

## **A LEGAL PRIMER**

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Lay people are often confused about what constitutes the “law.” Given the historical evolution of our legal system and the various layers of government, it is not surprising that there is some confusion. The “law” in the context of government can take a variety of different forms, including the common law, constitutions, statutes, court cases, and administrative regulations.

The ultimate law in our country is the United States Constitution. That federal constitution regulates the actions of all levels of government in the United States – federal government, states, and territories. All state governments (and political subdivisions within states such as counties, cities, villages, and townships) are regulated by state constitutions. A constitution is essentially a binding master plan. It is the source of all laws within the jurisdictional area bound by that constitution. It also places limits on the actions of governmental officials, units of government, and courts.

In general, constitutions tend to be broadly worded. Rarely does a constitution specify a criminal or civil penalty for violation of that constitution; rather, in most cases, the penalty for an official or action violating the constitution is invalidation of that law or action. However, there are some statutes that can make the violation of a constitution a criminal or civil offense and can also sometimes serve as the basis for a civil damages lawsuit.

Perhaps the most common source of binding law is a statute passed by a legislature. In the federal government, the legislature that enacts statutes is Congress, while in states, it is the

state legislature. Statutes are mandatory codes that must be followed or a penalty will normally ensue. While the violation of many statutes is a criminal matter, that is not always the case. There are some statutes that are not by their nature criminally based, and the violation of such statutes could involve civil penalties, the invalidation of an act in violation of the statute, or serve as the basis for a civil damages lawsuit. Statutes tend to be more “nuts and bolts” in their language than constitutions.

In most states, local units of government can enact and enforce ordinances, which are similar to statutes enacted by legislatures at the state level. As with statutes, the violation of a local ordinance can constitute a criminal offense or subject the violator to civil penalties.

To further complicate matters, another type of law is an administrative or regulatory agency regulation. An administrative or regulatory agency is usually created by statute and resides within the executive branch of the government involved (for the federal government, that would be the President and the President’s administration, and for state governments, administrative or regulatory agencies are normally under the jurisdiction of the governor). Quite often, the statute that creates an administrative or regulatory agency also gives that agency the ability to adopt formal rules and regulations that have the force of the law. Sometimes, such agencies can enact rules and regulations on their own, while in other situations, the rules and regulations cannot be effective until affirmed by the legislature or the chief executive of the governmental unit involved. Violation of such a regulatory rule or regulation can sometimes involve criminal or civil penalties.

What is the common law in Michigan? The common law is the sum of all published court decisions issued by appellate courts dating back to the creation of Michigan’s judiciary

(i.e., courts) when Michigan became a state in 1837. In Michigan, the common law consists of decisions by the Michigan Supreme Court and the Michigan Court of Appeals (and, occasionally, by federal courts when deciding Michigan law). Generally, such written court opinions can be found online or in official law books containing appellate court decisions for the jurisdiction. Typically, the common law only operates in the absence of statute. That is, there are many areas where statutes have not been enacted for a particular topic such that the “judgment calls” made by appellate courts in that jurisdiction govern. For example, much of the law regarding contracts consists of common law. Or, there may be applicable statutes with “gaps” which must be “filled in” by appellate court decisions. In most situations, a violation of or noncompliance with the common law is a civil matter, but, in a few situations (such as with common law crimes where they still exist), a violation could constitute a criminal offense.

What is the difference between civil and criminal law? The obvious answer is the correct one. Criminal law is penal in nature and its violation normally carries with it criminal penalties (i.e., imprisonment, fines, forfeiture of property, etc.). Civil law is the umbrella term given to all other types of statutes and court cases. Generally, if a lawsuit is civil in nature, it does not involve criminal penalties, but often includes recovery of damages or remedies such as injunctions (i.e., court orders) to prohibit parties from engaging in unlawful or prohibited behavior.

Hopefully, this summary will assist the reader when pondering the “law” related to waterfront properties.