

Section 7

How Do I Enforce the Law?

In this section, we will cover, in general terms - An approach to resolving a health problem that cannot be remedied under a mutual agreement between the municipality and the property owner.

In addition, we will cover:

Part I- Due Process

- What is Due Process

Part II: Nuisances

- Land Use Violation - Rule 80K - Maine Rules of Civil Procedures
- Malfunctioning Sewage System – Case Study #5
 - Determine What has Occurred and Where to Go From There
 - Take Necessary Action
 - Next Steps
 - Call for Assistance
- Conclusion
- Sample Knowledge Check # 5

Section seven should take approximately 45 minutes to read, process, and complete a sample knowledge check.

7.1 What is Due Process?

Protecting Individual Rights- The Essential Elements of Due Process of Law

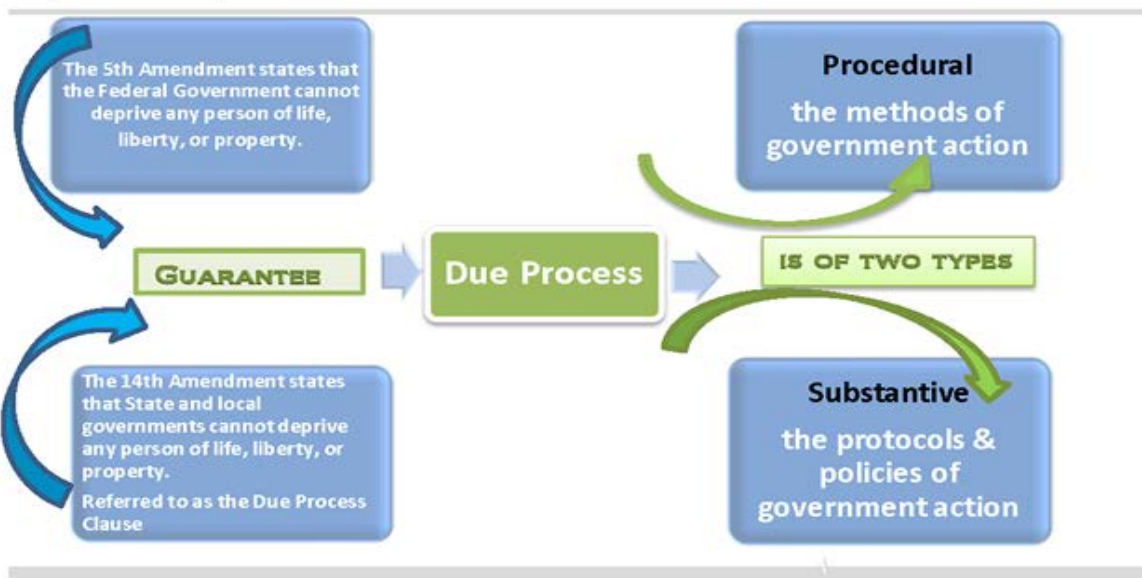
The 5th Amendment says that the government cannot deprive a person of “life, liberty, or property, without due process of law.” The 14th Amendment extends this restriction to the states. **Due process** means the government must act clearly and in accordance with established rules – it must use fair procedures. **Procedural due process** refers to the methods government must use; **substantive due process** refers to the fair policies under which government must operate.

THE BIG IDEA

In examining due process of law, the government must act fairly and in compliance with established rules.

The states have the power to protect and promote public health, safety, morals, and general well-being of all of the people. This power is called the **police power**, and the states may not use it in violation of two process. When its use conflicts with civil rights protections, the court must balance the needs of society against individual rights.

Graphic Summary: Due Process



Part II Nuisances

7.2 Malfunctioning Sewage System

Using a common example of a nuisance, we will cover the preparatory steps before a town official or an official who is Rule 80K-certified goes to court under [Rule 80K](#).

Some problems simply do not get resolved easily.

While the law may be in your favor, the language usually provides an opportunity for the property

owner to challenge the accusation – sometimes your only option is the court. A court matter is costly and it may not be an option for the town. Other times, local politics is the roadblock to court. The important thing is to be diligent and get as many issues resolved as quickly as possible.



7.3 Land Use Violations -Rule 80K



Maine Rules of Civil Procedure, Rule “80K” specifies the legal procedure which must be followed in prosecuting land use violations. Rule 80K actions are intended to be prosecuted by non-attorneys who have completed the Rule 80K certification program.

Unlike other court proceedings a Rule 80K action proceeds more rapidly through the court system. The violator of the law can answer the Complaint orally in court rather than in writing and the court can decide the main issues of the case with a minimum amount of formality. This process reduces the time and expense involved, without sacrificing the “due process rights” of the person accused of the violation.

Keep in mind, however, that although you may be permitted by law to carry the case from start to finish through the legal process, you are only an agent (see explanation below) of the municipality. It is critical to obtain the properly documented authority from the selectpersons or council prior to filing an action. The Board of Selectpersons may not wish to bring an 80K action against a certain violator; even though it may be justified. Once the violation notices have been disregarded, keep the Selectpersons well informed of the situation and make sure that they formally authorize you or the CEO to proceed with legal action.

Also, even if you are authorized by the Board to proceed with legal action, there are complex cases where obtaining the assistance of an attorney is recommended. If you believe that the case involves complex issues, do not hesitate to involve the town attorney, for your own protection.

