

update

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Friday Facts: Execution of Search Warrants – What to do

When involved in commercial transactions, clients often become vulnerable to criminal investigation and civil prosecution by regulatory authorities. Usually the first notice they have that they are being investigated is when they are confronted with a police officer armed with a warrant to search the premises.

That is when urgent advice is needed on how to deal with the situation in order to protect rights.

A search warrant will only be issued by a Court if the investigating officer satisfies the Court by affidavit that he/she genuinely considers that evidence may be found at the premises named in the warrant.

When faced with a search warrant it needs to be reviewed to ensure that it contains the following information to which the seizure will apply:

- the precise address of the premises the officer is seeking to search (including, if applicable a description of the vehicle, aircraft or other vessel to be searched)
- identification of the exact class of documents and materials which can be seized
- a description of the alleged offence/s including the Act under which the offence was alleged to have occurred and the section

Other things to remember are that:

- the investigators must act reasonably in

determining whether items fall within the terms of the warrant

- the investigators cannot indiscriminately remove every document even for temporary sorting however they can remove documents which they reasonably believe contains evidential material. In many instances unless the officers executing the warrant are closely monitored, they may seize documents which do not fall within the realms of the search warrant
- if the investigators have no cause to believe that the document itself provides evidence of an offence the execution of the warrant will be held to be unlawful
- there is no obligation on the occupier of the premises to assist the officers by answering questions or direct them to documents or material sought
- occupiers cannot however refuse entry and the officers can use reasonable force to enter including breaking in
- officers must make a list of the documents which they seize pursuant to the search warrant and provide a copy to the occupant

before they leave

- lawfully seized items may be held until the conclusion of the criminal or civil prosecution after which time prolonged detention of the material can give rise to an action for return of the goods or damages

Documents which are subject to legal professional privilege need to be protected by occupiers at the time the search warrant is being executed. The way that is done is the occupier asserting the privilege in the document and the document/s being placed in a sealed envelope until their solicitor has arrived at the premises and can ensure the documents are dealt with in accordance with accepted guidelines.

For more information

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