

Lead-based Paint Regulations



New York State Association of REALTORS®, Inc.

**130 Washington Ave.
Albany, N.Y. 12210**



Recent Addition to NYC Lead Paint Laws

Lead Paint Laws and Leasing Property in New York City

REALTORS should be aware that New York City has passed a law relating to lead paint and apartment rentals. A brief explanation of the law is described below.

Which Buildings Are Covered?

Only buildings built before 1960 with 3 or more apartments.

The Landlord Must:

- A. Ask if a child under age 6 resides in your home when you sign or renew a lease or move into the apartment.
- B. Send a notice once a year (like the one you receive for window guards) asking if a child under age 6 resides in the apartment.
- C. If the landlord knows about the child under age 6, the landlord must: (1) Visually inspect an apartment once a year for peeling lead paint. (2) Correct all peeling lead paint and deteriorating surfaces. (3) Use safe work practices. (4) Adjust all painted doors and windows to work smoothly.

The Tenant Must:

- A. Answer all notices sent by the landlord.
- B. Tell the landlord when a child under age 6 resides or moves into an apartment.
- C. Let the landlord into the apartment to inspect and make repairs.
- D. If you see peeling paint: (1) Immediately notify the landlord in writing. (2) Immediately call the New York City Department of Housing Preservation and Development (HPD) to report peeling lead paint. (HPD must inspect the apartment within 10-15 days.) (3) Have children tested for lead poisoning regularly.

If you need repairs, call HPD at 212-824-4328.

If you think the landlord is removing lead paint unsafely, call the Department of Health at 212-676-6355

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Sample Disclosure Format for Target Housing Rentals and Leases			
Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards			
Lead Warning Statement			
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Tenants must also receive a Federally approved pamphlet on lead poisoning prevention.			
Lessor's Disclosure (initial)			
_____ (a) Presence of lead-based paint or lead-based paint hazards (check one below):			
<input type="checkbox"/> Known lead-based paint and/or lead-based paint hazards are present in the housing (explain). _____			
<input type="checkbox"/> Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.			
_____ (b) Records and reports available to the lessor (check one below):			
<input type="checkbox"/> Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below). _____			
<input type="checkbox"/> Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.			
Lessee's Acknowledgment (initial)			
_____ (c) Lessee has received copies of all information listed above.			
_____ (d) Lessee has received the pamphlet <i>Protect Your Family from Lead in Your Home</i> .			
Agent's Acknowledgment (initial)			
_____ (e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.			
Certification of Accuracy			
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.			
_____	_____	_____	_____
Lessor	Date	Lessor	Date
_____	_____	_____	_____
Lessee	Date	Lessee	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

Introduction

This pamphlet is designed to help you as a REALTOR®, or anyone who enters into a contract with a seller or lessor, to do the following:

- To understand lead-based paint hazards in the property you sell or manage.
- To learn the laws and regulations designed to safeguard citizens with regard to lead-based paint hazards.
- To understand your obligations and the seller's or lessor's obligations with regard to those laws and regulations.

Terminology

The following U.S. Environmental Protection Agency and U.S. Department of Housing and Urban Development terminology will be used:

- **Abatement** - Permanent elimination of lead-based paint hazards.
- **Agent** - Any party such as a REALTOR® who enters into a contract with a seller or lessor or representative of the seller or lessor with the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.
- **Lead-based paint** - Paint or surface coating that contains lead equal to or in excess of 1 milligram per square centimeter or 0.5 percent by weight.
- **Lead-based-paint-free housing** - Target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1 milligram per square centimeter or 0.5 percent by weight.
- **Lead-based paint hazard** - Any condition which causes exposure to lead from lead-contaminated dust, soil, or paint.
- **Lessee** - Any person or entity that enters into an agreement to lease, rent, or sublease target housing.
- **Lessor** - Any person or entity that offers target housing for lease, rent, or sublease in formal rental agreements or informal rental agreements (e.g. oral leases).
- **Paint inspection** - Process of determining the presence of lead-based paint on every painted surface in a property. A written report indicating whether or not lead is present is provided. This does not include an assessment of any potential hazards.
- **Purchaser** - Any person or entity that enters into an agreement to purchase.

