

Who's listening?

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A recent call to the Hotline was from a listing salesperson who just ended an interesting conversation with her seller. The seller had called to relate some of the feedback he had "received" from potential buyers who had toured the property. Long story short, the seller had installed several web cams that enabled him to monitor both sight and sound! The listing broker was surprised, which is not, in and of itself, all that surprising given the lengths to which the seller disguised the cameras/microphones. The listing agent was somewhat horrified and also uncertain of what to do.

The agent's horror was justified given that her client had just committed a felony of the third degree! Pennsylvania's *Wire Tapping and Electronic Surveillance Control Act* makes it illegal for one to intentionally "intercept" oral communication without consent. "Intercept" is defined to include the "acquisition of the contents of any . . . oral communication through the use of any electronic . . . device." Oops!

While prior consent to such interception exempts one from this criminal conduct, is it something you want your sellers doing? Taping or monitoring the conversations of buyers and their agents seems like a bad way to facilitate a sale.

Web cams are appearing in homes with greater frequency. The technology and price make them an attractive component to a home security system. To the extent that the system only transmits visuals, it is not a violation of the Pennsylvania wire-tap law. Does that mean you want your sellers recording images of buyers during their visits?

There is a need to balance a seller's security and interests in safeguarding a home and its possessions against the interests of a potential buyer in being free from such surveillance. As a listing agent, you have a say in what listing you will accept and you will need to come to grips with the growing use of web cams.

Let's quickly dispense with the idea of monitoring or recording oral communications. Bad idea. If you are going to allow sellers to do so, you have to discern the appropriate means by which you will obtain consent from those who visit the property and are subject to the surveillance. Engage counsel, have the appropriate forms prepared and use them. Don't rely on comments in the multi-list and assume that you have obtained the appropriate consent. Likely, you have not.

Visual interception or monitoring is less problematic since it doesn't give rise to a possible felony conviction! But it may not help your efforts to sell the property. I suggest that you advise those who enter the home that there are such monitors that record visuals only that are there as part of a home security system designed to protect the sellers as well as potential buyers and their agents. It does happen that listed homes can be burglarized and having visual evidence exonerating buyers and their agents is a good thing. Ideally, the disclosure could include other information such as the fact that recorded visuals are deleted after so many hours, etc. Also included in such a disclosure could be other information that communicates information, but is also designed to soften the impact. This information can be

included in the comments to the MLS, but it would also be advisable to post them at or near the lock box or in a prominent location immediately upon entry.

If the property security system includes web cams that are prominent, it is conceivable that your seller would deactivate them during showings. If this is the case, make sure that it done consistently. And assume the worst if you seller does not deactivate the cameras when he/she has promised to do so (the “worst” includes a law suit against you!). I think we will see MLS systems react to the presence of these monitoring devices and security systems. Until then, you are more or less on your own. As I said at the outset, you are free to reject listings, especially those made difficult by sellers who insist on intimidating buyers through these devices.

I’d love to hear your feedback, but I am assuming most buyers who are given information and who are aware that visuals may be monitored or recorded will have little or no problem if the system is part of a home security system. When the monitoring is done just for purposes of home sale, buyers may feel intimidated or insulted by the lack of trust.

And remember, smile, you may be on candid camera!

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