



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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This edition of The Due Process Advocate focuses on the use of "hidden waivers" that are used by big corporations and financial institutions to cleverly strip consumers of their due process rights when they are completing paperwork necessary to receive, or purchase, goods and services.

HIDDEN WAIVERS IN STANDARD APPLICATIONS AND CONTRACTS ARE COSTING AMERICANS DEARLY AS THEY UNKNOWINGLY SIGN-AWAY THEIR DUE PROCESS RIGHTS

Big Corporations, and government agencies at all levels, know that the average American simply does not know what his or her due process rights are in a given situation - and once an individual is "duped" out of his or her due process rights, that individual is left defenseless against a host of penalties, fines, and/or unnecessary costs and fees.

There are unique due process rights associated with every single class of individuals in America: such as parents, teachers, disabled persons, employees, minorities, property owners, taxpayers, students, senior citizens, veterans, retired people, patients, and many, many more. All too often, unsuspecting consumers find out, way too late, that they have signed away their due process rights through the so-called "standard" contracts and agreements they sign in the course of their day-to-day business dealings.

Just about everyone realizes that there is very little we can do in the course of day-to-day living that won't ultimately involve our due process rights. This is because just about everything we do is regulated by, or in some manner subject to, local, state, and/or federal rules and laws. Therefore, as we go about our day-to-day business, we have a "blind-faith" that our due process rights will be automatically protected.

Think again!

Here are ten random events which, in aggregate, don't even scratch the surface with regard to all of the circumstances that are encountered by average Americans as they go about living their lives:

1. Paying a tax bill;
2. Making a major purchases such as a car or a home;
3. Going to school;
4. Making an investment;
5. Being stopped by the police;
6. Working for a company as an employee;
7. Receiving a medical treatment;
8. Being contacted by a debt collector;
9. Applying for a mortgage; or
10. Getting sued or arrested.

As you are no doubt aware, not all of the activities listed above are activities that are initially transacted with a government agency or department. Therefore, this primary question comes into play:

Does the party you are dealing with have any obligation whatsoever to protect, or even recognize, your constitutional due process rights?

The answer is somewhat complex and confusing. If you are paying a tax bill (No.1 above), being stopped by the police (No. 5 above), or getting sued or arrested (No. 10 above); you are no doubt dealing directly with one or more government entities or departments. In these situations, due process rights come immediately into play and, for the most part, represent circumstances where your due process rights are more readily acknowledged and recognized.

In all the remaining occurrences listed above, you are likely to be dealing with, fundamentally, a private company or institution (i.e. a car dealership, a college or university, an investment firm, an employer, a medical facility, a collection firm, a mortgage company, etc.).

However, you should always be mindful that:

1. all of these non-government entities understand, explicitly, that if "something goes wrong" and a dispute or controversy evolves, the resolution of the given dispute or controversy will be, to some degree, resolved in accordance with applicable local, state, and/or federal law; since
2. all of the activities listed above are highly regulated by a myriad of local, state, and federal laws.

Since big corporations and financial institutions know all about the power of your due process rights in a dispute or controversy, it makes sense that they would want to "take away" all or some of your future due process rights in advance. And that's exactly what they often times do - without you even realizing it's happening!

Here's a classic, actual example related to receiving medical treatment (No. 7 on the list):

A well-established medical facility (with a team of doctors, nurses, staff, and administrators that focus on the treatment of pain) has its patient sign an "AUTHORIZATION AND AGREEMENT OF MEDICAL TREATMENT, INSURANCE BENEFITS AND

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FINANCIAL RESPONSIBILITY" setting forth the terms and conditions of providing their medical services and treatment. All of the following statements are contained within the various provisions of the agreement that is signed in advance by the patient (they are shown verbatim):

"...The responsibility for any follow-up examinations to check abnormalities found and treated, lies with me and not with the physician;"

"...I hereby consent to and authorize the administration of all diagnostic and therapeutic treatments that may be considered advisable or necessary in the judgment of the physician:"

"...I am financially responsible for all office visit charges, which are payable at time of service, all deductibles, coinsurance (copay), and non-covered and/or disallowed services by Insurance Carriers, i.e. Medicare, Blue Cross Blue Shield, Medicaid, Private Insurance or Worker's Compensation. If it becomes necessary to refer this account to a collection agency, I agree to pay collection costs, court costs and reasonable attorney fees."

