Service and Notice: Due Process

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- See conference program/agenda for bio information

Pretest

- How many animals …?
- O T T F F S S _____ ?
- FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS. _____ ?

First things first

- Goals – write them down
- Network – make an effort to meet people
- Participate; ask questions and share experiences, especially if you have some information or technique that will help
- I will do everything that I can so that this does not turn out to be a lecture
- Take lots of notes

- Find the “big ideas”
  - _____
  - _____
  - _____
- Fill out the evaluations, honestly, and leave them with us at the end of the program
- Share your “big ideas” when you get back
- Write a “Dear Boss” thank you letter.

Practical Considerations

- Generally, when government (and others) takes action that interfere with the rights of others. Individuals should be informed of potential depravation of “rights.”
- Criminal actions
- Civil action
- Administrative

Moral Considerations

- Government is to serve its citizens
- Transparency in government
- Ethics
- Do unto others …
- What do we want to accomplish with “Code Enforcement?”

Legal Considerations

- US Constitutions
- State Constitutions
- Federal Statutes
- State Statutes

- Code of Federal Regulations (CFR)
- State Administrative Codes
- Local Charters
- Local Ordinances

Before the US Constitution, the Magna Carta (1297)

- Clause 29. -- NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

US Constitution

- No “notice” or “service of process” requirements per se
- 14th Amendment Due Process,
- 5th Amendment Due Process,
- Searches, 4th Amendment

Due Process Check List

1. Unbiased tribunal
2. Notice of proposed action and grounds asserted for it
3. Opportunity to present reasons why the proposed action should not be taken
4. Right to present evidence, including the right to call witnesses

Due Process Check List (2)

5. Right to know opposing evidence
6. Right to cross examine witnesses
7. Decision based exclusively on evidence presented
8. Right to counsel
9. Requirement that the tribunal prepare a record of the proceedings
10. Requirement that tribunal prepare a written findings of fact and reasons for its decision

Criminal Actions Dealing With Code Enforcement

- Search warrants
- Arrest warrants
- Summons and Complaints (tickets)
- Discovery: Brady vs. Maryland
- Pre-sentencing reports
- Other

Civil Actions Dealing With Code Enforcement

- Summons and Complaints
- Discovery
- Judgments
- Final orders
- Other

Lis Pendens

- ***Lis pendens*** is Latin for "suit pending." This may refer to any pending lawsuit or to a specific situation with a public notice of litigation that has been recorded in the same location where the title of real property has been recorded.
- In some jurisdictions, when the notice is properly recorded, *lis pendens* is considered constructive notice to the other litigants or other unrecorded or subordinate lienholders.

Administrative Actions Dealing With Code Enforcement

- Notice of violation
- Notice to make safe or demolish
- Hearing / procedural rules
- Default rules (Roberts)

Notice of the Laws and Regulations

- Actual notice required
- Judicial notice
- "Super" notice

What is “Process”

- Summons (or similar court order)
- Complaint specifying the reason and the remedies sought
- More

What is “Service”

- Personal
- By Posting
- Service on resident agent
- By publication
- Other

What is “Notice”

- Violation of law
- Specifications
- Consequences
- Where and when to answer
- More

When notice is not required

- Imminent threat to health and safety
- When the owner and interested parties can't be found
- Burden to show
- Protect yourself

When notice is waived

- Actual
- Other

When notice is implied or imputed

Who needs to be served?

- The owner(s)
- Parties of interest
- Others

Who are the owners?

- Of record
- Unrecorded ownership

Who are the parties of interests?

- Recorded interests
- Tenants
- Not recorded interests
- Freddie Mac
- Fannie Mae
- The United States of America
- Your state
- The municipality

How do you find the parties of interest?

Arrest Warrants

- Federal
- State
- Local

Basic Check List

- Notice of the law (requirements)
- Notice of the violations
- Notice of what remediation
- Notice of the penalties / consequences
- Notice of appeal from the decision
- Finding of the tribunal