

## Advanced Legal Aspects of Code Administration - Building Officials and Inspectors



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## How Much Do You Remember?

- How many branches of government are there?
  - A. 3
  - B. 2
  - C. 4
- Answer: 3



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## How Much Do You Remember

- What is Dillon's Rule?
  - A. Local government may not regulate state or federal buildings
  - B. Local government only has as much power as is given by state enabling legislation.
  - C. Always mumble the words to a song to keep the audience guessing
- Answer B



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## How Much Do You Remember?

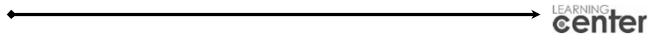
- What is the doctrine of preemption?
  - A. What happens when your favorite program is interrupted for breaking news.
  - B. State may not pass a law which is inconsistent with federal law.
  - C. Local government may not pass a law without following procedural due process.
- Answer B



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## How Much Do You Remember?

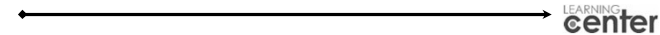
- What is sovereign immunity?
  - A. An ultra vires statute.
  - B. When a queen gets a flu vaccine.
  - C. You can't sue or regulate a higher form of government without its permission.
  
- Answer C



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## How Much Do You Remember?

- How does the local jurisdiction get its power?
  - A. The people.
  - B. Federal law.
  - C. State law.
  
- Answer C



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## How Much Do You Remember?

- Where does the Building Official get his or her power?
  - A. The code of the local jurisdiction.
  - B. The state constitution.
  - C. Wheaties.
  
- Answer A



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## Basis for the Building Official and Inspector's Duties and Powers

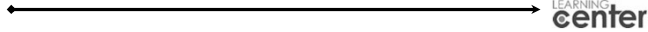
- State law adopts types of building codes that sets forth that authority that also allows:
- Local governments to adopt types of building codes that set forth that authority



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## How Much Do You Remember?

- Which of these is the basis for an appeal of the building official's decision?
  - A. The appellant has a hardship.
  - B. Provisions of the code do not fully apply.
  - C. The board of appeals wants to please a potential voter.
- Answer B



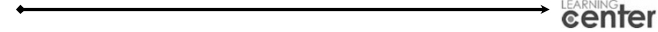
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## The Building Code Applies:

To every building or structure or any appurtenances connected or attached to the buildings or structures, unless exempted by the building code, when there is:

- ☐ Construction
- ☐ Alteration
- ☐ Movement
- ☐ Enlargement
- ☐ Replacement
- ☐ Repair
- ☐ Equipment
- ☐ Use and occupancy
- ☐ Location
- ☐ Maintenance
- ☐ Removal
- ☐ Demolition



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## The Building Code does not apply to:

- ☐ Detached one- and two-family dwellings
- ☐ Multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures



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## The Residential Code Applies:

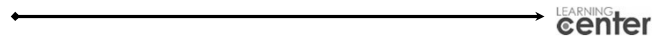
- To every detached one- and two-family dwellings and townhouses not more than three stories above-grade height with a separate means of egress and their accessory structure.



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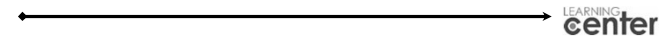
## How Much Power Do You Have?



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## Duty or Power of Building Code Official

- Appoint deputy building official, related technical officers, inspectors, plan examiners and other employees 103.3



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## Appointment of Building Officials and Deputies

- Use written documents to prove appointments were made
- Create one every time an employee is hired or duties are changed
- Could be used as basis to dismiss a complaint if not done



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## Appointment of Deputies

### APPOINTMENT OF DEPUTIES—IBC 103.3

I, \_\_\_\_\_, the building official for the \_\_\_\_\_, do hereby appoint \_\_\_\_\_ as deputy building official\* for the \_\_\_\_\_.

Date: \_\_\_\_\_ Building Official

Approved: \_\_\_\_\_  
Chief Appointing Authority

\* Or technical officer, inspector, plan examiner, or employee

**Comment:** The building official has the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners, and other employees, and these employees have the powers delegated to them by the building official. (IBC 103.3) When a defendant has no other defense, attacking the authority of the person doing the inspection may be the only defense remaining. Therefore, it is important to have these types of forms in the municipality's official records for every employee so a case cannot be challenged on the basis that the person had no authority to act. This is a frequent oversight by a municipality.

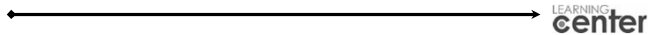


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## Duty or Power of Building Official

- Enforce the provisions of the Building Code 104.1
- Authority to render interpretations of the Building Code 104.1
- Adopt policies and procedures in order to clarify the application of the Building Code 104.1

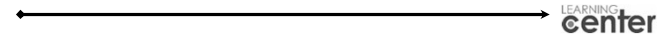


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## Duty or Power of Building Code Official

- Receive applications 104.2
- Review construction documents 104.2
- Issue permits for erection, alteration, demolition and moving of buildings and structures 104.2
- Inspect premises for which permits have been issued 104.2
- Enforce compliance with the code 104.2



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## Duty or Power of Building Code Official

- In flood hazard areas, determine if the proposed work constitutes substantial improvement or repair of substantial damage 104.2.1



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## Duty or Power of Building Code Official

- Issue notices or orders to ensure compliance 104.3
- Make all required inspections 104.4
- Authority to accept reports of inspections by approved agencies or individuals 104.4
- Engage expert opinions necessary to report upon unusual technical issues 104.4

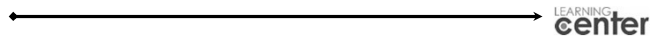


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## Duty or Power of Building Code Official

- Carry proper identification 104.5
- Enter structure or premises at reasonable times to inspect or perform duties imposed by the Building Code 104.6
- Keep official records of applications, permits, certificates, fees collected, inspection reports, notices and orders issued 104.7

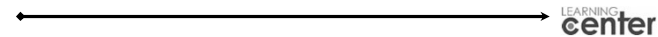


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## Duty or Power of Building Code Official

- Grant modifications for individual cases 104.10
- Grant modifications in flood hazard areas but after certain conditions are met 104.10.1



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## Duty or Power of Building Code Official

- Approve alternative materials, designs and methods of construction and equipment 104.11
- Require research reports 104.11.1
- Require tests 104.11.2



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## Duty or Power of Building Code Official

- Suspend or revoke permit 105.6
- Waive submission of construction documents and other data not required to be prepared by registered design professional 107.1

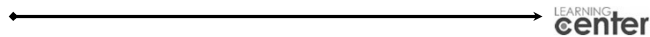


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## Duty or Power of Building Code Official

- Examine submittal documents 107.3
- Approve construction documents 107.3.1
- Allow phased approval 107.3.3
- Require owner to designate substitute registered design professional in responsible charge 107.3.4

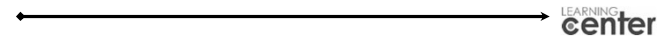


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## Duty or Power of Building Code Official

- Retain construction documents 107.5
- Issue temporary permits 108.1
- Terminate temporary permit 108.4
- Give permission for temporary power 108.3
- Conduct preliminary inspection before permit issued 110.2
- Make required inspections 110.3



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## Duty or Power of Building Code Official

- Accept reports of approved inspection agencies 110.4
- Issue certificates of occupancy 111.2
- Issue temporary certificates of occupancy 111.3
- Revoke certificate of occupancy 111.4



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## Duty or Power of Building Code Official

- Authorize temporary service utility connection 112.2
- Authorize disconnection of utility services 112.3
- Serve notice of violation or order 114.2
- Request legal counsel to institute proceedings at law 114.3

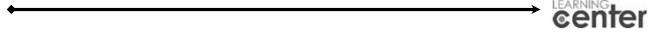


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## Duty or Power of Building Code Official

- Issue stop work order 115.1
- Make report on unsafe condition 116.2
- Serve written notice of unsafe condition 116.3



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## Permits, Plan Review, Inspections, Certificates of Occupancy & Stop Work Orders



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## Issuing permits



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## Who gets the permit?

- Contractor
- Owner
- Important to know to whom you are issuing a permit, especially if things go bad

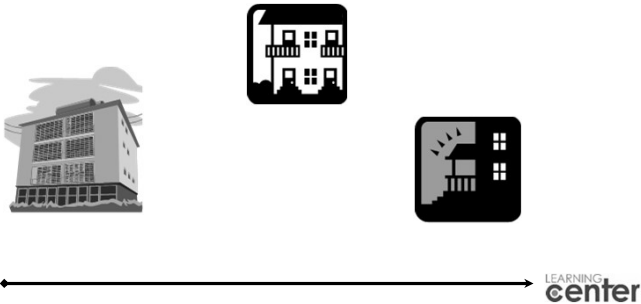


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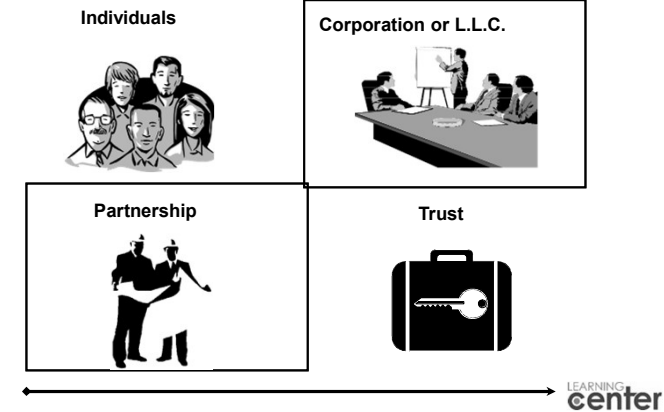
## How Much Do You Remember?

- What are the legal ways of owning property or businesses?



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## Ownership of Property



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## Individuals



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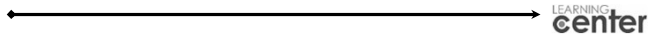
## Corporation or Limited Liability Company



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## How Much Do You Remember?

- What abbreviations or words must be in the name of a corporation or limited liability company in order to signify its legal structure?

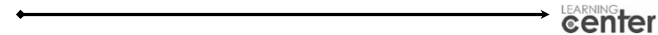


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## Alias or Assumed Names



- Check with County Clerk or
- Secretary of State



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## How Much Do You Remember?

A registered agent is:

- A. A person who accepts notices, and service of process on behalf of a corporation or LLC.
- B. A person who may be charged as a responsible party.
- C. Both of the above.
- Answer A



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## Owner - Ch. 2 IBC

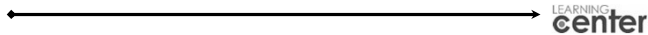
Any person, agent, operator, firm or corporation having a legal or equitable interest in the property



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## But What Is a Person?

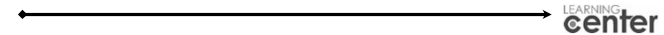
What does the Code say?



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## Person- IBC Chapter 2

An individual, heirs, executors, administrators or assigns and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.



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## But Who is Responsible?

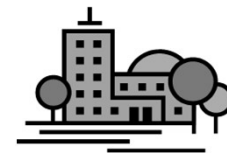
- What does the Code say?



