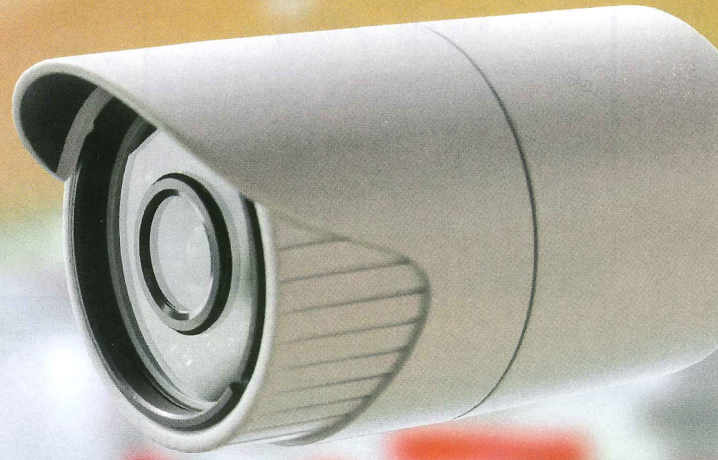


A QUESTION OF SECURITY

By Barry S. Goodman, Esq.



You have just listed a house for sale or lease that has a security camera or other video or audio taping equipment, often called “nanny cams.” What responsibility do you have to disclose the existence of the security camera system to potential buyers or tenants who lease the house? Can the seller record conversations between buyers and their agents when they walk through the house? Can the landlord have the security camera system working after the tenant has taken occupancy? Do the buyers and tenants have any right to an expectation of privacy not to be recorded?

It is extremely important for you and the property owner to know what can and cannot be done when there are security camera systems in the house. In deciding what to do, it is important to distinguish between potential buyers who are walking through the house and tenants who have moved in.

Potential Buyers Walking Through The House

A seller who has a security camera system in the house likely would want to keep it on when potential buyers and buyer’s agents are walking through.

However, the security system may very well record conversations between a buyer and the buyer's agent about an interest in purchasing the house, including possibly how much the buyer would be willing to pay. The question therefore arises whether or not the security system has to be disclosed to the buyer and the buyer's agent.

The New Jersey Real Estate Commission informally has taken the position that the listing agent does not have a duty to disclose there is a security camera system in place. However, if the listing agent is asked about a security system, they must, of course, provide an honest response.

In addition, if the listing agent becomes a disclosed dual agent, the listing agent in all likelihood has a fiduciary duty to the buyer to disclose there is a security camera system that would be videotaping and/or recording conversations. As a result, if there is any possibility the listing agent will become a disclosed dual agent, the listing agent should discuss with the seller when the listing agent obtains informed consent to disclosed dual agency that the security system will have to be disclosed. In fact, it is recommended they discuss simply disclosing the use of the security camera system to all buyers as part of a marketing strategy since a security system likely would increase the value of the house.

Use Of Security Cameras Where the Property Is Leased To Tenants

Although the same rules would apply to potential tenants who are walking through a property, once a tenant moves into the property, there are vastly different privacy expectations that the tenant understandably would have. Use by the landlord of a security camera system inside, and possibly outside, the house after the tenant has moved in likely would violate the tenant's privacy rights and subject the landlord to civil damages and possibly even criminal charges.

As a result, if there are security cameras on the property, they should be disabled and not used during the term of the tenancy, unless only the tenant has the use of the security system. In light of the potentially serious implications of improperly using a security camera during the tenancy, New Jersey Realtors® has added the following provision to its lease.

SECURITY CAMERAS:

Applicable Not Applicable

If there are any security cameras on the Property, including but not limited to what often are called "nanny cams" or other video or audio taping equipment, the Landlord represents that the security cameras will be disabled and not functioning during the Term of this Lease unless only the Tenant has the use of the security system and neither the Landlord nor any other party has access to or the use of it. The Landlord acknowledges that any use or access to the security system by the Landlord or any other party during the tenancy may constitute an invasion of privacy of the Tenant and subject the Landlord to civil damages and criminal charges.

What to Remember

Although there typically does not appear to be a duty to disclose to buyers and buyer's agents that there is a security camera system in the house, it probably would be in your best interest and in the best interest of the seller to disclose its existence. However, when the property is being rented, care should be taken to ensure the security camera system is not improperly used by the landlord during the term of the tenancy. ■

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