



The Long Island Board of REALTORS® present



www.lirealtor.com

UNDERSTANDING LEAD-BASED PAINT REGULATIONS

KEY POINTS

1. The law applies to any sale or lease transaction involving residential units built prior to January 1, 1978.
2. Seller/landlord must disclose all known lead paint conditions and provide a purchaser/tenant with any lead paint evaluation reports available to the seller/landlord.
3. The real estate broker/agent is required to inform the seller/landlord of their obligations and to insure that the seller/landlord complies with the requirements of the regulations.
4. Written disclosures must be made by the owner as well as the agent either by a separate disclosure document or in the contract of sale or lease.
5. The purchaser must receive the pamphlet published by the EPA/ HUD entitled, "Protect Your Family From Lead In Your Home."
6. The purchaser must receive a ten-day opportunity to conduct a lead paint risk assessment or inspection for the presence of lead paint.
7. The rule requires the broker to keep a copy of the aforesaid disclosure form for a period of three years.
8. A person may be penalized \$10,000 for each violation of the regulations.
9. Upon conviction, a person can be subject to a fine of \$25,000 for each day of violation.
10. A violator is subject to a civil lawsuit for the treble damages including costs, expert witness fees, and reasonable attorney's fees.

By Howard W. Goldson
Goldson & Radin, P.C.

Who Must Comply

The law primarily places the obligation on the seller/landlord. The law requires disclosure of the presence of lead-based paint or lead-based paint hazards (hereinafter referred to "Lead Paint") in all residential sales and rental transactions. The law is applicable to all residential units built prior to January 1, 1978.¹ The seller/landlord is required to disclose any information which the seller/landlord actually has concerning the presence of lead paint or lead paint hazards on the property. The standard used to determine whether the seller/landlord must disclose an actual knowledge standard. In addition to making a disclosure of the seller's/landlord's knowledge, the seller/landlord must also provide a purchaser/tenant with any lead paint evaluation reports available to the seller/landlord. Under the regulations, a report is "available to the seller/lessor" if the report is in the possession of the seller/landlord or can be

reasonably obtained by the seller/landlord.

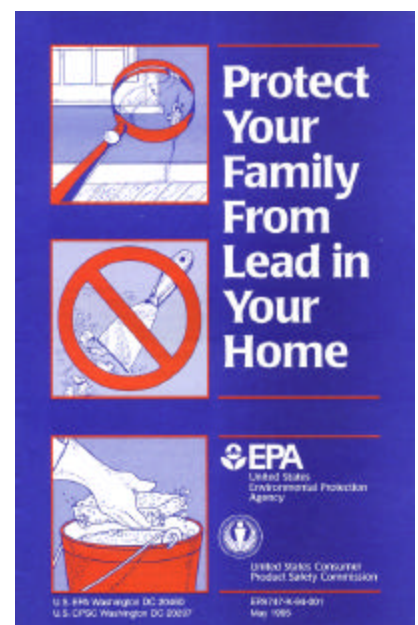
The real estate broker/agent is required to inform the seller/landlord of their obligations and to insure that the seller/landlord complies with the requirements of the regulations. This includes the fact that the seller/landlord disclosed the proper information to the buyer/tenant, that the buyer/tenant has an opportunity to conduct a lead paint inspection and that the contract of sale or lease contains appropriate notification and disclosure language or in the alternative that the proper disclosure of information on lead paint containing the appropriate notification be signed by the seller/landlord and the purchaser/tenant (*See Disclosure Form.*)

A broker or agent is defined as a party who is paid by the seller directly or through a cooperative brokerage agreement with the listing agent. This would include a buyer's broker paid in whole or in part by the seller/landlord or their agent, the listing broker. Only a buyer's broker, paid entirely by the purchaser is exempt

from compliance with these regulations.