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## Violations (Unlawful Acts)– 114.1

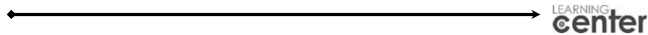
- Who is responsible?
  - Person
  - Firm
  - Corporation



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## Failure to Obtain Permit – 105.1

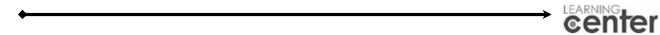
- Any owner
- Authorized agent



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## How Much Do You Remember?

- What should you check to find out who owns property or a business?



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## Who is Responsible?

- Mr. Jay and Ms. Snow enter into a contract for deed whereby she pays Mr. Jay every month and after 10 years she'll receive the deed. The garage on the property is deteriorating.



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## Who is Responsible?

- Mr. Han rents a unit in a strip mall from Juliet Development Corporation. A new air conditioner in Mr. Hans unit is leaking into another unit rented by Ms. Johnson which is underneath Mr. Hans. Ms. Johnson calls you to complain when no one will take responsibility. You find out the unit was installed without a permit.

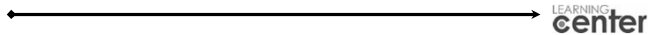


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## Who is Responsible?

- Workers at an apartment complex owned by Slums are Us LLC, have been doing work without a permit and in violation of a stop work order. The contractor is We Don't Need No Stinking Permits, Ltd.



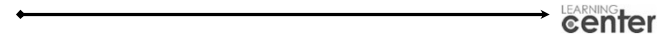
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## Applications

### • Major pitfalls: Failure to get complete information

- **Issues:**
- Does the application for a permit contain all the necessary ownership or responsible party information, what about identifiers?
- Is the owner's legal status clear?
- Did the applicant fill in the necessary information regarding the corporate or limited liability status of any applicant or owner?
- Does the applicant have the authority to apply for the permit?
- Is the registered agent listed for a corporation or limited liability company?
- If a contractor is applying for the permit, does the owner consent to the conditions of the permit? Is there a copy of the contract?



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## Applications

- Is the use and occupancy for the proposed work set forth in the application?
- Is the application accompanied by the construction documents?
- Is the valuation of the proposed work on the application?
- Is the application signed by the applicant or the applicant's authorized agent?
- Is the application complete?



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## Applications

- Are the plans complete?
- Is the lot buildable?
- Are copies of regulations for construction given to the permit holder?
- Is more than one type of permit required?
- If the building is a commercial one, is there an architectural seal on the plans?
- Do the contractors comply with the license and bond requirements?

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## Applications

- Does the type of work described require a permit?
- Is more than one type of permit required?
- Does any of the work described fall under an exception to the building code requirements for a permit?
- Does the application identify and describe the work to be covered by the permit?
- Is the land on which the proposed work is to be done identified so it can be located:
  - By legal description?
  - Street address?
  - Similar description?
  - Property index number?



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## Applications - Zoning review

**Major pitfalls:** Not catching zoning district, special use or setback errors

**Issues:**

- Is the use proper for the zoning district?
- Is a special use or conditional use permit necessary?
- Is there a legal non-conforming use issue?
- If a variance is being requested, does the application meet the legal criteria for one?

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## Applications - Zoning Review

- Are variances rejected or approved with some consistency?
- Are the setbacks on the plans compared side by side to those required by the ordinance?
- Is the site plan sufficient? Is the topographical plan sufficient?
- Are deficiencies noted and conveyed to the applicant?

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## Plan Review

**Major pitfalls:** Not catching code violations on the plans

**Issues:**

- Do the plans comply with the requirements of the codes?
- Are the plans complete?
- Are deficiencies noted and conveyed to the applicant?
- Do the plans comply with all accessibility codes?
- Should a pre-construction meeting be held with all parties to review all department requirements?



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## Coordinate with Other Departments

**Major pitfalls:** Permit issued by one department while in violation of other department's regulations

**Issues:**

- Does the right hand know what the left hand is doing
- Is there any unnecessary duplication?
- Are there outside agencies also involved in the construction process? (e.g. health department, fire prevention districts, sanitary districts, water utilities, impact fees, school and park donations)
- Should there be a pre-construction meeting?

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## Permit Issued

**Major pitfalls:** Failure to clearly describe parameters of permit and failure to have expiration date

**Issues:**

- What is the scope of the permit?
- When does the permit expire?
- What information is contained on the permit regarding inspections?

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## Violation - IBC 114.4 or IRC R113.4

- Failure to provide correct information on a permit application
- Can also be used to revoke permit



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## Notice of Revocation of Permit IBC 105.6 or IRC R105.6

- Due process
- Vested rights



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## Notice of Revocation or Suspension

December 11, 20XX

Tim McKenna  
109 Fremont St.  
Everytown, USA

Re: Permit No. 06-223  
Property Index No. -1-0001-002-02

Dear Mr. McKenna:

Pursuant to the authority granted to me in Section 105.6 of the 20XX International Building Code (IBC) as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code, you are hereby notified that the permit previously issued by the Department of Building Safety on November 24, 20XX for 18 Devon Ave., Everytown, USA is hereby revoked because the permit was issued on the basis of incorrect, inaccurate or incomplete information.\*\* Our review of your permit application has uncovered information that you no longer work for TKM Electrical Inspectors Co. and have used its state license without its permission in the permit application.\*\*\*

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## Notice of Revocation or Suspension

Please contact me if you have any questions. You may appeal my decision by filing a notice of appeal in writing with the Everytown Board of Appeals within 10 days \*\*\*\* stating whether the true intent of the building code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed.

Very truly yours,  
John Black  
Building Official

\* Or, suspension.

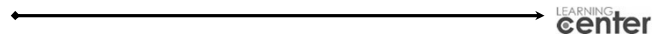
\*\* Or, in error or in violation of any ordinance or regulation or any of the provisions of this code.

\*\*\* Set forth the reason which justifies the suspension or revocation.

\*\*\*\* State whatever time length is set by ordinance or rule or regulation of the Board of Appeals.

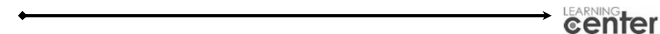
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## INSPECTIONS



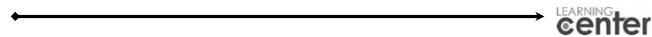
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- What inspections are required to be performed based on the nature of the permit approved?
- Who is responsible for performing the inspections?
- What documentation exists to prove an inspection took place?
- Has the permit holder notified the building official that the work is ready to be inspected?
- Has the work passed each necessary inspection?
- Is there written approval for the inspection?
- If the work has not passed the inspection, what corrections must be made in order to obtain approval?
- Has the permit holder notified the building official that the corrected work is ready to be inspected?
- Has the work passed the subsequent inspection?



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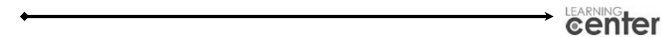
- Has any of the work been covered up or made inaccessible prior to approval? Will the permit holder voluntarily uncover the concealed work in order that an inspection can take place?
- Should a preliminary inspection of a building, structure, or site take place before issuing a permit?
- Are there any other inspections that should be required to make sure there is compliance with the provisions of the building code and other laws that are enforced by the Department of Building Safety?
- What special inspections need to be performed?
- Is the work ready for a final inspection?
- Has the work passed all the required inspections?
- Can a certificate of occupancy be issued?



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## Violations

- Working without the approval of the Building Official
- Covering or concealing work without approval
- Deviating from approved plans



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## Permit Problems

- Catch someone currently working without a permit
- Catch work done without a permit but in the distant past



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## Caught in the Act of Working without a Permit

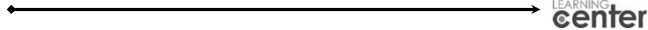
- Issue stop work order
- Only lift when permit obtained
- Charge anyone who continues with violating a stop work order or working without a permit or both



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## Work Done in the Past

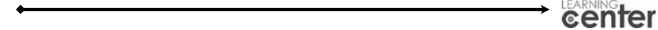
- Has the statute of limitations run?
- If not, notify owner of violation and seek compliance.
- If no compliance, issue ticket for working without a permit.



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## Work Done in the Past

- If statute of limitations has run, notify owner of problem w/certificate of occupancy or using space without final inspection
- Innocent v. knowing owner
- Use certificate of occupancy violation



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## Work Done in the Past

- Does the work meet the code?
- If yes, tell owner to get permit and pay fees.
- If no, send notice owner regarding violation of building code or property maintenance code.



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## Certificates of Occupancy

**Major pitfalls:** Failure to retain sufficient funds to complete work after temporary certificate issued

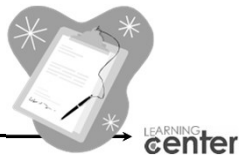
**Issues:**

- Are there any outstanding requirements?
- If a temporary certificate is issued, is there an adequate remedy if the owner doesn't comply? Bond? Letter of Credit?

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## Possible Violations

- Failure to obtain permit IBC 105.1
- Working without a permit IBC 114.1
- No certificate of occupancy IBC 111.1
- IBC or IPMC violations for work that doesn't meet code - every day is a new violation



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## Certificates of Occupancy - In General

- Does the building or structure have a certificate of occupancy?
- Was the building constructed before certificates of occupancy were issued by the local jurisdiction?
- Have all the necessary inspections been performed and passed before the certificate of occupancy is issued?
- Does the certificate of occupancy form comply with the requirements of IBC 111.2?
- Is there new construction that requires a new certificate of occupancy?
- Has the building's or structure's classification changed?
- Is there a certificate of occupancy for the classification change?
- How does the building official know that that building needs a certificate of occupancy?



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## Violations

- Are there photographs of the illegal occupancy or use?
- Who is the responsible party for the violation?
- Was there ever a permit for the work done?
- Are there accurate documents within the jurisdiction having authority that prove who the responsible party is?
- Has the responsible party admitted using or occupying the building or structure without a certificate of occupancy?
- Does the responsible party even know the violations exist?
- Should an informal letter be sent to the responsible party before a formal notice?



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## Violations

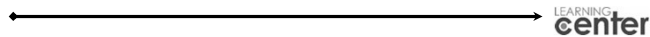
- Will the responsible party comply without further action?
- Is it even possible for the responsible party to comply given the facts of the case?
- Has a notice of violation been sent to the responsible party for occupying the building or structure without a certificate of occupancy?
- How was the notice served?
- Is there proof of service for the notice?



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## Temporary Certificates of Occupancy

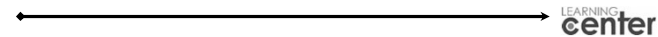
- Should a temporary certificate of occupancy be issued?
- What safeguards exist to ensure the work is complete if the responsible party fails to complete the conditions of the temporary certificate?
- What conditions need to be satisfied so a certificate of occupancy can be issued?
- What is the expiration date of the temporary certificate of occupancy?
- Should a letter be sent reminding the responsible party of the expiration of the temporary certificate of occupancy?
- Has a notice of violation been sent to the responsible party for occupying the building or structure with an expired temporary certificate of occupancy?
- How was the notice served?
- Is there proof of service for the notice?



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## Suspension or Revocation

- Should the certificate of occupancy for the building or structure be suspended or revoked?
- What is the basis for the suspension or revocation?
- Has notice of the suspension or revocation of the certificate of occupancy been sent to the responsible party?
- How was the notice served?
- Is there proof of service for the notice?
- Is there an appeal process or other due process procedure to contest the suspension or revocation of the certificate of occupancy prior to the actual suspension or revocation?



