



The Due Process Advocate

*"No Person shall be . . . deprived of life, liberty, or property without the due process of law"
- Fifth Amendment of the United States Constitution*

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ABOUT THIS PUBLICATION

Black's Law Dictionary, 6th Edition defines due process rights as follows:

All rights that are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against governmental actions that threaten the denial of life, liberty, or property.

Currently, there is overwhelming evidence that due process rights are being compromised, suppressed, and/or just blatantly denied to serve a host of political and private agendas at the cost of justice in our courts.

It is the express purpose of this publication, therefore, to expose and stop the proliferation of "government endorsed" actions and policies designed to remove due process rights from the common person to serve private interests.

The immediate, public demand for the restoration of due process rights throughout this nation's legal arena may be the real key to future prosperity in America. Without the return of the constitutionally-guaranteed due process rights that are the foundation of American justice, we risk economic and social chaos.

You be the judge as you read this edition, and future editions, of The Due Process Advocate - and please contact me if you have a personal experience that you'd like to share with our readers.

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In its premiere edition, The Due Process Advocate explained how foreclosure mills operated to strip homeowners of their due process rights in the foreclosure process. This edition exposes the orchestration of ruthless, post-foreclosure evictions of homeowners in the "Live Free Or Die" state - by the same foreclosure mills that are conducting wrongful foreclosures.

NEW HAMPSHIRE HOMEOWNERS CLAIM "RETALIATORY" EVICTIONS BY FORECLOSURE MILLS ARE SUPPORTED BY THE COURTS

In New Hampshire, a post-foreclosure eviction action against a former homeowner is brought in a local district court. Once the party (bank or other financial institution) that foreclosed records a foreclosure deed, that party is free to first serve an "eviction notice." If the homeowner does not vacate the property by the deadline set forth in the eviction notice (usually 30 to 60 days), a formal court action can be commenced by serving a "Landlord and Tenant Writ" on the former homeowner, and any other occupants of the property.

As you can imagine, many homeowners that are foreclosed do not believe their foreclosures were lawful; most typically because of disingenuous mortgage modification negotiations, secret or questionable assignments of their mortgage(s) to third parties prior to foreclosure, and/or robo-signed foreclosure documents which call into question the legal validity of the foreclosure process.

Currently, however, the NH Courts take the position that, if the homeowner does not sue the bank before a scheduled foreclosure sale (to "enjoin" the foreclosure sale), the homeowner's defenses against a wrongful foreclosure are, for the most part, barred at a later date to the extent that the homeowner's claims involve material facts that the homeowner knew, or should have known, before the foreclosure took place.

This has created a major legal debacle with respect to post-foreclosure evictions in New Hampshire due to the following circumstances:

1. There appears to be very little (based on the review of hundreds of foreclosure deeds recorded in recent years) that stops a foreclosing party from recording a foreclosure deed that, to some degree, is legally deficient or fraudulent in nature. This could be due to anything from the existence of manufactured (or "robo-signed") foreclosure documents to concealed assignments of the mortgage and/or other defects in the chain of title to the property.
2. The recording of a foreclosure deed which is not legally

valid means that the homeowner can still be "legally" evicted from his home when, in fact, the preceding foreclosure sale, upon which the right to evict is based, was not legal.

3. Because a NH court may require the homeowner to pay a surety or recognizance bond to file suit in order to enjoin a foreclosure, most homeowners don't file suit because they simply can't afford it. Therefore, even if a foreclosure sale is questionably legal, the homeowner can't do much about it if the homeowner can't afford it.

Forcing a homeowner to (a) sue the party that is foreclosing (especially when the identity of the actual party holding the mortgage and mortgage note isn't known by the homeowner) in order to enjoin a foreclosure sale, and then (b) forcing the homeowner to post a bond as a condition of pursuing his/her title action in court are well-practiced tactics that serve to discourage homeowners from fighting wrongful foreclosures and evictions. These tactics are employed by foreclosure mills (and the NH courts who serve and support the same, pro-bank, political agenda) with the specific, intended consequence of suppressing and denying homeowners their right to due process (i.e. their fundamental right to be heard in a fair legal proceeding).

In New Hampshire, wrongful foreclosures are often followed up with "swat-team-like" evictions; especially when a homeowner chooses to challenge the operation of a foreclosure mill as being illegal. Below are four actual examples of just how retaliatory and ruthless an eviction can be; and just how far a foreclosure mill will go to blatantly deny a homeowner his or her due process rights:

