



# 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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*President Obama's recent State of the Union message recognized the critical role of the "rule of law" as America became the greatest nation on earth. Unfortunately, the rule of law is steadily giving way to the "arbitrary rule" by the powers-to-be at all levels of government. This edition focuses on the devastating effects that all Americans are experiencing by this dangerous trend.*

## HOW ARBITRARY RULE THREATENS EVERYONE'S CONSTITUTIONALLY-PROTECTED RIGHTS TO LIFE, LIBERTY, AND PROPERTY ...

We've all heard, from time to time, news about someone's "due process rights" being violated. Ironically enough, very few of us were ever taught what due process is or exactly why it so critically important to each and every one of us.

After reading this edition of The Due Process Advocate, you might just have a whole new outlook on your priorities for day-to-day living in today's world.

The United States Constitution is clear and unambiguous about the protections of "life, liberty and property" that are guaranteed to all legal residents and citizens of the United States. These Constitutional protections mandate that the universal, not arbitrary, application of due process by our government be extended to everyone in a non-discriminating manner. Due process rights are guaranteed by the 5th and 14th Amendments to the U.S. Constitution. Your due process rights 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 was 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).

Therefore, in today's world, if you don't make a concerted effort to learn about your due process rights, you will be skating on thin ice until you do! In fact, it is an absolute travesty that our educational institutions aren't mandated to educate every single high school student about his or her due process rights. Education about due process rights should be a part of every person's education. Every single person needs a working knowledge of (a) what his or her due process rights are, (b) why they are so important, and (c) what they should do if their due process rights are violated. This will be the focus of the next edition of The Due Process Advocate.

Each and every day many lives are, literally, “turned upside down” by events and circumstances that could have been entirely avoided had someone been afforded the opportunity to exercise his or her due process rights. Here are some basic examples of common “due-process traps” that, unfortunately, you might recognize from your own personal experience:

### **Hidden Waivers in Contracts**

How many times have you signed an agreement while you were being told it was just a “standard” agreement. It happens all the time when you sign the “standard” applications and agreements to get credit cards, open a bank account, buy insurance, buy a car, buy a home, enter into a lease, buy equipment for your business, and much, much more. Unfortunately, many of these standard applications and agreements have hidden waivers and provisions which serve to limit, or totally prevent, any recourse or ability to adequately defend yourself in the event of future claims or damages you may want to assert at a later date in connection with the goods and services you are purchasing. For example, here is an exact statement found in the credit card agreement of one of the largest banks in the country: “We may suspend or close your account or otherwise terminate your right to use your account. We may do this at any time and for any reason.” The implications of this provision become very obvious when the cardholder tries to defend against a collection action years later - and finds out he had long ago given up (i.e. “waived”) many of his or her rights to contest the suspension or termination of his or her account! And here’s a “standard” provision from a New Hampshire mortgage contract: “Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender’s acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.” The “dagger” in this provision (buried in the middle of a typically 15 to 20 page mortgage contract) is the ending phrase that the acceptance of a late payment by the Lender “shall not be a waiver of or preclude the exercise of any right or remedy.” For many homeowners in the wake of the national foreclosure crisis, this provision meant “we’re happy to take late payments from you, but we’re still going to foreclose!” This “waiver” exemplifies the disingenuous nature of so many failed mortgage modification offers in the aftermath of the sub-prime mortgage crisis.

### **Lack of Notice Requirements**

There are two major considerations when evaluating whether or not your due process rights have been violated. The first consideration is whether you have been deprived of your “life, liberty, or property.” If so, that deprivation is evaluated as the “substantive” component of a due process violation. If, in fact, you have been deprived of “life, liberty, or property” as prohibited by the 5th and 14th Amendments to the Constitution; then the issue focuses on whether or not that deprivation was legal or illegal. The determination of its legality usually refers to the “procedural” component of a due process violation (i.e. Were you given the proper notices and afforded any other requisite legal protocol performed in accordance with the law before you were deprived of your life, liberty, or property?). Obviously, if you don’t know what notices and legal procedures are required before someone takes or seizes your “life, liberty, and property”; then you can

hardly defend yourself against a due process violation!

### **Failure to Respond**

Not knowing what notice requirements can apply to a given proceeding (i.e. court hearing notices and other notices of other legal actions or applicable deadlines) inevitably leads to costly problems. Day in and day out, notices from taxing authorities, state agencies, municipal governments, and courts at all levels are lost, disregarded, and not followed up on. In essence, this inevitably results in a “waiver” of some, or all, of your due process rights associated with the given notice to which you haven’t responded. As you might know from experience, such a default, or failure to respond to the action being taken against you, can end up costing you dearly. Worse yet, if you were intentionally not given such a notice, the result is that someone has intentionally deprived you of your due process rights! Unfortunately, this is not at all far-fetched. It happens all the time in a myriad of circumstances where it is all but impossible to prove that you were not served a copy of the given notice. This gets you the worst of all worlds: You don’t receive notice, don’t respond, get defaulted, and wind up with anything from a judgment against you and/or a fine, bench warrant, or some other disposition (depending on the nature and type of case; i.e. civil or criminal). There are legal procedures and avenues to remove default judgments, but it is infinitely easier to avoid the default in the first place.

