



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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The Due Process Advocate was originally created and published in response to due process abuses experienced by thousands of homeowners in the wake of the national housing crisis. However, due process abuses have been spreading like wild-fire in other areas as well; as the right to be heard and fair legal proceedings are rapidly being sacrificed for the advantage and benefit of a host of political agendas separate and apart from those related to the mass-foreclosures in the housing arena. As a result, this edition focuses on a major decision facing America: due process or arbitrary rule?

THE 2016 ELECTION:

WILL AMERICA'S NEXT PRESIDENT SUPPORT DUE PROCESS OR ARBITRARY RULE?

The mass-foreclosures that took place in the wake of the national housing crisis called attention to the ugly and un-American nature of “arbitrary rule” and, perhaps, put a spotlight on the need for the mass-restoration of due process rights in America.

The ramifications of a continued trend toward arbitrary rule, especially as a preferred alternative to due process, will have a devastating impact on the future of America.

Here’s why:

Due process embodies two very critical legal concepts which are the cornerstones upon which every citizen’s well-being and opportunity to “get ahead” in life are based:

The first concept is that all citizens are entitled to certain constitutionally-guaranteed protections of their life, liberty and property. These rights are, basically, referred to as “substantive due process rights.” The idea here is that due process mandates the protection of certain fundamental rights from government interference with those rights,

The second concept refers to the manner in which those substantive due process rights are protected. These rights are referred to as “procedural due process rights;” as they seek to protect individuals from the power of government by ensuring that the adjudication of all cases involving constitutionally-guaranteed rights are conducted in a fair and impartial manner. This means the right to notice, the right to be heard, the right to a fair proceeding, and a host of other rights related to the statutorily-prescribed procedures necessary for a fair proceeding. In a nutshell, procedural due process is all about the fundamental fairness in the resolution of any given case.

Many folks think of due process as applying only to criminal actions (i.e. being accused of committing a crime). However, due process also applies to the adjudication of certain property rights and claims (such as the title or possession of a home which might be contested during a foreclosure or eviction proceeding). Again, due process protections are afforded with respect to a person's constitutionally-guaranteed rights to "life, liberty, and property".

Unfortunately, those "protections" can conflict with political agendas. One prime example is the debacle that was created by so-called "mortgage modifications" which weren't, in a vast majority of cases, intended to be modifications at all. During the early stages of pending foreclosure proceedings, borrowers are encouraged to contact their "lender" in order to prevent foreclosure. In many instances, homeowners are led to believe that they can obtain lower payments and/or reductions in principal as permanent modifications of their mortgage loans. In MOST cases, however, these offers become disingenuous ploys that are designed by mortgage servicers to (a) extract money out of the borrowers under false pretenses; (b) get updated financial information from the borrowers for collection and pre-foreclosure purposes; (c) get the borrowers to submit "blind" applications for so-called modifications with no advance disclosure of the terms or conditions of the so-called mortgage modifications that the homeowners were applying for; (d) get unchallenged confirmations from borrowers that certain amounts are owed for principal, interest, costs, expenses, and/or attorney fees; and (e) get statements in the form of "hardship letters" confirming that any existing default was the fault of the borrowers.

The truth of the matter is that, more often than not, these modification arrangements are merely temporary payment plans which are misrepresented as alternatives to foreclosure when, in fact, there is no actual intent on the part of the servicer or lender to offer a viable alternative, or long-term solution, other than foreclosure or deed in lieu. It is arguable that the essence of the development and institution of mortgage modification programs was simply to suppress or deny due process rights in order to conduct the process of "re-cycling" toxic assets with the least resistance from homeowners. The apparent objective is to make sure homeowners enter the foreclosure arena having fundamentally waived their defenses and their interests in their property.

Another way to look at this situation is this:

Just about every astute financial analyst understands that the securitization of mortgage pools in the secondary market compromised, at least to some degree, the ability for lenders to foreclose millions of mortgages. As a result, the government became much more concerned about protecting the financial markets than protecting homeowners' property rights. In this manner, millions of homeowners lost substantial equities and investments in their homes; while the government intervened to "bail out" the banks who orchestrated what may very well prove to be the biggest Ponzi-scheme to ever hit planet earth. In other words, the government made the choice that "propping up the economy" was a more important objective than the preservation of due process rights of individual homeowners.

It is exactly this short-sighted thinking that Americans have to

fear. Propping up the U.S. economy with bigger financial bubbles, more government spending, skyrocketing costs and prices, and the escalation of national debt to an unsustainable level is not the answer.

