

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

THE United States and California Constitutions guarantee the right to privacy. The right to privacy presumably imposes limitations on an employer's right to install surveillance camera at work and monitor the phone calls, emails, and computer activities of its employees while in the workplace.

However, employers have argued that employees lacked a reasonable expectation of privacy in the workplace and employers have legitimate objectives in the surveillance and monitoring of the work premises. Such objectives would include concerns about violence in the workplace, crime prevention, lost productivity, malicious software invasions, dissemination of proprietary information, and employer liability for inappropriate Internet and computer usage.

The following are some of the areas in which employers may encroach upon an employee's privacy rights at work:

Workplace video surveillance

Employers may install electronic surveillance on its work premises. However, effective January 1, 1999, the Labor Code prohibits employers from making audio or video recordings of employees in specific work areas considered to be private. Such areas include restrooms, locker rooms, or rooms designated by an employer for changing clothes. An employer may monitor these areas by video or audio only if authorized by court order. Should any recording be obtained in violation of the statute, such recording cannot be used for any purpose. The statute applies to all private and public employers, except for the federal government.

While the law recognizes an

Are employees entitled to privacy at work?

employer's right to protect its business against crimes by using video or other electronic surveillance, such use must respect the employees' rights to privacy. Some video surveillance in the workplace may be considered an unreasonable intrusion by the employer into their employees' privacy. In the event of such conflict between the right of the employer to protect its business and the right of the employee to privacy, the courts will balance these competing rights.

Telephone calls
An employer may listen to an employee's phone calls at work. For example, employers may monitor calls with clients or customers for reasons of quality control. However, when the parties to the call are all in California, state law requires that they be informed that the conversation is recorded or monitored by either putting a beep tone on the line or playing a recorded message. When employees are told not to make personal calls from specified business phones, the employee then takes the risk that calls on those phones may be monitored.

Under federal case law, when an employer knows the call is personal, the employer must immediately stop monitoring the call. Interception or monitoring of telephone calls when the employer knows that the call is a private call and is made with the expectation of privacy violates federal law. If the employer has a policy prohibiting personal calls, however, employees could still be terminated for violating the employer's work rules.

Computer and Internet activities

Employers may legally monitor its employees' computer and internet activities in the workplace. According to the federal Electronic Communications Privacy Act (ECPA), an employer-provided computer system is the property of the employer. Therefore, employers that provide em-

ployees with a computer system and Internet access are free to monitor almost everything that the employee may do with the computer and Internet access so provided. Employers may emphasize this right to monitor computer and internet use by issuing a written policy to its employees regarding such use.

At present, there are very few laws that spell out very clearly an employee's right of privacy at work. Even more importantly, there are very few laws that directly regulate an employer's monitoring of its employees in the workplace. If an employee is concerned about privacy issues at work, seeking experienced legal help may be a smart move.

C. Joe Sayas, Jr., Esq. is an experienced trial attorney who has successfully obtained significant results, including several million dollar recoveries for consumers against insurance companies and big business. He is a member of the Million Dollar-Advocates Forum—a prestigious group of trial lawyers whose membership is limited to those who have demonstrated exceptional skill, experience and excellence in advocacy. He has been featured in the cover of Los Angeles Daily Journal's Verdicts and Settlements for his professional accomplishments and recipient of numerous awards from community and media organizations. His litigation practice concentrates in the following areas: serious personal injuries, wrongful death, insurance claims, unfair business practices, wage and hour (overtime) litigation. You can visit his website at www.joesayaslaw.com or contact his office by telephone at (818) 291-0088.

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BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

THERE is a natural tendency among divorcing parties to hide their assets from their spouse. This is a common problem that I have observed from practicing law for many years. A common question I hear from clients is "my spouse doesn't know I have an account in this bank, do I have to let him/her know of this account?"

Parties to a divorce proceeding have a duty to disclose financial information to each other. This duty arose based on California's policy (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law. To promote the above public policy, the family code requires a full and accurate disclosure of all assets and liabilities in which the parties have or may have an interest be made in a divorce or

Duty to disclose community property in divorce

a legal separation, regardless of the alleged characterization of the property as either community or separate. Parties are also required to disclose all income and expenses of the parties.

The parties also have a continuing duty to update and augment that disclosure to the extent that there has been a material change to their financial position. The purpose of the duty to augment and update the disclosures is so that at the time the parties enter into a settlement agreement, stipulated divorce judgment, or trial, each party will do so with full and complete knowledge of all relevant underlying facts of the case.

