

# Legal Potpourri & Privacy Law

August 2015



1. **Are your Facebook posts completely private and only available to your Facebook friends?**
  - A. Yes, only people that I am friends with can see what I post.
  - B. Yes, but only if I change my account settings to "Private."
  - C. No, even if the post is only accessible by your friends, there is nothing to prevent them from taking a screenshot and sharing your information with unwanted people.
  - D. No, anyone can see any Facebook post on the site by using secret spy software.
  
2. **Which of the following could be considered "private" property? Choose all that apply.**
  - A. A public highway.
  - B. The bathroom of a single-family home.
  - C. A parking lot that is publicly accessible, but not open to the public.
  - D. A state park.
  
3. **What is a "squatter?"**
  - A. A person who settles on land or occupies property without title, right, or payment of rent.
  - B. A settler with no legal title to the land occupied, typically one on land not yet allocated by a government.
  - C. A crossfit champion who can complete many squats.
  - D. Both (a) and (b).
  
4. **True or false: A property owner owns all of the land above and below their property, from the center of the earth all the way to the top of the atmosphere.**
  - A. True
  - B. False
  
5. **True or false: In order to legally record a phone conversation, all parties to the call must consent to the recording.**
  - A. True, consent by all parties is always necessary.
  - B. True, but only if the recorded call is to a customer service hotline.
  - C. False, neither party needs to consent to the recording.
  - D. False, only one party needs to consent to the recording.

- 6. Which of the following is legal? Choose all that apply.**
- A. Having an open container in the center console of your car while it is parked on private property.
  - B. Recording a private phone call with consent of only one party to the call.
  - C. Eavesdropping on an in-person conversation at a public establishment by hiding under the table so that no one can see you.
  - D. Setting up video cameras in your living room to record an open house.
- 7. True or False: Property owners can exclude people from their property for any and all reasons.**
- A. True, a property owner has an unimpeded right to protect his property by preventing ALL persons from stepping foot on his private property.
  - B. True, but only if the property owner places a clearly visible sign that states “Private Property – KEEP OUT”
  - C. False, private property owners do not have the right to exclude others from their land because, at one point, all land in the U.S. was government-owned and public.
  - D. False, private property owners generally have the right to exclude others from their property, but there are exceptions such as public interests and emergencies making it necessary to enter the property.
- 8. In which of the following places does a person have a “reasonable expectation of privacy?” Choose all that apply.**
- A. Private home bathroom.
  - B. Public highway.
  - C. Outdoor concert.
  - D. Backyard visible from interstate.
- 9. Which of the following should REALTORS® avoid? Choose all that apply.**
- A. Hold confidential meetings in an office at the brokerage.
  - B. Include confidentiality disclaimers at the top of confidential e-mails.
  - C. Hold confidential meetings with clients in a crowded restaurant to drown out the sound of the conversation.
  - D. Discuss confidential matters with potential buyers at the seller’s open house while the seller is gone.
- 10. Confidentiality disclaimers in e-mails accomplish which of the following? Choose all that apply.**
- A. Relieve the sender of all liability for sending confidential information to the wrong person.
  - B. Sometimes help prevent the spread of confidential information.
  - C. Notify an improper e-mail recipient to destroy the e-mail.
  - D. Nothing, the disclaimers are meaningless in court.

**11. Can a person be charged with public intoxication on the front porch of their single-family residence?**

- A. Yes, always.
- B. Yes, but only if you can view the porch from a public street.
- C. No, never.
- D. No, as long as the owner of the porch has not extended a general public invitation to their property.

**12. What do REALTORS® have in common with Uber drivers?**

- A. Both REALTORS® and (most) Uber drivers are considered independent contractors.
- B. Both are required to have job-specific licenses (REALTORS® need real estate salesperson or broker license, and Uber drivers need a chauffeur's license).
- C. They have nothing in common, this is a trick question.
- D. What's an Uber driver?

**13. In Iowa, what is the safest choice for a landlord who discovers someone is illegally squatting on the landlord's property?**

- A. Enter the property and physically remove the squatter and all of their possessions. The squatter is there illegally and a landlord has the right to protect his property.
- B. Go through the formal eviction process that requires specific notice procedures and includes fees.
- C. Call the police and report a breaking and entering.
- D. Move in with the squatter and be such a bad roommate that the squatter leaves on his own accord.

**14. Which of the following would be favorable terms to put in a lease to a marijuana greenhouse/dispensary tenant?**

- A. Short-notice termination provisions.
- B. Strong compliance and regulatory provisions.
- C. Mold coverage and haz-mat provisions for pesticides and fertilizers.
- D. All of the above.

