

Privacy, Recording Devices and Security, Part 2

Does a prospective buyer, agent or inspector have a reasonable expectation of privacy in a seller's house?

Maybe not. But, maybe so. Some (meaning attorneys) would argue that once you enter another's property, especially in today's digital age and the advent of products like Alexa and Google Home, that one should expect the possibility of recording exists. Others would argue that even if it is necessary for one to see what is going on inside a house (for example, to catch a thief), conversations are different.

If a seller has surveillance equipment on the property, must that fact be disclosed to prospective buyers, agents and others visiting an open house, viewing the property, or attending an inspection?

A prudent seller will make the disclosure to avoid claims of unlawfully invading private or confidential communications. Disclosing the existence of surveillance equipment makes it very difficult for such persons to make a claim that there is an expectation of privacy or they were unknowingly recorded. C.A.R.'s Residential Listing Agreement, Form RLA, makes this recommendation in paragraph 13.

How should a seller disclose the existence of recording devices?

At a minimum, it is suggested that a notice be posted on or near the front door or other entrance to the property in a location that is likely to be seen. For example, in many cases a front door is left open during an open house, so in that circumstance, posting a notice to the front of the front door would not be visible.

What should the notice say?

There is no precise language that creates a "safe harbor" however here are a few examples that could be helpful:

- Notice: This property is being monitored by surveillance equipment.
- Smile, and please talk clearly; you are being recorded.
- Welcome to my home. Big Brother is watching and listening to you. Recording equipment on the premises.

If an agent knows or suspects that recording devices are in place, what can an agent do who wants to have a private conversation with a buyer client about the listed property?

- Leave the property and talk in the agent's or client's car;
- Have a discussion back at the agent's office

Whether or not a notice has been posted on the listed property, it is always a good idea to have private conversations outside the presence or property of the listing agent or seller.

Can a seller prevent others from making recordings inside the seller's house?

While a seller may request that photos or videos not be taken, or even attempt to prohibit such actions, by, for instance, indicating so in the Remarks section of a MLS, policing such a request can prove to be very difficult. Just like a seller can use "nanny cams" or hidden cameras, buyers and others visiting the property may unobtrusively make use of smart phones, or other devices such as cameras in eye glasses or coat buttons.

How can a seller protect valuables from visitors, including those legitimately interested in the property and otherwise?

During the listing period, valuables should be moved or safeguarded. The same applies before the marketing begins, when the chosen listing agent takes, or hires others to take, pictures or videos of the property. Even before a listing agent has been chosen, sellers may want to consider similar precautions. Sellers should also consult their insurance company to determine what is required or suggested to assure that coverage will be available in the unlikely event of a loss.