78

## Notice of Revocation - Certificate of Occupancy

November 3, 20XX  
A.J. Murphy, President  
Big Al's Trucking Co.  
6560 Hollywood Blvd.  
Everytown, USA

Re: 6560 Hollywood Blvd., Everytown, USA

Property Index Number: 01-0001-001-00

Dear Mr. Murphy:

Pursuant to the authority granted to me in Section 111.4 of the 20XX International Building Code (IBC) as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code, you are hereby notified that the certificate of occupancy previously issued by the Department of Building Safety on June 1, 20XX, for 6560 Hollywood Blvd., Everytown, USA, is hereby suspended because the building is in violation of the following portions of the building code:



79

*Occupying a Structure without a Certificate of Occupancy in violation of 20XX IBC 111.1 as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code; and*

*Failure to Obtain a Building Permit in violation of Section 105.1 of the 20XX IBC as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code.*

You were informed via letter on October 3, 20XX, that an inspection of your company's property at 6560 Hollywood Blvd. Everytown, USA, on October 2, 20XX, showed the following violations of the code of ordinances of the City of Everytown:

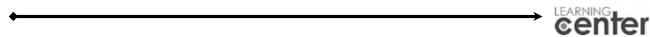


80



*Occupying a Structure without a Certificate of Occupancy in violation of 20XX IBC 111.1 as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code – an addition to the building, being a storage area for the trucks, is being occupied without a certificate of occupancy.*

*\*\*\* On October 5, 20XX, an inspection of the interior of the addition using an administrative search warrant showed that in addition to the storage of trucks, you were storing other equipment connected with your business, had installed ceiling fans without electrical permits, were storing hazardous material, being gun powder, and added a toilet room without a building or plumbing permit. You have failed to apply for any permits and have refused to cease occupying the addition. No one may occupy the building or structure, including the offices, during the suspension of the certificate of occupancy.*



81

Please feel free to contact me to discuss this matter further. The suspension will be lifted when the building is in conformance with the codes of the *City of Everytown*. You may appeal my decision by filing a notice of appeal in writing with the *Everytown* Board of Appeals within *10 days\*\*\*\** stating whether the true intent of the building code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed.

Very truly yours,

*John Black*

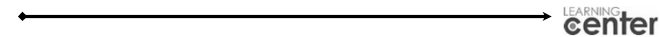
Building Official

\* Or suspension

\*\* Or completion

\*\*\* Set forth the violations of the building code that justify the suspension.

\*\*\*\* State whatever time length is set by ordinance or rule or regulation of the Board of Appeals.



82

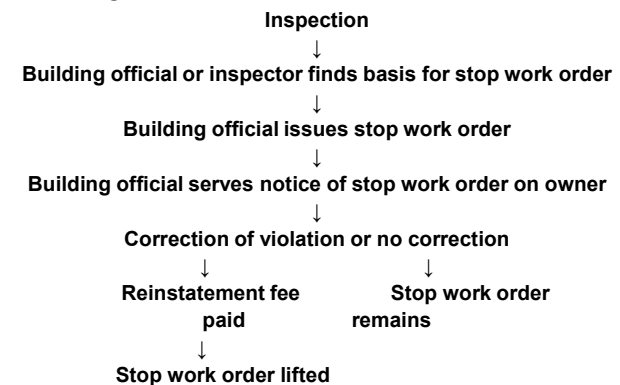
## Violations

- Occupying a structure without a certificate of occupancy IBC 111.1



83

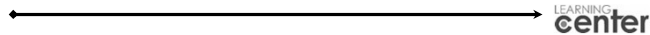
## Issuing a stop work order



84

## Case Studies - Stop Work Orders

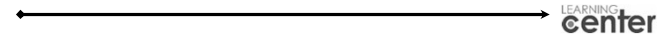
- Artes -Roy v. City of Aspen, 31 F.3d 958(1994)



85

## Checklist

- Should a stop work order be issued?
- What is the nature of the work being performed that is contrary to the building code?
- Is the work being performed dangerous or unsafe?
- Has the stop work order been reduced to writing?
- What does the code say about the content of the stop work order and the way it has to be served?
- Does the stop work order contain the reason for the order and the conditions under which the cited work will be permitted to resume?



86

## Checklist

- Who has been served with the stop work order?
  - Owner?
  - Owner's agent?
  - Person doing the work?
  - What proof of service of the stop work order exists?
  - If served by first class mail, was a proof of service form prepared?
- How was service made?
  - Posted in a conspicuous place in or about the structure affected by the stop work order
  - Delivered personally
  - Sent by certified mail addressed to the last known address
  - Sent by first-class mail addressed to the last known address
  - Private delivery service
- If service was made by posting, was a photograph taken to prove it was served in this manner?



87

## Violations

- Unlawful continuance of work IBC 115.3
- IRC 114.2



88

## Change of Occupancy

**Major pitfall:** No inspection done

### Issues:

- How does the new owner know he or she needs an inspection?
- How are point of sale inspections conducted?
- Does the inspector notify the new owner about the maximum capacity for the structure?
- How is the issue of outstanding building or property maintenance code violations handled?

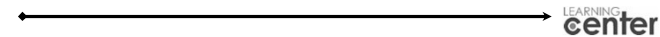
89

## Board of Appeals – IBC 113.2

May hear appeals of a building official's decision

- If true intent of code or rules legally adopted have been incorrectly interpreted
- Provisions of the code do not fully apply
- Equally good or better form of construction is proposed.

No authority to waive requirements of the code



90

## Searching Title: Who Owns or Controls the Property?

- Owner(s)?
- Lienholder(s)?
- Third party company?
- Persons with beneficial interest?



91

## Tracing the Chain of Title

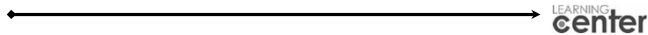
- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>▪ Recorder of Deeds             <ul style="list-style-type: none"> <li>▪ In person or online</li> <li>▪ Can research for free in person with modest charge online</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Title company             <ul style="list-style-type: none"> <li>– Charges a fee for research</li> </ul> </li> </ul> |
|---|---|



92

## Tracing Title

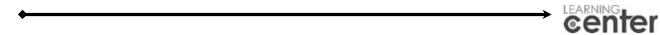
- Trace backwards
- Who holds the last deed in time?
- What is the most recent mortgage company?
- Is there a foreclosure action filed? Where?



93

## Important Terms

- Grantor - person or entity transferring property
- Grantee - person or entity receiving property
- Assignor- person or entity assigning property
- Assignee - person or entity receiving assigned property
- Assignment - transferring interest in property
- Mortgagor - person or entity borrowing money in a mortgage agreement



94

## Important Terms

- Mortgagee - creditor or lender in a mortgage agreement
- Mortgage agreement - document that creates a lien on the property
- Mechanic's lien - lien filed by person or entity that's done work on the property
- Warranty deed - document that transfers guaranteed interest in property



95

## Important Terms

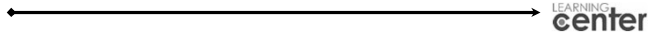
- Lis Pendens - notice that a foreclosure lawsuit has been filed
  - Name of lender
  - Name of borrower
  - Case number in court
  - Name of lender's attorney



96

## Important Terms

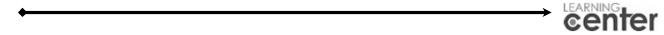
- Quitclaim deed - document that only transfers whatever interest in land the grantor possesses
- Release - document filed when mortgage is satisfied
- Sheriff's deed - document that transfers property to new owner after a foreclosure



97

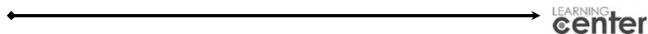
## Important Terms

- Articles of agreement for deed or real estate installment contract
- Deed in lieu of foreclosure



98

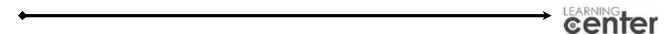
## Gathering Evidence and Enforcement



99

## How Much Do You Remember?

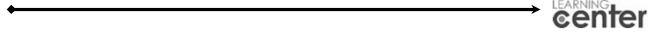
- How many types of evidence are there?
- What are the major sources of evidence?



100

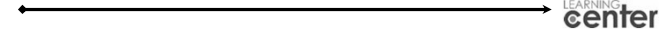
## How Much Do You Remember?

- Name the 4 steps necessary for effective enforcement
- A. Inspection
- B. Notice
- C. Reinspection
- D. Enforcement



101

## Enforcement Procedure



102



103



104



105



106



107



108



109



110



111



112





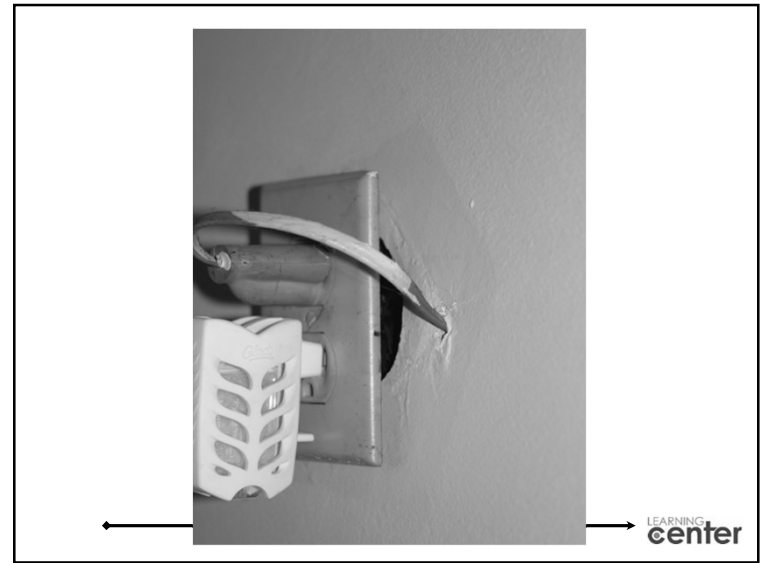
113



114



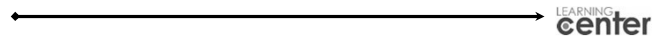
115



116

## INSPECTION RECORD – UNLAWFUL ACTS

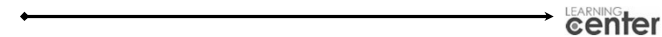
Location of Property: \_\_\_\_\_  
 Property Index Number: \_\_\_\_\_  
 Permit Number (if any): \_\_\_\_\_  
 Building Official Assigned \_\_\_\_\_  
 Nature of Property: \_\_\_ Multifamily Residential  
                           \_\_\_ Commercial  
                           \_\_\_ Vacant Land  
                           \_\_\_ Industrial  
                           \_\_\_ Other \_\_\_\_\_



117

## Proof of Violation:

Date of Violation: \_\_\_\_\_ Time of  
 Violation: \_\_\_\_\_ a.m./p.m.  
 Nature of Violation  
 Observed: \_\_\_\_\_  
 \_\_\_\_\_  
 Name of Violation(s)    Code Section(s) Violated:  
 \_\_\_\_\_  
 \_\_\_\_\_



118

Actual working observed: Yes ☐ No ☐  
 Photos: Yes ☐ No ☐      Video: Yes ☐ No ☐  
 If working observed, name of person working:  
 \_\_\_\_\_  
 Address: \_\_\_\_\_ City, State:  
                           \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office #: \_\_\_\_\_  
 Cell: \_\_\_\_\_  
 D.O.B. \_\_\_\_\_ D.L. No. \_\_\_\_\_  
 Summary of  
 conversation: \_\_\_\_\_  
 \_\_\_\_\_