CASE #1: This case evolved from a contested foreclosure on a home by Fannie Mae and a subsequent post-foreclosure eviction action. The homeowners challenged the foreclosure of their mortgage because Fannie Mae never actually conducted a foreclosure sale. The auctioneer showed up, but never offered the property for sale and never took any public bids (as a matter of Court records). The auctioneer adjourned the sale with no public auction whatsoever. Nevertheless, Fannie Mae later recorded a foreclosure deed (in order to establish legal standing to proceed with an eviction action) and commenced a possessory action in court. At the initial trial on possession, the homeowners testified that no foreclosure took place because they had witnessed the voluntary adjournment of the scheduled auction sale. There was also an additional eye-witness present at the adjourned auction sale who was also willing to testify that there was no auction. Months later, amidst the pendency of more contentious litigation over what the homeowners called a "fake" auction, the county sheriff called the homeowners early on a Monday morning saying that the property had to be vacated in an hour. The deputy sheriffs showed up and physically evicted the homeowners, their daughter (home from school) and a tenant of the property of several years. All of the occupants were thrown out and the sheriffs turned the property over to a real estate office (allegedly representing Fannie Mae) and the locks were changed. Everyone was forced to immediately vacate and leave the property; scrambling to gather enough personal effects and belongings to live. One of the occupants was forced by the sheriffs to leave the property in her car while being so distraught she couldn't even drive. She wound up in the hospital.

CASE #2: In this case, a local business owner of many years was allowed only 5 minutes to leave his property after, as in the case above, Fannie Mae conducted a contested foreclosure.

The homeowner's account is one which depicts a sequence of events that should not take place in a civilized society. In the homeowner's own words:

"This outrageous 'law enforcement' tactic (throw-back to the atrocities of the civil rights era) should not be tolerated in any town or city of the United States. I was given 5 minutes to leave after awaking to someone pounding on my door yelling 'open the door.' Being told I was being evicted, I asked for a writ of possession. A deputy sheriff, (deputy sheriff's name omitted), told me 'he didn't need one' and informed me, looking at his watch, there were 'only two minutes left' and 'did I want to argue or get my things.' I actually thought he was going to pull a gun on me.. (deputy sheriff's name omitted) refused to show me, or present, any writ of possession; or explain or disclose by what party or legal process I was being evicted. His acts and conduct were extremely discriminatory as I have not been able to find a single person who has been treated in such an abusive and uncalled-for manner. It was painfully obvious he had an overwhelming prejudice against me. I have been a resident and business owner in the area for many years and I was under the impression that these types of intentionally-abusive civil rights violations were only a part of history. I am appalled."

The sheriff then, in accordance with the foreclosure mill's modus-operandi, turned possession of this gentleman's property over to a real estate broker. After he was removed, this homeowner's home was later ransacked and some of his personal property was stolen.

CASE #3: This ruthless eviction of a mother (age 85) and her daughter was referred to Adult Protection Services of the New Hampshire Department of Health and Human Services. The department immediately declared, without hesitation, that the manner and method of eviction constituted abuse of the elderly. However, when Adult Protection Services found out it was the sheriff's department that inflicted the abuse, the department recanted its findings; despite these facts:

The mother and daughter were physically evicted from their home in early February amidst the extremely cold and stormy conditions in New Hampshire by two deputy sheriffs. No writ of possession nor any other order from the court was served on either of them despite repeated requests. The mother is an 85 year old woman and the daughter was her primary caregiver for the past several years. The elderly mother was abruptly awoken and forced to leave with little preparation or explanation. She was not allowed to eat or take her medications. She was thrust out into the extreme cold that she feared. She was subject to great discomfort and was confused to say the least. Prior to her physical eviction the elderly mother had not even been outside of her home for approximately a month. In fact, the only times she ever left her home during the previous year were for the sole purpose of seeing her doctor while accompanied by her daughter. The one time she left her home on her own, she got lost and was brought back home by the State Police.

This eviction was yet another reprehensible case exemplifying the "retaliatory punishment" supported by the New Hampshire Courts for contesting a foreclosure proceeding. In this case it was Freddie Mac, not Fannie Mae who employed the local foreclosure mill to, apparently, "teach this old lady a lesson." Neither the New Hampshire Governor's office nor the New Hampshire Attorney General's office were concerned about this elderly mother's plight to the extent of doing much about it.

CASE #4: This family (father, mother, and son) was locked out of their New Hampshire home by a deputy sheriff and sergeant from the local sheriff's office. In typical fashion, the eviction was conducted without any prior notice and the officers refused to show or present any writ of possession or any other court paper which authorized them to act. In this case, the actual ownership and possession of the home had been in litigation for several years (the son owned the property), but there was never any formal judgment for possession awarded to Fannie Mae. In fact, more than two weeks before the forced eviction the local Superior Court declared the case was closed. Worse yet, the mother was never a party to any foreclosure or eviction proceeding whatsoever. When the eviction took place, she just happened to be in her kitchen and was told by the "law enforcement officials" that, if she didn't immediately leave, she would be taken out in cuffs. Once the family was removed, the property was turned over to a real estate agent who alleged to be representing Fannie Mae. Also, like the previous cases, the family's personal property was also seized by the real estate broker despite the fact that New Hampshire law states: "A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof."