Sample Disclosure Format for Target Housing Sales Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards Lead Warning Statement			
Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.			
Seller's Disclosure (initial)			
_____	(a)	Presence of lead-based paint and/or lead-based paint hazards (check one below):	
		<input type="checkbox"/> Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).	_____
		<input type="checkbox"/> Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.	
_____	(b)	Records and reports available to the seller (check one below):	
		<input type="checkbox"/> Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).	_____
		<input type="checkbox"/> Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.	
Purchaser's Acknowledgment (initial)			
_____	(c)	Purchaser has received copies of all information listed above.	
_____	(d)	Purchaser has received the pamphlet <i>Protect Your Family from Lead in Your Home</i> .	
_____	(e)	Purchaser has (check one below):	
		<input type="checkbox"/> Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or	
		Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.	
Agent's Acknowledgment (initial)			
_____	(f)	Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.	
Certification of Accuracy			
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.			
_____	Seller	_____	Date
_____	Agent	_____	Date
_____	Purchaser	_____	Date

To purchase multiple copies of the federally mandated lead-based paint pamphlet *Protect Your Family From Lead In Your Home*, call your local board or NYSAR at (518) 463-0300.

For technical information about lead-based paint and lead-based paint hazards, call the National Lead Information Clearinghouse at (800) 424-LEAD or TDD at (800) 526-5456. Information can also be accessed via e-mail at ehc@cais.com or by fax at (202) 659-1192

The U.S. Department of Housing & Urban Development Office of Lead-Based Paint Abatement and Poisoning Prevention
451 7th Street, SW
Washington, D.C. 20410
Phone: (202) 755-1805

U.S. Environmental Protection Agency
Region 2 Office
Building 5
2890 Woodbridge Avenue
Edison, N.J. 08837-3679
Phone: (908) 321-6671

Terminology *continued*

- **Risk assessment** - An on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential housing. This includes gathering information regarding the age and history of the housing, gathering information regarding occupancy by children under the age of six, a visual inspection, limited swipe or other environmental sampling techniques, and other activities as appropriate. A written report detailing the results of the investigation should then be provided.
- **Seller** - Any person or entity that transfers legal title to target housing.
- **Target housing** - Any housing constructed prior to 1978, except housing for the elderly and disabled, unless a child who is less than six years of age resides there or is expected to live there, zero-bedroom housing and housing that has been certified to be free of lead-based paint.

What Are the Major Laws and Regulations?

In 1996, federal regulations required by Section 1018 of Title X were published to manage the risk from deteriorated residential lead-based paint. For owners of more than four residential dwellings, the regulations are effective on Sept. 6, 1996. This means that if you own a combined total of more than four homes or apartments in the United States, you must comply by Sept. 6. For owners of one to four residential dwellings, the regulations are effective on Dec. 6, 1996.



Federal regulations require agents to ensure that sellers and lessors of property constructed before 1978 do the following:

1. Inform sellers and lessors of what they must do to comply.
2. Ensure compliance, if the seller does not comply, by providing any information the seller has disclosed to the prospective purchaser.
3. Provide purchasers and lessees with a federally approved lead hazard information pamphlet.
4. Retain signed copies of the sample disclosure form or equivalent for three years.

Note: If steps one and two are completed, the agent will not be held liable for information known to the seller or lessor, but not disclosed to the agent.

In addition, agents must ensure that sellers provide purchasers with a 10-day opportunity (or mutually agreed upon period of time) to conduct a risk assessment or inspection for the presence of lead-based paint or hazard on the property before the purchaser is obligated under any purchase contracts.

