

# SEARCH AND SEIZURE BASICS

## - WHAT CAN THE POLICE SEARCH YOUR HOME?

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## Part I of a Two Part Series



Whether you live in a studio apartment or a multi-million dollar estate, your home is where you retreat to at the end of the day. Home is supposed to be a safe and secure sanctuary -- the one place where you can shut out the outside world if you

choose. What do you do then if you find the police standing at your front door asking to search your home? Whether you have anything incriminating in your home or not, a police search and seizure will most certainly violate your privacy and disrupt your life.

Do the police need your consent to search your home? Should you give them consent? Hopefully, you will never be faced with the need to know the answers to these questions; however, the reality is that anyone can find themselves the target of a search and seizure operation. A working knowledge of basic search and seizure law will be invaluable should you find yourself facing a law enforcement officer standing on your doorstep requesting to search your home.

Here, in **Part I** of this series we discuss the warrant requirement as well as exceptions to the warrant requirement. Please be sure to read **Part II** where we discuss what happens if the police conduct and *illegal* search and seizure.

## The Basic Rule – Searching a Home Requires a Warrant



As is often the case in matters involving criminal law concepts in the United States, there is a basic rule with regard to a search and seizure of your home – and then there are exceptions to the basic rule.

The basic rule, which is firmly established in the U.S., is that a law enforcement officer is required to obtain a valid warrant before conducting a search and seizure of a private residence.



## Where Is the Basic Rule Found?

Authority for the basic rule can be found first and foremost in the Fourth Amendment to the U.S. Constitution which states, in pertinent part:

*"[t]he 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."*

Mirroring the federal search and seizure provision, Article I. § 7 of the Tennessee Constitution also provides authority for the principle of no warrantless searches, stating as follows:

*"That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted."*

## Practically Speaking, What Does the Warrant Requirement Mean?



Collectively, the Fourth Amendment and Article I, § 7 mean that before a law enforcement officer may conduct a search and seizure of your home the officer must obtain a valid search warrant, signed by a judge or magistrate that is based on probable cause and particularly described the place to be searched and the items to be sought. The definition of the term “probable cause” has been debated and litigated for decades; however, for the purpose of gaining a basic

understanding of search and seizure law, consider the definition to be “a reasonable basis for believing that a crime may have been committed (for arrest) and that evidence of the crime is present in the place to be searched (for search).”

## Exceptions to the Rule -- When Is a Warrant *Not* Required?

Over the years, the warrant requirement found in the Fourth Amendment has been watered down significantly by the Supreme Court of the United States, or SCOTUS; however, its applicability to a search of your home remains strong. There are, however, several important exceptions to the warrant requirement that have been carved out over the years. Those exceptions include:

- **Consent** – by far, the most widely used exception to the warrant requirement is consent. If you consent to a search of your home a warrant is not needed. Not surprisingly, law enforcement officers routinely try and get an occupant of the home to consent to the search, thereby bypassing the need to obtain a warrant. It is not uncommon for officers to use threats or even lie in order to persuade an individual to consent to the search. ***Do not ever consent to a search before you consult with an experienced criminal defense attorney*** because once you consent you waive the right to challenge the authority to search your home.
- **Incident to arrest** – sometimes an arrest is made pursuant to an arrest warrant. If an arrest occurs at your home the officer effectuating the arrest has the right to search the *immediate area under the arrestee's control*. The rationale for this is that the arrestee could have a weapon or contraband on him/her or within arm's reach.

- **Plain View** – if a law enforcement officer views contraband in plain view, a search and seizure may follow based on the presence of contraband. For example, imagine you answer the door and find two law enforcement officers on your porch. Through the open door the officers and clearly see a large bag of cocaine or marijuana on the coffee table visible from the front door.
- **Exigent circumstances** –an exigent circumstance exists when there is a compelling need to take action but an officer does not have the time required to obtain a warrant. For instance, if an officer arrives at your door and before she can knock the officer hears someone inside screaming for help. Knocking produces no answer but the word “Help!” emanates from within the house. If the person inside needs help it is obvious the officer does not have time to get a warrant. Consequently, the law allows the officer to enter and conduct a search without first obtaining a warrant.

## What Happens If A search Is Conducted Without a Warrant and No Exception Applies?

The law remains relatively clear with regard to the search of your home. A warrant is required unless an exception applies. If a warrantless search and seizure is conducted and no exception applies, the search is illegal. In Part II of this series we will discuss the legal ramifications of an illegal search and seizure of your home.

If you were the victim of a warrantless search it is in your best interest to consult with an experienced Tennessee criminal defense attorney to discuss the facts and circumstances of the search and seizure because an illegal search often provides the basis for a successful defense.



Cornell University Law School, [Fourth Amendment: An Overview](#)

Cornell University Law School, [Exclusionary Rule](#)

Tennessee Constitution, [Article I. Declaration of Rights](#)



## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional, trustworthy, and effective services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.