

IS YOUR SELLERS' HOME SURVEILLANCE PUTTING THEM AT RISK?



Many homeowners have installed security cameras and smart-home devices. These installations can be an ultra high-tech security system or a simple baby monitor, and they all can be abused. Whether it's to listen to a potential buyer's showing, or to gain advantage in negotiations, or simply to better understand the public's opinion of your home to help you stage it better; learn what you can and cannot do under Texas law.



THE LAWS

Both the Federal Electronic Communications Privacy Act (ECPA) and Section 16.02 of the Texas Penal Code prohibit audio recordings without the consent of at least one individual who is part of the conversation. The Texas rule, commonly referred to as the one-party rule, requires at least one party to consent to recording conversations. What that rule allows is any individual to covertly-and legally-record his own conversations with a broker, neighbor, or other party.

“ IF A SELLER IS NOT PRESENT AND PARTICIPATING IN THE SHOWING, HE CANNOT RECORD AUDIO...EVEN IF THE CONVERSATION HAPPENS INSIDE THE SELLER'S HOME. ”



WHAT ABOUT VIDEO?

Silent video from security cameras-is generally allowed as long as it isn't in an area where an individual would have a reasonable expectation of privacy. For instance, silent bathroom video recording is not allowed. But silent video recording of the foyer, kid's playroom, exterior of a home, and a garage are likely permitted.



HELP YOUR BUYERS BE SMART ABOUT SURVEILLANCE

- Don't discuss confidential negotiations within a home.
- Be careful about over-enthusiasm of particular features in a residence.
- Realize that most video recordings are legal. You and your client's body language and gestures sometimes tell more than you think.
- If talking on the telephone, make sure that the owner's neighbors can't overhear your conversations. Neighbors are often nosier than the owner.
- If you are really worried that someone is playing unfair, turn on a faucet. The audio tones from running water create white noise that masks voice tones and makes it difficult for micro-phones to do their job.
- Don't be too paranoid. Be security smart, but don't let it ruin your real purpose to be at the house.