and other types of weapons, below is sample language taken, in part, from existing North Carolina statutes prohibiting weapons on school grounds, liquor stores, and other public places:

p.s.

POYNER SPRUILL publishes this newsletter to provide general information about significant legal developments. Because the facts in each situation may vary, the legal precedents noted herein may not be applicable to individual circumstances. © Poyner Spruill LLP 2010. All Rights Reserved.

RALEIGH

CHARLOTTE

ROCKY MOUNT

SOUTHERN PINES

WWW.POYNERSPRUILL.COM

301 Fayetteville St., Suite 1900, Raleigh, NC 27601/P.O. Box 1801, Raleigh, NC 27602-1801 P: 919.783.6400 F: 919.783.1075

p.s.

Poyner Spruill^{LLP}

ATTORNEYS AT LAW

No person, including residents or family members, may possess or carry, whether openly or concealed, any guns, rifles, pistols, or firearms of any type, stun guns, air rifles, air pistols, Bowie Knives, dirks, daggers, slingshots, loaded canes, switchblade knives, blackjacks, metallic knuckles, razors or razor blades (except solely for personal shaving), fireworks, or any sharp pointed or edged instrument (except instructional supplies, un-altered nail files and clippers, and tools used solely for the preparation of food, instruction, and maintenance on the property) on the premises of _____ (name of facility or property). Violation of this policy shall be deemed a violation of the applicable rental agreement or admission agreement and may constitute grounds for discharge or cancellation of the resident admission or rental agreement.

p.s.

POYNER SPRUILL publishes this newsletter to provide general information about significant legal developments. Because the facts in each situation may vary, the legal precedents noted herein may not be applicable to individual circumstances. © Poyner Spruill LLP 2010. All Rights Reserved.

RALEIGH

CHARLOTTE

ROCKY MOUNT

SOUTHERN PINES

WWW.POYNERSPRUILL.COM

301 Fayetteville St., Suite 1900, Raleigh, NC 27601/P.O. Box 1801, Raleigh, NC 27602-1801 P: 919.783.6400 F: 919.783.1075