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SEARCH WARRANTS: ALL YOU NEED TO KNOW (THOUGH YOU HOPE YOU NEVER NEED TO KNOW)

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A search warrant is a court order obtained by prosecutors that gives law enforcement agents the right to enter the premises specifically identified in the warrant for the purpose of seizing any documents and objects specified in the warrant. To obtain approval for a search warrant, the government must establish that there is probable cause to believe that the premises sought to be searched will contain evidence of a specified criminal activity.

The government's purpose in executing a search warrant is to surprise the company, with the hope of obtaining information that the government believes it would be unable to obtain otherwise, *e.g.*, by a subpoena. Although every company hopes it will never be subject to a search warrant, you should be aware of certain things you have the right to do . . . and should do.

- Ask the agent in charge of the search to identify himself/herself and his/her agency. Do not volunteer any information about your company or the employees.

- Immediately contact your company's legal department to inform them that agents have arrived with a search warrant.

- If no one at the legal department is available or if your company has no legal department, call the attorneys who usually handle your company's legal work.

- Ask the government agents to postpone their search until your attorneys can be present. [Note: The agents probably will not agree to do so.]

- If the agents refuse to wait until your attorney's arrival, review the search warrant papers to determine where the warrant allows them to search and what types of documents it allows them to seize. Also ask for the affidavit in support of the search warrant; the affidavit had to be presented to the court to demonstrate that the agents have probable cause to believe that the premises to be searched contain evidence of a specified criminal activity. [Note: The affidavit is often sealed, and thus it probably will not be available, but it will not hurt to ask for it.]

- If the agents ask for consent to search areas other than those authorized by the search warrant or to take documents other than those specified in the search warrant, tell them that you prefer to wait until an attorney is present to advise you as to whether you should consent to their request. Do NOT consent to a search for records not specified in the search warrant or for locations not specified in the warrant (*e.g.*, offsite storage) without speaking to your lawyer.

- If possible, send employees home since agents often attempt to interview various company employees during the course of the search. A search warrant does not give agents the right to demand interviews. Employees should be advised immediately that they do not have to consent to be interviewed (it is the decision of each employee whether or not to be interviewed). The company should provide an attorney to be present during any such interview, if the employee agrees to be interviewed and would like counsel to be present.

- If agents attempt to seize or examine privileged communications between your company and its attorneys, you should request that they wait to do so until your attorney has arrived so that your attorney can discuss the matter with them. [Note: Your company may want to establish a policy to segregate privileged materials.]

- You are not required to assist the agents in any way during their search. This means that you do not have to tell them where the documents that they want are located nor do you have any obligation to answer questions about the content or meaning of the documents they are examining and seizing.

- After the premises have been searched, the agents are required to leave an inventory of the items they have seized, though on most occasions it is written in such a way as to be fairly useless, *e.g.*, “box of financial records.” Try to get (or create for yourself) a detailed list of the documents seized.

- The execution of a search warrant means that the government believes that a crime has occurred. It is imperative that the company obtain competent and experienced counsel immediately.