



*Historic Preservation – The
Protections and Benefits of
Federal and State Programs
to Encourage Historic
Preservation*





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He is experienced in municipal law, real estate law, public finance, litigation, eminent domain, historic preservation, employment law and appellate practice. Mr. Friedman is a managing member and has been affiliated with Neal & Leroy, LLC since 1983.

Prior to joining Neal & Leroy, LLC, Mr. Friedman was a member of the City of Chicago Law Department's Appeals and Review and Finance Divisions. Mr. Friedman represents clients in appeals at all state and federal levels. Mr. Friedman was awarded a diversity and inclusion grant for his teaching at the School of the Art Institute of Chicago. Mr. Friedman was named a 2019 Leading Lawyer in Land Use, Zoning, and Condemnation Law.

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Course Description

Course Presentation

State and federal laws identifying, protecting, and limiting the development of cultural resources; state and federal tax incentives and grants available to encourage retention and redevelopment of historic properties.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives:

Participants will develop an understanding about the limits (and benefits) resulting from the various kinds of federal and local landmark designations.

Participants will learn about the federal and state tax credits, preservation easement donations and real estate tax freeze programs to encourage historic preservation.

Participants will learn that with the proliferation of historic districts and cultural landmarks, today it is necessary to know how to advise clients who own or seek to develop historic properties.

This is a broad fundamental course which is good for a new attorney or overview for any attorney.

The primary practice area for this course is real estate/property law.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



Timed Agenda:

Presenter Name: Richard F. Friedman

CLE Course Title: Historic Preservation – The Protections and Benefits of Federal and State Programs to Encourage Historic Preservation

Time Format (00:00:00 - Hours:Minutes:Seconds)	Description
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title Historic Preservation – Protections and Benefits
00:00:32	CLE Presenter Introduction
00:00:34	CLE Substantive Material Presentation Introduction
00:02:30	What is a Landmark?
00:06:08	Why Designate Landmarks?
00:10:04	Levels of Landmark Designation
00:13:23	Levels of Landmark Protection
00:17:57	What’s wrong with landmarking?
00:25:20	HISTORY OF HISTORIC PRESERVATION
00:25:46	Early Days - Private Preservation
00:27:22	19th and Early 20th Centuries – Governmental Ownership
00:30:47	Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978)
00:34:03	Protection of Landmarks
00:36:33	NHPA 1966
00:37:49	Federal Regulations 36 CFR Part 60
00:38:52	Criterion A, B, C, D
00:42:54	Sec. 106 of NHPA
00:46:31	Section 106 MOA outcomes
00:47:59	Transportation - Section 4f
00:50:38	LOCAL LANDMARKS
00:51:34	Impact of Local Designation
00:54:21	Impact of District Designation
00:56:26	Certificate of Appropriateness Certificate of Economic Hardship
01:01:08	Benefits of Landmark Status



01:02:55	Federal Tax Incentives Preservation Easement Donation
01:07:02	Federal Tax Incentives Historic 20% Tax Credit
01:08:26	Illinois Tax Incentive Residential Real Estate Tax Freeze
01:11:36	MORE LOCAL PRESERVATION INCENTIVES
01:12:49	Fee Waivers Grants
01:14:31	Advice Zoning Bonus
01:17:02	Presenter Closing
01:17:04	ApexCLE Company Closing Credits
01:17:11	End of Video



Course Material

Topics

- A Structure and history of preservation
- B. Protection of landmarks
- C. Benefits of landmark status

Structure and History of Preservation

What is a Landmark?

- Masterwork
Crown Hall on IIT Campus – Ludwig Mies van der Rohe 1956
- Site of historic event
Site of Mrs. O’Leary’s Barn
Chicago Water Tower
- Ensemble
Royal Street, French Quarter, New Orleans
- World Heritage resource
UNESCO Treaty
Okinawa dugong
- Future landmark
Sharp Center for Design, OCAD University, Toronto, Will Alsop, 2004

Why Identify Landmarks?

- Identify common heritage
- Honor

Innovation/Beauty/Accomplishment

- Tangible example of past
- Sustainability
- Tourism

Reliance Building

Levels of Landmark Designation

- International—UNESCO World Heritage Site
- National—National Historic Landmark or listed on National Register of Historic Places
- State—listed or designated
- Local—Locally designated landmark

Cahokia Mounds near Collinsville, IL

Levels of Landmark Protection

- International—protection from Fed. action.
- National—limited: “take into account” / only Federal involvement
- State—not used
- Local—protection against change or destruction

Alta Vista Terrace

- Elimination or reduction of economic exploitation

Grand Central Terminal, NYC



What's Wrong with Landmarking?

- Additional governmental involvement in private property:
 - *Review and permit process*
 - *Must be open to the public (not!)*
 - *Limits use (not!)*
 - *Extraordinary upkeep (not!)*
Madlener House
- No objective standard for designation or review of demolition or modification application.