**15. Short answer: Can a seller place a microphone or video camera in their home to record conversations between a REALTOR® and buyers during an open house?**

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## Answer Key

1. **C** – No, even if the post is only accessible by your friends, there is nothing to prevent them from taking a screenshot and sharing your information with unwanted people. It is very easy to share even private posts so the best way to manage your social media posts is to imagine them on the front page of the newspaper.
2. **B & C** – The bathroom of a single-family home is a private place due to the personal nature of the events that take place there. In addition, a parking lot that is publicly accessible, but not open to the public can be considered private property despite the fact that members of the public can view it. *See State v. Brown*, No. 13-2054, 2015 Iowa App. LEXIS 624 (July 22, 2015) for more info.
3. **D** – A squatter is both a person who settles on land or occupies property without title, right, or payment of rent, and a settler with no legal title to the land occupied, typically on land not yet allocated by a government. In the property law context, the first definition of squatter is the one that is troublesome for landlords.
4. **B** – False, property owners only own as much of the airspace above their land that they can reasonably use. If they truly owned all of the air above their property, commercial airlines could be cited for trespassing.
5. **D** – In Iowa, only one party needs to consent to the recording of a phone conversation. Iowa Code § 808B.2
6. **A, B, C, & D** – Having an open container in the center console of your car while it is parked on private property is legal because the vehicle is parking on private property (but this is still not an activity we advise. Recording a private phone call with consent of only one party to the call is legal because, in Iowa, only one party needs to consent to the recording. Eavesdropping on an in-person conversation at a public establishment by hiding under the table so that no one can see you is legal as long as you do not tape, record, or use any other mechanical device to listen to or preserve the conversation. Setting up video cameras in your living room to record an open house is legal because the open house may temporarily make your house “public” property and, other than in the bathroom, people do not generally have an expectation of privacy during the open house.
7. **D** – False, private property owners generally have the right to exclude others from their property, but there are exceptions such as public interests and emergencies making it necessary to enter the property. This means that you can generally stop the neighbor kid from playing on your lawn, but you can’t stop a firefighter from crossing your lawn to put out a fire.
8. **A** – People generally have a reasonable expectation of privacy in their private home bathroom, for obvious reasons. As such, if a person did choose to put a video recorder in their home during an open house, they should not put it in a bathroom as that would violate electronic recording statutes.
9. **C & D** – REALTORS® should avoid holding confidential meetings with clients in a crowded restaurant to drown out the sound of the conversation and discussing confidential matters with potential buyers at the seller’s open house while the seller is gone. In public places it is hard to know who might overhear your confidential conversation making it difficult to protect the information. In addition, it has become common for sellers to place a microphone or even video camera in their home during an open house to monitor what goes on. As such, REALTORS® should discuss confidential matters in their office or somewhere equally private to be safe.

10. **B & C** – Confidentiality disclaimers in e-mails can sometimes help prevent the spread of confidential information and notify an improper e-mail recipient to destroy the e-mail. While confidentiality disclaimers are helpful, they are not failsafe, nor are they a “get out of jail free” card in court. As such REALTORS® should limit the confidential information they send via e-mail and be conscious of who they are sending e-mails to.
11. **D** – A person cannot be charged with a public intoxication on the front porch of their single-family residence as long as they have not extended a general public invitation to their property. In its natural state, the front porch of a home is generally considered private property, however, there are instances that the property might be considered public such as an open house, or a public invite for a garage sale.
12. **A** – Both REALTORS® and most Uber drivers are considered independent contractors. As such, both have dealt with lawsuits over their worker classification and have argued that they should be considered employees that are entitled to certain benefits like overtime pay.
13. **B** – If a landlord discovers someone is illegally squatting on their property, the landlord should go through the formal eviction process and should NOT enter the premises to physically remove the squatter or their property. Doing so could have seriously legal consequences. While it seems unfair, the eviction process exists to protect tenants, however, it’s possible lawmakers will consider revising the rule to protect landlords in squatter situations. A landlord may also choose to first call the police and report the squatter as a trespasser (entering land of another without permission Iowa Code § 716). However, squatters will often claim tenant’s or squatter’s rights making police reluctant to remove a squatter. As such, a landlord will likely have to use the formal eviction process.
14. **D** – All of the answers would be favorable terms to put in a lease to a marijuana greenhouse or dispensary tenant. While Iowa has not legalized marijuana, states that have done so suggest these terms to protect the lessor/landlord in this tricky regulatory area.
15. **Model answer:** Yes, a seller can place a microphone or video camera in their home to record conversations between a REALTOR® and buyers during an open house. During an open house, the house could be considered “public” property and, as such, people do not have a reasonable expectation of privacy during the open house. However, recording devices should not be placed in a bathroom or similar area where one would expect to have privacy. Any recording of nudity or partial nudity is considered an invasion of privacy which is a serious misdemeanor. To be especially cautious, if a seller plans to use a recording device during an open house, they should inform (and better yet, get the permission of) the REALTOR® hosting the open house. That way, even if the house was not considered “public” during the open house, the party recording would still be safe from liability because they had permission from one of the parties which is all that is required.