

Apartment Association of South Central Wisconsin
Wisconsin Concealed Carry FAQs

1. What is the current law in Wisconsin?

Individuals may open carry weapons in most public places. Individuals may also open carry weapons on the private property of others unless the property owner or occupant prohibits carrying weapons. Currently, concealed carry is illegal except in an individual's own home or place of business.

2. When will Wisconsin's new Concealed Carry Law ("Law") take effect?

November 1, 2011.

3. Is the Law in final form?

Yes, but the Wisconsin Department of Justice ("DOJ") will release regulations before November 1. These regulations will clarify certain provisions of the Law; we do not know which provisions, specifically, the regulations will address.

4. What rights does the Law afford individuals?

After November 1, individuals may carry concealed weapons in most locations, unless prohibited from doing so by the location's owner or legal occupant. Individuals will continue to be able to open carry, as well.

5. Which weapons may be "concealed"?

Individuals will be allowed to carry concealed handguns, knives (other than switchblades), billy clubs, and electric weapons (such as stun guns).

6. What does this mean for landlords with regard to the occupants of their multi-unit residential buildings?

The Law amends Wisconsin's criminal trespass statute, making it a crime to enter or remain on another's property with a weapon after having received notice that weapons are prohibited on the property. However, under the amended criminal trespass statute, the occupants of a multi-unit residential building have the right to possess weapons anywhere on the premises of buildings that they occupy; such possession does not constitute criminal trespass. In other words, an occupant is allowed to possess weapons in his or her apartment and anywhere else in the building. This is understood as the default position.

Although the criminal trespass statute sets the default (allowing occupants to possess weapons), it is possible that landlords may prohibit occupants from possessing weapons anywhere on their property as a term of their leases or as a reasonable rule affecting the

property. However, landlords should consider whether enacting such prohibitions might make them susceptible to fair housing challenges based on an occupant's Second Amendment right to bear arms for self defense or their Fourth Amendment right to privacy in one's home. Landlords who participate in public housing programs may have a higher level of risk. It is unclear whether such challenges would be successful, and an attempt at analysis is beyond the scope of these FAQs. Landlords who are interested in prohibiting occupants from carrying weapons should be aware of the risk and should consult with their attorneys.

7. May landlords prohibit non-occupants from possessing weapons on their property?

Yes. Under the amended criminal trespass statute, the owner of a multi-unit residential building may prohibit non-occupants from carrying weapons (concealed and open) in the common areas or on the grounds of the building by posting signs.

8. What does the Law say about landlords' rights to prohibit non-occupants from possessing weapons in their parking lots/parking facilities?

Under the amended criminal trespass statute, landlords of multi-unit residential buildings may prohibit non-occupants from possessing weapons anywhere on their property other than in parking lots/parking facilities. Therefore, it will not constitute criminal trespass for a non-occupant to possess a weapon in the parking lot/parking facility of a multi-unit residential building.

9. What are the signage requirements?

Posting signs is the only way for landlords to properly notify non-occupants that weapons are prohibited on their property.

Signs on buildings:

- i. Must be posted in a prominent place near all entrances of the part(s) of the building to which the restriction applies
 - a. Must also be posted at all probable access points to the grounds of the building
- ii. Must be at least five (5) inches by seven (7) inches
- iii. Must be posted so persons can reasonably be expected to see them
- iv. The Law does not require specific language for signage on buildings and the grounds of buildings

Signs for posting land:

- i. Applies to land of 40 acres or more
- ii. Must be posted in at least two conspicuous places every 40 acres
- iii. Must be at least eleven (11) inches by eleven (11) inches
- iv. Language
 - a. Must provide "appropriate notice" of the prohibition

- b. Must provide the name of the person giving the notice and indicate whether this person is the owner or occupant of the land

10. May landlords include their “No Weapons” posting with their “No Trespassing” posting?

Yes. However, because the Concealed Carry Law requires signs to be at least 5 inches by 7 inches, landlords should ensure that the portion of the combined signage dedicated to the weapons prohibition is at least 5 inches by 7 inches. Combining these signs should not adversely affect landlords.

11. After November 1, what should a landlord do if someone violates the criminal trespass statute by bringing a weapon onto his or her property, after having been notified (by the presence of proper signage) that weapons are prohibited?

If proper signage is in place notifying non-occupants that weapons are prohibited, and an individual nevertheless carries a weapon onto a landlord’s property, the landlord should notify the police.