Since 1970, the New York State Department of Health (DOH) has had the authority to test dwellings and require abatement for lead paint based on elevated blood-lead levels or areas of high risk. In 1992, the New York State Legislature passed the Lead Poisoning Prevention Act, which required the screening and testing of all children under the age of six for the presence of lead. This increased the number of dwellings being tested by the Department of Health. In 1994, DOH issued regulations pertaining to the abatement and assessment of lead-based paint. If blood testing shows a significant level of lead (typically 20 mcg/dl or higher), DOH can inspect the dwelling and require abatement by landlords and property owners. In this case, landlords and property owners must pay for the cost of abatement, which might involve encapsulation, enclosure, removal, or replacement.

Why Should You Be Concerned About Lead Paint?



More than 80 percent (approximately 64 million) of the housing units built in the U.S. before 1978 contain lead-based paint. In

1978, lead-based paint containing levels greater than 0.06 percent lead by weight was banned from use in interior residential paints.

Why is lead paint so dangerous? Ingesting lead-based paint or lead dust can cause damage to the brain and nervous system, headaches, behavior and learning problems, and retard growth. Lead is most dangerous for children because their hand-to-mouth activity increases the risk of ingesting lead dust and chips. Problems associated with lead ingestion are also enhanced for children because their brains are not fully developed and lead interferes with their brain cells' ability to connect.

Whom do you call for additional information in your local area?

Local County Health Departments

Albany - (518) 447-4620	Niagara - (716) 439-7444
Allegany - (716) 268-9250	Oneida - (315) 798-5064 or (800) 541-0151 Ext 5064
Broome - (607) 778-3913	Onondaga - (315) 435-3271
Cattaraugus - (716) 373-8050	Orange - (914) 291-2332
Cayuga - (315) 253-1405	Orleans - (716) 589-2762
Chautauqua - (716) 753-4481	Oswego - (315) 349-3557
Chemung - (607) 737-2019	Putnam - (914) 278-6130
Chenango - (607) 337-1673	Rensselaer - (518) 270-2664
Clinton - (518) 565-4870	Rockland - (914) 364-2526
Columbia - (518) 828-3358	Schenectady - (518) 386-2818
Cortland - (607) 753-4481	Schoharie - (518) 295-8382
Dutchess - (914) 486-3422	Seneca - (315) 539-9294
Erie - (716) 885-0800	Suffolk - (516) 853-3077
Genesee - (716) 344-8506	Tioga - (607) 687-8620
Livingston - (716) 243-7280	Tompkins - (607) 274-6688
Madison - (315) 363-1014	Ulster - (914) 338-8447
Monroe - (716) 274-6087	Westchester - (914) 593-5130
Nassau - (516) 571-3678	Wyoming - (716) 786-8894
New York City - (212) 226-5323	

State District Health Offices and Counties Served

Canton D.O. (St. Lawrence)	(315) 386-1040
Geneva D.O. (Ontario, Wayne, Yates)	(315) 789-3030
Glens Falls D.O. (Saratoga, Warren, Washington) ...	(518) 793-3893
Herkimer D.O. (Fulton, Herkimer, Montgomery) ...	(315) 866-6879
Hornell D.O. (Schuyler, Steuben)	(607) 324-8371
Monticello D.O. (Sullivan)	(914) 794-2045
Oneonta D.O. (Delaware, Greene, Otsego)	(607) 432-3911
Saranac Lake D.O. (Essex, Franklin, Hamilton)	(518) 891-1800
Watertown D.O. (Jefferson, Lewis)	(315) 785-2277

NYS Department of Health Center for Environmental Health	(800) 458-1158
National Lead Information Hotline	(800) LEAD-FYI
EPA Safe Drinking Water Hotline (for laboratory info.) ..	(800) 426-4791

Is the property owner required to use a certified or licensed inspector or assessment person?

No, currently New York state and the federal government do not have lead worker certification guidelines in place. However, NYSAR strongly recommends the use of licensed inspectors or certified persons when testing. Utilizing non-licensed or certified workers can exacerbate hazardous lead paint conditions and can expose occupants to harmful amounts of lead paint and dust.

Do occupants have to move?

The occupants of the property requiring abatement may not have to be relocated to temporary housing while abatement is being performed. However, the New York State Department of Health has given local health departments the authority to order relocation if it is found necessary depending on the extent and method of abatement required. No one should be present in the residence during abatement procedures.