Prentice Women's Hospital, Bertrand Goldberg, 1975-2015

History of Historic Preservation

- Early days – private preservation
*George Washington's estate, Mount Vernon, Virginia,
purchased in 1858 by the Mount Vernon Ladies' Association*
- 19th and early 20th Centuries – governmental ownership
Civil War veterans return to Gettysburg battlefield

Preservation by Regulation

- 1930s-Historic districts--tourism
- 1950's Urban renewal "With Heritage So Rich"
- 1960's-enactment of local preservation laws
- National Historic Preservation Act of 1966
*Schiller (Garrick) Theater, Dankmar Adler and Louis Sullivan,
1893-1960*



The United States Constitution

Fifth Amendment:

“Nor shall private property be taken for public use, without just compensation”

Regulatory takings v. physical takings

Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978)

Penn Central Principles

- Designation does not constitute a taking unless it deprives owner of all benefit and return.
- Taking is measured by what remains, not by what is taken
- Landmarking does not violate the constituting by singling out hist. properties
- Landmarking offers mutual benefits.

Protection of Landmarks

The Designation Process

- National Register of Historic Places
 - Submission through State Historic Preservation Officer (SHPO)
 - Listing by United States Dept. of Interior

<https://www.nps.gov/subjects/nationalregister/index.htm>

The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of



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Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

The National Register:

- Reviews nominations that Americans believe are worthy of preservation submitted by states, tribes, and other federal agencies and list eligible properties in the National Register
- Offer guidance on evaluating, documenting, and listing different types of historic places through the National Register Bulletin series and other publications
- Help qualified historic properties receive preservation benefits and incentives

Where to Start

The National Register nomination process usually starts with your State Historic Preservation Office* (SHPO). Contact your SHPO or check their web page for National Register information, research materials, and necessary forms to begin the nomination process. If the property is on federal or tribal land, then the process starts with the Federal Preservation Office or Tribal Preservation Office. (More on FPO and TPOs.)

<https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm>

How are Properties Evaluated?

To be considered eligible, a property must meet the National Register Criteria for Evaluation. This involves examining the property's age, significance, and integrity.

Age and Integrity: Is the property old enough to be considered historic (generally at least 50 years old) and does it still look much the way it did in the past?

Significance: Is the property associated with events, activities, or developments that were important in the past? With the lives of people who were important in the past? With significant architectural history, landscape history, or engineering achievements? Does it have the potential to yield information through archeological investigation about our past?

<https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm>



National Register Listing Process

Nominations can be submitted to your SHPO from property owners, historical societies, preservation organizations, governmental agencies, and other individuals or groups. Official National Register Nomination Forms are downloadable or from your State Historic Preservation Office. National Register Bulletins can also provide guidance on how to document and evaluate certain types of properties. Sample Nominations provide additional useful information.

The SHPO notifies affected property owners and local governments and solicits public comment. If the owner (or a majority of owners for a district nomination) objects, the property cannot be listed but may be forwarded to the National Park Service for a Determination of Eligibility (DOE).

Proposed nominations are reviewed by your state's historic preservation office and the state's National Register Review Board. The length of the state process varies but will take a minimum of 90 days.

Complete nominations, with certifying recommendations, are submitted by the state to the National Park Service in Washington, D.C. for final review and listing by the Keeper of the National Register of Historic Places. The National Park Service makes a listing decision within 45 days.

<https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm>

- Local Designation
 - Recommendation (after hearing) by Landmark Commission
 - Approval by City Council/Village Board

NHPA 1966

- National Historic Preservation Act of 1966
 - Established network of delegate state agencies
 - Established SHPO (State Historic Preservation Officer)
 - Established structure for certified local governments (CLGs) common throughout the US
 - Established responsibility for protecting historic resources impacted by federal programs or owned by federal government



Section 1 (16 U.S.C. 470)

- (a) This Act may be cited as the "National Historic Preservation Act."
- (b) The Congress finds and declares that-
- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
 - (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
 - (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
 - (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
 - (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
 - (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development; and
 - (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

<https://www.nps.gov/history/local-law/nhpa1966.htm>



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Federal Regulations

- 36 CFR Part 60

36 CFR § 60.2 - Effects of listing under Federal law.

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

- (a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, inter alia, their commenting responsibility in 36 CFR part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decision-making process, program decisions rest with the agency implementing the undertaking.
- (b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.
- (c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for



rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

- (d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

<https://www.law.cornell.edu/cfr/text/36/60.2>

Federal Designations of Historic Properties

- National Register of Historic Places
- National Register Districts/Contributing Structures
 - Criterion A, "Event," the property must make a contribution to the major pattern of American History
 - Criterion B, "Person," is associated with significant people of the American past.
 - Criterion C, "Design/Construction," concerns the distinctive characteristics of the building by its architecture and construction, including having great artistic value or being the work of a master.
 - Criterion D, "Information potential," is satisfied if the property has yielded or may be likely to yield information important to prehistory or history. 36 CFR sec. 60.

