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Inspections & Abatements

COMPLYING WITH THE FOURTH AMENDMENT & WARRANTS

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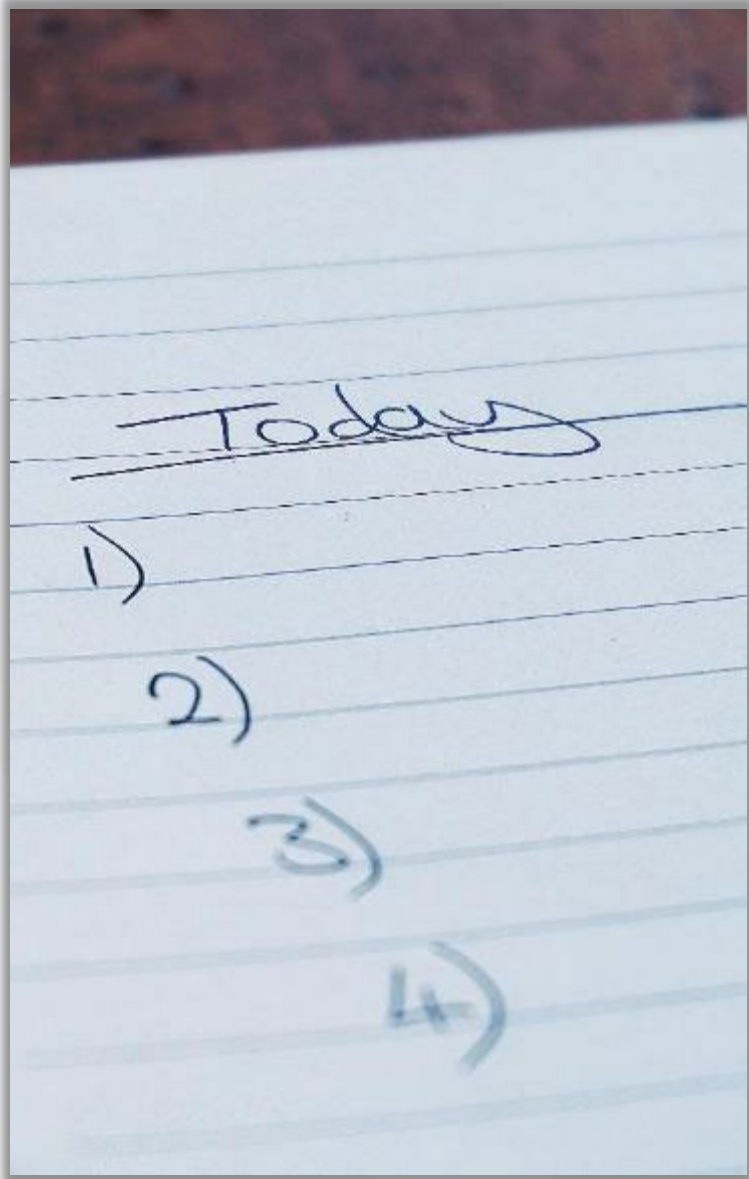


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Disclaimers



Agenda

- Possess an understanding of legal privacy and rights of entry
- Purpose and use of warrants for inspections
- SECTIONS
- Fourth Amendment
- Exceptions
- Warrants

I. Fourth Amendment

4th Amendment – Breaking it Down

The Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

4th Amendment Applies To Code Enforcement

- 4th Amendment protects unreasonable searches by government without a warrant.
- Code enforcement officers and inspectors must adhere to the Fourth Amendment when they inspect private property.
 - Department of Toxic Substances Control v Superior Court (1996) 44 CA4th 1418, 1422.
 - Camara v. Municipal Court, 387 U.S. 523 (1967)

4th Amendment – In General

- “The Fourth Amendment and the personal rights which it secures have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.”
- *Silverman v U.S.* (1961) 365 US 505, 511

4th Amendment Applies to Code Enforcement

- Search - Inspection
- Seizure - Abatement
- 4th Amendment: entry onto private property to inspect or abate – warrant requirements.

Default Rules

- 4th Amendment requires a warrant in the absence of an exception (when 4th Amendment applies).
 - “[T]he ultimate touchstone of the Fourth Amendment is ‘reasonableness,’ ” and thus, “[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant.”
 - “In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.”
 - *Riley v. California*, 573 U.S. 373, 381-82 (2014)

Search/Seizure vs. Inspection

- Search/seizure: identify and collect evidence of a crime (not applicable here)
- Inspection: protect public health and safety

Reasonable Expectation of Privacy Doctrine

- 4th Amendment applies to searches of places where the occupant has a reasonable expectation of privacy.
- Who holds the rights?

Reasonable Expectation of Privacy Doctrine (cont'd)



- Ex: No reasonable expectation of privacy exists when garbage is left at the curb for collection. *California v. Greenwood* (1988) 486 U.S. 35, 40.
- Why not?

Reasonable Expectation

- TWO ELEMENTS TO A REASONABLE EXPECTATION OF PRIVACY:
- SUBJECTIVE AND
- OBJECTIVE STANDARD

Curtilage

- Refers to areas that are so closely connected to a home that they are included in areas where people have reasonable expectations of privacy
 - Can interrelate with plain view doctrine (see later slide)

II. Inspection Without A Warrant

When Warrants Are Not Required



- No reasonable expectation of privacy exists
- Consent
- Other exceptions
 - Exigent circumstances
 - Highly regulated businesses
 - Etc.

