

# Entering Private Property

for Health Directors

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# 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 . . . and particularly describing the place to be searched, and the persons or things to be seized.”

# How Courts Have Interpreted the Fourth Amendment

1. A “search” is any intrusion into a private location.
2. Searches must be reasonable.
3. A search with a valid warrant, supported by probable cause, is reasonable.
4. There are a few, limited circumstances in which a search is reasonable without a warrant.

# Fourth Amendment Flow Chart



# Reasonable Expectation of Privacy

- Fourth Amendment protects (applies to) locations subject to a REP
  - Inside your house: REP
  - In a McDonald's parking lot: no REP

# Open Fields vs. Curtilage

- Curtilage
  - Anything “directly and intimately connected with the [home] and in proximity” to it
  - Generally subject to REP
- Open Fields
  - Anything that’s not within the curtilage is an “open field”
  - Not subject to REP

# Curtilage of a Dwelling

- To determine whether an area, building, etc., is within the curtilage, a court will consider:
  - The proximity of the area to the home
  - Whether the area is within an enclosure surrounding the home
  - The nature and use to which the area is put
  - Efforts taken by the resident to protect the area from observation by passers-by

# Common Entrances

- “When officers go to a house by using the common entrance . . . for a legitimate purpose . . . they are not conducting a search under the Fourth Amendment – even though they have entered the curtilage.”





# Privacy and Business Property

- REP exists in offices and similar areas
- No REP in a business open to the public
  - During business hours
  - In areas open to the public
  - To the extent any customer might “inspect”
- Businesses don’t have curtilage
  - But some outside areas are still private
  - Analysis is similar to curtilage analysis

# Plain View Observation

- When an item or an area “is left in open view and is observed . . . from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no ‘search’.”

# Fourth Amendment Flow Chart



# Consent Searches

- Who may give consent?

Children?	
Tenants or landlords?	
Housemates?	
Employees?	

# Consent Searches

- Consent must be voluntary
- Scope of consent search
  - Controlled by the person giving consent

# Fourth Amendment Flow Chart



(TYPE OR PRINT IN BLACK INK)

**STATE OF NORTH CAROLINA**  
**In The General Court Of Justice**

\_\_\_\_\_ County

**AFFIDAVIT TO OBTAIN  
ADMINISTRATIVE INSPECTION  
WARRANT FOR PARTICULAR  
CONDITION OR ACTIVITY**

I, \_\_\_\_\_, being  
(name and position)

duly sworn and examined under oath, state under oath that there is probable cause for believing that there is

\_\_\_\_\_  
(describe condition, object, activity, or circumstance which the search is intended to check or reveal)

at the property owned or possessed by \_\_\_\_\_  
and described as follows: \_\_\_\_\_

\_\_\_\_\_  
(precisely describe the property to be inspected)

The facts which establish probable cause to believe this are: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Administrative Inspection Warrants

- Similar to search warrants
- Usually issued by a magistrate
- Authorized
  - Camara v. Municipal Court, 387 U.S. 523 (1967)
  - G.S. 15-27.2
- Forms in your materials
  - Also available on AOC website: [www.nccourts.org](http://www.nccourts.org)

# Probable Cause and Administrative Inspection Warrants

- Two kinds
- Particular condition or activity
  - Must show a “fair probability” of a violation
  - “Fair probability” may be less than 50%
- Periodic inspection
  - “[I]nclude[d]” in a “program of inspection”
  - Examples
    - Inspect each bar every year
    - Inspect each well every five years

# Execution of an Administrative Inspection Warrant

- Must be executed within 24 hours
- Must be executed between 8:00 a.m. and 8:00 p.m.
- Bring a law enforcement officer if possible
- Serve a copy of the warrant on the owner or possessor of the property
  - May be affixed to property under certain circumstances
- Return to clerk's office after execution

