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Searches and Warrants - What To Do When Encountering Law Enforcement ^[1]

This booklet tells you about your basic rights. It is not a substitute for legal advice. You should contact an attorney if you have been arrested or believe that your rights have been violated.

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1.

Question

Can law enforcement officers search my home or office?

Answer

Law enforcement officers can search your home only if they have a warrant or your consent. In your absence, the police can search your home based on the consent of your roommate or a guest if the police reasonably believe that person has the authority to consent. Law enforcement officers can search your office only if they have a warrant or the consent of the employer. If your employer consents to a search of your office, law enforcement officers can search your workspace whether you consent or not.

2.

Question

What are warrants and what should I make sure they say?

Answer

A warrant is a piece of paper signed by a judge giving law enforcement officers permission to enter a home or other building to do a search or make an arrest. A search warrant allows law enforcement officers to enter the place described in the warrant to look for and take items identified in the warrant. An arrest warrant allows law enforcement officers to take you into custody. An arrest warrant alone does not give law enforcement officers the right to search your home (but they can look in places where you might be hiding and they can take evidence that is in plain sight), and a search warrant alone does not give them the right to arrest you (but they can arrest you if they find enough evidence to justify an arrest). A warrant must contain the judge's name, your name and address, the date, place to be searched, a description of any items being searched for, and the name of the agency that is conducting the search or arrest. An arrest warrant that does not have your name on it may still be validly used for your arrest if it describes you with enough detail to identify you, and a search warrant that does not have your name on it may still be valid if it gives the correct address and description of the place the officers will be searching. However, the fact that a piece of paper says "warrant" on it does not always mean that it is an arrest or search warrant. A *warrant of deportation/removal*, for example, is a kind of *administrative* warrant and does not grant the same authority to enter a home or other building to do a search or make an arrest.

3.

Question

What should I do if officers come to my house?

Answer

If law enforcement officers knock on your door, instead of opening the door, ask through the door if they have a warrant. If the answer is no, do not let them into your home and do not answer any questions or say anything other than "I do not want to talk to you." If the officers say that they do have a warrant, ask the officers to slip it under the door (or show it to you through a peephole, a window in your door, or a door that is open only enough to see the warrant). If you feel you must open the door, then step outside, close the door behind you and ask to see the warrant. Make sure the search warrant contains everything noted above, and tell the officers if they are at the wrong address or if you see some other mistake in the warrant. (And remember that an immigration "warrant of removal/deportation" does not give the officer the authority to enter your home.) If you tell the officers that the warrant is not complete or not accurate, you should say you do not consent to the search, but you should not interfere if the officers decide to do the search even after you have told them they are mistaken. Call your lawyer as soon as possible. Ask if you are allowed to watch the search; if you are allowed to, you should. Take notes, including names, badge numbers, which agency each officer is from, where they searched and what they took. If others are present, have them act as witnesses to watch carefully what is happening.

4.

Question

Do I have to answer questions if law enforcement officers have a search or arrest warrant?

Answer

No. Neither a search nor arrest warrant means you have to answer questions.

5.

Question

What if law enforcement officers do not have a search warrant?

Answer

You do not have to let law enforcement officers search your home, and you do not have to answer their questions. Law enforcement officers cannot get a warrant based on your refusal, nor can they punish you for refusing to give consent.

6.

Question

What if law enforcement officers tell me they will come back with a search warrant if I do not let them in?

Answer

You can still tell them that you do not consent to the search and that they need to get a warrant. The officers may or may not succeed in getting a warrant if they follow through and ask the court for one, but once you give your consent, they do not need to try to get the court's permission to do the search.

7.

Question

What if law enforcement officers do not have a search warrant, but they insist on searching my home even after I object?

Answer

You should not interfere with the search in any way because you could get arrested. But you should say clearly that you have not given your consent and that the search is against your wishes. If someone is there with you, ask him or her to witness that you are not giving permission for the search. Call your lawyer as soon as possible. Take note of the names and badge numbers of the searching officers.

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