119

## Proof of Responsibility:

Contact with responsible party (if different from  
 worker): Yes ☐ No ☐  
 Contact with: ☐ Owner ☐ Agent of Owner ☐ Person  
 responsible for property  
 Name of responsible  
 party: \_\_\_\_\_  
 \_\_\_\_\_  
 If contact made, summary of  
 conversation \_\_\_\_\_  
 \_\_\_\_\_



120

## Ownership verified:

By person's admission \_\_\_\_

By title search \_\_\_\_

Other (describe) \_\_\_\_

Check appropriate box and fill in information:

☐ Individual

Address: \_\_\_\_\_ City, State: \_\_\_\_\_  
Zip: \_\_\_\_\_

Office #: \_\_\_\_\_ Cell: \_\_\_\_\_

D.O.B. \_\_\_\_\_ D.L. No. \_\_\_\_\_

☐ Corporation – Corporate No. \_\_\_\_\_ ☐ Limited Liability Company or Partnership

LLC or LLP No. \_\_\_\_\_

Registered Agent: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip: \_\_\_\_\_



121

## Land Trust? Yes ☐ No ☐

☐ Land Trust, Trustee \_\_\_\_\_

Person with Power of Direction: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip: \_\_\_\_\_

Beneficiaries: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip: \_\_\_\_\_

☐ Other \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip: \_\_\_\_\_



122

## License #s:

Contractor \_\_\_\_\_

Roofing Contractor \_\_\_\_\_

Plumbing \_\_\_\_\_

Electrical \_\_\_\_\_

Other \_\_\_\_\_



123

## Notice:

Date sent \_\_\_\_\_ (Attach copy of notice)

Method of service:

\_\_\_\_ Personal service (i.e., hand delivered)

\_\_\_\_ Certified mail      Certified Receipt Received:

Yes ☐ No ☐

\_\_\_\_ First-class mail

\_\_\_\_ Posting of notice in conspicuous place in or about the structure

Photograph of posting Yes ☐ No ☐



124

## Other inspections or contacts:

Date: \_\_\_\_\_

New evidence: Yes ☐ No ☐

Summary of findings:

---



---



---



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125

- Referred for prosecution: ☐ Yes ☐ No

Date: \_\_\_\_\_

- \_\_\_\_\_
- Building Official's Signature and Date  
\_\_\_\_\_ Title

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126

## Dealing with Distressed Properties

127

## Tools

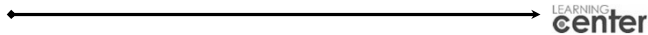
- Criminal housing management criminal and civil cases
- Demolition under State statute
- Condemnation under the IPMC



128

## Unsafe structures and equipment

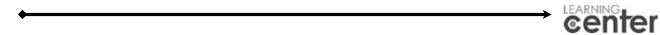
- **IBC 116.1 Conditions.** Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate *means of egress* facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the *building official* deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.



129

## IBC 116.2 Record.

- The *building official* shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition



130

## IBC 116.3 Notice

If an unsafe condition is found, the *building official* shall serve on the *owner*, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.



131

## IBC 116.4 Method of service

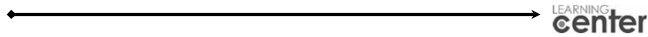
- Such notice shall be deemed properly served if a copy thereof is (a) delivered to the *owner* personally; (b) sent by certified or registered mail addressed to the *owner* at the last known address with the return receipt requested; or (c) delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the *owner*.



132

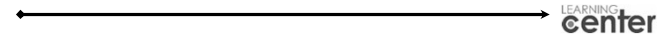
## IBC 116.5 Restoration

- Where the structure or equipment determined to be unsafe by the *building official* is restored to a safe condition, to the extent that repairs, *alterations* or *additions* are made or a change of occupancy occurs during the restoration of the structure, such *repairs*, *alterations*, *additions* and change of occupancy shall comply with the requirements of Section 105.2.2 and the *International Existing Building Code*.

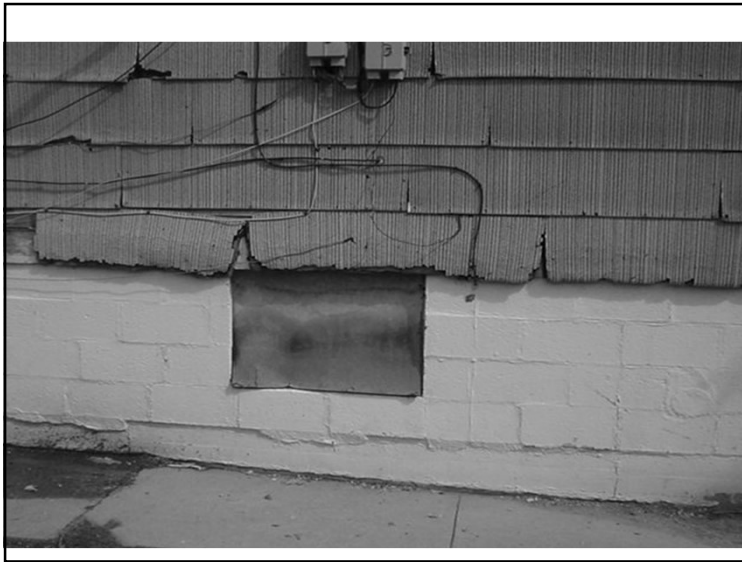


133

## IPMC Condemnation and Demolition Section 108, 109 and 110



134



135

Interior Door Locks

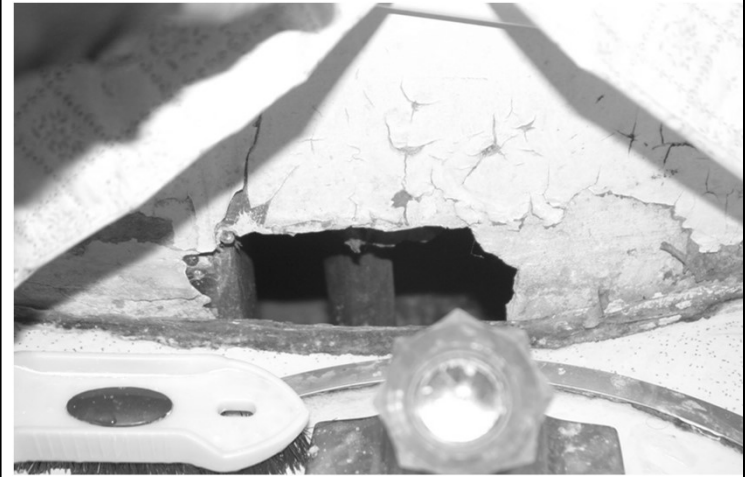


136

Basement  
Bedroom



137



138



139



140



141



142



143



144





145



146



147

## Condemnation and Demolition

- State law
- Due process
- Section 108 and 110 of the IPMC



←————→ LEARNING center

148

## Condemnation Steps – IPMC 108.1

- Notice
- Placard
- Enforcement tools – ordinance violations
  - Placard removal Section
  - Unlawful occupancy Section



149

### SAMPLE FORM: NOTICE OF CONDEMNATION OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY—IPMC 108.3

#### NOTICE OF CONDEMNATION

Date: January 24, 20XX

To: Mr. Barry Greedie, President  
Vulture Loans, Inc.  
201 Madoff Avenue  
Out of Town, USA

Re: 60 McMansion Court, Everywhere, USA

Based on the inspection of your property, 60 McMansion Court, Everywhere, USA, on January 24, 20XX, I hereby condemn the structure because it is unfit for human occupancy pursuant to 20XX IPMC 108.1.3 because the structure is unfit for human occupancy. Therefore, I am serving you with this notice of condemnation.

As property owner you are hereby being directed to correct violations as noted below no later than the close of business on February 28, 20XX.

**FAILURE TO MAINTAIN INTERIOR STRUCTURE:** 20XX IPMC Section 305.1 as amended and adopted by reference in Section 14-1J-1 of the City of Everywhere Code—You are required to keep the interior of the structure in good repair, structurally sound and in sanitary condition. The interior of the structure is unsanitary because it is covered with mold because of plumbing pipes that froze and burst.

150

The property will be inspected on March 1, 20XX. If it has been determined that the violations have not been corrected, the property shall be placarded as CONDEMNED and citations will be issued requiring your appearance in County Court.

You have a right to appeal this notice and order by filing a written application for appeal with the Board of Appeals for the City of Everywhere. The application for appeal must be filed within twenty (20) days after the day this notice is served upon you. The appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or the requirements of the code are adequately satisfied by other means.

If you fail to correct these violations, any action taken by the City of Everywhere, the authority having jurisdiction, may be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

Very truly yours,  
Karyn Byrne  
Code Official

Cc: Property File

151

### SAMPLE FORM: CONDEMNATION PLACARD—IPMC 108.4

Department of Property Maintenance  
NOTICE  
CONDEMNED

THIS STRUCTURE IS UNFIT FOR HUMAN OCCUPANCY AND ITS OCCUPANCY IS PROHIBITED BY THE CODE OFFICIAL. IT SHALL BE UNLAWFUL FOR ANY PERSON TO OCCUPY SUCH STRUCTURE WITHOUT THE APPROVAL OF THE CODE OFFICIAL.

60 MC MANSION COURT; EVERYWHERE, USA

PROPERTY ADDRESS

THIS NOTICE HAS BEEN POSTED ON THIS THE 1st DAY OF MARCH 20XX

BY: Karyn Byrne.

ANY PERSON WHO OCCUPIES THE PREMISES,\*\*\* OR DEFACES OR REMOVES A CONDEMNATION PLACARD WITHOUT THE APPROVAL OF THE CODE OFFICIAL SHALL BE SUBJECT TO A FINE OF \$750.00.

Karyn Byrne March 1, 20XX  
CODE OFFICIAL DATE

152

## SAMPLE FORM: NOTICE OF IMMINENT DANGER—IPMC 109.1

Department of Property Maintenance  
NOTICE AND ORDER

THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY IS PROHIBITED BY THE CODE OFFICIAL. ALL OCCUPANTS MUST VACATE THE PREMISES FORTHWITH.

IT SHALL BE UNLAWFUL FOR ANY PERSON TO ENTER SUCH STRUCTURE EXCEPT FOR THE PURPOSE OF SECURING THE STRUCTURE, MAKING THE REQUIRED REPAIRS, REMOVING THE HAZARDOUS CONDITION, OR DEMOLISHING THE SAME BUT ONLY AFTER HAVING SECURED THE REQUIRED PERMITS.

1020 PEAL ROAD, EVERYWHERE, USA

PROPERTY ADDRESS

THIS NOTICE HAS BEEN POSTED ON THIS THE 17th DAY OF JULY 20XX

John Black \_\_\_\_\_ July 17, 20XX \_\_\_\_\_  
CODE OFFICIAL DATE

You have a right to a hearing to appeal this notice and order by filing a written application for appeal with the Board of Appeals for CITY OF EVERYWHERE. The application for appeal must be filed within twenty (20) days after the day this notice is served upon you. The appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or the requirements of the code are adequately satisfied by other means.

153

## SAMPLE COMPLAINT: OCCUPYING\* A PLACARDED STRUCTURE —IPMC-108.5

CITY OF EVERYWHERE

v.

