

*Solutions for Working Families:
2009 Learning Conference on State and Local
Housing Policy*

*The Context for Legal Authority
and Decision-Making*

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**National Housing Conference & Center for Housing Policy
Chicago, IL
June 29, 2009**

The Context for Legal Authority and Decision-Making

Layers of Authority

Private Actions

Municipal Governance

State Legislation

Federal Legislation

State Constitution

Federal Constitution

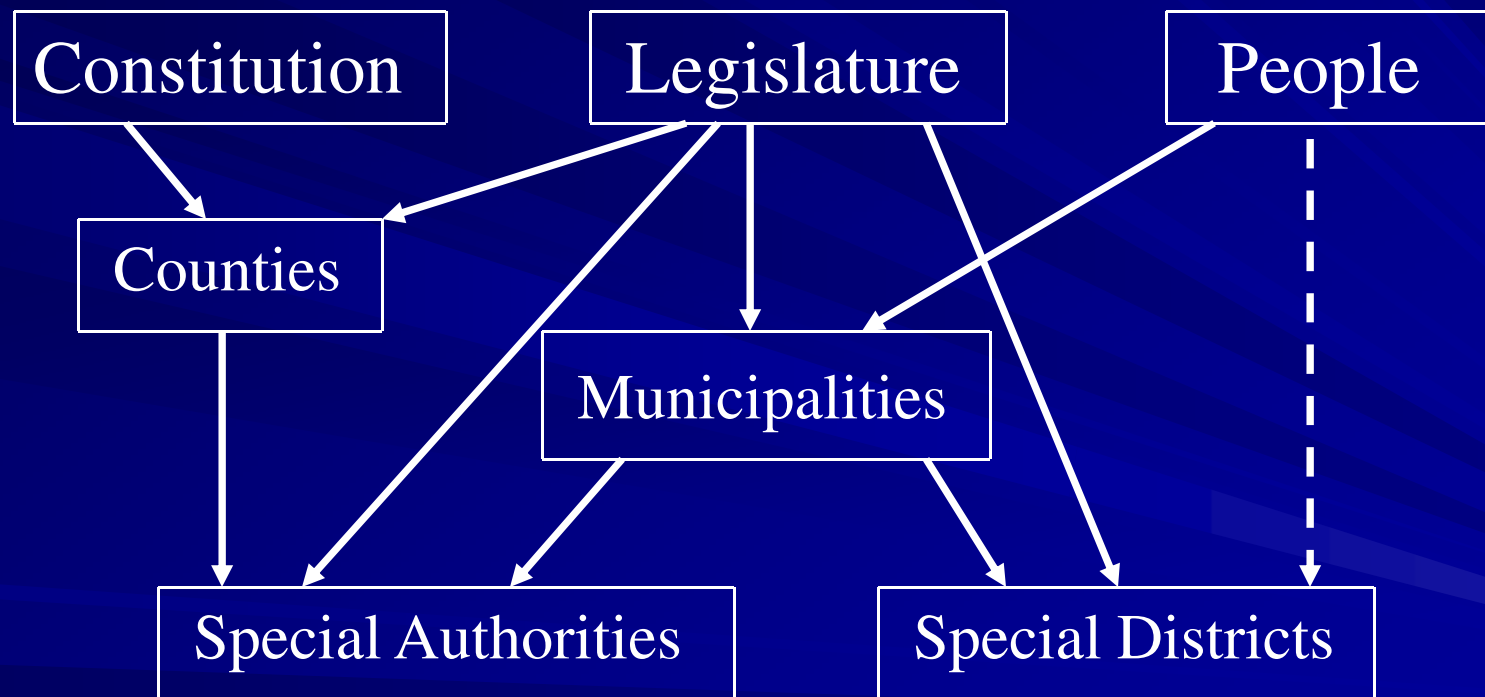
The Context for Legal Authority and Decision-Making

State Constitutional Law

- Constitution as limit – plenary legislative authority.
- Can prohibit things that the federal constitution permits (*death penalty*).
- Can create rights not found in federal constitution (*education*).
- Can be construed by state supreme court in any manner it desires, so long as not in conflict with federal constitution.
- Can apply equal protection and due process differently, so long as not contrary to federal constitution (more than minimum rationality).

The Context for Legal Authority and Decision-Making

State and Local Structures



The Context for Legal Authority and Decision-Making

Key Conceptual Doctrines on State – Local Allocation of Authority

- Home Rule: Constitutional and Statutory
- State Enabling Statutes
- State Preemption of Local Authority

The Range of Analysis

- Exclusive Constitutional Home Rule: rarely found; applicable usually to specific actions (geographic boundaries); no legislative override
- Strong Constitutional Home Rule: direct grant of authority to local governments; strong presumption in favor of local government actions
- Weak Constitutional Home Rule: narrow interpretation of authority conveyed; general law overrides
- Legislative Home Rule: final authority rests in legislature; issues are presumption and preemption

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Key Housing Policy Doctrines

- Housing & Building Codes
- Inclusionary Zoning
- Regional Planning and Zoning
- Anti-Predatory Lending Laws
- Substantive Mortgage Foreclosure: Anti-deficiency; FMV tests; judicial v. non-judicial
- Mortgage Foreclosure Procedures: judicial v. non-judicial; redemption; F-Sale deed recording
- Tenant Protections: Just Cause Eviction Statutes and Title VII of *Helping Families Save Their Homes Act of 2009*, Pub. L. 111-22 (5/20/09)

The Context for Legal Authority and Decision-Making

1. Restructuring the nature and function of MERS.
 - ✓ Clearer correlation with state real property ownership and transfer records
 - ✓ Clearer authority (or the lack thereof) for MERS to serve as legal agent for foreclosures
2. Increasing liability for external costs of abandonment
 - ✓ Vacant property registration ordinances
 - ✓ Foreclosure assessments
3. Strengthening Codes and Code Enforcement.
 - ✓ Clear housing and building substantive codes
 - ✓ Clear costs and penalties, secured by first lien.

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4. Facilitating Local Government and NGO Transfers
 - ✓ Default and foreclosure notices to local governments
 - ✓ Educating servicers on revised NPV calculations
 - ✓ Maximize NCST models on trust asset transfers
 - ✓ Modeling property tax foreclosure reform
5. Re-envision Alternatives to Abandonment
 - ✓ Minimize “walk-aways”
 - ✓ “Friendly” receiverships
 - ✓ Bankruptcy Court transfers
6. Protect Third Parties
 - ✓ Pre-Foreclosure notices to tenants
 - ✓ Post-Foreclosure notices of ownership

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7. Consistency in Definitions & Concepts

- ✓ “Foreclosed Upon”; “Abandoned”
- ✓ “Vacant”; “blighted structures”

8. HUD’s Own Inventory

- ✓ Total properties? Condition of properties?
Transferability of properties?
- ✓ Supremacy Clause/Preemption Analysis on application of state and local laws to HUD properties

9. Adequacy of Data

- ✓ 2/3 of Families Own; 1/3 that own, have no mortgage:
40% of Family Homes have mortgages
- ✓ Residential v. Non-Residential; Residential Owner-Occupied v. Rental; Occupied v. Non-Occupied