However, landlords might want to consider implementing a policy that includes a verbal reminder of the weapons prohibition before involving the police. Instances of improper carry might be the result of an individual not having been aware of the prohibition, in which case the situation might easily be resolved without police involvement.

12. What is the penalty for violating the criminal trespass statute?

Class B forfeiture of up to \$1000.

13. Who may obtain a license to carry a concealed weapon?

The DOJ is required to issue a license to any applicant, unless one or more of the following applies:

- a. Applicant is less than 21 years of age
- b. Applicant is not a Wisconsin resident
- c. Applicant is prohibited under state or federal law from possessing weapons
- d. Applicant is prohibited by a court from carrying a weapon while on bail or release and facing charges; or
- e. Applicant has not provided proof of qualifying training

14. Will individuals with out-of-state concealed carry licenses be able to legally carry concealed weapons in Wisconsin?

Some will. The DOJ regulations will indicate which states’ concealed carry licenses will be honored in Wisconsin.

15. How many individuals are expected to carry concealed weapons?

Based on the average numbers of individuals in other states who hold concealed carry licenses, it is estimated that 2.9% of Wisconsin residents will obtain concealed carry licenses. Of those individuals who obtain licenses, an estimated 30% will actually carry concealed weapons. Therefore, an estimated 0.8% of Wisconsin residents will carry concealed weapons.

16. What should landlords know about the Law's "immunity" provision?

➤ The Law grants immunity to persons or employers who *do not* prohibit concealed carry from liability arising from such decision.

➤ The statute reads:

“A person that does not prohibit an individual from carrying a concealed weapon on property that the person owns or occupies is immune from any liability arising from its decision.” Wis. Stat. § 175.60(21)(b).

“An employer that does not prohibit one or more employees from carrying a concealed weapon under sub. (15m) is immune from any liability arising from its decision.” Wis. Stat. § 175.60(21)(c).

➤ There is no immunity for persons or employers who *do* prohibit concealed carry.

➤ Whether a landlord may face potential liability due to the prohibition of weapons will turn on the facts of each case. A landlord's decision whether to allow or prohibit concealed weapons on his or her property should be the subject of communication with the landlord's attorney, as this analysis involves each landlord's unique circumstances.

17. If a landlord included a “no weapons” term in his or her lease or as a rule affecting the property, but did not post signs prohibiting weapons on the property, would the landlord be able to take advantage of the immunity provision in the Law?

No. The Law's immunity provision is not limited by specific reference to posting signs. Instead, the immunity provision is available to anyone “that does not prohibit” concealed carry. The method of prohibition is irrelevant.

If a landlord prohibits (whether by contract, rule, signage, or other means) the concealed carry of weapons, the landlord loses the protection of the Law's immunity provision.

Additionally, because the Law's default position allows occupants to decide whether to allow or prohibit weapons in their individual units, landlords who choose to prohibit

occupants from carrying concealed weapons might be subject to an indemnification claim from an occupant if a situation arises in which the occupant may have been able to avoid liability under the Law's immunity provision but for the no-weapons lease term or building rule.

18. What should landlords do now?

- Decide whether to prohibit **occupants'** concealed carry on premises
 - If concealed carry will be allowed
 - Landlords are not required to do anything if they will permit occupants to carry weapons.
 - However, landlords should consider whether they would like to communicate this decision to the occupants of their buildings.
 - Landlords may also consider establishing reasonable rules related to the carrying of weapons, such as requiring occupants to encase their weapons while in common areas on the property.
 - If concealed carry will not be allowed
 - Revise leases/rules accordingly.
 - Notify occupants in writing of the prohibition and consider obtaining signed receipts from each occupant.
- Decide whether to prohibit **non-occupants'** concealed carry
 - If concealed carry will be allowed
 - Landlords are not required to do anything if they will permit non-occupants to carry weapons.
 - However, landlords should consider whether they would like to communicate this decision to the occupants of their buildings.
 - Landlords may also consider establishing rules related to the carrying of weapons, such as requiring non-occupants to encase their weapons while in common areas on the property.
 - If concealed carry will not be allowed
 - Determine where signs are required.
 - Draft language for signs.
 - Consider waiting for DOJ regulations, which might require certain language.
 - But be sure to post signs before November 1, 2011.
 - If the regulations do not require certain language, "No Weapons on Premises" will suffice.

19. Questions?