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Sixth Circuit Provides Clarity on Procedural Due Process Requirements When a Government Entity Demolishes a Property

Under the U.S. Constitution, the 14th Amendment's due process clause provides that states may not "deprive any person of life, liberty, or property, without due process of law." In *McIntosh v. City of Madisonville, Kentucky*, the Sixth Circuit held that the City of Madisonville violated a mobile homeowner's due process rights when it demolished the mobile home without giving the owner an opportunity for a hearing.

The Demolition at Issue

The City of Madisonville ("City") first became aware of the property after a tenant of the mobile home told the City that her mobile home contained mold and mildew and that the owners, Michael and Rebecca McIntosh, failed to fix it. Upon inspection, the City confirmed the tenant's complaint, finding "vegetative growth" on the walls, "organic growth" on the ceiling, doors, and windows, and unstable two-by-fours supporting the ceiling. Accordingly, the City's code enforcement officer sent the McIntoshes a letter on behalf of the City notifying them of Property Maintenance Code violations and condemning the property. This notice was also posted on the door of the mobile home.

Mr. McIntosh saw this notice and wrote to the City, requesting that they withdraw the notice. According to Mr. McIntosh, he continued to call the City, asking for repair recommendations or for a hearing regarding the City's condemnation of the property. The City rejected Mr. McIntosh's efforts and stated that the property would be torn down. Although the City's code stated that property owners had a right to a hearing before a "Local Appeals Board," the City's zoning inspector admitted that no such board existed. The City later demolished the mobile home, and the McIntoshes sued, alleging

violations of their due process rights.

The Demolition Violated Due Process Rights

The Sixth Circuit stated that due process requires that property owners be given (1) notice and (2) the opportunity to be heard before tearing down the property. The court held that while the City had given the McIntoshes proper notice, the City failed to give the McIntoshes the opportunity to be heard. The City argued that the McIntoshes were given an opportunity to be heard because the McIntoshes could have requested a “sit down” with City officials.

The Sixth Circuit rejected this argument, stating that, even if an informal sit down constituted constitutional due process, the City’s Code, as well as its notices to the McIntoshes, did not outline this right and the City never offered an informal sit-down in its numerous conversations with the McIntoshes. Additionally, the Sixth Circuit seemed highly skeptical that a sit-down could constitute sufficient due process before the demolition of a condemned structure, and, in a concurring opinion, Judge Murphy suggested that the City should have obtained a court order before tearing the structure down.

Avoiding Due Process Violations When Demolishing Nuisance Properties

Cities and townships frequently resort to demolition when an owner of a property refuses, or otherwise fails, to abate dangerous nuisance conditions on their property. However, regardless of the dilapidated state of the property, cities and townships must be careful to ensure that the property owner’s due process rights are not violated. This means (1) providing adequate written notice to the property owner and its tenants and (2) providing the owner with an opportunity to contest the demolition order. If these conditions are not met, the city or township may very well face damages for violating the owner’s constitutional due process rights.

For more information and assistance regarding procedural due process issues associated with demolitions, please contact the

authors or any attorney with Frost Brown Todd's [Government Services Practice Group](#).

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