Sheridan Plaza Apartments, 4607 N. Sheridan



Federal Protections of Historic Properties

- National Historic Landmarks
 - possess exceptional value or quality in illustrating or interpreting the heritage of the United State. 36 CFR sec 65
- Limited to projects using Fed. funds or Fed.
 - permits—**does not regulate private activity**
- No prohibition against demolition
 - agency must “take into account” impact on hist. property
 - Sec. 106 of NHPA
- Stronger protection in transp. projects
 - Demol. only if no prudent and feasible alternative
 - Sec. 4f of Dept. of Transp. Act

Section 106

Section 106 Planning

- Analyze project for federal or state involvement, such as:
- Federal
 - Section 404—Wetlands-U.S. Army Corps of Eng.
 - Public involvement or approval—HUD; University
 - Federal financing
- State
 - Ill. Environmental Protection Agency

Sewer permits

Section 106 Procedures

- Process delegated to the states
 - SHPO administers



- In Illinois Ill. State. Hist. Pres. Agency (IHPA)
- Consultation with federal funding or permitting agency
- Consultation with Advisory Council (ACHP)
- Consultation with “interested parties”
- End result: MOA

Section 106 MOA Outcomes

- Modify the project
- Document and demolish and proceed as planned
- Relocate the landmark
- Compensatory preservation--demolish but retain/rehabilitate similar landmarks elsewhere
- Court review of MOA is deferential

Transportation – Security 4f

- Applies to federal transportation projects
- Protects historic resources of national, state or local importance
- No adverse impact allowed unless “no prudent and feasible” alternative

Coordination with NEPA

- National Environmental Policy Act of 1969
 - Federal projects affecting human environment
 - All environmental impacts
- FONSI – or
- EIS
 - RoD

End result: MOA

- Section 106 applies irrespective of FONSI



Local Landmarks

- Individual structures – *Robie House*
- Historic Districts - *Bronzeville*

Impact of Local Designation

- Building/demolition permits are reviewed by landmark commission
- Inconsistent remodeling is not permitted
- Designation usually not include interiors (unless exceptional)
- Private landmarks are not open to the public

Impact of District Designation

- Contributing vs. non-contributing structures
- All permits reviewed irrespective of contrib.
- Contributing structure sometimes listed.
- Period of significance
- Integrity

Landmark Databases

- National Register of Historic Places
 - State Web site
 - HARGIS-Historic and Architectural Resources Geographic Information System
- Local designation
 - City Web site and FOIA
 - Buildings recognized but not protected
 - Non-historic review

Zoning
Architectural review boards



Relief from Landmark Protections

- Informal sign-off for non-material changes
 - By staff and/or permit review committee
- Certificate of appropriateness
- Certificate of economic hardship
 - Owner must prove no economic benefit or return
 - Penn Central standard
 - It is insufficient to show a mere reduction in value

Hidden Landmarks

- Protected even if not designated
- Determination of Eligibility for the National Register
 - By the Sec'y Interior
- Orange-rated (Chicago)

Benefits of Landmark Status

- Economic Incentives for the Repair and Rehabilitation of Historic Buildings – Commercial and Industrial Buildings Offices and Hotels
- Economic Incentives for the Repair and Rehabilitation of Historic Buildings – Residential Buildings

Federal Tax Incentives

Preservation Easement Donation

- Deductible as charitable donation to non-profit organization
- Permanent surrender of right to modify or demolish protected elements
- National Register or local landmark district



- Required cash donation
- Donation calculated as value of prop. before and after the restriction

Preservation of Easement Documentation – IRS regs

- Appraisal required
 - Before and after method, with comparable sales
- Donation unavailable if other restrictions
- Written acknowledgement of donee
- Donee must have resources and purpose to enforce
- Annual inspection

Historic 20% Tax Credit

- Credit is better than a tax deduction
- National Register or local historic district
- Tax credit = 20% of rehab costs@4%/yr.-5 yr.
- Rehab must be certified as historic
- Credits may be sold to provide immediate funds
- Commercial, industrial or residential rehab
- Must be for-profit
- Leased NFP prop. OK

Old Cook County Hospital

Illinois Tax Incentive

Residential Real Estate Tax Freeze

- Single-family up to 6-unit (owner-occupied)
- National Register/local designation or district
- Eight-year assessment freeze, then four-year kick up
- Certified rehab



- Invest >25% of Assessor's market value

Charles N. Loucks House

Local Tax Incentives

Cook County Real Estate Tax Reduction

- Class L
- Available to Class 3, 4, or 5a or 5b (commercial)
- Nat. Reg. property or local dist.
- Approved by City Council
- Tax rate reduced 60% for 10 years
- Rehab to be certified by IHPA
- Investment = 50% of assessed value of improvement

Chicago Board of Trade

More Local Preservation Incentives

- State tax credits
- Fee waivers
- Grants
- Advice
- Zoning bonus—Adopt-a-Landmark
- TIF and other development assistance

Not specifically historic

Preservation through Zoning

- Protections
 - Overlay districts
 - Downzoning
 - Planned development statements



- Incentives
 - Adopt-a-landmark
 - Bonus FAR (density) to reward adaptive reuse
 - Bonus FAR to reward monetary contributions

Aid to on-site or off-site historic landmarks

Objective: Preserve our Heritage

Consistent with rights of property owners

Ludwig Mies van der Rohe, Farnsworth House 1951

For More Information

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Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org

