

# GUIDANCE CONCERNING INTERACTIONS WITH LAW ENFORCEMENT ON PROPERTY

BOMA International members represent the breadth of commercial real estate, including tenants and clients who operate an incredibly diverse range of businesses in a host of industries. Property professionals may, at times, interact with local, state, or federal law enforcement, including the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE), in a variety of contexts. BOMA is actively evaluating current events and points of interest identified by the BOMA local associations, and we will provide supplemental information in the event it is helpful or necessary.

This information is not legal advice and should not be acted on as such. Any member seeking legal guidance should engage legal counsel who can provide advice and representation with a full understanding of the facts and circumstances unique to the situation.

## THE CRE PERSPECTIVE

### Third-Party Resources

BOMA does not endorse any particular resource relevant to the issues addressed herein, and cautions everyone to critically assess the source and quality of any additional materials. Many third-party publications write in general and broad terms that do not take into account circumstances unique to each location, such as state and local laws. No third-party resource should be treated as legal advice upon which a local association or its members can rely. BOMA encourages members--and local associations as appropriate--to engage independent counsel for legal advice and representation.

Member interactions with law enforcement on property can give rise to a pair of contemporaneous responsibilities:

- complying with, and, to the extent necessary, assisting with valid government law enforcement actions; and
- fulfilling obligations under lease agreements, management contracts, or other responsibilities consistent with maintaining safe and orderly commercial spaces.

BOMA does not view these responsibilities as either competing with or in conflict with one another. Properties should cooperate with all lawful enforcement actions undertaken pursuant to proper federal or state authorization and in compliance with all applicable governing law, including the U.S. Constitution. Personnel should not impede or disrupt any such actions.

At the same time, BOMA recognizes and endorses our members' obligation to serve their tenants, service providers, and employees by fulfilling their responsibilities in accordance with their contractual obligations. Advance preparation, engagement with local counsel, and clear communication with tenants and other stakeholders will maximize properties' ability to fulfill these obligations while also minimizing the risk of inadvertently engaging in obstructionist activity with law enforcement in the proper exercise of its duties.

## STEPS TO PREPARE FOR LAW ENFORCEMENT ENGAGEMENT

BOMA local associations and individual members may find it beneficial to discuss responsibilities as well as possible best practices or recommended protocols that may guide members' interactions with law enforcement on property, including the receipt of legal process, such as subpoenas or warrants, from government representatives.

Members may engage with local, state, or federal law enforcement in a wide range of circumstances. Each situation will be unique and each jurisdiction may present differing policies and expectations, making it difficult to provide blanket guidance across the country. However, properties should consider broad suggested guidance that can be generally applied. Such topics may include, but are not limited to:

- **Retain local counsel** with relevant expertise who can provide informed advice on an expedited basis tailored to unique circumstances.
- **Identify the different types of spaces** within the physical property, including: (a) which areas of the property are open to the public and accessible without special permission; (b) when and under what circumstances those "public" areas are closed (e.g., close of business and restricting access); and (c) which areas of the property are designated as "private" or for the exclusive use of a tenant, and therefore likely only accessible with either a valid judicial or administrative warrant, or consent from the tenant or the building owner.
- **Develop a written protocol to govern interactions** with law enforcement both during and after the conclusion of traditional business hours.
- **Designate specific representatives** who are authorized to: (a) communicate and engage with law enforcement agents; (b) review and assess papers presented by such agents; (c) accompany law enforcement while on the property; and (d) liaise with retained counsel.
- **Train representatives** to recognize and understand the import of papers presented by government agents, such as a judicial warrant signed by a judge, its scope, and date.
- **Develop written protocol for the receipt of law enforcement process**, such as a subpoena or presentation of a warrant, and work with retained counsel to confirm the scope of members' obligations when in receipt of a subpoena as opposed to other forms of legal process, such as a judicial or administrative warrant.
- **Establish a front desk or security protocol**, pursuant to which such representatives may be instructed on: (a) gathering basic information regarding the agency and purpose of the visit, (b) contacting the designated representative for engaging with law enforcement and passing along documented information; and (c) instructing law enforcement agents that front desk or security personnel are not authorized to consent to any potential search of the premises.
- **Train other employees or on-site personnel** (e.g., building engineering or cleaning crews, other staff) to direct law enforcement to the authorized representative upon arrival.
- **Determine who will document interactions** with law enforcement and retain relevant records, including the date, time, law enforcement agency, agency personnel (and relevant contact information), purpose of the visit, and summary of interaction.
- **Work with retained counsel** to understand whether tenants operate businesses that may qualify as "special industries," thereby potentially entitling law enforcement or administrative agencies to greater access to the property without special permission.