



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*

Vol. 4 No. 1

New Hampshire / Massachusetts / Maine

September 2015 - FREE

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.

Ed Smith, Publisher of The Due Process Advocate
816 Elm St. Box 296, Manchester NH 03101
thedueprocessadvocate@gmail.com

ARCHIVE

Every edition of The Due Process Advocate is archived and may be viewed online at:

www.DueProcessAdvocate.com

DISCLAIMER & COPYRIGHT NOTICE - Nothing contained in this publication is intended to be, or should be construed as, legal advice or any other advice which requires state or federal professional licensing of any kind. © 2015 by Edward H. Smith. All Rights Reserved.

Previous editions of The Due Process Advocate called attention to the clash between due-process and arbitrary rule in the U.S. legal system. This edition focuses on several first-hand experiences of our readers revealing that abuse of process is growing out of control in the courts.

ABUSE OF PROCESS IS REACHING EPIDEMIC PROPORTIONS AS COURTS SIDE WITH SLICK ATTORNEYS TO "EXPEDITE" JUSTICE BY DENYING DUE-PROCESS RIGHTS

You would think it was impossible for an attorney to walk into court and, literally, throw someone's due-process rights out the window with the blessing of the judge. Think again. This happens day in and day out, over and over again, as unscrupulous attorneys take advantage of unsuspecting litigants who don't understand that these attorneys are perfectly willing to deny you your due process rights. They know that they can quickly win the case against you, and make a lot of easy money, by strategically removing your due-process rights (especially if you are representing yourself). Forget about the idea that you are, in any manner, protected because an attorney takes an oath to support the constitutions of both his or her state and the United States. That oath is fundamentally meaningless because attorneys are not held to it. When is the last time you saw an attorney get disbarred for not supporting a constitution?

Because it is more difficult than ever to hold attorneys and judges accountable for their violations of professional or judicial conduct, the door has been left wide open for the blatant abuse of process that has become "commonplace" in many of the courts.

So what exactly is abuse of process?

Black's Dictionary (6th Edition) states that: "The gist of an action for abuse of process is improper use or perversion of process after it has been issued." More simply put, an abuse of process occurs when a legal process is used for a purpose it was not intended for.

Here's an example of an abuse of process:

Let's say you successfully sue someone for a debt that you know they don't owe by, perhaps, concealing material evidence indicating the debt was paid; you obtain a judgment against them. You then immediately pursue a very aggressive collection action against the alleged debtor to damage his business operation which is in competition with your business. This is an abuse of

process which you could be sued for because the proper purpose of your lawsuit is to enable you to recover a just debt that you are owed, not to provide you with a vehicle to damage your competitor's business.

Sometimes, an abuse of process is very cleverly concealed through a scheme of carefully orchestrated deceptive acts and conduct. Here's a real example of such a case:

The house belonging to a New Hampshire homeowner was foreclosed on after a very lengthy litigation over the legality of the bank's title. Ultimately, a post-foreclosure eviction proceeding was commenced against the homeowner by Freddie Mac. A writ of possession for the real property (i.e. just the house, not the homeowner's personal property inside the house) was issued by the Court in May of 2015. However, the homeowner was never told and never knew the writ existed. He never received a copy of the writ nor any notice that the writ had been issued as required by the Court's own rules. In August of 2015, Freddie Mac's attorney ordered that the writ of possession be executed by the Sheriff while the homeowner (who lived alone) was at work. Freddie Mac's attorney accomplished this by engaging the services of the sheriff to enter the property, engaging the services of a local locksmith to change the locks, and then engaging the services of a local real estate agent to take possession of the real property; all allegedly on behalf of Freddie Mac. The homeowner came home from work and was greeted by signs posted on his property declaring that he would be arrested for criminal trespassing if he entered his home. One of the signs was written with a magic marker by the real estate agent saying the homeowner had seven days to recover his life-long collection of personal property (worth tens of thousands of dollars). The real estate broker had, theoretically, taken possession of the property and had the keys to the property. However, when the homeowner called the number he was given on the posted notice, the party answering the phone didn't have the vaguest idea what was going on. The gentleman at the real estate office suggested that the homeowner try to contact the locksmith!

The homeowner was now extremely concerned about who else had access to his personal property, and for what purpose. Contrary to a sign left on the property by Freddie Mac's agent (the local real estate broker), the homeowner was eventually given only limited access to his property during the two days following the lock-out. As you no doubt understand, it would have taken the homeowner, literally, a month to pack up, recover, and transport all his personal property to another location. The homeowner didn't anticipate the sudden lock-out without notice because he had already been involved with the battle over the corrupt title to his property for over 5 years.

The end result is that the forced eviction and seizure of the homeowner's personal property was accomplished by executing a writ of possession issued by the Court for only the real estate (and not the homeowner's personal property).