Consent

- Scenarios
 - Neighbors
 - Occupant vs. Owner
 - Roommates
 - Contractors

Consent

Requirements:

- Voluntary
- Knowing
- Capacity
- Must be given, cannot be “notified”

Consent

- Withdrawal
- Limited consent
- Warrant advisory

Plain View

- No reasonable expectation of privacy if it is in plain view
- Areas open to the public or open to public view
- Violation readily apparent

Plain View

- Requirements:
 - Legal place
 - Violation immediately apparent
 - (Don't need to move subject item)
- What is observable by the public is observable without a warrant, by the government inspector as well.
 - Marshall v. Barlow's, Inc., (1978) 436 U.S. 307.

Plain View (Cont'd)

- Neighboring property:
- Dillon v. Superior Ct. (1972) 7 Cal. 3d 305, 310; People v Claeys (2002) 97 CA4th 55, 58 (officer's observations from neighbor's yard did not violate 4th Amendment.)

Plain View (Cont'd)

- Open Fields



Plain View (Cont'd)

- Trespass & Open fields:
 - The Fourth Amendment authorizes the warrantless entry into open fields. *Oliver v. United States*, 466 U.S. 170 (1984) (forested area and field located one mile from farmhouse); *Hester v. United States*, 265 U.S. 57 (1924).
 - The fact that a search may or may not involve a trespass or other invasion of defendant's property interests is not conclusive, for the prohibition in the (Fourth) amendment is against unreasonable searches and seizures, not trespasses. (*People v. Terry* (1969) 70 Cal.2d 410.)
 - Minor trespass, not involving entry of building, does not render observations an unreasonable search. (*People v. Terry*)

Plain View (Cont'd)

- Flashlights and binoculars:
 - People v. Vermouth (1974) 42 Cal.App.3d 353, 361 (use of binoculars to confirm marijuana plants on sun deck is okay)
 - People v. Capps (1989) 215 Cal.App.3d 1112, 1123 (use of flashlight to illuminate inside of a handbag is okay)

Plain View (Cont'd)

- Aerial Surveillance:
 - Dow Chemical Co. v. U.S. (1986) 476 U.S. 227, 234-239 (warrantless aerial inspection of open areas of an industrial plant is lawful, treated like open fields, absent inspection of “intimate details.”).
 - Florida v. Riley (1989) 488 U.S. 445, 451-452 (warrantless aerial surveillance of residential back yard at 400 feet high is lawful.)
 - People v. McKim (1988) 214 Cal.App.3d 766, 769-772 (warrantless aerial surveillance by a helicopter at 400 feet did not violate the 4th Amendment).

Exceptions

- Consent
- Highly-Regulated Businesses
- Exigent Circumstances

Exception: Highly Regulated Businesses

- See statutes and ordinances

Exception: Exigent Circumstances

- Immediate dangers
- "[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment."
- Mincey v. Arizona (1978) 437 U.S. 385, 393-394

ILLEGAL SEARCH

- Exclusionary Rule
 - Fruit of the Poisonous Tree
- Legal exposure
- HR

III. Primer on Warrants

Overview

- Inspection warrant vs. search warrant
- CCP 1822.50 et seq.
- Prerequisites:
 - Occupant's refusal to be inspected, and
 - Reasonable cause to suspect code violations or reasonable legislative or administrative standards

vs. Search Warrant

- What are the differences?
- Benefits of an inspection warrant
- When to use either one

Refusal of Consent to Inspect

- Follow procedures/protocols
- Sufficient evidence

Reasonable Cause (Cont'd)

- Reasonable or good cause can arise in two basic ways:
 - Enactment of an ordinance or administrative policy which establishes area-wide or annual inspections, or
 - Evaluation of a particular location that is suspected of having code violations.

Reasonable Cause (Cont'd)

- Annual Inspections: to ensure compliance with building codes, housing codes or other regulations
- Site-Specific Violations: enforcement inspector suspects code violations on properties that are not part of an annual or area inspection; inspector must support the suspicion with
 - A written statement of specific facts
 - A written statement listing the violated code sections

IV. Obtaining A Warrant



Procedural Overview

- Relevant statutes are: Code of Civ. Proc., §§ 1822.50-1822.60
- Procedure requires
 - Seek and deny consent (exception)
 - Inspector's Declaration
 - Court
 - Proposed Inspection Warrant
 - 24-hour notice (exception)
 - Execute and return the warrant



Inspector's Declaration

- Place
- Purpose
- Consent
- Evidence - reasonable/good cause
- Basis for any exceptions

Inspection Warrant

- The inspection warrant must specify:
 - Place
 - Purpose
 - Who
 - Authorizations
 - Limitations
 - Other information

Provide Notice of Inspection

- CCP § 1822.56 - 24-hour advance notice to be given to the occupant, unless waived by Judge on good cause.
- Waiver of this requirement or permission for forcible entry specified in the inspection warrant

Forcible Entry

- Not permitted unless below.
- Permitting forcible entry:
 - Immediate threat to the public's health or safety if the violation were found to exist, or
 - Prior unsuccessful attempt to execute a previously issued inspection warrant

Execute and Return

- 14 days, unless extended
- Effect after 14 days
- Warrant return

V. Conducting the Inspection

Executing the Warrant

- Unless the approved warrant states otherwise as authorized by law:
- Notice*
- 8 a.m. - 6 p.m.*
- Occupant or owner must be present*
- No forcible entry*
- *Unless waiver by Judge on good cause & statutory requirement

IIIA. Abatement Warrants

- Based on case law.
- CCP 1822.50 et seq.
- Authorizes abatement under certain circumstances
- Due process

QUESTIONS?

Thank you for attending!

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