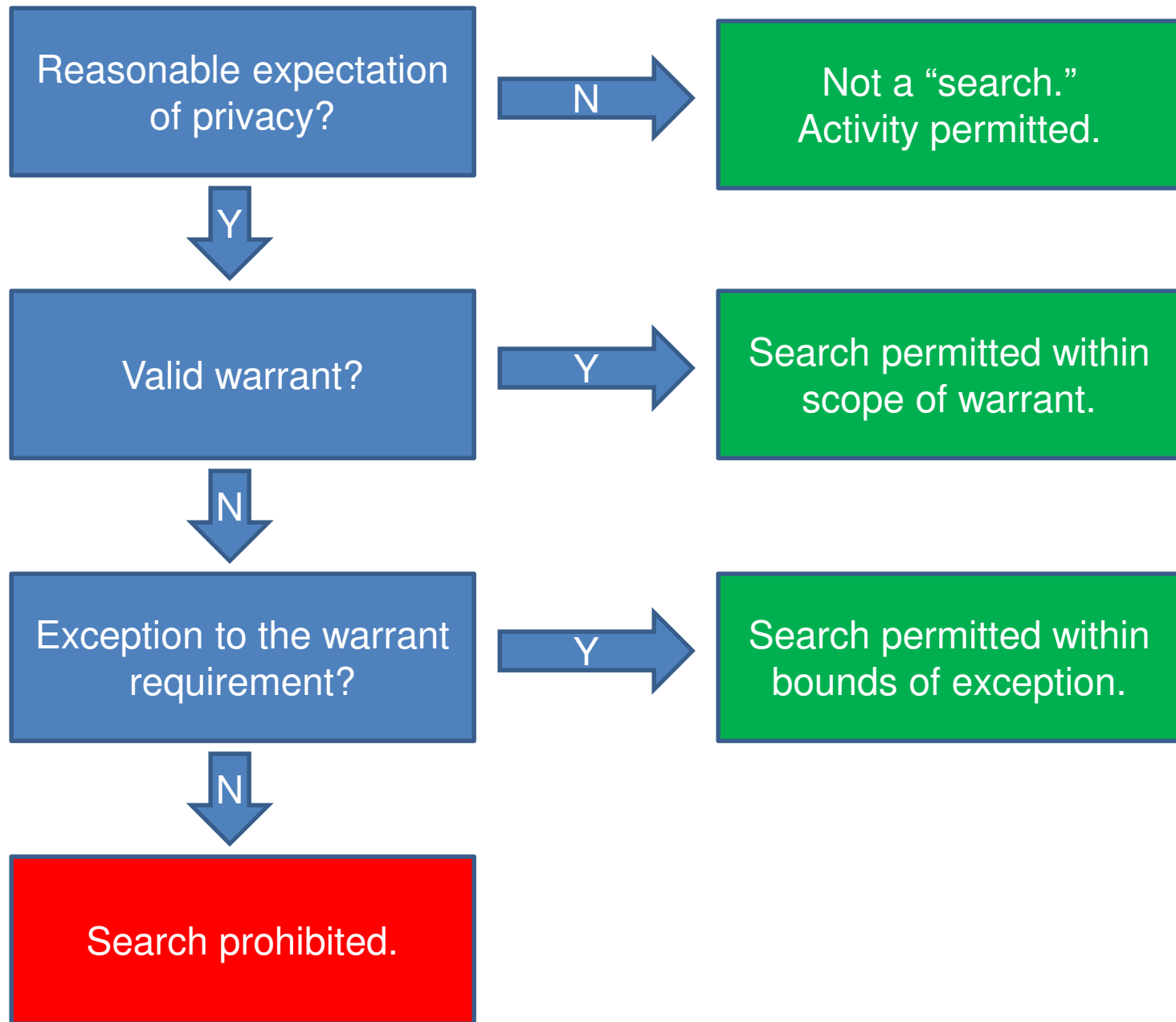
# The Fourth Amendment and G.S. 130A-17

- G.S. 130A-17 says:

The . . . health director shall have the right of entry upon the premises of any place where entry is necessary to enforce [the health laws]. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained [unless there is an emergency].

- Allows you to get warrants
- Couldn't do any more than it does
  - Fourth Amendment would trump it

# Fourth Amendment Flow Chart



# Consequences of Violating Fourth Amendment

- Civil lawsuit against government officer and employing agency
- Criminal prosecution of government officer
- Disciplinary action against government officer by employing agency
- Exclusion of evidence obtained as a result of violating Fourth Amendment

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