The Lead Paint Disclosure Form

As indicated above, written disclosures must be made by the owner as well as the agent either by a separate disclosure document or in the contract of sale or lease. In most instances, it will be convenient to use a separate disclosure form. A copy of the form recommended by EPA/ HUD is set forth in this special section on the Lead-Based Paint Regulations. You should refer to the form while you are reading this section of the article. You will note that at the top there is a lead warning ⇨





Understanding Lead-based Paint Regulations

Continued from page 1

statement. The lead warning statement for a sale is different than the one for a rental. Both of these statements, however, are mandated by the regulations and must be contained either in the contract of sale/lease or in the disclosure document.

The seller/landlord is required to state all known lead paint present in the housing or to specifically state that they have no knowledge of lead paint in the housing. The seller must also certify that they have provided the purchaser with all available records and reports pertaining to lead paint or that no such reports or records are in the possession of the seller or can be reasonably obtained by the seller.

The purchaser must acknowledge that they have received copies of all information listed on the disclosure form by the seller, that they have received the pamphlet published by EPA/HUD entitled, "Protect Your Family From Lead in Your Home;" (As a practical matter such a pamphlet will most likely be available through the broker and must be delivered to the purchaser/tenant in every case prior to the time that the purchaser/tenant becomes obligated to purchase or lease by signing a binder,

contract of sale, a lease, or otherwise agreeing to the terms of the lease which does not have to be in writing under the statute of frauds), and also acknowledge that they received a ten day

opportunity to conduct a lead paint risk assessment or inspection for the presence of lead paint. The ten-day opportunity for inspection may be shortened upon mutual consent of both

purchaser/tenant and the seller/landlord. Purchaser also has an opportunity to waive the risk assessment on the form (See article entitled, "What the Broker Has to Do" for discussion of this waiver.² The broker must acknowledge that they have informed the →

Sample Disclosure Format for Target Housing Sales Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards	
<p>Lead Warning Statement</p> <p><i>Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead form 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.</i></p>	
<p>Seller Disclosure (initial)</p> <p>___ (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):</p> <p><input type="checkbox"/> Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):</p> <p><input type="checkbox"/> Seller has no knowledge of lead-based paint and/or lead-based paint hazards in housing</p> <p>___ (b) Records and reports available to the seller (check one below):</p> <p>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).</p> <p>_____</p> <p><input type="checkbox"/> Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.</p>	
<p>Purchaser's Acknowledgment (initial)</p> <p>___ (c) Purchaser has received copies of all information listed above.</p> <p>___ (d) Purchaser has received the pamphlet, "Protect Your Family from Lead in Your Home."</p> <p>___ (e) Purchaser has (check one below)</p> <p><input type="checkbox"/> Received a 10 day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or</p> <p><input type="checkbox"/> Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.</p>	
<p>Agents Acknowledgement (initial)</p> <p>___ (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4582(d) and is aware of his/her responsibility to ensure compliance.</p>	
<p>Certification of Accuracy</p> <p>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.</p> <p>Seller _____ Date _____ Seller _____ Date _____</p> <p>Agent _____ Date _____ Agent _____ Date _____</p> <p>Purchaser _____ Date _____ Purchaser _____ Date _____</p>	



Understanding Lead Continued from page 2

seller/landlord or their obligations under the law and that the broker is aware of their responsibility to assure compliance by the seller/landlord.

Properties Not Affected By These Regulations

All housing built prior to 1978 is covered by these regulations. In the event of the sale/rental of a residence constructed after January 1, 1978, there is no need to comply with the regulations.

There are also exemptions for efficiency units, studio apartments, dormitory housing, rental of individual rooms, housing for the elderly or disabled unless a child under the age of six years resides in the housing or is expected to reside in the housing and rentals for a

period under 100 days. However, a tenancy at will, or a month-to-month tenant is not a rental for a period of 100 days. In order to qualify for this exemption, there must be a specific term which expires prior to the end of that time period.

Document Retention Requirements

The rule requires the broker to keep a copy of the aforesaid disclosure form for a period of three years and also to keep a copy of the contract of

sale or lease agreement. There is no requirement for parties to retain records and reports of lead paint. Nevertheless, HUD encourages seller/landlords to do so.