Consider the implications of this abuse: The

homeowner's computer, checkbooks, financial and personal information, antiques, valuables (including a gun collection), perishable foods, clothes, healthcare supplies, and everything else belonging to the homeowner was seized and turned over to previously unknown parties. Bear in mind that the Fourth Amendment of the U.S. Constitution provides, "[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 ..." Again, neither Freddie Mac, nor any other person on planet earth, ever alleged to have any rights to the homeowner's personal property; yet this homeowner's personal property was turned over to the possession and control of third parties unknown to the homeowner. In fact, the homeowner believes the objective of the unannounced seizure was just that: to gain illegal access to the homeowner's private information under the guise of a legitimate possessory action for the real estate.

This event took place in New Hampshire and it is not an isolated event. A few months earlier, an 85-year-old, bed-ridden woman was, literally, thrown out in the severe cold and storm with her daughter (an RN who, for the most part, was taking care of her mother 24/7). In this case (see Vol. 2, No. 1 of *The Due Process Advocate*), Adult Protection Services of the New Hampshire Department of Health and Human Services declared, without hesitation, that the manner and method of the eviction constituted abuse of the elderly. However, when Adult Protection Services found out it was the local sheriff's department that actually inflicted the abuse, the department recanted its findings. Again, this horror show was conducted by the sheriff's department at the direction of Freddie Mac, who hides behind its agents (i.e. the various "team-members" of the local foreclosure mill) who Freddie Mac employs (and then blames) for any such wrongdoing.

In another recent case, a 15-minute unannounced, forced eviction was executed to remove a near-term, pregnant mother (with a "high-risk" pregnancy) from her home. In this case, the opposing attorney applied the same *modus operandi*: seize the personal property to cause as much hurt and inconvenience as possible. This ruthless eviction was orchestrated, apparently, because the mother had contested the validity of the underlying foreclosure that was accomplished by and through a series of questionable conveyances of her mortgage. In the final analysis, this woman was physically evicted from her home and all of her personal property was seized (including all of her supplies, clothes, and furniture that were ready and waiting for the baby's arrival). It appears that her property was seized and withheld from her to "extort" her cooperation by giving up any claims to the title or possession of her home. Again, as in the first case above, the writ of possession for the real property (i.e. the house itself) was used as a vehicle to seize the woman's personal property and "punish" her for challenging the title to her home (in which she had a very substantial amount of money invested).

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.

The aforementioned due process abuses are examples from cases in the New Hampshire foreclosure arena. In Massachusetts, a recent case involved a Summary Process (eviction) action of a woman whose home was foreclosed by a "third-generation" loan servicer after the original loan servicer's office was raided and shut down by the FBI years earlier. At trial, the Court dismissed the eviction action because the plaintiff, a third party who alleged to have purchased the property from the third-generation loan servicer and, allegedly, owner of the mortgage note despite the fact that no foreclosure deed, nor any other actual proof of ownership, was presented, or offered as evidence, at the trial. This was clearly an attempt by the plaintiff in the eviction action (another real estate broker/investor) to capitalize on the demise of a foreclosed homeowner by seeing if he could evict her before, apparently, making a final decision to buy her property by and through the third-generation servicer. The Due Process Advocate has uncovered a number of such cases where this tactic is used to obtain, unlawfully, REO properties at steep discounts.

The Due Process Advocate has received a host of abuse of process claims from other areas of legal process outside the foreclosure arena; especially with respect to civil actions regarding domestic matters, debt collection, and bankruptcy. Regarding criminal matters, the most common complaints by readers have been (a) the lack of probable cause (i.e. a legally sufficient reason) for being stopped or arrested and (b) the disappearance, non-disclosure, or withholding, by prosecutors of evidence that is needed to defend against criminal charges. A common complaint in both civil and criminal cases appears to be the "arbitrary" handling of cases (i.e. where different rules and adjudication protocols are inconsistently applied by court clerks and judges with no apparent reason or justification other than a personal bias or prejudice of some kind against a party to the case).

Many abuse of process tactics have become commonplace in the legal arena. Unfortunately, the gradual elimination of due process rights is fast-becoming a national disgrace that will ultimately kill America's ability to remain the leader of the free world. If we allow arbitrary rule to prevail in the courts, we risk becoming the next world empire that got top-heavy and crumbled under the weight of its own corruption. Hopefully, we'll be smart enough to clean up our act before it's too late. Restoring due process rights, above all else, is absolutely critical to restoring confidence in America.

Do you have a special interest in due process issues?

Free-lance writers, researchers, investigators, legal analysts, and local advocates are needed as The Due Process Advocate expands.

Please direct inquiries to Ed Smith at:

thedueprocessadvocate@gmail.com

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.