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Historic Preservation Law in a Nutshell

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Abstract

The purpose of this book is to provide a concise, coherent reference for the emerging field of historic preservation law for lawyers, policymakers, planners, architects, and students alike.

We consider preservation law to be "emerging" because it began to fully develop in the United States only in the last fifty years. Two key transition points happened at the federal level: the 1966 passage of the National Historic Preservation Act and the 1978 Penn Central Supreme Court decision, which upheld a landmarks law against a constitutional challenge and consequently encouraged other localities to adopt similar ordinances. (Of course, this book covers laws and judicial decisions prior to and subsequent to those two key transition points.)

Historic preservation law continues to evolve. Our book is intended to give a broad overview of the key issues as they stand today, supported by statutory references and caselaw. Some of the issues, particularly in the conservation/preservation restriction and the tax credit context, are very much "live," and we strive to highlight areas of current controversy. We will address the way these legal controversies come to be settled, if at all, in future editions of this book.

Most of the Chapters in this book focus on federal laws and jurisprudence implicating preservation, and we devote one Chapter to international preservation law. It is important to note, however, that the venue in which most people interact with historic preservation law is the local level. Hundreds of localities have stand-alone historic preservation ordinances, while others incorporate historic preservation considerations into their planning and zoning rules. While we could not survey every locality with a preservation ordinance, we present common legal strategies and areas of concern.

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