



LAW NOTES

Historic Preservation Laws and Frank Lloyd Wright Buildings

BY STEFAN NAGEL, ESQ
LAW OFFICE OF STEPHEN J. SMALL, ESQ., P.C.
BOSTON, MA

Laws protecting historic resources also encompass the protection of architecturally significant properties. Historic resource protection laws are enacted under the United States three-tiered system of government.

The primary legal protection for historic resources is found at the local level. Ordinances related to or touching on historic preservation through zoning, landmarking, alteration and demolition controls, and the imposition of construction requirements will generally have the most direct impact on the protection of architecturally significant properties.

Federal law generally (although not exclusively) establishes policy that guides those activities of federal agencies that might adversely impact historic resources. Properties identified for listing in the National Register of Historic Places (National Register), which is maintained by the Department of the Interior, are protected against adverse actions involving the participation of federal agencies through a number of federal laws. Key among these laws is the National Historic Preservation Act, 16 U. S. C. Sections 470-470w-6 (NHPA) Among other things, the NHPA establishes a review process (so-called Section 106 review) to ensure that federal agencies consider the effects of federally licensed, assisted, regulated, or funded activities on historic properties listed or eligible for listing in the National Register.

Section 4(f) of the Department of Transportation Act of 1966, 49 U. S. C. Section 303, is perhaps the strongest federal preservation law. It prohibits federal approval or funding of transportation projects that require the use of or physical taking of, or substantial impairment to any historic site, as well as any park and wildlife refuge area.

The NHPA also encourages states through the provision of grant money to create a State Historic Preservation Office (SHPO). All states have created SHPOs. Consequently, the states have assumed the primary responsibility for identifying and nominating properties for listing in the National Register of Historic Places and for working with federal agencies in implementing the Section 106 review process.

To a large extent state historic preservation laws are similar in scope to federal preservation laws. States administer their own registers of historic places, tax incentive programs and financial assistance programs. An increasing number of states have enacted laws similar to the federal Section 106 and Section 4(f) provisions to protect against harmful state action.

Thus, in considering the extent to which a Frank Lloyd Wright property might be protected under the array of local, state and federal laws briefly outlined here, it's worth emphasizing that the most substantive protection of the property is likely found through local ordinance. The listing of the property in the National Register of Historic Places is generally honorific only, except with respect to the following: (1) the protection against federal (and, increasingly, state) actions, and (2) the qualification of the property for federal and state tax incentives such as the federal income tax deduction for preservation easement donations.