

DUE PROCESS EXPLAINED

The concept of “due process” in laws refers a basic tenant of American law set forth in a classic Supreme Court case, *Pennoyer v. Neff*, 95 U.S. 733, as “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.”

As generally applied to laws governing pet owners, this means that an owner should have recourse to legal appeal if his pet is impounded or otherwise diminished in value such as by “mandatory sterilization” or prohibitive conditions imposed by dangerous animal laws or other discretionary permits.

Well drafted ordinances and statutes that deprive a person of rights or property generally contain provisions for appeal to an administrative officer or agency – not a court of law – of the enforcing jurisdiction. Specific procedural requirements are set forth covering notice to the person about the law, his right to request a hearing, applicable time limits and procedural considerations for the hearing including right to legal counsel and calling witnesses, burden of proof and standard of evidence. If there is such a provision, the charged person must use it to “exhaust administrative remedies” in order preserve his right to appeal further to an actual court. In the absence of such provision, a person must go directly to court to enforce their due process rights. Court procedures are more formal, expensive and generally require legal counsel for effective results but provide a higher degree of protection for legal rights.

Most animal laws that have specific due process remedies, include these with the substantive provisions. However, general administrative remedies for entire parts of a jurisdiction’s laws could be in a separate title.

As a practical matter, the owner or person responsible for a confiscated animal or one subject to prohibitive conditions should be notified of his right to appeal or immediately demand information if notice is not provided. If there is no notice, the result is the loss – or “forfeiture” of the animal. There is an adage in jurisprudence that “the law abhors a forfeiture”, meaning that the loss of a right is viewed as a punishment that should be well justified and subject to due process. A good example are the drug related property forfeiture laws which have been subject to abuse when applied to parties innocent of any crime through mistake by law enforcement or mere association with a charged person.

In jurisdictions where cats are not legally classified as personal property, a cat owner could have a less well defined right to due process where actual ownership was an issue. However, in some cases this might be distinguished as a personal right to keep cats regardless of the property issue.

Whenever cat owners are faced with a proposed law or are either charged with violation of a law or have a cat confiscated, the first question is where is the “due process” notice of how to protect the owner’s rights? If there is no notice, owners must immediately seek counsel to preserve and protect their basic due process rights.