

The essential elements of due process of law

45. How Do I Solve This Problem?

Due Process - Follow up and follow through

Due process is best defined in one word--fairness. Throughout U.S. history, its constitution, statutes and case law have provided standards for fair treatment of citizens by federal, state, and local governments. The due process right, established by the Fourteenth Amendment, guarantees that the government cannot take a person's basic rights to "life, liberty, or property, without due process of law." The due process right is designed to protect citizens from actions taken by state government, counties, towns, and cities.

Due process of law involves two types of processes: (a) procedural due process – *Is the process fair?* and (b) substantive due process - *Does the government have the right to bring the action in the first place?* In performing the LHO duties and responsibilities, you must be concerned with whether the process is fair.

Due process procedures do not guarantee that the result of a government action will be to a citizen's liking. However, fair procedures do help prevent arbitrary, unreasonable decisions. Due process includes two things:

(1) Was adequate notice given?

Due process requirements vary depending on the situation. At a minimum, due process means that a citizen who will be affected by a government decision must be given advance notice of what the government plans to do and how the government's action may deprive them of life, liberty, or property.

After you have investigated the complaint and spoken with the landlord/owner, create a [letter using your notes](#). This letter to the landlord/owner is the LHO's first **notice** (emphasis added). As you create this letter, keep referring to the notes you took during your inspection of the property and conversations with the tenant and landlord/owner.

The LHO letter should contain the following information and instructions:

- i. Describe the type of problem. [Is the problem mold? Is it a dilapidated building?]
- ii. What law/statute has been violated? Provide the statute language or similar terminology that the landlord/owner is violating. Example: "In violation of Title 22 M.R.S.A §1561" *When the curser goes on the title the name will show up*
- iii. Provide a specific date for when you want the landlord/owner to respond. It is customary to allow five days to respond to this type of notice;
- iv. Outline what you want the landlord/owner to include in his or her response to you. The response should contain a remediation action plan (what is going to fix the problem) and the amount of time that will be needed to complete the repairs (how long will it take); and
- v. What consequences are available to the town or city if nothing is done to fix the problem?

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(a) What is adequate notice?

Notice is the process by which a person is informed of a legal process involving his or her rights, obligations, or duties. Adequate notice is notice that is sufficient to provide the individual with an opportunity to respond to the government-proposed action. The letter to the landlord/owner meets the *adequate notice* requirement if the letter contains the elements outlined in the information and instruction for the LHO letter. This letter is “giving notice” that he or she is in violation of the law.

(2) Did the person have an opportunity to be heard?

“Opportunity to be heard” refers to a hearing, which is a chance to appear before a court, a committee, a board, or a council to present evidence and argument before being punished by the government. An opportunity to be heard ordinarily includes the following rights:

- The right to receive fair notice of the hearing;
- The right to secure the assistance of counsel;
- The right to cross examine witnesses;
- A written decision, with reasons based on evidence introduced, and with an opportunity to appeal the decision.

Keep in mind that this process has to be fair, with clear-cut rules, within a consistent system that protects a person’s rights.