



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 U.S. Constitution protects U.S. all citizens, including foreclosed homeowners, from the unlawful seizure of their personal property. This edition focuses on a major legal debacle that has been brewing over the seizure and control of a foreclosed homeowners' personal property by "foreclosure mills" after contested foreclosure proceedings in New Hampshire.

FORECLOSURE MILLS OPERATING IN NEW HAMPSHIRE CONTINUE THEIR UNLAWFUL SEIZURE OF PERSONAL PROPERTY AS THE NEW HAMPSHIRE LEGAL COMMUNITY SHIRKS ITS DUTY TO ENFORCE CONSTITUTIONAL PROTECTIONS

The United States Constitution is clear and unambiguous about the protections of "life, liberty and property" that are guaranteed to the legal residents and citizens of the United States. These Constitutional protections mandate the universal, not arbitrary, application of due process throughout every court-house in the country.

So exactly what "due process" is a foreclosed-homeowner entitled to?

At the very least, a homeowner is entitled to these Constitutional protections:

1. the right to be heard in defense of title and possessory actions taken against his or her real or personal property; and
2. the right to defend those ownership and possessory actions within a fair legal proceeding conducted in a competent manner.

In short, the answer is simple and well-established at law: A foreclosed homeowner is entitled to the same due process rights as any other legal resident or citizen of the United States.

However, any objective analysis of the many recent Court proceedings in New Hampshire that involve title and possessory actions against foreclosed homeowners tells a much different story.

While a homeowner may have lost his real property (i.e. his real estate) through a foreclosure proceeding, that foreclosure does not give the foreclosing "bank" (or a "foreclosure mill") a right to seize the homeowner's personal property (i.e. the homeowner's personal belongings).

The reason why is very straightforward: A "mortgage" is

simply an agreement by the homeowner that, if the homeowner defaults on the repayment of the money he or she borrowed, the lender can "foreclose" the mortgage. Foreclosing the mortgage means the lender can sell the security (real estate collateral) for the loan at public auction in order to recoup the money that was loaned to the homeowner. The security that is sold at a foreclosure sale (again, in a vast majority of residential foreclosure sales) is only the "real" property (real estate) owned by the homeowner; and NOT the homeowner's personal property and belongings.

Nevertheless, (and very much unlike its neighboring states and a vast majority of other states in the country), in New Hampshire, a foreclosed homeowner's personal belongings are very much at risk of being "unconstitutionally-seized" by a "bank" (the term is commonly used by the "foreclosure mills" for just about any financial institution that forecloses as the "mortgagee" - even though the so-called "bank" might be Mortgage Electronic Registration Systems, Inc., a Real Estate Mortgage Investment Conduit, a Government-Sponsored Enterprise such as Fannie Mae or Freddie Mac, or an actual bank).

Case after case, the seemingly unconstitutional, post-foreclosure seizure of property in New Hampshire is being accomplished by the execution of a writ of possession by a county sheriff who (typically at the direction of the foreclosing party's attorney) arrives to execute the writ at an unannounced time; whereupon the sheriff executes the writ and turns the property over to a local representative of the foreclosing party (usually a real estate broker) who then changes the locks and, at the same time, seizes, and takes possession and control of, ALL of the homeowners personal property. This is often accomplished in an extremely ruthless and "retaliatory" manner; whereby the homeowner is given just a few minutes to leave the property and leave his or her life's collection of personal belongings behind.

As reported in the last edition (Vol.4, No.1), a 15-minute unannounced, forced eviction was recently executed to remove a near-term, pregnant mother (with an "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 and property. 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, 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).

UPDATE: Now the woman and her husband have sued both the so-called "bank" (in this case, that "bank" is a private, "discount- buyer" of foreclosed homes) and the private firm's New Hampshire attorney for abuse of process.

In that lawsuit, the homeowners (as plaintiffs in the suit) allege that [Note: Names of the parties are omitted here due to the ongoing litigation.]: "... the defendants, individually and in concert with one another, used the issuance and execution of the WOP [Writ of Possession] to accomplish their ulterior motives of physically hurting and harming the [plaintiffs' name] in retaliation for the [plaintiffs' name] exposure and allegations regarding the fraudulent nature of the quitclaim deed arranged and executed by the defendants to acquire the [plaintiffs' name] home.

What makes this case so hard to believe is this: The homeowners had offered to pay a licensed and bonded moving company to professionally pack and remove their personal property from their foreclosed home; and even pay for police presence during the removal of the personal property. The private firm currently in possession of the homeowners' personal property has refused the offer - and countered by saying they want to hire a moving company themselves to put all of the homeowner's personal belongings out on the curb and, if the homeowners' don't retrieve the property within 12 hours of the time it is left at curbside, then the personal property can be discarded and thrown away. The homeowners' personal property currently fills four floors of space the large home; making the private purchaser's proposal, literally, ludicrous in nature.

