

What are the 3 requirements of due process?

Making room for these innovations, the Court has determined that due process requires, at a minimum: **(1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal.**

## **Due process of law.**

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is, by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff* 95 U.S. 733, 24 L.Ed. 565.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *Kazubowski v. Kazubowski*, 45 DJ.2d 405, 259 N.E.2d 282. 290.

Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. *Pettit v. Penn*, La.App., 180 So.2d 66, 69.

The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U. S. v. Smith*, D.C.Iowa, 249 F.Supp. 515. 516.

Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084.

Aside from all else, "due process" means fundamental fairness and substantial justice. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.

Embodied in the due process concept are the basic rights of a defendant in criminal proceedings and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence and the verdict must be supported by the evidence presented; the right of an accused to be warned of constitutional rights at the earliest stage of the criminal process; protection against self-incrimination; assistance of counsel at every critical stage of the criminal process; and the guarantee that an individual will not be tried more than once for the same offense (double jeopardy).

*See also* Procedural due process; Substantive due process. Due process rights. All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against government actions that threaten the denial of life, liberty, or property.

*See* Due process of law.

**The Requirements of Due Process.**—Although due process tolerates variances in procedure “appropriate to the nature of the case,”<sup>751</sup> it is nonetheless possible to identify its core goals and requirements. First, “[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”<sup>752</sup> Thus, the required elements of due process are those that “minimize substantively unfair or mistaken deprivations” by enabling<sup>753</sup> persons to contest the basis upon which a state proposes to deprive them of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.

(1) Notice. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties<sup>754</sup> of the pendency of the action and afford them an opportunity to present their objections.”<sup>754</sup> This may include an obligation, upon learning that an attempt at notice has failed, to take “reasonable followup measures” that may be available.<sup>755</sup> In addition, notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest.<sup>756</sup> Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it.<sup>757</sup> Such notice, however, need not describe the legal procedures necessary to protect one’s interest if such procedures are otherwise set out in published, generally available public sources.<sup>758</sup>

(2) Hearing. “[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest.”<sup>759</sup> This right is a “basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . .”<sup>760</sup> Thus, the notice of hearing and the opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.”<sup>761</sup>

(3) Impartial Tribunal. Just as in criminal and quasi-criminal cases,<sup>762</sup> an impartial decisionmaker is an essential right in civil proceedings as well.<sup>763</sup> “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.”

Section 12-02-08. - Removal by police department.

The Police Department may remove or cause to be removed any trash, rubbish, junk, building materials, junk automobiles, abandoned vehicles or parts of junk or abandoned vehicles, or discontinued business identification, from any private property after having notified in writing the owner or occupant of such property of its intention to do so at least 48 hours prior to the removal. The notice will be served personally upon the owner or occupant of the property if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property. The removal must occur within not less than 48 hours nor more than 30 days after the service or posting of the notice. Any trash, rubbish, junk, building materials, junk automobiles, abandoned vehicles or parts of junk or abandoned vehicles, or discontinued business identification, will be removed and disposed of in accordance with the law. The removal by the Police Department does not excuse or relieve any person of the obligations imposed by this ordinance.

(Ord. No. 1025, § 1, 10-17-2017)

Section 12-02-09. - Property maintenance—Penalty.

Any violation of chapter 12-2, property maintenance, for which another penalty is not provided is a class B misdemeanor and must include a fine of \$300.00. Each day a violation of this chapter occurs may be treated as a separate offense.

(Ord. No. 1025, § 1, 10-17-2017; Ord. No. 1084, § 2, 6-15-2021)

Section 12-02-10. - Assessment of cost.

Whenever an owner or occupant of property has failed to comply with the notice and requirement to remove or cause to be removed any items referred to in this title, and the city by its police department or other departments has removed those items, the owner or occupant of the property will be billed for the cost of removal by the municipality. If the payment is not made when due, it may be assessed against the premises on which the work was done, collected and returned in the same manner as other municipal taxes are assessed, certified, collected, and returned, in accordance with N.D.C.C. § 45-05-01.1. The city reserves the right to seek a civil judgment against the owner or occupant for such costs.

(Ord. No. 1025, § 1, 10-17-2017)