As if to add insult to injury, the trend toward enacting and substituting various forms of arbitrary rule for due process rights under the guise of supporting Americans will not result in America going forward. Instead, this will create an economic pressure-cooker that will eventually wipe out the middle class in America.

Just to be clear, arbitrary rule is exemplified by government actions and policies that lack grounding in law or fact; that are despotic in nature and are viewed by the people as the actions and policies of a dictatorship. It means that privileged individuals, political groups, special interests, and abusive authorities can determine how, when and where the "rule of law" should apply.

The presence of arbitrary rule is growing out of control through a host of clever, but clearly unfair and deceptive, tactics and maneuvers. The following are just a few of the more common practices that are commonly employed to suppress or deny due process rights of individuals looking to have their day in court:

- 1. The intentional intimidation of self-represented litigants by government agencies, courts, and attorneys who abuse their authority in order to stifle an unrepresented person's due process rights.** Understandably, self-represented litigants can stray from the legal issues at hand in any particular hearing; usually because they do not have formal training in Court procedures and practices. However, that lack of training should not be used as an excuse for the intentional stifling of due process rights (through veiled threats, improper inferences, or procedural misrepresentations).
- 2. The knowing submission of altered, fabricated, manufactured, and/or otherwise fraudulent documents in legal actions by attorneys who know that the false documents will interfere with an opposing party's due process rights in the adjudication of a given controversy.** The tens of thousands of manufactured and/or robo-signed mortgage documents that were discovered in the wake of the national housing crisis (expediting the mass-foreclosure of toxic assets) provide a perfect example. Again, the fact that a given self-represented litigant may not be thoroughly familiar with, for example, the rules of evidence in a given jurisdiction or court should NEVER result in an opposing attorney submitting evidence that the attorney knows to be fraudulent in nature and likely to result in an unjust or unfair decision.
- 3. A court's refusal to entertain or hear allegations of obvious "fraud on the court" no matter how egregious the specific conduct may be.** One event that comes to mind is the case of a young attorney who, for a number of reasons, was desperate to get out of a case "in a hurry" - right in the middle of a hearing in which certain improprieties were about to be disclosed. In order to accomplish his immediate withdrawal, the attorney approached the bench and told the Judge that his client had threatened him with a gun. That was a very bold lie as, in fact, the attorney's client was not only a stellar citizen and professional business person; but also had never held a gun in his hand in his entire life. Obviously, this attorney's

stunt severely compromised this client's due process rights to be heard and enjoy a fair legal proceeding.

4. **The arbitrary delay of court hearings which serve to compromise due process rights.** For example, the divorce arena is plagued with custody and support issues that are unmercifully delayed; and wind up denying any semblance of "due process" to the exact people that need it more than anyone else: the children. Nevertheless, contested divorce proceedings involving the support of children are notorious for getting drawn out to oblivion; while unmerciful fees are generated by attorneys in wanton disregard for the welfare of those children.

The sad truth here is that the legal fees generated in a legal action are often viewed by the legal establishment as much more important than the due process rights of the real parties in interest (a good example being the recent \$25 billion mortgage settlement where the largest recipients of settlement funds have not directed those funds to housing related uses). As a result, the abandonment of due process as the top priority in the legal arena, the very legal system upon which all Americans rely on for "equal protection under the law," is rapidly giving way to the more profitable practice of arbitrary rule. [Note: The Equal Protection Clause in the Fourteenth Amendment to the United States Constitution requires each state to provide equal protection under the law to everyone within its jurisdiction.]

While there is no government or private organization that keeps ongoing, accurate statistics, The Due Process Advocate estimates that there are well over 50,000 legal actions filed in the courts, at all levels and jurisdictions, every day in America; and this is probably a very conservative estimate. For sure, many millions of cases and complaints are filed every year.

To more appreciate the magnitude of the problem (i.e. the large number of people whose "life, liberty, and property" are adversely and unfairly affected by the trend toward arbitrary rule that puts special interests in front of personal due process protection), simply talk to your friends and associates and ask them about their recent experiences with the court system. Specifically, ask them if they felt their proceedings were, or are, being conducted in a fair and impartial manner.

You may be surprised at the number of folks you find that are extremely dissatisfied with the legal system which, apparently, has determined that due process is too expensive, too time consuming, and too bothersome to provide to all people. So someone (maybe a clerk, maybe an attorney, or maybe a judge) has to make the decision about who gets due process and who doesn't! This sort of arbitrary rule is causing much of the legal havoc that you hear about every day on the national news networks.