The disclosures are made by the parties by serving each other with a preliminary declaration of disclosure and a final declaration of disclosure. The preliminary declaration of disclosure should be served within 60 days of serving the divorce, separation, or nullity petition. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment in addition to other remedies available under the law. The preliminary declaration of disclosure is not filed with the court but only exchanged by each party. The preliminary declaration of disclosure shall set forth 1) the identity of all assets and liabilities which the declarant may have an interest regardless of

the characterization of community, quasi-community, or separate property; 2)The declarant's percentage in the asset or liability; 3) the declarant's characterization of the asset or liability. In addition, the declarant shall also provide the other party with a completed income and expense declaration. The declarations may be amended without permission from the court.

The parties shall serve each other with a final declaration of disclosure at the time the parties enter into a settlement agreement, stipulated divorce judgment, or if the case goes to trial, at least 45 days prior to the first assigned trial date. The final declaration of disclosure shall include (1) All material facts and information regarding the characterization of all assets and liabilities(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest. (3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration. The parties may agree to

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Losing my houses and my business: Can I still negotiate with the bank after a notice of default?

LEGAL LIFELINE



ATTY. GENE W. CHOE

QUESTION: I own a small home health care business for senior citizens. While the real estate market was booming, I was able to buy two houses, both with first and second loans. For five years I was able to pay the mortgages and take in sufficient clients to pay the mortgages and still earn sizable profit. However, clients start to dwindle. Meantime, my mortgage stays the same and one mortgage with start to have an adjustable rate of mortgage (ARM). I am afraid I won't be able to pay the new monthly mortgage payments. So far, I have been dipping into my savings to pay off the mortgages for my first property. Incidentally, I also live in this property.

I have been behind about 4 months in mortgage payments for the second property. Yesterday, I received a Notice of Default for this property. I am afraid I will lose this property. The current market value for this property is about \$300,000. I have a first mortgage for \$350,000 and as second mortgage for \$100,000. I used the second loan to make repairs on the house to put in additional bathrooms to be able to have more clients.

Meantime, my business is barely earning enough to survive. Should I file for bankruptcy? Can I still save my property if I file under Chapter 7? Will I still be able to run my business? This is my only means of income. I am a 50 year old widow and all my children have their own problems.

Answer: You can file for personal bankruptcy under Chapter 7 because we can show that you are making less than the state family median income for California. You need to go to your accountant to prepare your profit and loss statement, which we will submit to bankruptcy court along with your petition. Upon filing your bankruptcy petition,

there will be an automatic stay for all your property. Under bankruptcy laws, all property of the debtor (person who filed for bankruptcy) becomes technically property of the Bankruptcy court. The creditor, in your case the bank holding the first mortgage must file a Motion for Relief from Automatic Stay in order to foreclose your property. This motion will be heard and an order granting the motion must be issued by the bankruptcy court.

In our experience, we need to coordinate with the attorney of the mortgagee bank to stipulate to continue negotiation for loan modification and that the bank will not foreclose on the property. This stipulation or agreement will be submitted for the bankruptcy court's approval.

You must bear in mind that bankruptcy will not hold off foreclose indefinitely. Eventually, the creditor will want to get its collateral. Hence, if you really want to retain the second property, you need to be able to pay the mortgage or have a successful loan modification to lower your mortgage payments. You can show financial hardship and ability to pay off your loan application. We can submit bank statements and tax returns as proof of income. You must find a good attorney who can handle your bankruptcy and loan modification at the same time.

Debtors, under chapter 7 can still retain their houses, provided they are able to pay the mortgage payments. You may need to claim your property as exempt and reaffirm your debts. However, most houses have zero equity due to the slump in the market. Therefore, the Trustee is not interested in the property because there is nothing for him to take.

Yes, you will be able to run your business because you are filing under personal bankruptcy. The trustee will not run after all income accruing after filing for bankruptcy.

If you have any loan from countrywide or any of its affiliates, please call our office at 213-639-3888 or e-mail us at cielo@choicelaw.org. Our office is located at 3699 Wilshire Boulevard, Suite 720, Los Angeles, California 90010.

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**To: Restaurant/Health Workers
All Underpaid Workers**

From: Bander Law Firm, LLP

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