One of the shortcomings of Rule 80K is that it only works as long as the defendant allows the court proceedings to go on. The defendant has an automatic right to "remove" a Rule 80K case, filed by a certified Rule 80K official, to the Superior Court. If on the other hand the defendant (violator) does "remove" the case, the city, town or state has to employ a lawyer to litigate the case. Enforcement officials (code officials) are not permitted to take legal action in Superior Court cases.

Definitions:***Agent:***

An agent is a person authorized to act for and under the direction of another person when dealing with third parties. The agent should not have a conflict of interest in carrying out the act. Note that this agency must be given or obtained ahead of time.

Agency: 'Principal-Agent Relationship'

An 'agency' is a relationship or an agreement between a principal and an agent; a relationship in which the agent – **town employee** - has legal authority to act, on behalf of the principle – **the municipality**. This 'agency' is either, expressed or understood, between the parties, by which the agent has legal authority to act, on behalf of the principle and to make an account of the transaction.

Municipal: Municipal means associated with or belonging to a city or town that has its own local government. Municipalities create authorities from various state and federal statutes. For reasons of public policy and convenience, a municipal authority comes from it being a separate and distinct body.

7.4. Case Study #5

The Malfunctioning Sewage System



Our case study is about a malfunctioning sewage system. In order to be efficient, investigate, and log all the facts. Do not repeat the investigation or steps someone has already completed.

7.4.1 Determine what has occurred and consult with town officials. Discuss your plan and how you will proceed with the town officials.

Example: The LHO discusses the situation with the Local Plumbing Inspector (LPI) for more information. Previous actions taken:

- ✓ The L P I had received a complaint 10 days before and visited the property to investigate.
- ✓ The LPI prepared an order he served to the owner in person (as provided for in the “malfunctioning sewage system” statute)
- ✓ This order was signed by the City Manager and contained the facts of the malfunctioning sewage system; the owner was given 10 days to remedy the malfunction.
- ✓ Immediately after the LPI inspection, the LPI prepared a sworn statement indicating he conducted the inspection and notified the owner of the repair deadline. The statement was witnessed and signed by the City Clerk.

7.4.2 Take the necessary action(s)

Since ten days have lapsed with no action taken by the owner to repair the system, the LHO and the LPI agree re-visit the property to speak with the homeowner.

- a. During their visit, the LHO and LPI see sewage seeping out from the top of the septic tank with the effluent running down the back slope behind the house.
- b. The LHO notes that there are three neighbor homes located within the radius of the influence of the malfunction – and that all three properties had drilled wells.



The owner is at home and the LHO introduces himself as well as the LPI. The options in the law are explained to the owner.

1. The City can file a civil action in District Court, in which case the costs, including reasonable attorney fees would be borne by the owner, or
2. The City can assess a special tax (essentially a lien) against the land on which the sub-surface disposal system is located for the expenses, and the amount would be placed in the next annual warrant for the city tax collector to collect with accrued interest.



7.4.3 Next Steps

The LHO and the LPI return to the City Manager's office and explain what occurred.

- The City Manager indicates he wants the LHO to prepare a letter for the City Manager's signature outlining what occurred between the LPI, the LHO, and the owner.
- The letter is to ask the owner to respond within 5 days as to what course of action he/she chooses to take.

- After that time, the City will be filing a motion in court to abate the malfunction. The City Manager says if the owner refuses to comply, the LHO will represent the City in Court.

As the LHO, if you were duly trained through the State Planning Office, you are authorized allowed to represent the municipality in Court.

7.4.4.. Call for Assistance

Always consult with your peers, State agencies, and organizations, such as the Maine Municipal Association, as well as the Division of Local Public Health or your Local District Liaison, to obtain their opinions and suggestions. It may also be helpful to determine if the neighboring LHO has gone to court under the authority of Rule 80K.



For more information - Links, References:

- Title 30-A M.R.S.A. §3428. **Malfunctioning domestic waste water disposal units; abatement of nuisance** <http://janus.state.me.us/legis/statutes/30-A/title30-Asec3428.html>
- Title 17 M.R.S.A. §2851 *et seq.* **Dangerous buildings.** <http://janus.state.me.us/legis/statutes/17/title17sec2851.html>
- Title 14 M.R.S.A. §6021 **Implied warranty and covenant of habitability** (landlord tenant issues) <http://janus.state.me.us/legis/statutes/14/title14sec6021.html>
- Title 30-A M.R.S.A. §4453. **Certification for representation in court** <http://janus.state.me.us/legis/statutes/30-A/title30-Asec4453.html>

Enforcement of Land Use Violations Using Rule 80k of the Maine Rules of Civil Procedure, State of Maine, State Planning Office. Edited by Durward W. Parkinson, Esquire, January 2006.

7.5 Conclusion to Section 7

In this section, we covered an approach to resolve a health problem that cannot be remedied under a mutual agreement between the municipality and the owner.

Using a common example of a nuisance, we covered the needed preparatory steps before an LHO goes to court and represents the community under Rule 80K contained in the Maine Rules of Civil Procedure.

If you have reached a level of comfort with the material presented so far then you are ready to move on to the next section.

Sample Knowledge Check #5

How Do I Enforce The Law?

True/False

If the law does not provide a direct remedy, due to costs, it is recommended that the LHO not bother with continuing to correct the problem?

A) True

B) False

Question 1 of 2

Multiple choice (Choose all that apply)

What are some resources where the LHO can obtain assistance?

A) The County Commissioner

B) Animal Control Officer

C) Local Plumbing Inspector

D) Code Enforcement Officer

E) State employees in your region

Question 2 of 2