NAME: JOSEPH McKENNA

ADDRESS: 1020 Peal Road

CITY: EVERYWHERE, USA

The undersigned says that on or about July 18, 20XX, at or about 3:00 p.m. the Defendant, Joseph McKenna, being the owner\*\* of 1020 Peal Road, did unlawfully commit the offense of Occupying\*\*\* a Placarded Structure in violation of 20XX IPMC-108.5 as amended and adopted by reference in Section 14-1J-1 of the CITY OF EVERYWHERE Code; in that said Defendant, did occupy\*\*\*\* a placarded structure, being 1020 Peal Road, EVERYWHERE, USA, which CITY OF EVERYWHERE.

Karyn Byrne  
Complainant

Sworn to and Subscribed before Me  
This 18th Day of July, 20XX

Notary Public

\* Or, Allowing the Occupation of

\*\* Or, person responsible for the premises

\*\*\* Or, Allowing the Occupation of

\*\*\*\* Or, allowed the occupation of

154

## SAMPLE COMPLAINT: UNLAWFUL REMOVAL OF A PLACARD—IPMC-108.4.1

CITY OF EVERYWHERE

v.

NAME: JOSEPH McKENNA

ADDRESS: 1020 Peal Road

CITY: Everywhere, USA

The undersigned says that on or about July 18, 20XX, at or about 3:00 p.m. the Defendant, Joseph McKenna, did unlawfully commit the offense of Unlawful Removal of a Condemnation Placard in violation of 20XX IPMC-108.4.1 as amended and adopted by reference in Section 14-1J-1 of the City of Everywhere Code; in that said Defendant, without the approval of the code official, John Black, did remove a condemnation placard that had been posted on the structure\* at 1020 Peal Road, City of Everywhere, USA, on July 17, 20XX.

Karyn Byrne  
Complainant

Sworn to and Subscribed before Me  
This 18th Day of July, 20XX

Notary Public

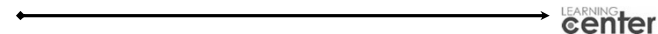
\* Or, equipment.

Comment: Always take a photograph of the placard after it is posted as proof that the inspector properly posted the property.

155

## Demolition – IPMC 110

- **110.1** The *code official* shall order the *owner* of any *premises* upon which is located any structure, which in the *code official* judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the *code official* shall order the *owner* to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless *approved* by the building official.

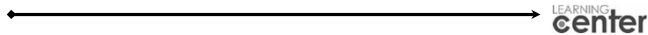


LEARNING  
center

156

## Demolition

- **110.2 Notices and orders.** All notices and orders shall comply with Section 107.
- **110.3 Failure to comply.** If the *owner of a premises* fails to comply with a demolition order within the time prescribed, the *code official* shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.



157

## Right of Entry

158

## How Much Do You Remember? #1

Which Amendment to the U.S. Constitution is the right of entry based upon?

1. First Amendment
2. Fourth Amendment
3. Fourteenth Amendment

Answer 2



159

## How Much Do You Remember? #2

In analyzing the right of entry, what is the most important concept to use?

1. Plain view doctrine
2. Reasonable expectation of privacy
3. Exclusionary rule

Answer 2



160

**What is a Reasonable  
Expectation  
of  
Privacy that Society is  
Prepared to Accept?**

161



162



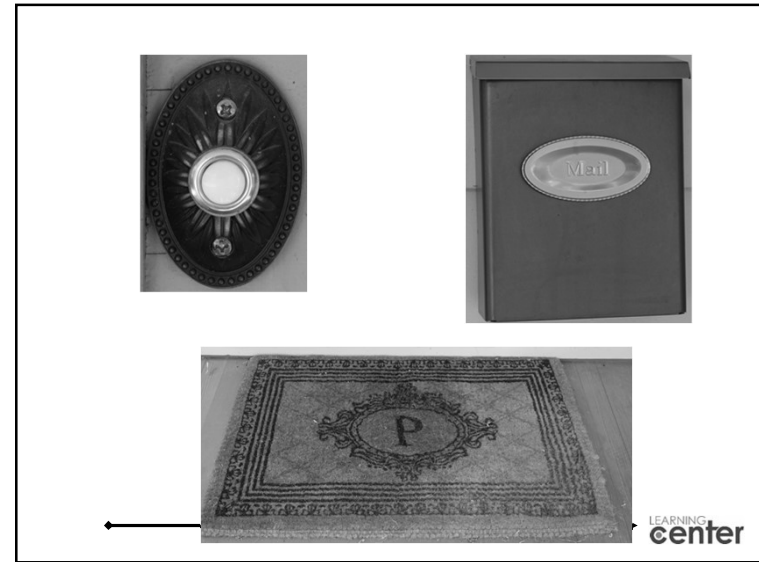
163



164



165



166



167



168



169



170



171



172

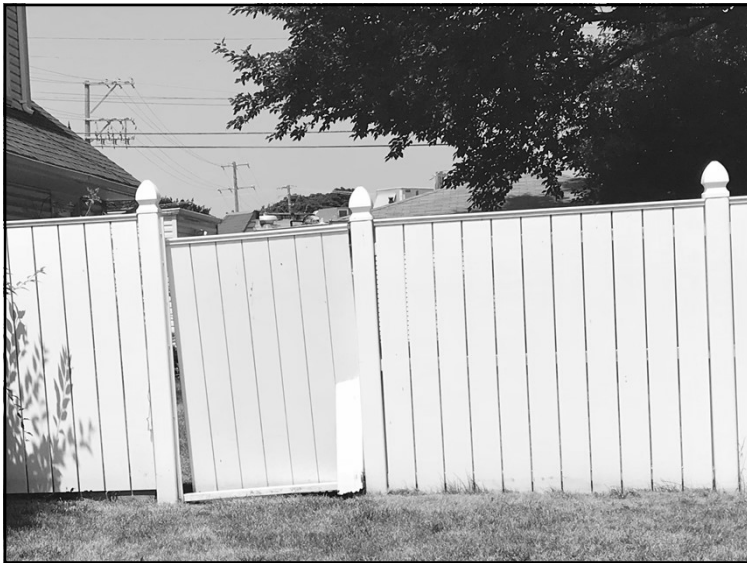




173



174



175



176





177



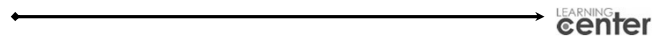
178

## How Much Do You Remember? #3

Which of these involve the plain view doctrine?

1. Inspector sees electrical violation while doing a plumbing inspection
2. Neighbor tells inspector about what she can see in neighbor's backyard
3. Plans submitted do not comply with the building code

Answer 1



179

## Plain View Doctrine



180

## Plain view doctrine



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181



182

## How Much Do You Remember? #4

What is the exclusionary rule?

1. A motion an attorney makes to keep the witnesses outside the courtroom during a trial.
2. The inability to use evidence unlawfully obtained at trial.
3. Not granting a permit to a contractor who owes money to the city.

Answer 2

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183

## How Much Do You Remember? #5

Which of these are exceptions to the search warrant requirement?

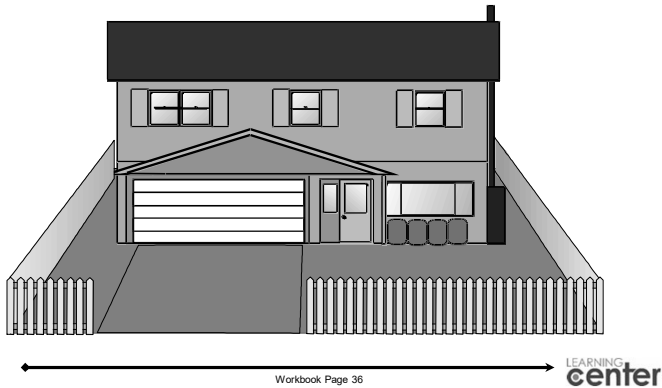
1. Consent
2. Exigent circumstances
3. Closely regulated businesses
4. Open fields
5. All of the above

Answer 5

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184

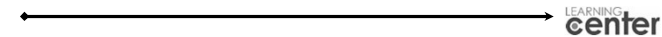
## Curtilage



185

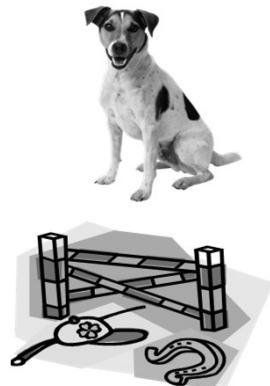
## Open Fields

- Area beyond curtilage
- No reasonable expectation of privacy
- Widgren v. Maple Grove township, 429 F.3d 575(2005)



186

## State v. Berry, 92 S.W.3d 823(2003)



187

## Drones, aerial maps and the Fourth Amendment



188

## How much do you remember?

Drones can be used by an inspector:

- A. Anytime, there's no right to privacy.
- B. Anytime, as long as it's above 400 feet.
- C. Only when the state statute allows it.
- D. B and C
- E. A and C
- F. None of the above.

Answer F

189

## Issues

- No trespass if above 400 feet (public air space)
- What if you don't know someone is watching your property? How can you have a subjective expectation of privacy?
- State statutes restrict use by law enforcement
- Expanded view of subjective expectation of privacy?
- Could be constitutional but not legal under a state statute

190

## Vacant Property



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191

## Is It Abandoned?

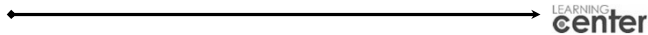


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192

## Abandoned Property

- A person has no expectation of privacy in premises which he has intentionally or constructively abandoned, and police entry of such premises is not a search under the Fourth Amendment.
- *Abel v. U.S.*, 362 U.S. 217, 80 S. Ct. 683, 4 L. Ed. 2d 668 (1960)

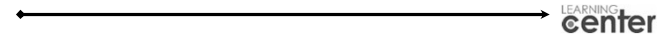


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193

## Abandoned Property

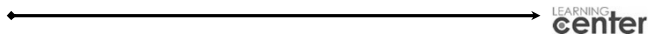
- Whether abandonment of premises has occurred is to be determined from all the relevant circumstances.
- An abandonment must be shown by clear, unequivocal and decisive evidence.
- Abandonment raises questions of fact and intent of the person who allegedly abandoned the premises.
- Intent is to be inferred from all the relevant circumstances and objective facts.



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194

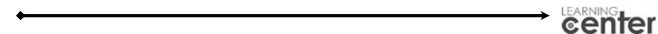
## Commercial Property



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195

## ARE ALL BUSINESSES CREATED EQUAL REGARDING INSPECTIONS?



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196



197

## Towing Vehicles Off Private Property



Bezayiff v. City of St. Louis, 963 S.W.2d 225(1998)(need a warrant)

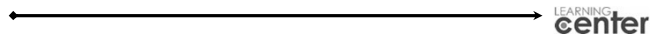
Redwood v. Lierman, 265 Ill.Dec. 432(2002)



198

## But, is condemnation a Fourth Amendment taking?

- Freeman v. Dallas, 242 F.3d 642(2001)
- Seizure under state law - reasonable



199

## Third Party Consent

Person having joint control over property:

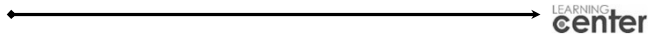
Co-owner  
Roommate  
Child

200

## What If One Consents and One Refuses?

Georgia v. Randolph,  
547 U.S. 103, 126 S.Ct. 1515(2006)

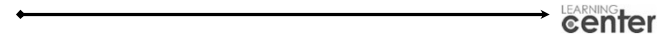
Fernandez v. California,  
134 S. Ct. 1126(2014)



201

## Apparent Authority

- Illinois v. Rodriguez, 497 U.S. 177(1990)
- State v. Bowens, 2018 WL 1473976(2018)
- People v. Garza, 276 Ill.App.3d 659(1995)



202

## Third Party Authority

- Apparent authority of contractor where no permit had been issued
- Qualified immunity
- Montville v. Lewis 87 F.3d 900 (1996)



203

## Third Party Consent - Age



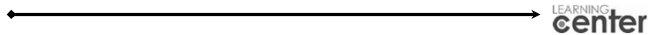
204

## What Do You Remember?

In *Montville v. Lewis*, when did the inspector violate the Fourth Amendment?

