

Marian A Altman

From: Drymalski, Peter [Peter.Drymalski@montgomerycountymd.gov]
Sent: Thursday, March 17, 2011 10:51 AM
To: Marian A Altman
Subject: RE: Question?

Dear Marian,

The prohibition against recording a conversation without the consent of all the parties is found in the Criminal Law Code. (Remember the Linda Tripp/Monica Lewinsky hullabaloo? That's the law that tripped Tripp.)

Here is more information:
<http://www.rcfp.org/taping/states/maryland.html>

The reason a board might not want to allow private taping is that the board has no control over the use of the tape or videotape, whether it is edited, etc; and in addition other people in the audience might not want to have their comments taped by any private person.

Peter

-----Original Message-----

From: Marian A Altman [mailto:marianaaltman@verizon.net]
Sent: Wed 3/16/2011 3:43 PM
To: Drymalski, Peter
Subject: Question?

Peter,

We are trying to resolve the issues raised by Paul Bessel and Robert Conn in their CCOC complaints; one issue is the recording of meetings. I went to the Office of Consumer Protection CCOC website and was reading your section on Meetings and under "What are some techniques for running effective meetings?" was a paragraph on "Recordings." which states:

"The board of directors has a legal right to limit the audio and video taping of meetings. Many attorneys discourage keeping recordings. The Secretary may tape the meeting to aid in writing the minutes, but the tapes should be erased after the minutes have been approved. Members should not attempt to record a meeting without the permission of the board or committee involved, and in fact it is illegal to make a recording without the knowledge and consent of the participants in the meeting."

Can you find out where this came from and cite me the law?

We have our next special meeting this coming Monday, March 21st; it would be nice if I could have this information for the meeting.

We are making progress.

Thanks

ma

Maryland

Under Maryland's Wiretapping and Electronic Surveillance Act, it is unlawful to tape record a conversation without the permission of all the parties. See *Bodoy v. North Arundel Hosp.*, 945 F.Supp. 890 (D. Md. 1996). Additionally, recording with criminal or tortious purpose is illegal, regardless of consent. Md. Code Ann., Cts. & Jud. Proc. § 10-402.

Disclosing the contents of intercepted communications with reason to know they were obtained unlawfully is a crime as well.

Violations of the law are felonies punishable by imprisonment for not more than five years and a fine of not more than \$10,000. Civil liability for violations can include the greater of actual damages, \$100 a day for each day of violation or \$1,000, along with punitive damages, attorney fees and litigation costs. To recover civil damages, however, a plaintiff must prove that the defendant knew it was illegal to tape the communication without consent from all participants. MD. Code Ann., Cts. & Jud. Proc. § 10-410.

A Practical Guide to Taping Phone Calls and In-Person Conversations in the 50 States and D.C.

- [Introduction](#)
- [State-by-state guide](#)
- [Tape-recording laws at a glance](#)
- [Consent and its limits](#)
- [Interstate phone calls](#)
- [Possession and publication](#)
- [The FCC's role](#)
- [Cellular & cordless calls](#)
- [Citations to cases](#)

State courts have interpreted the laws to protect communications only when the parties have a reasonable expectation of privacy, and thus, where a person in a private apartment was speaking so loudly that residents of an adjoining apartment could hear without any sound enhancing device, recording without the speaker's consent did not violate the wiretapping law. *Malpas v. Maryland*, 695 A.2d 588 (Md. Ct. Spec. App. 1997); see also *Benford v. American Broadcasting Co.*, 649 F. Supp. 9 (D. Md. 1986) (salesman's presentation in stranger's home not assumed to carry expectation of privacy).

The Court of Special Appeals of Maryland held that because states are at liberty to adopt more restrictive provisions than those contained in federal law, the secretary-treasurer of a local union who recorded conversations between himself and management representatives could still be prosecuted under the state statute, even if his conduct was arguably protected under the National Labor Relations Act. *Petric v. State*, 504 A.2d 1168 (Md. Ct. Spec. App. 1986).

It is a misdemeanor to use a hidden camera in a bathroom or dressing room. It is also a misdemeanor to use a hidden camera on private property "for purposes of conducting deliberate, surreptitious observation of a person inside the private residence," or in a private place with "prurient intent." Md. Crim. Law §§ 3-901, -902, -903. A person who is viewed in violation of these statutes has a civil cause of action. The court may award actual damages and reasonable attorney fees. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$2,500 or both.

*Ms. Almon's
handout*