These cases expose one unconscionably illegal, and unconstitutional practice orchestrated by the attorneys that run foreclosure mills in New Hampshire while the courts "look the other way".

That practice is post-foreclosure seizure of a homeowner's personal property as part of an eviction proceeding. Consider the following:

Even if a foreclosure is "legal" (which a vast majority of foreclosures are not as evidenced by the underlying investigations which gave rise to the \$25 billion national mortgage settlement and a host of other settlements), it is extremely rare that a homeowner's personal property is foreclosed. In fact, the personal property seized in all the above cases was not foreclosed. It was simply seized in a manner that blatantly deprived its rightful owners of any due process whatsoever. This is accomplished by and through the deceptive scheme whereby the Courts authorize a writ of possession for the real property (i.e. the real estate) which a foreclosure mill's attorney uses to seize both the real property and the homeowner's personal property contained within the home. The homeowner is then held hostage to it; being told it will be disposed of if it is not removed in days (sometimes hours). Sometimes this involves a life-time accumulation of personal property which, properly removed, would be a task that would take most homeowners at least a month. In New Hampshire, it is often seized by the likes of thugs and bullies (to coerce the cooperation and control of the owners of the personal property) with no due process whatsoever.

EVERY AMERICAN SHOULD UNDERSTAND WHAT "DUE PROCESS OF LAW" MEANS FOR US

By Bob Tobiasz

As Americans, we are entitled to what is known as "due process of law." Specifically, the Fifth and Fourteenth Amendments to the U.S. Constitution guarantee "due process of law" to each of us.

What does "due process of law" actually mean to each of us? Simply put, "due process of law" means that we will be given notice of any legal proceedings, that we will be afforded the opportunity to present our case at such proceedings and that such proceedings will be fair before any government attempts to take away our life, liberty and/or property. Inherent in our "due process of law" constitutional guarantee is that any law, to which we are subject, shall not be unreasonable, arbitrary and/or capricious.

While many of us think of "due process of law" in the context of criminal proceedings (i.e. the various legal rights we have if we are charged with a crime), "due process of law" is also applicable to civil proceedings (collection actions, foreclosures, evictions, divorces, bankruptcies, etc.) wherein confiscation of our property (real estate, businesses, cash, stocks, bonds, etc.) is being threatened.

Why is "due process of law" more important today than ever? Firstly, because without a thorough understanding of our "due process of law" rights, we will be unable to properly defend ourselves in criminal and/or civil proceedings. Secondly, absent a swift and far-reaching restoration of fundamental due process rights at all levels of local, state and federal governments, America's middle class will disappear as the rich get richer and the poor get poorer.

In closing, I'd like to remind you of the June 15, 1215 words of the Magna Carta, Chapter 29, from which our "due process of law" rights were derived:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land."

Note: Bob Tobiasz is a graduate of both Boston College and the University of Chicago. He has an extensive background in business management and financial analysis; including several years as a high-level corporate executive, a real estate investor and manager, a venture capital consultant, and a private investor and entrepreneur. He is a life-long due process advocate.

SUPPORTING THE CAUSE . . .

The protection of due process rights has attracted a fast-growing network of people, from all walks of life, who are concerned about the future protection of the due process rights that are quickly disappearing from the American marketplace and courts. This page is included to recognize trustworthy and dependable supporters, advertisers, sponsors, affiliates and others who share and support the fundamental objectives of The Due Process Advocate.

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**SIGN THIS PETITION
TO SUPPORT THE CRIMINAL PROSECUTION
OF BANKERS AND THEIR ATTORNEYS
FOR WRONGFUL FORECLOSURES**

The purpose of this petition is to encourage state and federal lawmakers, regulators, and other law enforcement authorities to immediately and aggressively pursue the criminal prosecution of banks and their attorney representatives for their participation in criminal acts designed to conduct illegal foreclosures in the United States.

The existence of a host of deceptive frauds has overwhelmed the foreclosure process in the wake of the national housing crisis. The urgent need for the criminal prosecution of the banks and their legal representatives for wrongful foreclosure actions is supported by the conclusions based on thousands of pages of investigations, documents, reports, and legal pleadings produced by the U.S. Government itself.

Millions of wrongful foreclosures have taken place since the start of the beginning of the mortgage crisis in 2008. The "time is now" regarding the mass-exposure of the unfair, deceptive, and illegal operations of the many foreclosure mills that have irreparably damaged so many U.S. homeowners in the wake of the national foreclosure crisis

Please join forces to help expose and put foreclosure mills out of business by signing this petition to show your support for the criminal prosecution of bankers and their attorneys who practice self-serving deception and fraud in order to orchestrate illegal foreclosures.

Name: _____

Address: _____

Phone (Optional): _____

Email (Optional): _____

Signature: _____ Date: _____

Please forward signed Petition to:

**Edward H. Smith
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Manchester, NH 03101**