

June 7, 2022

SENT VIA EMAIL:
Owners Association of Sunset Village, Inc.
116A Sailors Cove Drive
Port St. Joe, FL 32456
sunsetvillagepsj@gmail.com

Re: Legal Opinion Regarding Use of Cameras at Community Pool

Dear Board of Directors:

You inquired as to the legal requirements to install and use video cameras at the community pool, including the possibility of recording both audio and video. This opinion letter is to formalize prior conversations on this topic with members of the Board. The foundational issue is reasonable expectations of privacy. Florida law does not prohibit video surveillance of areas when there is no expectation of privacy. In this case, I understand that the cameras point to the pool, open walkways, and public parking lot.

Video recording into private spaces can be illegal. For example, the cameras could not be placed in dressing rooms or bathrooms. Section 810.14, Florida Statutes, prohibits anyone from looking into a person's house, structure, or conveyance (vehicle, etc.) or from looking at a person's intimate areas that are protected by clothing from the public view. This is commonly called a "Peeping Tom" law because it prevents a person ("Tom") from secretly peering into areas and recording another person where that person has a reasonable expectation of privacy. The Statute requires that the individual is (1) secretly observed, (2) with lewd, lascivious or indecent intent and (3) when the victim was in a dwelling, structure or conveyance (conveyance means a car, truck, boat, airplane, etc.) at a place and time that person had a reasonable expectation of privacy. Additionally, Section 810.145, Florida Statutes, Florida's "Video Voyeurism" law, incorporates and prohibits recording and dissemination of images prohibited under Section 810.14. Section 810.145(1)(c) defines "place and time when a person has a reasonable expectation of privacy" as a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth. This would not include a public parking lot.

Recording audio can invoke Florida's wiretapping statute, but again the primary concern is the expectation of privacy. Florida's wiretapping law is a "two-party consent" law. Florida makes it a crime to intercept or record a "wire, oral, or electronic communication," unless all parties to the communication consent. *See* Section 934.03, Florida Statutes. That statute makes an exception for in-person communications when the parties do not have a reasonable expectation of

privacy in the conversation, such as when they are engaged in conversation in a public place where they might reasonably be overheard.

Courts examine expectations of privacy and the totality of the circumstances to determine whether an oral communication given without consent is protected. "[T]he circumstances to be considered include: (1) the location where the communication took place; (2) the manner in which the communication was made; (3) the nature of the communication; (4) the intent of the speaker asserting Chapter 934 protection at the time the communication was made; (5) the purpose of the communication; (6) the conduct of the speaker; (7) the number of people present; and (8) the contents of the communication." *Brugmann v. State*, 117 So. 3d 39, 48–49 (Fla. 3d DCA 2013). While this analysis can be fluid, there are still some well-established rules.

For example, conversations outside in public spaces are not protected. *Cinci v. State*, 642 So. 2d 572, 573 (Fla. 4th DCA 1994)(Finding that taped conversation in apartment building courtyard was legal). Conversations at a place of business open to the public are not protected. *Adams v. State*, 436 So. 2d 1132 (Fla. 5th DCA 1983)(Finding that taped conversation in pawn shop was legal). Likewise, even conversations in offices can be recorded. *Morningstar v. State*, 428 So. 2d 220, 221 (Fla. 1982)(Finding that although defendant claimed an expectation of privacy in his private office, it "is not one which society is willing to recognize as reasonable or which society is willing to protect."); *see also Brugmann v. State*, 117 So. 3d 39, 48–49 (Fla. 3d DCA 2013)(Finding that taped recording of psychologist and attorney at their offices by their client was legal). Finally, conversations occurring on a conference call to discuss company business are not protected. *Cohen Bros., LLC v. ME Corp., S.A.*, 872 So. 2d 321, 324–25 (Fla. 3d DCA 2004) (Finding that taped telephone conversation between shareholders, managers and attorneys for corporation was legal).

In sum, it is my legal opinion that the installation and use of video cameras facing the pool, walkways, and public parking lot are permissible and may record both video and audio. The Association should be careful to ensure that the cameras do not inadvertently capture private bathrooms or changing areas around the pool. Posting a sign advising pool users that recording is in progress is recommended.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julia Maddalena".

Julia Maddalena