We need to immediately restore the constitutional due process rights of life, liberty, and property to all individuals in order to regain the respect we've lost by so many who would deny those rights to others in order to serve themselves.

The 2016 presidential election, therefore, may very well be a fork in the road for America. Either we demand the restoration of due process rights; or we will be lured down the path of arbitrary rule where the rich run the government by continuing their relentless campaign to chip away at the due process rights the nation was built on.

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 . . . AND PROVIDING KEY RESOURCES

The protection of due process rights has attracted a fast-growing network of people, from all walks of life, who are concerned that many constitutionally-guaranteed due process rights are disappearing in America. This page is included to provide access to trustworthy and dependable supporters, advertisers, sponsors, affiliates and others who not only share and support the fundamental objectives of The Due Process Advocate; but also provide key resources for those who are looking for help with issues where due process rights have been abused or denied.

Your due process rights are more important than ever before...

In today's world, a vast majority of the people (including, perhaps, yourself) are involved in some type of legal issue. Some of the more common problem-areas involve business disputes, collections, divorce & domestic issues, pending foreclosures, bankruptcy, and a host of other legal issues.

Unfortunately, most folks don't realize, until it's too late, that the protection of their due process rights is absolutely critical when a serious problem raises its ugly head. No matter what the problem, a person's ability to prevail is often directly proportional to his or her ability to exercise his or her due process rights. The reason why is this: There are two major components of due process rights: (1) The right to be heard; and (2) the right to a fair legal proceeding. Therefore, as soon as the opposition is able to orchestrate a proceeding in such a way as to suppress or deny those basic rights, the opposition has "clear sailing" and gains an extraordinary advantage.

Equally important is the fact that many folks simply don't realize that their right to be heard and their right to a fair legal proceeding are not "privileges" that are extended by an authority (such as a court). They are constitutional rights which should not be trampled on by anyone.

Nevertheless, the "powers-to-be" know that the fastest way to get money from individuals, or masses of individuals, is to operate in a manner that stifles, suppresses, or removes due process rights. After all, without the right to be heard within a fair proceeding in a legal forum, the odds of winning any legal battle are drastically diminished.

For this fundamental reason, due process advocates focus on the need for cases to be (a) actually heard, and (b) within a fair proceeding. These two elements are what due process is all about. Without due process, an administrative or legal proceeding becomes a one-way exercise of "arbitrary rule" which results in an unfair decision or outcome.

Urgent Issue? Get an IMMEDIATE Response

For these fundamental reasons, The Due Process Advocate provides a no-cost and no-obligation program for you to inquire about available help and resources if you are involved in any type of proceeding that may hinge on your ability to exercise your due process rights. Simply follow these simple steps:

1. Visit www.ehsportal.com and click on the "Reply Form" link at the upper right-hand corner of the homepage;
2. Input your contact information, the name of the person that referred you (if applicable) and a brief description of the issue you are inquiring about; and
3. You'll receive a no-cost and no-obligation response via email within 24-48 hours.

You might save yourself a lot of time, energy, effort, and money (not to mention the headaches) by taking these simple steps to help protect your due process rights and/or get some feedback about the issues you are dealing with. Don't become another statistic (or subject of a story like the one below!).

This Edition's "Due Process Abuse"...

This due process abuse has been repeated, literally, in hundreds of New Hampshire foreclosure cases. According to New Hampshire law NH RSA 479:26(I): "The person selling pursuant to the power shall within 60 days after the sale cause the foreclosure deed, a copy of the notice of the sale, and his affidavit setting forth fully and particularly his acts in the premises to be recorded in the registry of deeds in the county where the property is situated; and such affidavit or a duly certified copy of the record thereof shall be evidence on the question whether the power of sale was duly executed..."

In this specific case, as in many other cases in New Hampshire, the attorney who executed the foreclosure deed stated in his affidavit (recorded with the foreclosure deed at the Registry of Deeds) that: "I further say on oath that pursuant to said Notice, at the time and place therein appointed, I sold the mortgaged premises at public auction to Federal National Mortgage Association..."

But here's the problem: This attorney was never at this foreclosure auction - and this attorney never sold anything to anyone! The bogus foreclosure deed was recorded at the registry and the homeowner lost his home based on the legitimacy of the foreclosure. Currently, the Courts are allowing the financial power-houses to record questionable foreclosure deeds; perhaps because the Courts want to support the prevailing "pro-bank" political agenda which, unfortunately, calls for the denial of a New Hampshire homeowner's right to challenge a foreclosure deed. In this manner, the homeowner's due-process rights to be heard in a fair proceeding are routinely denied.