1. When he went up to the front door of the house without a warrant.
2. When he entered the house after being invited in by the contractor.
3. When he viewed violations from the public way or neighbor's property.

Answer 2



205

## Good Faith Exception to the Exclusionary Rule



206

## Quick Refresher

What do you need to get an administrative search warrant?

- Need probable cause or
- Administrative inspection
  - May be based on the passage of time
  - Nature of the building
  - Condition of the entire area
  - Specific knowledge of conditions



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## Complaint for Administrative Search Warrant – IBC 104.6

IN THE MATTER OF )  
*18 County Line Lane, Unit C* ) CASE NUMBER: 20XX MR 0002  
*Everytown, USA* )

### COMPLAINT FOR ADMINISTRATIVE SEARCH WARRANT

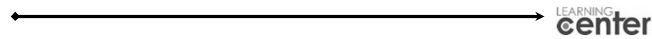
NOW APPEARS *John Black*, Building Official for the *City of Everytown*, Complainant, before the undersigned Judge of the *18<sup>th</sup> Judicial Circuit*, and requests the issuance of an Administrative Search Warrant, to inspect the premises of *18 County Line Lane, Unit C, Everytown*, to determine if said premises is maintained in compliance with the ordinances of the *City of Everytown*, being the *20XX International Building Code*, as adopted in section *8-1D-1 of the City of Everytown Code* (the "Building Code"). In support hereof, Complainant states as follows:



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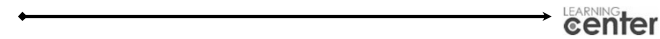


1. The 20XX International Building Code as amended and adopted by reference in Section 8-1D-1 of the *City of Everytown* Code prescribes minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.
2. Section 105.1 of the 20XX International Building Code as amended and adopted by reference in Section 8-1D-1 of the *City of Everytown* Code provides that any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.



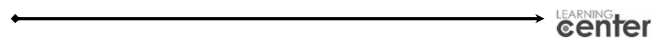
209

3. Section 104.6 of the 20XX International Building Code as amended and adopted by reference in Section 8-1D-1 of the *City of Everytown* Code provides that: "Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure or premises at reasonable times to inspect or to perform duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupancy and entry requested. If such structure or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry."\*



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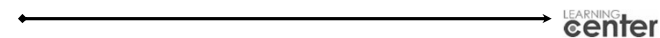
4. The Complainant,\*\* the plumbing inspector, Bob Meyer, and the electrical inspector, Joan Rogers, if allowed entry into the premises, shall determine whether the structure has been constructed, enlarged, altered, repaired, moved, demolished, and whether there has been a change in the occupancy of the building or structure, and whether there has been an erection, installation, enlargement, alteration, repair, removal, conversion or replacement any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by the Building Code, or whether someone has cause such work to be done in violation of Section 105.1, Working without a Permit, of the 20XX International Building Code as amended and adopted by reference in Section 8-1D-1 of the *City of Everytown* Code.
5. There is probable cause for the administrative search warrant based on the following facts:\*\*\*
  - a. On November 18, 20XX at 11:00 a.m. I had a conversation with Fire Inspector Pat Kenny of the Everytown Fire Department who told me that on November 17, 20XX at 2:00 p.m. he had been at 18 County Line Lane, Everytown, USA to perform the annual fire inspection. The building is a three story office building.



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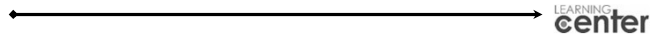
*He said that while he was on the second floor, he noticed that the previous tenant, Sarah's Temps Co., was no longer present in Unit 2C. He noticed people going in and out of the unit carrying building materials dressed in clothes suitable for construction work. He called the building department to determine if a permit had been issued for the build out of this unit and found that no permit was on file. He tried to gain entry to the unit but one of the workers closed the door on him.*

- b. On November 18, 20XX at 2 p.m. I went to 18 County Line Lane, Everytown, USA and went to the second floor to see if I could speak with someone regarding Unit 2C. The door was closed to the unit but I heard sounds coming from the unit which sounded like hammering. I knocked on the door but no one answered. I then went to the management office located on the first floor to speak with a representative of the management company, McGinnis Management Ltd. I spoke with a woman by the name of Sandi Mueller who told me I would have to speak with Mr. Robert McGinnis about the issue as she couldn't tell me anything. She also told me that Mr. McGinnis was on a world cruise and would return after New Year's Day. I asked if she could grant access to the unit and she told me she didn't have the authority.



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- c. After I left the management office I observed a number of work trucks parked by the entrance way that was near the service elevator in the back of the building. I noticed a truck marked M&E Construction Inc., SJJ Plumbing Co. and TKM Electrical Contractors.
- d. I called SJJ Plumbing Co. at the number listed on its truck at 4 p.m. on November 18, 20XX and spoke with a person identifying herself as Sarah. I asked her whether SJJ Plumbing had pulled a permit for the work being done at 18 County Line Lane. She told me that McGinnis Management was taking care of all the permits for the job on the second floor. She told me that the work involved a spa and that numerous plumbing fixtures were being installed such as showers and whirlpools.
- e. On November 19, 20XX I checked the City of Everytown's records to see if any permits of any type had been applied for or granted for Unit C at 18 County Line Lane and found no records for any type of work. I also checked the records with the Recorder of Deeds and determined that McGinnis Development Ltd. is listed as the owner on the last deed recorded.



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6. Complainant reasonably believes that the property at 18 County Line Lane, Unit C, Everytown, USA is in violation of Section 105.1 of the 20XX International Building Code as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code, Working without a Permit.

WHEREFORE, Complainant prays that this Court issue an Administrative Search Warrant, to inspect the building, being 18 County Line Lane, Unit C, Everytown, USA.

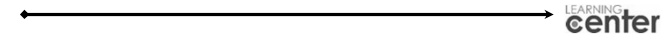
John Black

Complainant

Subscribed and sworn to before me

on this 20<sup>th</sup> day of November, 20XX

\_\_\_\_\_  
Notary Public or Judge



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\*If there is an additional specific state statute or municipal code section that authorizes an administrative search warrant, include the following line:

"Section \_\_\_\_ of the (\_\_\_\_ state statute) (\_\_\_\_ municipal code) provides for the issuance of an administrative search warrant."

\*\* List anyone else who may accompany the inspector, e.g. zoning officer, structural engineer, a police officer, for the limited purpose of providing security, or other inspector.

\*\*\* Set forth all the facts which form the probable cause for the search warrant or, if probable cause does not exist, the basis for an administrative inspection.

**COMMENT:** If there is a state statute that sets forth the forms to be used for obtaining an administrative search warrant, the building official or inspector should use those forms as well as following the statutory procedure. The building official or inspector should always seek legal assistance in drafting and obtaining an administrative search warrant to make sure that all the statutory and constitutional requirements are satisfied.



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IN THE MATTER OF )  
18 County Line Lane, Unit C ) CASE NUMBER: 20XX MR 0002  
Everytown, USA )

#### ADMINISTRATIVE SEARCH WARRANT

On this day, November 20, 20XX at 3:00 p.m., Complainant, John Black, has subscribed and sworn to a Complaint for an Administrative Search Warrant before me. Upon examination of the Complaint, I find that it states facts to show a reasonable basis and probable cause and I therefore command that the structure at 18 County Line Lane, Everytown, USA, Unit 2C, be inspected by the building official, the plumbing inspector and the electrical inspector, for the purpose of determining whether it is in violation of Section 105.1 of the 20XX International Building Code as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code, Working without a Permit. The inspection and execution of the administrative search warrant may be videotaped and/or photographed.

Time and date of Issuance: November 20, 20XX at 3:00 p.m.

\_\_\_\_\_  
Judge or Magistrate



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**SAMPLE FORM: SEARCH WARRANT RETURN - IBC 104.6**

IN THE MATTER OF                     )  
   )  
*18 County Line Lane, Unit C*        )       CASE NUMBER: 20XX MR 0002  
*Everytown, USA*                     )

Premises: *18 County Line Lane., Unit C, Everytown, USA*

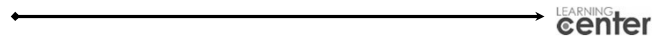
I served this Administrative Search Warrant at the above named Premises and aided in its execution, this *21st* day of *November, 20XX*, at *9:00* a.m.

Date: *November 22, 20XX*               *John Black*  
   Complainant

Or

I did not serve this Administrative Search Warrant within 96\* hours of the time of issuance, and it is hereby returned to the Court as void and not executed.

Date: *December 15, 20XX*               \_\_\_\_\_  
   Complainant



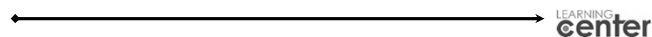
217

## Using Zoning as an Enforcement Tool

218

## Types of codes at your disposal

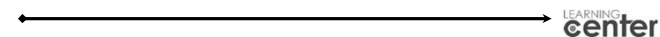
- Building Codes
  - International Building Code
  - International Residential Code
- Fire Codes
  - International Fire Code
  - Life Safety Code – other NFPA codes
- International Property Maintenance Code
- State Plumbing Code
- Zoning Ordinances – Land Use Ordinances
- Storm Water Management – National Flood Insurance Program (FEMA)



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## Common multiple code cases

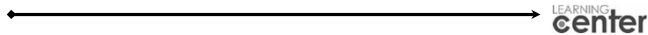
- Working without a permit
  - IBC and IFC – doing work without a permit and creating a fire code hazard
  - IBC, IRC and zoning – illegal conversions
  - IBC or IRC and IPMC violations – permit expired (BR)
  - IBC and plumbing violations
  - Storm water management and IRC – building a gazebo in a flood plain



220

## Using the zoning code

- Illegal conversions from single family to multi-family housing
- Rooming houses - Are the rooms being advertised anywhere in the area or local papers?
- Parking on the grass or gravel
- Expanding driveways without a permit
- Revocation of zoning certificates of occupancy

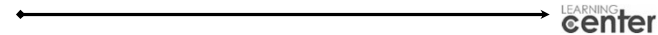


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221

## What's the problem?

- Violations of the zoning code
  - Single family to illegal multi-family use
  - Rooming houses
  - Commercial buildings – illegal use
- Police problems – increased crime
- Violations of the building code
  - Work done without permits
  - No certificate of occupancy
  - Property maintenance issues
- 



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222

## Is it illegal?

- What is the current zoning code use for the lot?
- When was the current zoning code adopted?
- What was the use of the property at the time the zoning code was adopted?



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## Zoning districts

- The ultimate purpose of zoning ordinances is to confine certain classes of uses and structures to designated areas.
- Because nonconforming uses by definition detract from the fulfillment of that purpose, zoning ordinances properly seek to restrain them.

