



# TRAINING Tip of the week

## NANNY CAMS & ELECTRONIC SURVEILLANCE

### ALL EYES ARE ON THE BUYER BUT IS IT OK?

With nanny cams, electronic doorbells and home video surveillance systems, it's easy for sellers to see what's happening in their home during real estate showings and open houses. While homeowners may take comfort in turning on their recording devices to make sure potential prospects don't take anything or damage property, sellers take on some risk when they use surveillance.

This is particularly true because these tools are so new the law is still catching up. In fact, courts have not yet ruled on many of the potential legal issues surrounding this topic.

With so many unknowns, what guidance can you use as you work with buyers and sellers? Use the quiz below to test your knowledge of electronic surveillance in the real estate transaction.

TRUE OR FALSE? ®

**1. It is illegal for a seller to record the audio of buyers' conversations while they are touring a home.**

*IT DEPENDS.* State and federal wiretapping laws require at least one party's consent for the audio of a private conversation to be recorded.

There are, however, some exceptions that don't require consent for audio recordings made in public places where someone does not have "a reasonable expectation of privacy." Ultimately, this means it's not completely clear whether sellers can record the audio conversations of buyers inside their home.

Thus, agents representing buyers should warn them not to say anything about the home or their financial situation that could hurt their negotiation position. This includes while they're in or outside the home.

**2. It is illegal for a seller to record video of buyers while they are touring a home.**

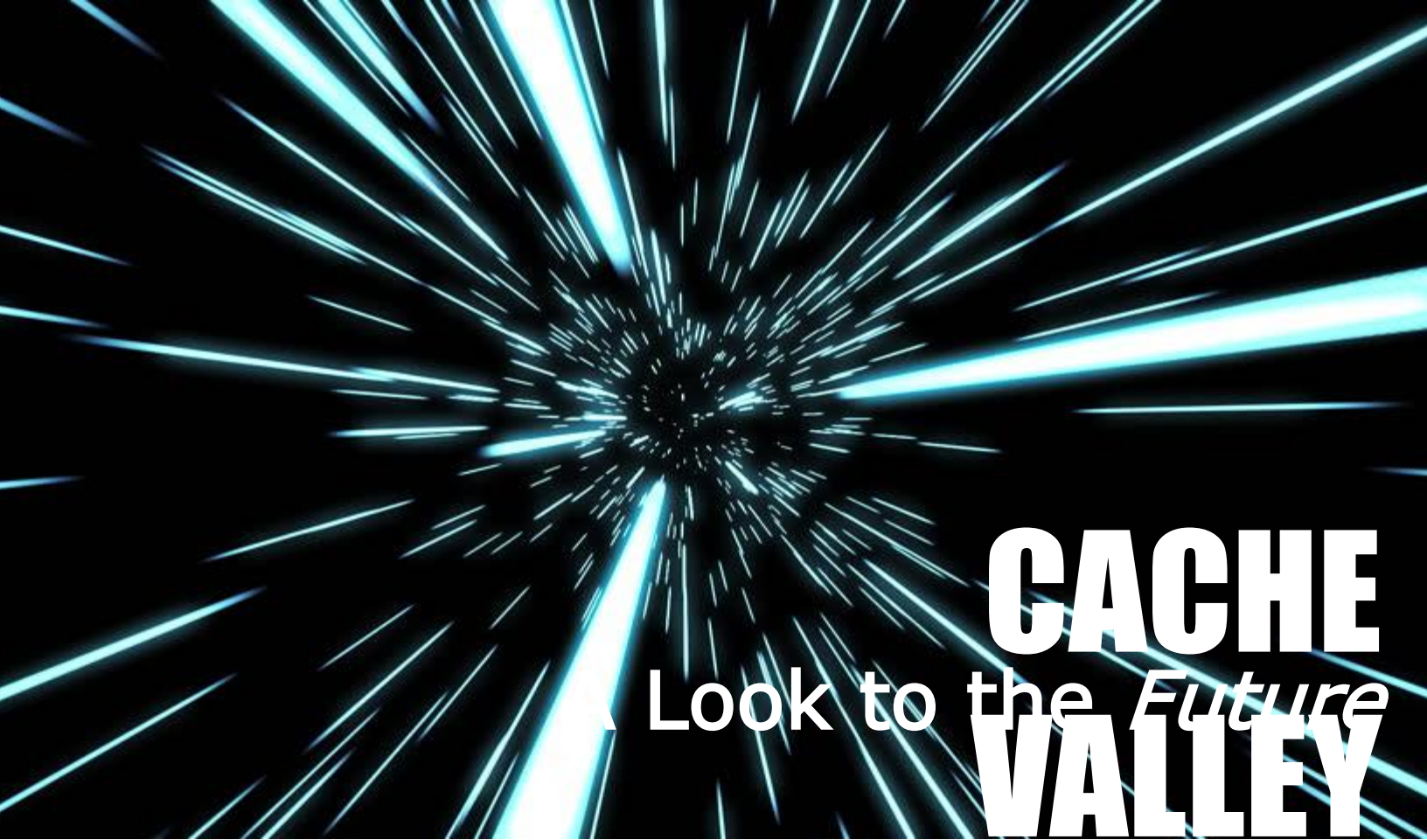
*IT DEPENDS.* Utah law prevents using a recording device in a private place without the consent of those entitled to privacy therein. Thus, the question hinges on whether the location is considered private. In other words, does the buyer have a "reasonable expectation of privacy" while touring someone else's home that is for sale? If there's no expectation of privacy, like in a public place, the seller could make video recordings without consent.

Look at Question 3 for more discussion regarding whether a seller's home is considered a private place for a buyer.

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