Who Performs the Inspection and/or Assessment?

Where can paint samples be sent for testing?

For a complete list of environmental laboratories approved by the New York State Department of Health, please call (518) 485-5570, or call the National Lead Information Clearinghouse at 800-424-LEAD.

Where can certified lead inspectors and risk assessors be found?

The neighboring states of New Jersey, Vermont, Massachusetts, Ohio and Connecticut have enacted licensing and certification requirements. Check the yellow pages under “Environmental Products and Services,” and ask for a state-certified lead paint abatement contractor. Also, check references and ask for the all results in writing

What is the cost of abatement?

The cost of abatement varies greatly depending on the condition of the paint, the type of work that needs to be done, and the region. Typically, costs can vary from a few hundred dollars to more than \$20,000.

What Are Some of the Sources of Lead Paint Hazards?



There are numerous sources of lead hazards:

- Worn painted surfaces that are peeling, chipping, chalking, or cracking.
- Painted surfaces that are dry scraped or sanded during renovations.
- Painted surfaces of window sills, doors or stairs, porches, or fences that a child might chew or rub against. Dust from these areas are a major source of ingested lead in children as they crawl and play on floors, then may place their hands into their mouths.
- Exterior house paint that has flaked off or leached into the soil around a home, contaminating the soil. Children may play in that soil, or people can bring the soil into the house on their shoes.
- Any work operation that generates lead dust and fumes.
- Dust produced from the abrasion of lead-painted surfaces such as opening and closing doors.

How Does Lead Enter a Body?

People can get lead in their bodies if they do the following:

- Put their hands or other objects covered with lead-contaminated dust in their mouths.
- Eat paint chips or soil that contains lead.
- Breathe in lead-contaminated dust.

What Housing Situations Are Exempt from the EPA HUD Disclosure Regulations?



Any agent, seller, or buyer involved with the sale, rental, or renovation of property or “target housing” built prior to 1978 needs to be concerned about lead paint. The following exceptions apply:

- Zero-bedroom dwellings such as lofts, efficiencies, studios, dormitories, military barracks, and

rental of individual rooms in residential dwellings where the sleeping area is not separated from the living area.

- Dwelling units leased for 100 days or less, such as vacation homes or short rentals with no possibility of renewal. If renewed, then the exemption is void.
- Designated housing for the elderly and the handicapped unless children under the age of six are residing there or are expected to reside there.
- Rental housing that has been inspected by a certified inspector and is found to be free of lead-based paint (does not apply to sales).
- Foreclosure sales (initial sale only).

What Must the Agent Do When Dealing with Target Housing?



Phase 1. Listing the Property

The listing agent must determine the age of the property by asking the seller or lessor and by checking the property records. If the property is not exempt or was built before 1978, the agent should briefly describe the federal disclosure regulations with regard to lead-based paint hazards and then ask the seller or the lessor to do the following:

- Disclose any known lead-based paint hazards to serious prospects and tenants, and make reports and records available. If the seller or lessor does not make the information available, agents are liable to disclose any information disclosed to them by the seller or lessor.
- Provide any records, test data, or other information regarding lead-based paint or hazards with regard to the target housing. This information can include test results from other units in the property and common areas in multi-family properties. It is not necessary to provide medical information on elevated blood-lead levels since these elevated levels could come from other sources and are strictly confidential.
- If no test results are provided, ask the owners for as much about the test result as they remember, and the name of the company that conducted the testing.

