


# Cameras in the Common Area: Spoiler Alert – Don't Call Them Security Cameras!

By Brian Moreno, Esq.



"Should an association decide to proceed with the installation of cameras in the common areas, it is imperative that the association not only develop policies for footage review but also disclose to the membership the board's intentions."

**B**efore installing cameras owned and operated by the association, board members should consider the association's long-term goals keeping in mind that cameras do not necessarily provide security. For the most part, installed cameras collect footage of attempted or completed crimes to help law enforcement and the association identify people that violate laws and the association's governing documents. According to a research article published by the American Society of Criminology in 2019, cameras in residential areas impact property damage and vehicle theft rates but have no significant impact on violent crimes. In addition, researchers have found that in the presence of cameras, people let their guard down making them more susceptible to becoming targets of crime. For this reason, we recommend you refrain from using the term "security cameras" in any of the disclosures or communications about cameras. Associations do not want the liability of providing security, creating a duty where one does not exist unless security is actually required by the association's governing documents.

Should an association decide to proceed with the installation of cameras in the common areas, it is imperative that the association not only develop policies for footage review but also disclose to the membership the board's intentions.

Penal Code section 647(j) prohibits concealment of cameras and requires that the view of the camera not include areas where people expect privacy. Examples of where people have an expectation of privacy include inside their homes, in a restroom, or dressing room. We are often asked if a pool area or gym would be considered a place where one expects privacy. In our view, these are areas open to the membership and a person is not entitled to a reasonable expectation of privacy in these locations.

We also recommend that associations provide a disclosure notice to residents about cameras, including:

- protective language in case cameras fail
- indicate that not all areas of the common area are covered
- notice that the association is not responsible for gaps in the camera view or for lost footage
- provide access restrictions and any costs associated with reviewing footage (we recommend that associations restrict access to the footage to the board or, at the very least, provide that it will be made available at the board's discretion)
- a policy to preserve footage for any requests made to allow an owner to seek a court order
- include how long the footage is saved before it is recorded over
- a reminder that the association is not providing "security" and that each member is responsible for their own security unless the governing documents provide otherwise.

Including this in your annual disclosures is a great way to make sure you are informing residents regularly.

To avoid potential liability, if cameras become inoperable, the association should send out a separate disclosure alerting members and residents.

It is important to note that in some cases, members may request to review the footage for claims against the HOA. To the extent that the association makes the footage available to members, it must be honest and forthcoming with footage that shows the association's liability for an incident, such as a gate hitting a vehicle.

This brings us to fake cameras. Don't do it. If residents rely on false information, the HOA is exposing itself to liability resulting from a detrimental reliance claim. An example of this might be that the owner would have installed cameras if they knew that the association's cameras were fake. Should a crime occur and the victim isn't able to get the assistance they thought they would have in finding the perpetrator due to fake cameras, the association may be found liable for creating the false sense of security.

Whether your board decides to install cameras in the common area or not, they must take into consideration privacy rights and disclosure responsibilities. Your HOA attorney should be consulted. ⬆



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