Penalties

The penalties for violations of these rules are extremely severe. A person may be penalized \$10,000 for each violation of the regulations. Thus, for example, if a broker failed to include a contingency clause in their binder and failed to ⇒

Sample 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 EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined dead-line 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 opinion, with ___ 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 counter-offer, the Purchaser shall have ___ days to respond to the counter-offer 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.

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 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 and/or lead-based paint hazards (check one below):

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

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):

Lessor 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).

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) Purchaser has received the pamphlet, "Protect Your Family from Lead in Your Home."

Agents Acknowledgement (initial)

___ (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4582(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 _____ Seller _____ Date _____
Agent _____ Date _____ Agent _____ Date _____
Purchaser _____ Date _____ Purchaser _____ Date _____

Understanding Lead

Continued from page 3

obtain a waiver of the right to inspection, and if they took 10 such binders, the outside risk for civil penalties for the broker would be \$100,000. Obviously, if they took 100 such binders, the figure goes up to \$1,000,000. In addition, there are criminal penalties applicable to persons who knowingly and willfully violate the regulation. Upon conviction, a person can be subject to a fine of \$25,000 for each day of violation, or imprisonment for not more than one year or both. Finally, a violator shall be liable in a civil lawsuit for treble damages including costs, expert witness fees, and reasonable attorney's fees in any civil action in which the plaintiff claims damages to either abate a lead paint condition for injury to a child from lead poisoning. The latter enforcement device is perhaps the most serious of all. The availability of attorney fees to a successful plaintiff will certainly invite private lawsuits for lead paint damage.❖

1. *There are certain exclusions which will be discussed later in this article.*

2. *The disclosure for the landlord/ tenant is essentially the same but without the requirement of the ten-day inspection.*



*By Howard W. Goldson
LIBOR/MLS Counsel*

What The Broker Has To Do

If you are the Listing Broker-

- Ascertain whether or not the home was built prior to 1978. If so, you must comply with all of the following. If not, you do not have to comply with any of the following.
- At the time that you take the listing, advise the owner that they must fully set forth to all purchasers any information that they have concerning lead-based paint or lead-based paint hazards (hereinafter "lead paint") with respect to their home in appropriate disclosure form.
- At the time of listing, apprise the owner of the consequences of their failure to comply with the regulations and your responsibility to assure that they comply.
- Ask the owner whether or not that they have any written reports indicating the presence of lead-based paint or a lead-based paint hazard in their property, and if so, obtain copies of said report.
- Have the Seller complete the Seller's portion of the lead paint disclosure form prior to any binder, contract, rental agreement, or lease signed by the Purchaser. If there is to be no written lease, the Landlord must complete this disclosure before any oral offers to rent are transmitted to the landlord.
- Complete and sign the agent's portion of the disclosure statement.
- Obtain a copy of any engineer's or other inspection report actually received by the Seller, or the seller's agent or attorney, and if said report contains any mention of lead-based paint hazard, supply a copy of said information to any Purchaser of the property prior to their becoming obligated to purchase the property.
- Obtain a copy of any contract actually signed by the Purchaser/Tenant and the Seller/Landlord.
- Fax or deliver a copy of all documents pertinent to lead paint to the selling broker at the time that an offer is received on the property.
- If your office is the selling broker as well as the listing broker, follow the instructions to selling brokers.
- **Maintain all of the above records for a period of three years.**

If you are the Selling Broker-

- Provide the Purchaser with a copy of the EPA pamphlet, "**Protect Your Family from Lead in Your Home**" before they make an offer on a house built prior to January 1, 1978. and;
- Make sure the Purchaser inspects the property for lead paint prior to making a written offer to purchase or rent the property or provide a 10 day contingency in the offer which allows the purchaser to make an inspection and cancel the contract after such inspection if the same shows the presence of lead paint ¹.
- Obtain for the Purchaser from the listing broker a copy of the listing broker's owner's certification and any documentation which the owner has concerning lead paint.
- Deliver all information concerning lead paint to the Purchaser.
- Have the Purchaser complete the Purchaser's portion of the disclosure statement.
- Complete the agent's portion of the lead paint disclosure statement.
- Obtain a copy of the contract of sale.
- Maintain all of the above for at least three years.