Obviously, if a dispute arises (i.e. the patient thought the doctor was responsible for monitoring necessary treatment, the patient thought that treatments would be provided with the patient's input and approval, and/or the patient thought a given treatment was covered by insurance, etc.), the patient will be at a severe disadvantage by having signed away on this agreement. If the dispute winds up in court, the patient will have a big mountain to climb because he or she will have, in essence, substantially waived his or her right to be heard (i.e. complain about anything the physician did, whether or not it was necessary, what was miss-diagnosed, and/or who is liable for payment) since the patient effectively waived the right to do so. In other words, the patient got "duped" out of his or her due process rights.

Therefore, the lesson here is that you have to be careful about not inadvertently waiving your due process rights as you make key decisions and purchases on a day-to-day basis; as there are often crucial, but seemingly innocuous, terms and conditions that are actually pre-designed to remove, not preserve, your due-process rights in the event of a future dispute or controversy.

No doubt that, as you were reading this, you are thinking about many other situations where you may have been "duped" out of your due process rights!

DUE PROCESS ADVOCATES WANTED

In every national movement, there are always key individuals who have the requisite education, experience, skills, mindset, and in-depth understanding to serve as advocates for the mission itself.

If you have these qualifications and, perhaps, experience with the overwhelming, and sometimes relentless, nature of government bureaucracy (especially within the legal arena); you may be a "perfect" candidate to function as an independent due-process advocate and independent affiliate of The Due Process Advocate.

To explore a working relationship, simply forward a letter of introduction and/or resume with your current contact information directly to Edward H. Smith, Publisher. You will be contacted to discuss the many details and considerations regarding the prospects of establishing a mutually productive working relationship.

WE MUST FIGHT TO ELIMINATE "ARBITRARY RULE" OR WITNESS THE DEMISE OF THE UNITED STATES OF AMERICA AS WE CURRENTLY KNOW IT

By Bob Tobiasz

Several months ago, I wrote an article for The Due Process Advocate entitled "Every American Should Understand What Due Process of Law Means for Us." In that article, I pointed out the following:

1. "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;" and
2. "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."

This article will focus on the word(s) "arbitrary" (double underscored above) or "arbitrary rule." What do these words mean? In simplest terms, they mean that any laws and/or rules to which we are subject must not be random, subjective, uninformed, illogical, haphazard, erratic, frivolous, inconsistent, irrational, irresponsible, unreasonable and/or unaccountable. Conversely, it means that any laws and/or rules to which we are subject must be consistent, dependable, logical, reasonable, rational, reasoned and/or supported.

When a decision is arbitrary, it means that the decision is not based on judgment or reason but instead on discretion without any regards to standards or rules. It implies a disregard of the evidence. In many circumstances, the term "arbitrary" implies an aspect of bad faith and it sometimes may be taken as despotic or tyrannical.

Why, as Americans, should we care about whether decisions by our federal and/or state courts and/or administrative agencies are "arbitrary?" Well, simply put, unless we care enough to dispute and fight to overturn "arbitrary decisions" by those courts and/or administrative agencies, we can expect the following to occur in the United States:

1. continued enrichment of the wealthy and politically well-connected individuals to the detriment of all others;
2. a complete elimination of the middle class way of life on which our country was built; and
3. an eventual complete loss of our "due process of law."

How do we, as Americans, fight to overturn "arbitrary" rules and/or decisions. I suggest that we consider the following steps:

1. In federal and/or state court proceedings, ask for "findings of fact" and "rulings of law." This is probably the best way to keep judges honest;
2. Also, in federal and/or state court and/or agency proceedings, make sure that, within financial reason, you appeal any decisions to higher courts and/or agencies. Learn the appeal process and use it to your advantage;
3. Since "arbitrary rule" flourishes well in environments which are void of practical checks and balances, you should support grass roots efforts to keep the system honest;
4. Do your homework! Support only those candidates at all levels of government who have demonstrated, by their actions, a true respect for "due process of law" for all people, not just the wealthy and/or politically well-connected.

At times, fighting to overcome "arbitrary rule" seems like an insurmountable obstacle. Nonetheless, the fight must continue if we want to maintain our way of life and, simultaneously, make the United States a positive example for the rest of the world.

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.