

PROCEDURAL DUE PROCESS



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5th AMENDMENT

The 5th Amendment to the Constitution of the United States provides: "No person shall be ... deprived of life, liberty, or property, without due process of law...."



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14TH AMENDMENT

The 14th Amendment to the Constitution of the United States provides:

Section 1.

"... 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."



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WHICH AMENDMENT APPLIES?

The Due Process Clause of the 5th Amendment applies only to the Federal Government. The 14th Amendment applies only to the States and their subdivisions (counties, cities, and their agencies). Both the 5th and the 14th Amendments provide that the government shall not take a person's "life, liberty, or property" without due process of law.



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DUE PROCESS IS SAME

The Supreme Court has interpreted those two clauses identically. Justice Felix Frankfurter explained: "To suppose that 'due process of law' meant one thing in the 5th Amendment and another in the 14th Amendment is too frivolous to require elaborate rejection."

Malinsky v. New York, 324 U.S. 401, 415 (1945)



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CALIFORNIA CONSTITUTION

Art. 1, Sec. 7(a)

"A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws"



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WHO MUST AFFORD DUE PROCESS?

Both the 5th and 14th Amendments to the United States Constitution, and Article 1, Section 7(a) of the California Constitution only apply to governmental actors and not private citizens.



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GENERAL PRINCIPLES OF DUE PROCESS

Procedural due process refers to the fairness and accuracy of the decision-making process. At a minimum, due process requires that an affected person be given **notice** that the government intends to take some action, and an **opportunity to be heard**. "The essential requirements of due process ... are notice and an opportunity to respond."

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 546 (1985).



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PROTECTED INTEREST

In order for due process requirements to attach, a person must have either a property interest (*i.e.* a legal claim of entitlement) or a liberty interest.



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PROPERTY INTERESTS

“Property Interests” include ownership of tangible or intangible property, as well as statutorily created entitlements or rights.



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LIBERTY INTERESTS

"Liberty Interests" include life and freedom from physical restraint.



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WHAT PROCESS IS DUE?

Due process does not require that procedures be so comprehensive as to preclude any possibility of error. Rather, due process requires a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible governmental official warrants them to be.



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ELEMENTS OF DUE PROCESS

In addition to notice and opportunity to be heard, standard elements of due process include:

1. Notice of the basis of the governmental action;
2. A neutral arbiter;
3. An opportunity for oral presentation;
4. A means of presenting evidence;
5. An opportunity to cross-examine witnesses or respond to written evidence;
6. An unbiased decision based on facts.



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