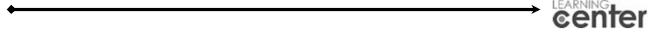


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## Why allow legal nonconforming use?

- Otherwise it's a unlawful taking of a property right
- Violates the 14<sup>th</sup>
  - Amendment

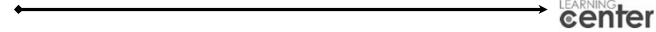


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## But, is the use lawful?

- In order to retain the right to use the property, the use had to be lawful to begin with
- When was the conversion? Before or after the adoption of the zoning code?
- Were there permits issued for the conversion?



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## Researching the issue

- How old is the structure?
- What documentation is in the files?
- What do aerial photos show?
- Are there neighbors who remember?
- What was allowed under the code in effect at the time the use was adopted?
- Ask the owner



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## How are illegal conversions discovered?

- Police calls - fights
- Fire calls
- MLS listings
- Lenders
- Advertisement
  - On-line
  - Community bulletin boards
  - Publications

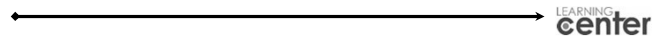


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## Other evidentiary sources

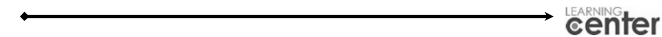
- Utility records
- Cable connections
- Postal carrier



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## Enforcement

- Notice of violation
- File legal action: choice of remedy
  - Citation and/or
  - Lawsuit in equity/chancery court
- Record notice of violation?
- Report unethical realtors
- Contact lender



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## Zoning Code

- If use not listed, it is not allowed
- Notify owner that conversion is an illegal use of the building



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## Zoning Certificates of Occupancy

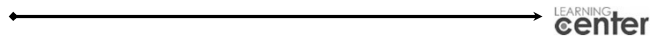
- 9-15-3: OCCUPANCY PERMITS:
  - A. Occupancy Permit Required: No structures or additions thereto constructed, moved, remodeled or reconstructed after the effective date hereof shall be occupied and used for any purpose, and no land vacant on the effective date hereof shall be used for any other use, unless an occupancy permit shall first have been obtained from the village certifying that the proposed use or occupancy complies with all provisions of this title.



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### Certificate of Occupancy – IRC or IBC

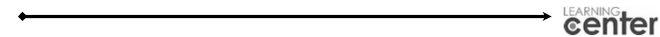
- R110.1 Use and Occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein.



233

### Revocation of Existing Certificate of Occupancy

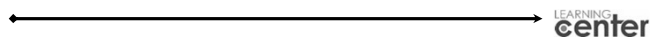
- R110.5 Revocation. The building official shall, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this code wherever....it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.



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### Certificates of Occupancy - In General

- Does the building or structure have a certificate of occupancy?
- Was the building constructed before certificates of occupancy were issued by the local jurisdiction?
- Has the building's or structure's classification changed?
- Is there a certificate of occupancy for the classification change?



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### Suspension or Revocation

- Should the certificate of occupancy for the building or structure be suspended or revoked?
- Has notice of the suspension or revocation of the certificate of occupancy been sent to the responsible party?
- How was the notice served?
- Is there proof of service for the notice?
- Is there an appeal process or other due process procedure to contest the suspension or revocation of the certificate of occupancy prior to the actual suspension or revocation?



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### Notice of Revocation - Certificate of Occupancy

- November 3, 20XX
- A.J. Murphy, President
- Big Al's Terrace Estates, LLC
- 6560 Hollywood Blvd.
- Anywhere, USA
- Re: 6560 Hollywood Blvd. Anywhere, USA
- Property Index Number: 01-0001-001-00
- Dear Mr. Murphy:
  - Pursuant to the authority granted to me in Section R110.5 of the 20XX International Residential Building Code (IRC) as amended and adopted by reference in Section 7.1201 of the City of Anywhere Code, you are hereby notified that the certificate of occupancy previously issued by the Department of Building Safety on June 1, 20XX, for 6560 Hollywood Blvd., Anywhere, USA, is hereby suspended because the building is in violation of the following portions of the building code:

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- *Occupying a Structure without a Certificate of Occupancy in violation of 20XX IRC R110.1 as amended and adopted by reference in Section 7.1201 of the City of Anywhere Code; and*
- *Failure to Obtain a Building Permit in violation of Section R105.1 of the 20XX IRC as amended and adopted by reference in Section 7.1201 of the City of Anywhere Code.*

▪ You were informed via letter on October 3, 20XX, that an inspection of your property at 6560 Hollywood Blvd. Anywhere, USA, on October 2, 20XX, showed the following violations of the code of ordinances of the City of Anywhere:

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- *Occupying a Structure without a Certificate of Occupancy in violation of 20XX IRC R110.1 as amended and adopted by reference in Section 7.1201 of the City of Anywhere Code – attic and basement apartments are being occupied without a certificate of occupancy.*

▪ **\*\*\* On October 5, 20XX, an inspection of the interior of the dwelling using an administrative search warrant showed that a single family dwelling had been converted into 3 apartments and there were ceiling fans that had been installed without electrical permits, toilets were added in the attic and basement without a building or plumbing permit. You have failed to apply for any permits and have refused to cease allowing the occupancy of the basement and attic .**

▪ No one may occupy the building or structure, during the suspension of the certificate of occupancy.

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▪ Please feel free to contact me to discuss this matter further. The suspension will be lifted when the building is in conformance with the codes of the City of Anywhere. You may appeal my decision by filing a notice of appeal in writing with the the rules legally interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed.

▪ Very truly yours,

▪ John Black

▪ Building Official

▪ \* Or suspension

▪ \*\* Or completion

▪ \*\*\* Set forth the violations of the building code that justify the suspension.

▪ \*\*\*\* State whatever time length is set by ordinance or rule or regulation of the Board of Appeals.

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## Violations

- Occupying a structure without a certificate of occupancy IBC 111.1 or R110.1



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### •SAMPLE COMPLAINT: OCCUPYING A STRUCTURE WITHOUT A CERTIFICATE OF OCCUPANCY – IBC 111.1

•STATE OF ILLINOIS

•COUNTY OF DU PAGE

•City of Anywhere

•v.

•NAME: **Big Al's Terrace Estates, LLC.**

•ADDRESS: 6560 Hollywood Blvd.

•CITY: Anywhere, Anywhere, USA 60515

•The undersigned says that on or about October 5, 20XX, at or about 5:00 p.m. the Defendant did unlawfully commit the offense of *Occupying a Structure without a Certificate of Occupancy in violation of 201XX IBC 111.1 as amended and adopted by reference in Section 7.1101 of the City of Anywhere Code*, in that said Defendant, the owner\* of 6560 Hollywood Blvd., Anywhere, USA occupied the structure, being an addition on the premises, without a certificate of occupancy in that the structure was being used and occupied to store equipment, being trucks and repair machinery.

John Black

Complainant

•Sworn to and Subscribed Before Me

•This 25th Day of October, 20XX

•

•Notary Public

•\* Or occupant.

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## Advanced Legal Aspects of Code Administration for Building Officials and Inspectors: Liability

By Linda S. Pieczynski  
Attorney at Law, P.C.

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## How much do you remember?

- Who can be sued in court?
- A) Building official or inspector
- B) Local jurisdiction
- C) Both A and B.
- Answer C

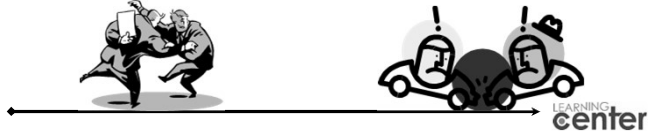


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## Intentional Torts v. Negligence

- Intentional tort
- involves conduct the person intended to occur
- Negligence –
- no intent involved but harm caused and breach of duty of care



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## How much do you remember – intentional torts

- Malicious prosecution
- Abuse of process
- False Imprisonment
- Intentional infliction of emotional distress
- Assault and battery
- Trespass



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## How much do you remember? Negligence

- Duty owed to another to act according to a certain standard
- Failure to act in accordance with the standard
- Breach of duty
  - Misfeasance – improper performance
  - Malfeasance – doing something you shouldn't do
  - Nonfeasance – failure to do something
- Proximate cause of injury or damage to another

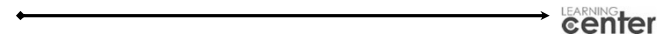


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## Tort Immunity Laws

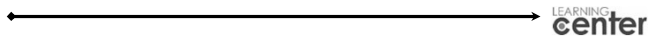
- Replaces abolished doctrine of sovereign immunity
- Protects local public entities and public employees from liability
- Don't want to dissipate public funds for private damage awards



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## What Does A Tort Immunity Law Provide?

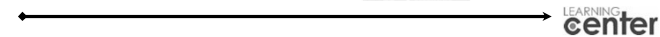
- Confers immunities and defenses
- Not new duties
- Local government may have a duty but may be immune under the Act



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## Public duty doctrine

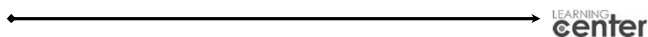
- Plaintiff must prove that local jurisdiction owed a duty to the plaintiff not just the general public when performing the activity that gave rise to the action



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## Defenses

- Absolute immunity - set forth in statute
- Qualified immunity - despite violation of constitutional or statutory right, rights were not clearly established at the time of the violation



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## Mandamus

Mandamus: an order issued by a court of competent jurisdiction to compel the performance of an act, which is required by law, but the performance of which has been refused.

- Mandamus only lies when there is an unequivocal showing that a public official failed to perform a ministerial duty imposed by law.
- State v. McDonald's Corporation, 748 S.W.2d 51(1988)
- Property owner sought writ of mandamus requiring **building** commissioner to issue **permit** for construction of commercial **building**. Court of Appeals held that property owner was not entitled to issuance of **permit** based on failure to identify contractor and to provide sufficiently detailed plans for truss diagrams and minimum required fire protection.



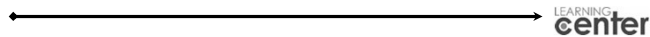
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## Station Nightclub Fire 2003\*

- Located in West Warwick, Rhode Island and built in 1946.
- The Club, a wood frame structure, was equipped with non-fire resistant soundproof foam boards to limit the noise level.
- Soundproofing board obstructed a couple exits.
- The building was equipped with an automatic fire alarm system.
- Building not equipped with a sprinkler system due to an overlooked code requirement when the building changed occupancies...which required a sprinkler system to be installed as it no longer met a code exception.

▪ \*Excerpt from: History of Fire and Fire Codes by Department of Public Safety, State of Iowa

▪

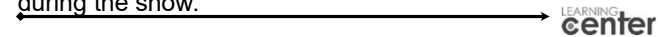


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## Station Fire

- There were 462 occupants in a building built for only 300.
- The building had 4 working exits.
- Building had passed the annual fire inspection.
- On February 20, 2003 the band "Great White" was playing at the club.
- The band used pyrotechnics without obtaining a required permit from the city.
- The band used pyrotechnics without obtaining a required permit from the city.
- The band tour manager ignited a set of pyrotechnics during the show.



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## Station Fire

- Sparks from the pyrotechnics reached the ceiling and eventually hit the non-fire resistant soundproof boards.
- The soundproof boards caught fire.
- The flames were believed to be part of the act until the spectators realized the flames and smoke were out of control.
- In less than a minute, the stage was completely involved in flames.
- The crowd, band members, and staff started to rush towards the doors.