### **Denial of Due Process**

Ironically enough, it is the court judges themselves that are most likely to intentionally deny your due process rights. You may not be aware that, fundamentally, judges have what is called “judicial immunity” from being held accountable (i.e. you can’t sue a judge for damages except in extraordinary circumstances) for their acts and conduct which any reasonable person would find to be blatantly illegal. This judicial immunity has been tried and has prevailed in the federal appeals courts and is here to stay!

While most judges see and respect their immunity from prosecution as a means for them to exercise their discretion in a truly impartial manner (recognizing their duty to be true to the high degree of trust placed in them), many judges blatantly take advantage of their judicial immunity by ruling in favor of their personal likes and dislikes, their political agendas, and their other self-serving objectives. Obviously, justice is not, even remotely, being served when this happens. The current trend is that more and more people are finding their “day in court” to be an exercise in futility as they come face-to-face with arrogant, condescending, impolite, politically-oriented and corrupt judges. When it comes to a bad judge, the old axiom that a “rotten apple spoils the barrel” is especially apropos; as everyone in the Court that comes in contact with such a judge (i.e. attorneys, clerks, other court staff, etc) is influenced by the horrible example set by such judges. The Due Process Advocate has received reports of, literally, hundreds of inexcusably reprehensible acts and conduct committed by those who are most trusted to preserve and protect the constitutionally-protected right to due process.

If you have been denied the right to be heard in a court proceeding, or you have participated in a court proceeding that was outrageously unfair, please take a moment to tell us about it at [thedueprocessadvocate@gmail.com](mailto:thedueprocessadvocate@gmail.com).

*Do you have a special interest in due process issues? Independent local distributors and advocates are paid by The Due Process Advocate to assist with its expansion program. Please direct inquiries to Ed Smith at:*

*[thedueprocessadvocate@gmail.com](mailto:thedueprocessadvocate@gmail.com)*

## CODES OF JUDICIAL CONDUCT

If there's one question that is most often asked by readers of The Due Process Advocate, it is, by far, this question:

"How can a judge get away with making a ruling like that?"

As explained earlier in this edition, the fundamental reason is simply that judges have what is called "judicial immunity" from being held accountable. It is all but impossible to sue a judge and this judicial immunity has been affirmed by a host of appellate courts.

The reality of the situation is that, in theory, judges are held to a high, exemplary standard of conduct but, in practice, are not. More and more, judges are making decisions to uphold and be consistent with a political agenda. One perfect example is the futile efforts of homeowners trying to assert valid foreclosure defenses in circumstances where the subject banks and power-house financial institutions are making wind-fall profits and a mockery of due process in the foreclosure arena through the operation of foreclosure mills; all with the blessing of biased judges and courts.

For your review, these are the canons of judicial conduct for New Hampshire judges (they are similar to the canons of conduct for Massachusetts, Maine, and most/all other states):

From the New Hampshire Code of Judicial Conduct:

**CANON 1: A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.**

**CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.**

**CANON 3: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.**

**CANON 4: A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS.**

**CANON 5: A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.**

Beginning in its next edition, The Due Process Advocate will publish selected comments from readers regarding the judicial conduct of a judge that they have personally experienced as a party to a court action.

## 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:

*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.*

***"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."***

## DON'T MAKE THE MISTAKE OF TAKING YOUR DUE PROCESS RIGHTS FOR GRANTED...

Please take a moment to read this information. It may change your outlook on the many serious personal or business matters that you are forced to deal with on a day-to-day basis in today's world. Simply put, the American marketplace has become a minefield of legal deception and cleverly-orchestrated "legal traps" that can end up costing you dearly when you find out (usually after it's way too late) that you have been, literally, "duped" out of your due process rights.

Due process rights are the rights you have that are guaranteed by the 5th and 14th Amendments to the U.S. Constitution. Your due process rights include (a) your right to be heard in (b) a fair legal proceeding. These rights are designed protect your "life, liberty, and property." 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. These rights are the foundation upon which America was built. Due process means being governed by the rule of law and having equal protection under the law. Due process is the opposite of "arbitrary rule" (i.e. being subject to the whims of judges and other officials who make up their own rules and don't follow the law).

The bottom line is this: If you don't know exactly what your due process rights are, or when you can assert them, you can hardly protect yourself when your "life, liberty or property" is threatened!

For example: What will happen when you are stopped by the police? .. or when you have to go to court on a civil or criminal matter? .. or (worse yet) get arrested? What will you do when you find out that "standard" agreement to signed in the process of making a major financial commitment also contained your agreement to waive your due process rights in the event of a dispute?

In any event, you don't have to get "blind-sided" by the a legal system that won't protect you if you don't protect yourself. Don't become another statistic! Learn more about your due process rights through a free email subscription to The Due Process Advocate.

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Thank you!