

May 30, 2004

Q.&A.; Camera Trained On Apartment Door

Q. Recently a camera was installed in the hall directly in front of my apartment door. I was under the impression that it was a carbon monoxide alarm. Last week, the building porter told my next-door neighbor that it was a camera, and he showed my neighbor the monitor in the basement. The camera views our two front doors. There are no other cameras in the building. I feel that this camera, which can see into my apartment when I open my door, is an invasion of my privacy. Can I ask the landlord to remove it? Jared Kotz, Manhattan.

A. Alexander Suslensky, a Manhattan real estate lawyer, said that while the landlord's use of a camera to observe the doors to only two apartments "certainly seems suspect," it probably does not violate any New York laws.

"Many states have broad statutory and common laws protecting an individual's right to privacy," he said, adding that in such states, the facts presented could very well constitute an illegal intrusion into the letter writer's privacy.

"Unfortunately, New York's invasion-of-privacy law is much more limited," he said, explaining that the state's law prohibits only the invasion of privacy for commercial exploitation. "In fact, New York courts have clearly held that the state does not recognize common-law invasion of privacy claims," he said.

Mr. Suslensky said the state's criminal law prohibits use of cameras in places where a person has a "reasonable expectation of privacy," with that term defined as any place where "a reasonable person would believe that he or she could fully disrobe in privacy." The law does not prohibit surveillance of public hallways in a residential building.

But, he said, the letter writer may of course ask the landlord either to move

or reposition the camera, or, perhaps more significantly, ask why the camera is there in the first place.

Co-ops, Condos And Mail Slots

Q. In condos and co-ops that have mail distributed into open slots by building staff, what regulations, if any, govern the handling of non-Postal Service mail? Do house rules alone dictate whether residents can leave noncommercial messages for other residents? Can quantity or frequency be restricted? Does it matter whether messages are loose flyers or in sealed, addressed envelopes? Do free-speech laws allow messages to be slipped under apartment doors? . . . Larry Simms, Manhattan.

A. Adam Leitman Bailey, a Manhattan real estate lawyer, said that federal law and New York State's Housing Maintenance Code require all multiple dwellings, including co-ops and condos, to arrange for mail to be delivered properly. Usually, Mr. Bailey said, that is done by using locked mailboxes that can be accessed only by tenants and postal workers. With that system, he said, postal regulations permit only mail that is postmarked to be placed in the boxes.

But some buildings use the system described by the writer. And whether it can be used for private purposes is up to building management.

Mr. Bailey said that while many co-ops and condos prohibit or restrict distribution of commercial messages, most do not prohibit noncommercial messages, nor do they define quantity, frequency or packaging. But, he said, "the business judgment rule allows a co-op board to exercise extensive powers, including the ability to include such provisions in the bylaws or house rules."

He added while free-speech laws prohibit public entities from denying individuals the right to make their views known, such laws do not apply to private entities like co-ops and condos. So, he said, "co-op and condo boards can prohibit the slipping of messages under apartment doors if the board believes it is acting in the best interests of the building."