

Sellers rules about video/audio recording during showings



Created by:

Randy Rought
REALTOR[®]
303-503-6210

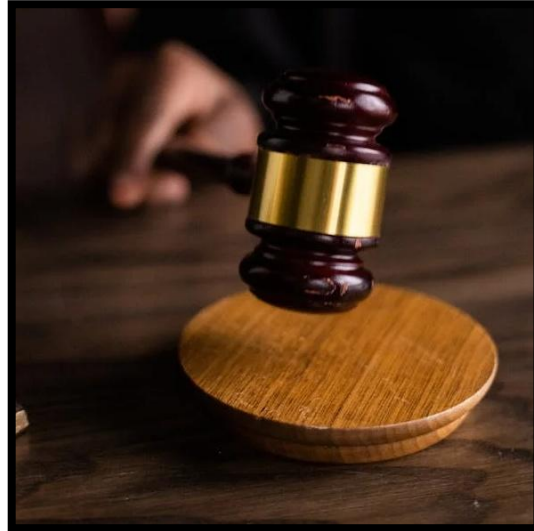
Air Force Retiree still Serving my Community

Video and Audio Surveillance of “For Sale” Properties

Article produced by the Colorado Department of Regulatory Agencies, Division of Real Estate ⁱ

Legal or Illegal Surveillance

Questions arise as to the Seller’s legality in the use of audio and video surveillance in homes during property showings. Security devices are justifiably used in homes for security purposes. However, issues arise should they be used as a means of obtaining insider information on prospective buyers, their offers, or discussions with their real estate brokers. The improper use of these devices could possibly result in civil or criminal liability. But anyone would have to prove the seller collected and used this insider information.



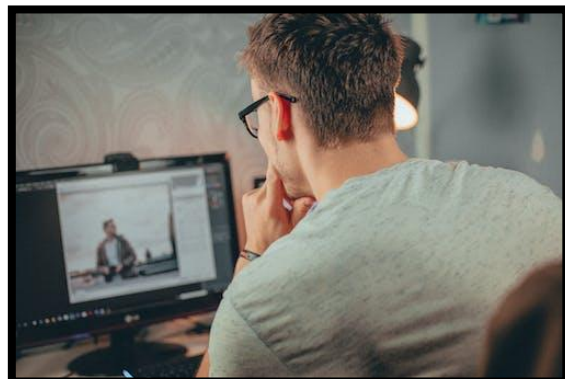
ii

A best practice for a listing broker would be to discuss with the seller not to have audio recordings enabled during a showing unless a proper notice is provided to the prospective buyers and their real estate broker.

A best practice for a buyer’ would be to just assume there may be an audio recording system in the premises, and to advise their clients not to say anything they would not want the listing broker or seller to hear. Have your private conversations at a time and place where you know you have privacy with your client.

Video Surveillance

In Colorado, privacy laws prohibit anyone from visually recording another without consent in situations where the person has a reasonable expectation of privacy. (See §18-7-801, C.R.S.) Therefore, would the person being video recorded have a reasonable expectation of privacy in the living room of a home being offered for sale? A legal ruling might be needed. It would definitely be illegal if it were placed in the bathroom.



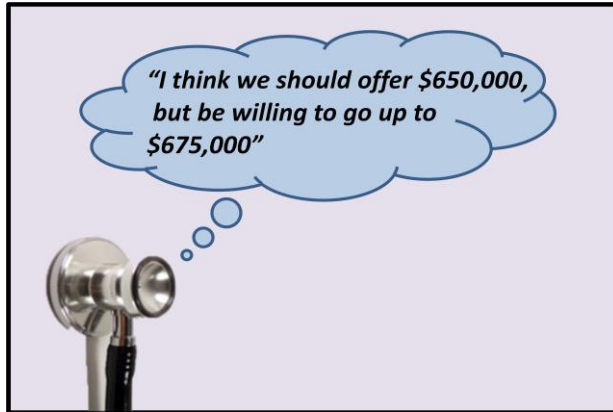
iii iv

A listing broker should ask and find out if video surveillance devices are located in the home, and a best practice would be to share this information with any buyer's brokers or prospective buyers so as to avoid any possible claims illegal video recordings were made.

A posting of a prominent notice or signs on the property alerts any visitors to the home they may be video recorded would be advisable, as well as disclosing this in the MLS comment field.

It is always a good idea for sellers to discuss these surveillance practices and concerns with their legal counsel.

Audio Surveillance



v vi

In Colorado, audio surveillance needs the consent of at least one participant to the conversation before a recording can take place, unless the eavesdropping device is used on one's own premises for security or business purposes and notice is given to the public. (See §18-9-304 and 305, C.R.S.)

Therefore, if audio surveillance is being used by the seller in their home, it is advisable to follow state law and to give proper notice such surveillance is present. A one-party rule applies when you are recording your conversation without the consent of the other person, however, not when you are not present and not participating in the conversation. If a seller wants to record a conversation between a prospective buyer and their real estate broker, this would be inappropriate and not allowed since the seller is not a party to the communication and the parties have not provided their consent. This would also apply to non-recording audio devices such as a walkie-talkie or a baby monitor to listen in on private communications.

ⁱ https://dre.colorado.gov/division-notifications/audio-and-video-surveillance-properties?utm_medium=email&utm_source=govdelivery

ⁱⁱ <https://images.pexels.com/photos/6077189/pexels-photo-6077189.jpeg?auto=compress&cs=tinysrgb&w=600>

ⁱⁱⁱ <https://images.pexels.com/photos/6016937/pexels-photo-6016937.jpeg?auto=compress&cs=tinysrgb&w=600>

^{iv} <https://images.pexels.com/photos/1970801/pexels-photo-1970801.jpeg?auto=compress&cs=tinysrgb&w=600>

^v https://morguefile.nyc3.cdn.digitaloceanspaces.com/imageData/public/files/i/imelenchon/preview/fldr_2009_02_16/file8191234819930.jpg

^{vi} <https://images.pexels.com/photos/3831187/pexels-photo-3831187.jpeg?auto=compress&cs=tinysrgb&w=600>