Evaluation of Lead Testing Results

The New York State Department of Health has adopted the same standards set by the United States Environmental Protection Agency. The guidelines set three action levels based on the results of the tests:

1. No lead found. If the test concludes that no lead has been found on the premises, no action is required on the part of the owner.
2. Results inconclusive. If the results of the lead test are inconclusive, an inspector may take samples of the paint chips for conclusive analysis by a laboratory approved by the New York State Department of Health.
3. Significant lead found. If the results of the test indicate that a significant level of lead is present, the local county department of health will issue a “notice and demand” to determine the course of action if a child with an elevated blood-lead level is residing there. Possible choices of action include:

- **Encapsulation.** Requires making the lead paint inaccessible by covering or sealing the surfaces.
- **Enclosure.** Requires covering and sealing the lead paint surface with durable rigid materials affixed to the surface to ensure that material containing lead is not exposed and will not allow dust to escape.
- **Removal.** Requires the dislocation, stripping or scraping of paint or plaster or of any other coating material from the surface. Some removal methods such as dry scraping may be restricted. Check with your local health department before beginning any projects.
- **Replacement.** Requires the removal of components such as doors, windows, and trim that contain lead paint and installation of new or delead components.

What Are the Responsibilities of the Property Owner?

If the local health department finds significant lead, the property owner may be ordered to treat the lead paint that is in poor repair or to remove the hazard conducive to lead poisoning. Intact lead paint on walls, ceilings, and other non-accessible surfaces may not need to be disturbed.

Regulations

The New York State Department of Health has had the authority to test dwellings and require abatement for lead paint since 1970. In 1992, the New York State Legislature passed the Lead Poisoning Prevention Act, which required the screening and testing of all children under the age of six for the presence of lead in their blood.

In 1994, the State Department of Health issued regulations pertaining to the abatement and assessment of lead-based paint. If one or more of the following situations occur, the Department of Health will require an environmental investigation and after assessing the results, may demand subsequent action. These situations are the identification of:

1. A child who is tested for the presence of lead is found to have an elevated blood lead level (EBLL) of 20 mcg/dl. or more.
2. Areas designated as high risk.
3. A child with an elevated blood lead level is known to frequent a particular building, home or day care center.

Methods of Testing

Inspectors use two methods for testing paint for the presence of lead. These tests will not include an evaluation of the severity of an actual or potential hazard - that's a risk assessor's job. These are:

1. **X-Ray Fluorescence Analyzer (XRF)** - X-rays are used to analyze layers of paint to determine lead content. Portable XRF analyzers take seconds to measure lead content and provide instant results. False positives and negatives vary greatly with the machine brand and the age of the machine. Because the margin of error may be plus or minus 0.3, it is recommended that XRF readings that fall between 0.7 and 1.3 are verified by additional paint chip samples that are analyzed by a certified laboratory.

2. **Laboratory Analysis of Paint Chips** - To validate XRF results, inspectors will take paint chips from numerous areas of a building and analyze the chips in a DOH-approved laboratory. Test results are usually obtained within a few days.

Phase 2. Showing the Property

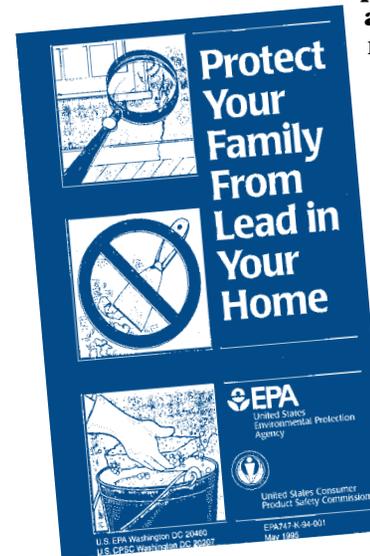
The listing agent should advise potential agents that the building is target housing.

Disclosure must be made before a purchaser or lessee is obligated under a contract to purchase or lease target housing.

Phase 3. Negotiating the Contract

Agents have the responsibility to make sure that sellers and lessors provide the potential purchasers or lessees with the following, or provide the following themselves, **before** the seller accepts the purchaser's written offer to purchase or the lessor accepts the lessee's signature on the lease:

1. **Give notice of the presence of all known lead-based paint and lead-based paint hazards in the housing.** By law, sellers must make full disclosure before the purchaser or lessee is obligated under any contract to purchase or lease the housing. However, agents should recognize that as a rule, disclosure works best when provided early.



