

Entering Private Property to Conduct Inspections

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We are often asked to render opinions regarding the authority of administrative agents, such as health agents, building inspectors, conservation commission agents, and animal control officers, to enter private property for purposes of conducting inspections. Administrative agents may enter private property to conduct inspections only if: (1) the property owner consents to the entry; (2) an administrative search warrant is issued by a court; or (3) there is an emergency situation requiring immediate entry. Discussed in more detail below, in all but the most extreme circumstances, therefore, administrative agents should attempt to procure consent or a warrant before conducting a search of private property.

Administrative agents are often called on to conduct inspections of private property to determine compliance with numerous state statutes and regulations. In fact, many statutes expressly authorize such entry. See e.g. 105 CMR 410.820 (inspection of property by Board of Health agent); G.L. c. 129, §7 (inspection of property by animal control officer); G.L. c. 131, §40 (inspection of property by conservation commission); 780 CMR 115.6 (inspection of property by building inspector). However, any authority to enter private property for purposes of inspection must be interpreted in accordance with the prohibition set forth in the Fourth Amendment of the United States Constitution against unreasonable searches and seizures.

The basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 1727, 1730 (1967). To further this purpose, the Supreme Court has consistently held that government officials may not enter private property without the permission of the occupant unless a neutral magistrate issues a warrant based upon probable cause. Camara, 387 U.S. at 1731, and cases cited. While this requirement is typically applied to searches conducted by the police, in 1967 the Supreme Court held that searches by local administrative officials violate the Fourth Amendment when conducted without an administrative search warrant. Camara, 387 U.S. at 1733. The Massachusetts Appeals Court has followed the Supreme Court's precedent in this regard and has held that administrative officials are required to obtain warrants prior to conducting inspections of private property without the owner's consent. City of Boston v. Ditson, 4 Mass.App.Ct. 323 (1976). Further, an administrative inspection that exceeds the limits set forth in the authorizing statute and case law is both a statutory and a constitutional violation. Commonwealth v. O'Donnell, 92 Mass.App.Ct. 262 (2017) (finding town exceeded scope of search permissible under administrative inspection warrant by extending search to areas unrelated to suspected code violations).

The issuance of a warrant for an administrative search depends upon a lesser showing of probable cause than in the context of criminal investigations. Id. Probable cause to justify the issuance of a warrant for an administrative search warrant exists "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." Camara, 387 U.S. at 1736. "Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g.

multifamily apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of a particular [property].” *Id.* While each circumstance must be evaluated in light of its specific facts, an agent’s observations as to regulatory violations on the exterior of the property would likely justify the issuance of an administrative search warrant to inspect for violations in the interior of the property. Likewise, a citizen complaint may justify an administrative search warrant. An administrative warrant must “specify on its face the purpose, place, and objects of a search.” *Commonwealth v. Lipomi*, 385 Mass. 370 (1982). In summation, “the proper scope of an administrative warrant ... is limited by the purpose for which the warrant is sought.” *Commonwealth v. Jung*, 420 Mass. 675 (1995).

While administrative officials will be required to obtain warrants before conducting searches of private property in the vast majority of circumstances, the courts have recognized limited exceptions to the warrant requirement. Under one such exception, government officials may search private property without a warrant if they obtain consent of a person authorized to permit entry. Not every person having an interest in the property, however, may consent to a warrantless search. *Commonwealth v. Ploude*, 44 Mass.App.Ct. 137, 140 (1998). The person giving consent must have joint access or control over the premises for most purposes, so that it is reasonable to recognize that the individual would have a right to conduct an inspection in their own right. *Ploude*, 44 Mass.App.Ct. at 141. Thus, family members who live in a home together may validly consent to a search of that home. *Commonwealth v. Podurski*, 44 Mass.App.Ct. 929, 930 (1998). A landlord, however, cannot generally consent to the inspection of a dwelling rented to another. *Ploude*, 44 Mass.App.Ct. at 140, internal citations omitted; *but see Boston Housing Authority v. Guirola*, 410 Mass. 820, 827-828 (1991) (landlord could consent to search where lease provision permitted landlord to enter for purposes related to the search).

Administrative officials may also conduct warrantless searches in emergency situations. *Camara*, 87 S.Ct. at 1736. In so holding, the Supreme Court gave the following examples of emergency situations justifying warrantless entry by a board of health agent: seizure of unwholesome food, compulsory small pox vaccination, health quarantine, and summary destruction of tubercular cattle. *Id.* The Court warned, however, that “in the case of most routine inspections, there is no compelling urgency to inspect at a particular time or on a particular day.” *Camara*, 87 S.Ct. at 1736. Rather, warrantless entry in the case of emergency is justified only when there is a need to protect or preserve life or to avoid serious injury. *See, e.g. Commonwealth v. Ringgard*, 71 Mass.App.Ct. 2008 (police justified in entering burning building without a warrant); *Commonwealth v. Cantelli*, 83 Mass.App.Ct. 156 (2013) (emergency exception applied where there was an odor of flammable gas coming from building); *Compare City of Boston v. Ditson*, 4 Mass.App.Ct. 323 (1976) (exigent circumstances did not exist where rubbish accumulated on property for seven years before the inspection); *Commonwealth v. Hurd*, 51 Mass.App.Ct. 12 (2001) (alleged abuse of animals did not justify warrantless search where inspector had time to procure a warrant). Therefore, in all but the most extreme circumstances, administrative agents should attempt to procure consent or a warrant before conducting a search of private property.

Please contact Attorney Gregg J. Corbo (gcorbo@k-plaw.com) at 617-556-0007, or any other attorney at the firm, with any questions concerning authority of administrative agents to enter private property to conduct inspections.

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