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## Station Fire

- The fire alarm activated as the stage became fully involved with fire.
- Burning soundproofing foam created dense, toxic smoke throughout building.
- No emergency lighting units within the building.
- Most people rushed for the Main Front Door entrance.
- The Front Door was ultimately blocked due to the rush for the door.
- Fire engulfed the club within approximately 3 minutes.
- Due to the stampede for the exits, many were killed or injured.
- Burns, smoke inhalation, and blunt force trauma from trampling were the main causes of death in this fire.
- DEATH AND DAMAGE TOLL  
100 killed and approximately 230 injured.



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### Absolute v. Qualified Immunity Gray v. Derderian 400 F.Supp.2d 415 D.R.I.,2005

- State fire marshall immune in absence of proof of bad faith or malice for failure to enforce fire code
- Under Rhode Island law, allegations that town officials failed to fulfill their common law duty to act with care in inspecting nightclub and enforcing fire code stated negligence claim against town and officials, to be analyzed under public duty doctrine, in action arising from nightclub fire that was triggered by town officials at concert and caused numerous



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### Civil Rights Act of 1871

#### Title 1983 Action

1. Color of state law
2. A deprivation of federal constitutional or statutory rights
  - a. Fourth Amendment - search and seizure
  - b. Fourteenth Amendment- due process/equal protection
  - c. Discrimination- race / disability / religion



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### Defenses

- Absolute immunity - set forth in statute
- Qualified immunity - despite violation of constitutional or statutory right, rights were not clearly established at the time of the violation

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### Montville v. Lewis

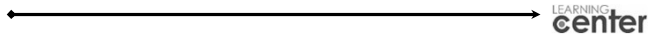
- 87 F.3d 900(1996)
- Homeowner brought 1983 action against city officials alleging that their administrative searches of her home violated the Fourth Amendment. The United States District Court for the Northern District of Illinois, denied officials' motion for summary judgment and their qualified immunity claim. Officials appealed. The Court of Appeals, held that homeowner failed to show that law regarding third-party consent to warrantless administrative searches was well established at time of search and, thus, officials were entitled to qualified immunity

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## Due Process

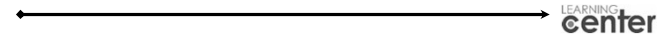
- Right to be heard before being deprived of property interest
- When someone acts with malicious purpose, in bad faith or in a wanton or reckless manner they are not entitled to immunity.



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## Due Process

- If you have a procedure in the Code, you must follow it
- Must follow substantive rules (permits, stop work orders, inspections, certificates of occupancy)
- Must follow procedural rules (notice, service)



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## Problem #1

- You drive by 3849 York St., Anywhere USA on June 1, 20XX at 10:00 a.m. and notice that the residence has a hole in its roof.



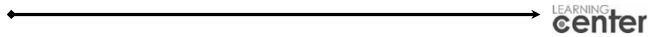
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## Problem #1

You stop by the house and make contact with Ms. Daisy Mae Abner who tells you that she rents the house from Slums R Us. She tells you that she's complained numerous times to the manager of the company, Barry Lee Comptant but he just says the owner won't spend the money on repairs. Ms. Abner lets you in and you notice water damage, numerous electrical violations, venting issues, a hole in the roof and very unsanitary conditions. You take photos of the problems.



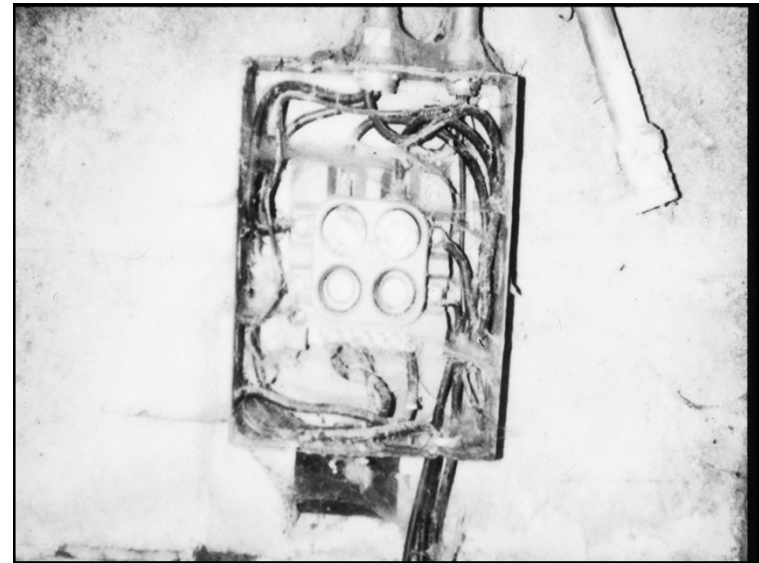
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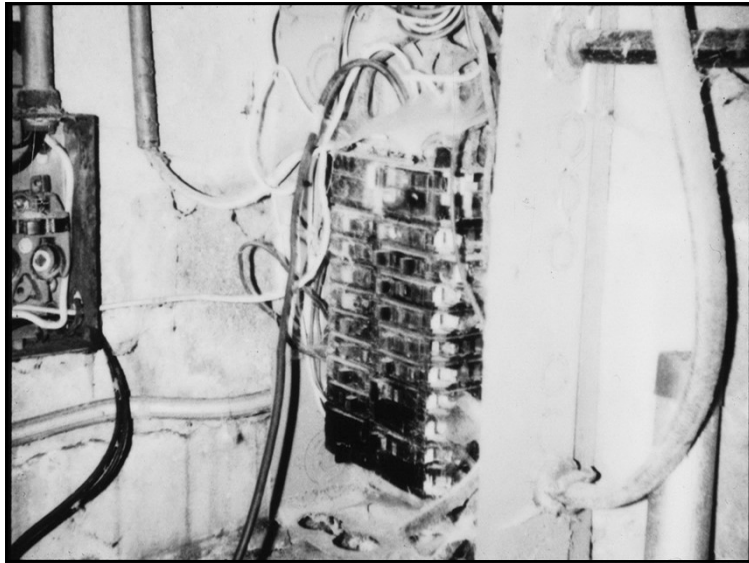
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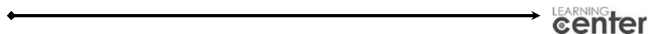


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## Problem #1

What are the next steps to take?

How do you find out who's responsible for what?



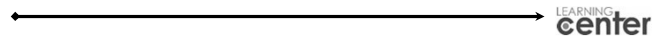
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## How Many Violations Are There?



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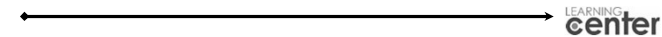
## What are the Violations and Who Gets Them?



277

## Problem #1

The Recorder of Deeds records reveal that the property is owned by Trust Number 921, Schaumburg Bank and Trust, Trustee. What is your next step?



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## Information

Name of Beneficiary: Slums Are Us, Inc.

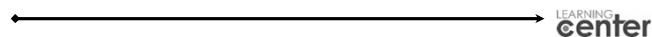
4 S. Drake St.

Anywhere, USA

President: Mark O' Connor

Registered Agent: Sylvia DuBois, 12 LaSalle St.,  
Anywhere, USA

Manager: Barry Lee Comptant, 1200 S. 4th Blvd.,  
Anywhere, USA



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## Who Gets the Notice of Violation?

- A. Barry Lee Comptant
- B. Mr. Mark O' Connor
- C. Slums Are Us, Inc.
- D. Daisy Mae Abner
- E. All of the above



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## Notice

*June 5, 20XX*

Mr. Mark O' Connor

Slums Are Us, Ltd.

4 S. Drake St.

Anywhere, USA

Re: 3849 York St., Anywhere, USA

Property Index Number: 01-0001-001-00

Dear Mr. O'Connor:

An inspection of your property at 3849 York St., Anywhere, USA, on June 1, 20XX shows the following violations of the code of ordinances of the *City of Anywhere USA*:

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**Failure to Maintain Roof in violation of 20XX IPMC-304.7 as amended and adopted by reference in Section 8-1J-1(A) of the *City of Anywhere USA* Code. You have failed to maintain the roof of the structure in a condition so as to be sound, tight and not have defects that admit rain in that *there are numerous shingles missing on the roof and a large hole such that you can see the exterior from the interior of the residence.***

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The property will be inspected on *June 16, 20XX*. If it has been determined that the violations have not been corrected, citations will be issued requiring your appearance in *Big Country County* Court.

You have a right to appeal this notice and order by filing a written application for appeal with the Board of Appeals for the *Village of Anywhere*. The application for appeal must be filed within twenty (20) days after the day this notice is served upon you. The appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or the requirements of the code are adequately satisfied by other means.

If you fail to correct these violations, any action taken by the *Village of Anywhere*, the authority having jurisdiction, may be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

Very truly yours,  
Karvn Byrne  
Deputy Code Official

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## How Much Do You Remember?

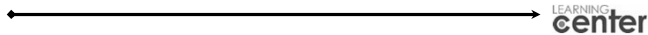
After you've sent a notice of violation, which of these steps must you next take?

- A. Get approval from your boss.
- B. Reinspect the property.
- C. File a complaint.

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After you have filed your first set of tickets with the court or hearing authority and before compliance has been obtained, the trust transfers the property to Slum Development2, LLC. Can you do anything about it?



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## SAMPLE COMPLAINT: UNLAWFUL TRANSFER OF OWNERSHIP - IPMC 107.5

STATE OF ILLINOIS  
COUNTY OF BIG COUNTRY  
VILLAGE OF ANYWHERE

v.

NAME: SLUMS ARE US, INC.  
ADDRESS: 4 S. Drake St.  
CITY: Anywhere, USA

The undersigned says that on or about August 5, 20XX, the Defendant did unlawfully commit the offense of Unlawful Transfer of Ownership in violation of 2006 IPMC-107.5 as amended and adopted by reference in Section 8-1J-1(A) of the Village of Anywhere Code; in that said Defendant, being the beneficial owner of 3849 York St., Anywhere, USA, did unlawfully transfer said dwelling unit to Slum Development2, LLC after receiving a compliance order dated June 10, 20XX which is attached hereto and made a part hereof, from the Village of Anywhere prior to complying with the order or notice of violation sent by code official, Karyn Byrne.

Karyn Byrne  
Deputy Code Official

Sworn to and Subscribed before Me  
This 5th Day of August, 20XX

Notary Public

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Before you take Daisy Mae Abner to court, she files a notice of appeal with the local authority contending that messy housekeeping doesn't equal an unsanitary house and that she can't afford the cost to resanitize the residence. Now what?



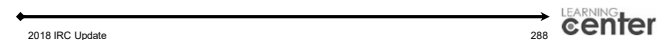
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## Final Reflection

This slide will help the learner to reflect on the day and what they will take back to the job and apply.

- **What?** What happened and what was observed in the training?
- **So what?** What did you learn? What difference did this training make?
- **Now what?** How will you do things differently back on the job as a result of this training?

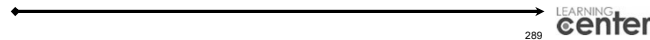


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## Thank you for participating

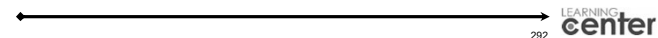
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