2. **Provide any available reports on the housing with regard to lead hazards, including reports of inspections conducted by other prospective purchasers.** If any prior testing has been done, the seller or lessor must provide the purchaser or lessee with copies of test results. If testing was done for other units or in other common areas in the building or complex and the testing showed lead-based paint or lead-based paint

hazards, the results must be provided to the purchaser or lessee.

3. **Provide purchasers or lessees with a lead hazard information pamphlet developed or approved by EPA.** In New York State provide a copy of the HUD/EPA pamphlet *Protect Your Family From Lead in Your Home*. Copies can be obtained from your local REALTOR® board, NYSAR or the EPA.

4. **Complete the HUD/EPA recommended sample disclosure form or equivalent for target housing sales or target housing rentals.** The lead disclosure must be written in the same language as the contract. A sample of the HUD/EPA recommended disclosure form is included at the end of this publication. Obtain the necessary signatures from the seller, the purchaser, and the agent.

NYSAR recommends using the HUD/EPA disclosure form. If sellers or their agents don't wish to use the HUD/EPA disclosure form, written disclosure should be made and include all of the following required elements:

- a. The Lead Warning Statement provided at the top of the HUD/EPA disclosure form exactly as it appears
- b. An indication that disclosure was made to the prospective buyer regarding the presence of any known lead-based paint or lead-based paint hazard in the target housing, or a statement that there is no knowledge of the presence of lead-based paint and/or lead-based paint hazards. Such a statement must also list all records and reports pertaining to lead-based paint and/or lead-based paint hazards available to the seller about the target housing, and note that these records and reports have been provided to the purchaser. If no such statements are available, the statement must indicate that fact.
- c. An affirmation that the purchaser has received the information listed above and the lead-based paint pamphlet. A written statement that the agent has informed the seller of the seller's obligations under the federal disclosure regulations. The seller(s), agent(s), and purchaser(s) should sign and date this statement certifying the accuracy of their statements. The statement should be an attachment to the contract.
- e. An indication that the purchaser was allowed a 10-day or mutually agreed upon period to conduct an assessment or inspection for the presence of lead-based paint, prior to becoming obligated under contract. With regard to this testing, the following was done:
 - The purchaser was allowed to waive the right to testing.
 - The purchaser was allowed to cancel the contract or another option if test results show an unacceptable amount of lead in the home.



Does the purchaser have to give the test results to the seller?

No, the purchaser paid for the test. The seller may not want a copy of the test results because he or she would then be required to provide future purchasers those test results. If the seller knows the results, he or she is still required to disclose those results to future potential purchasers.

Will I be held liable if the sellers or lessors don't disclose information about lead-based paint to buyers or lessees?

No, an agent will not be held liable in this case as long as the agent has done the following: informed the sellers or lessor of their obligations to disclose and has personally made the disclosure, if necessary.

What do I do if the seller informs me that there is no lead-based paint in the rental housing?

In order to be exempt from the federal disclosure rules, sellers must verify in writing that there is no lead on premises.

Do renters have the same opportunity to test for lead?

No, under the law, the 10-day or mutually agreed upon inspection period is limited to sales transactions, but nothing prevents the renter from negotiating with the lessor to allow time for an inspection before rental.

Do renovations change the applicable date of construction under the law?

No, the date that the original structure was built remains the applicable date under the law.

Federal Penalties for Non-Compliance

Federal penalties are severe for non-compliance, but the regulations give the federal agencies the flexibility to issue warnings without penalties. The following are details about liability and penalties:

1. Civil penalties can range up to \$10,000 for each violation.
2. If someone knowingly and willfully violates the law and habitually fails to comply, the penalties can be \$10,000 for each violation plus imprisonment for up to one year.
3. Federal penalties are in addition to civil claims under state law for failure to disclose a hazardous material condition.
4. The seller, lessor, or agent may be liable for three times the amount of damages incurred by the purchaser or lessee. These damages may include court costs, relevant medical costs related to treating lead-based paint poisoning, and costs of eliminating lead-based paint hazards.
5. Agents cannot be held liable for their failure to provide information withheld by the seller or lessor, if agents can prove they complied with the law.