It is a mystery as to why neither the New Hampshire law enforcement community nor the New Hampshire Courts are have the courage to challenge the "financial power-houses" (i.e. the nation's biggest banks that received "deferred prosecution" for their roles as exposed by the \$25 billion national mortgage settlement) who are orchestrating such blatant and unconstitutional due process abuses in wanton disregard for the foreclosed homeowners' clear right to their own personal property.

The Due Process Advocate will follow this case as it unravels in the Court system, as well as other related cases where due process rights are being denied to serve private political and financial interests.

A JOB EXTREMELY WELL DONE.

Published on September 23, 2015, The American Civil Liberties Union of New Hampshire published a report entitled, "Debtors' Prisons in New Hampshire."

The Executive Summary of the report started with these three paragraphs of profound declarations:

"In a practice startlingly akin to the debtors' prisons of the 19th and early 20th centuries, Circuit Court judges in New Hampshire commonly jail those who have no ability to pay fines without a meaningful hearing and without providing access to counsel. This practice imposed on our most vulnerable citizens is unconstitutional, financially unsound, and cruel.

In an alarming number of cases where indigent defendants appear in court to address an unpaid fine, judges do not inform these defendants of their rights. Judges do not afford them a lawyer. Judges do not even determine whether they can pay the fine. Judges simply put them in jail.

This practice is systemic. A year-long investigation

conducted by the American Civil Liberties Union of New Hampshire ("ACLU-NH"), in conjunction with University of New Hampshire School of Law Professor and ACLUNH Board Chair Albert E. Scherr, has revealed that the problem is not limited to a rogue judge or court, but is occurring throughout the state."

The complete report is here:

<http://aclu-nh.org/wp-content/uploads/2015/09/Final-ACLU-Debtors-Prisons-Report-9.23.15.pdf>

This report is extremely well researched and well-written. It deserves the close attention and praise of all those who understand the crucial importance of due process rights in this age where "arbitrary rule" threatens the very core of American jurisprudence.

Thank you to all those who contributed to its publication.

TRUMP V. O'REILLY

Can't help but comment on the recent immigration dispute that took place during Bill O'Reilly's interview of Donald Trump on August 19, 2015.

The dispute was a classic example of "forgetting to do your homework" which is, unfortunately, becoming commonplace in the discussion of critical, national issues by those who are supposed to know what they are talking about; but actually don't. In this case, a gentleman who aspires to be the next president of the United States is obviously not on top of what's actually going on.

In the interview, O'Reilly was in fundamental agreement with Trump's notion that the country needed stronger laws and borders to curb illegal immigration; but his opinion was that the federal government would not allow the "mass deportation" of those who are entitled to due process by their American citizenship (referring to "anchor babies"). Trump, on the other hand, indicated he would like to have the issue of whether anchor babies are truly American citizens "tested" because it would take too long to pursue a constitutional amendment.

So exactly what is this "test" that Mr. Trump suggests could "trump" (good pun!) the 14th Amendment to the United States Constitution which reads, in Section 1, that:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In any event, we don't need a front-running presidential candidate questioning the due process rights that are guaranteed by the Constitution because, "many lawyers are saying that's not the way it is in terms of this."

O'Reilly was right on this one.

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.

*Get involved and get the information about your **DUE PROCESS RIGHTS**
that is absolutely critical for you to know!*

FACTS

Over 12 million arrests are made every year in the United States. That's well over 30,000 per day! An average of more than 112,000 speeding tickets are given out daily in the United States. In addition, millions of criminal and civil actions are filed in state and federal courts each year.

Don't procrastinate any longer! What are you going to do if you get stopped by the police, get arrested, or summoned to appear before a Court?

Get involved and get prepared before it's too late!

REMEMBER

Due process rights are guaranteed by the 5th and 14th Amendments to the U.S. Constitution. They are not a privilege (like driving a car) that you have to qualify for. Due process rights are yours to have and keep forever; as long as you're a citizen of the United States. Due process is part of the foundation upon which America is built. Due process supports the rule of law and equal protection under the law. Due process is the opposite of "arbitrary rule" (i.e. judges and other government agencies and individuals deciding who gets equal protection under the law and/or deciding on a case-by-case basis who is subject to the rule of law and who is not).

CONTRIBUTION

Your contribution supports the distribution of The Due Process Advocate to thousands of people. As a Sponsor to this cause, we'll provide you (PDF file via email) with a special publication that addresses key issues that you **MUST** know if you get stopped by the police, get arrested, or get summoned to appear in Court on a criminal or civil matter. You'll also receive periodic updates and electronic copies of each future edition of The Due Process Advocate.

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