

# Introduction

Part VI – Administrative Law

Part III – Related Property Law Concepts

Part V – State Legislative Law

Part VI – Federal Legislative Law

# Objectives

Upon completion of this course you will be better able to apply the following concepts to your position:

- Administrative Law
- Constitutional Law
- Related Property Law Concepts
- Civil Rights Actions
- State Legislative Law
- Federal Legislative Law

# Part I – Administrative Law

Based on the Ohio Building Code

# Creation of the Board of Building Code Appeals

- 112.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction

# Application to the Board

- To construct a building a person must apply under the building code to the building official for a building permit
- The involvement of the BBCA

# Powers of the Board

- Two reasons why the criteria under which an appeal may be taken are poorly defined:
  1. It may be the case that the types of appeals which are seen by building officials are so broad it is difficult to adopt criteria
  2. The vagueness of the criteria indicates uncertainty about the function of the BBCA

# Powers of the Board

- The International Building Code
- Impact on Judicial Review

# Appeals Procedures

- Rules of Procedure
- Open Public Meetings
- Notice
- Burden and Presentation of Proof



# Appeals Procedures

- Granting Remedies
- Administrative Discretion
- Rehearings
- Orders

# Part II – Constitutional Law

Based on the Ohio Building Code

# Search and Seizure

- Prohibited unless a warrant has been issued
- Model Code Provisions and Camara
  - ❖ Camara v. Municipal Court of the City and County of San Francisco
  - ❖ Appellate Court

# Search and Seizure

- Consent
  - ❖ Tenant
  - ❖ Jackson v. Davis
  - ❖ Cranwell v. Mesac
  - ❖ Illinois v. Rodriguez
- The Plan Review Doctrine

# Search and Seizure

- Emergencies
  - ❖ Michigan v. Tyler
  - ❖ Michigan v. Clifford
- Heavily Regulated Business
  - ❖ Frey v. Panza
  - ❖ Appeal
  - ❖ Writ of certiorari

# Search and Seizure

- Abandoned Buildings
- Warrants

# Substantive Due Process

- Any and all legislation enacted by a government must bear some rational relationship to a legitimate governmental function
- Eggert v. Board of Appeals for the City of Chicago

# Retroactive Code Provisions

- Bakersfield, California case
- Will be upheld only when the building official can prove that a hazard exists
- A clear understanding of the particular provisions of the code is required



# Equal Protection Clause

- Affects building code provisions in two ways:
  1. Requires code provisions apply to people and to buildings
  2. Prohibits discriminatory enforcement of the code and may be raised as a defense in any enforcement actions

# Equal Protection Clause

- Facial Validity – means that on its face, the words of a statute are valid although, in reality, they may not be applicable
- Discriminatory Enforcement – does not look to the facial validity of the law, but rather to how that law is applied

# Part III – Related Property Law Concepts

Based on the Ohio Building Code

# Zoning Ordinances

- A system regulating the use and development of property within a municipality or county
- Zoning Plan
- Comprehensive Zoning Plan

# Zoning Ordinances

- Permitted Uses
- Accessory Uses
- Zoning Ordinance
- Conditional Use

# Zoning Ordinances

- Conditional Use Permit
- Nonconforming Use
- Special Use Permit

# Covenants

- An agreement or promise between two or more people to either do something or refrain from doing something
- Affirmative Covenant
- Negative Covenant

# Covenants

- Restrictive Covenants
- Encumbrance
- Homeowners' Association
- Chain of Title



# Easements

- A grant of an interest in land entitling a person to use land possessed by another
- Expressed Easement
- Implied Easement
- Abut – Physically touch one another

# Easements

- Affirmative Easement
- Negative Easement
- Public Easement
- Public Property

# Easements

- Eminent Domain
- Condemnation
- Inverse Condemnation
- Dedication of land

# Easements

- Adverse Possession
  - ❖ Clos v. Modenda
- Encroachment
- Possession
- Permissive Use

# Ownership Transfer

- Real Property or Real Estate
- Personal Property
- Fixtures or Fixed Property
- Owner Persona

# Ownership Transfer

- Caveat Emptor
- Caveat Venditor
- Title Search
- Liens

# Ownership Transfer

- Lis Pendens
- Attachment
- Title Evaluation
- Mortgage

# Ownership Transfer

- Owner in Arrears
- Survey
- Metes and Bounds
- Topography Map
- Plat or Plat Map



# Ownership Transfer

- Plot Plan
- Site Map
- Site Plan
- Deed
- Warranty Deed

# Common Property Rights

- Party Wall
- Partition Wall
- Bearing Wall
- Curtain Wall

# Subdivision Regulations

- Enacted pursuant to an enabling act
- Lay out conditions for approval of a subdivision plan
- Planned Unit Development
- Urban Renewal

# The Fair Housing Act

- Designers and builders of more than four units must assure that:
  1. Doors, halls and thresholds must accommodate wheelchairs
  2. Light switches, electrical outlets, thermostats and other environmental controls must be accessible to people in wheelchairs
  3. Usable kitchens and bathrooms must be built so that wheelchairs can move about the space

# The Fair Housing Act

- The City of Edmonds v. Oxford House, Inc.
- A growing area of litigation under the Fair Housing Act and the Civil Rights Act involves urban renewal

# The Americans with Disabilities Act

- The act covers:
  - ❖ Employment discrimination
  - ❖ Public transportation
  - ❖ Public accommodations
  - ❖ Telecommunications

# The Attorneys Fee Award Act

- Allows the plaintiff to recover any expenses incurred for attorney's fees in the prosecution of the case
- The building official does not have the same rights as the plaintiff

# Part V – State Legislative Law

Based on the Ohio Building Code



# Enabling Legislation

- Legislation which enables local governments to enact building codes
- Statute of Limitations

# Enabling Legislation

- The board has three general powers:
  - ❖ Is authorized to hear any appeal of a building official's decision
  - ❖ May have the power to modify the provisions of the code itself when the intent of the code is assured
  - ❖ Board may be empowered to consider new and innovative building techniques

# State Building Codes

- No local building code department
- No local control
- Mandatory state building statutes generally do not apply to home rule municipalities

# Related Legislative Provisions

- The Fire Code
- Zoning Ordinances
- Storm Water Management

# Preemption

- Judicially created doctrine which says that a state may not pass a law which is inconsistent with federal law
- Allows federal and state governments to regulate activities which would otherwise be subject to lose control

# Sovereign Immunity

- Stipulates that a state may not be held liable for any wrongdoing which it or any of its agents may commit
- Applies in areas of tort liability and the field of regulation

# Sovereign Immunity

- Exceptions to the general rule
- Declaratory Relief
- Injunction

# The Consumer Product Safety Act

- An example of federal legislation which can affect the building official
- An act is another name for a statutory law
- CPSA sought to “promote research and investigation into the causes and prevention of product-related deaths, illnesses and injuries”