Questions You Might Ask



If the seller does not want to have the property tested, can the seller refuse to sell?

The seller has no legal obligation to sell until the contract is signed, so he or she could refuse to sell. However, refusal to allow an inspection is a violation of the federal disclosure rule.

What if I receive an offer on my listing, but I don't think that the selling agent disclosed information to the potential purchaser?

You must advise the seller not to accept the offer until the provisions of the law are followed. You must ensure disclosure even if you have to do it personally.

How can I avoid the situation of the purchaser or the seller wanting to back out of the deal because of positive test results?

To avoid problems such as this, include contingency language in the contract that gives the seller the opportunity to eliminate any lead-based paint hazards if they are found during the testing.

Dealing with Target Housing *continued*

5. Provide a 10-day or mutually agreed upon testing period (not required for leases). Sellers, by law, must allow buyers a 10-day or mutually agreed upon period to conduct a lead-based paint inspection or risk assessment before the purchaser becomes obligated under the contract for the sale. Purchasers have the option to decline inspection; all waivers of property testing should be received in writing. Sellers cannot accept the potential buyer's offer until the disclosure activities are completed. Sellers are not required to test their property for lead-based paint.

Prospective buyers pay for the testing, and they must have the opportunity to review the testing information and consider whether to amend the offer before being held to any terms of the contract.

This regulation gives the two parties the flexibility to negotiate key terms of the evaluation including the time period in which the evaluation is to be carried out.

6. Include language in the sales contract regarding lead-based paint similar to that used for other contingencies.

The use of contingency language is not required in the regulations. Home inspection contingency language may be expanded to include lead-based paint or the following EPA/HUD example of the contingency language may be used:

Sample Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar-day after ratification [Insert date 10 days after contract ratification or a date mutually agreed upon.] (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet Protect Your Family From Lead in Your Home for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within ___ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counteroffer, the Purchaser shall have ___ days to respond to the counteroffer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

Phase 4. After the Sale or Lease



The seller, agent, and lessor are required to retain a copy of the completed disclosure and acknowledgment contract attachment or completed lease with attachments for three years from the completion date of the sale or commencement of the leasing period.

Property owners are not required to retain all records and reports of lead-based paint and lead-based paint hazards, but they are encouraged to do so to help purchasers and occupants to take exposure prevention precautions during later ownership or occupancy. If the property owner has not retained the original reports, he or she will still be required to disclose the presence of known lead-based paint and/or lead-based paint hazards.

Checklist for the Agent

- Did I make the seller or lessor aware of their obligation to disclose any known lead-based paint hazards as required by federal law?
- Did I inform the seller or lessor that they must disclose the proper information to me, buyers, and tenants? Note: The agent must personally ensure disclosure if the seller or lessor fails to meet their obligation.
- Did I inform the seller that they must give the purchaser the opportunity to conduct an inspection?
- Did the lease or sales contract contain the appropriate notification and disclosure language and proper signatures?
- Is there contingency language pertaining to the results of the lead-based paint test in the contract?
- Have I retained the signed records that I will need to keep for three years?

Checklist for the Seller

- Did I disclose any known information, and provide available reports and records?
- Did I complete the sample disclosure form or equivalent, and attach it to the contract?
- Did I provide a copy of the EPA pamphlet *Protect Your Family From Lead In Your Home*?
- Did I provide a 10-day period or mutually agreed upon period to conduct an inspection or risk assessment?
- Have I retained a copy of the signed disclosure form that I will need to keep for three years?

Checklist for the Lessor

- Did I disclose any known information, and provide available reports and records to the lessee?
- Did I complete the sample disclosure form or equivalent, and attach it to the lease?
- For current leases, did I disclose on renewal? Note: Disclosure must be made only once per tenant unless new information was found since the last disclosure. Then any new information must be disclosed
- Did I provide a copy of the EPA pamphlet *Protect Your Family From Lead In Your Home*?
- Have I retained a copy of the signed disclosure form that I will need to keep for three years?