1. The ten-day period may be shortened by mutual agreement between the buyer and the seller or waived by the purchaser. It is strongly recommended to the broker that they do not allow a purchaser to waive their right to the inspection without making written disclosure to the purchaser that (1) lead paint is a serious hazard and can cause serious injury to children under six years old who reside in the premises; (2) even if no such children are residing in the premises, purchaser may have to take action to abate existing lead paint conditions when they sell the property.

LEAD-BASED PAINT Q & A

By Laurie J. Bloom

Q. Does a Seller have to check their house for lead before selling it?

A. No, but they do have to give buyers a 10-day opportunity to have a test done if desired.

Q. Does the owner have to correct any lead hazards that are found?

A. No. Nothing in the law requires an owner to remove lead paint or correct hazards. The law also does not prevent two parties from negotiating hazard reduction as a part of the deal. This will be handled in the same way as any other housing defect.

Q. Who should perform the testing?

A. According to David Harvey, vice president of technical development for Trade Wind Environmental, "Although currently there is no licensing for inspectors, there is an EPA approved course for lead inspectors." Harvey stated that this course is the most "state-of-the-art course offered in the

field of lead inspection at this time." He added that, in addition to asking whether or not your inspector has attended this course, it is also recommended that you seek the help of an inspector who is a member of the National Association of Lead Inspectors. Harvey suggested that those seeking lead testing should ask if the laboratory that is testing the samples is approved by the National Lead Laboratory Program (NLLAP). There are two accrediting bodies that are accepted by the NLLAP, they are: the American Association for Laboratory Accreditation (A₂LA).

Q. How can I find out more information?

A. For information about how you can protect children from lead poisoning, call:

The National Lead Information Center:
1-800-LEAD-FYI

For other information about lead hazards, call:
1-800424-LEAD;

For the hearing impaired

TDD: 1-800-526-5456

EPA's Safe Drinking Water Hotline: 1-800-426-4791

To request information on lead in consumer products, or to report an unsafe product, call the Consumer Product Safety Commission:
1-800-638-2772

For the hearing impaired call TDD: 1-800-638-8270
For more information from State Health and Environmental Agencies, call: (800) 458-1158

Your Regional EPA Office can provide regulations and lead protection programs:

Region 2: (New Jersey, New York, Puerto Rico, Virgin Islands)

Building 5
2890 Woodbridge Ave.
Edison, NJ 08837-3679
(908) 321-6671

CPSC Regional Offices:
Eastern Regional Center
6 World Trade Center
Vessey Street, Room 350
New York, NY 10048 (212) 466-1612

Q. What is the agent's responsibility if the seller or landlord fails to

comply with law?

A. Agents must comply with the law if the seller or landlord fail to do so. However, the agent is not responsible if an owner conceals information or fails to disclose this information.

Q. Do buyers have to get a lead test?

A. No. This law only gives them the right to have one if they want. If they get a test, they must pay for it (or negotiate with the seller on who will pay for it).

Q. Can the 10-day inspection period be waived?

A. Yes. The buyer and seller can choose any time period they want, as long as it is by mutual consent or the buyer may waive the 10-day opportunity altogether.

Q. If I am renting, do I also have the right to test for lead?

A. No. The 10-day inspection period is limited to sales transactions, but nothing in the law prevents the renter from negotiating an inspection or risk assessment with the landlord or lessor before rental. ❖

What You Can Do Now to Protect Your Family from Lead Poisoning

If you suspect that your house has lead hazards, you can take some immediate steps to reduce your family's risk.

- ✓ If you rent, notify your landlord of peeling or chipping paint.
- ✓ Clean up paint chips immediately.
- ✓ Clean floors, window frames, window-sills, and other surfaces weekly. Use a mop or sponge with warm water and a general all-purpose cleaner or a cleaner made specifically for lead. Remember: never mix ammonia and bleach together since they can form a dangerous gas.
- ✓ Thoroughly rinse sponges and mop heads after cleaning dirty or dusty areas.
- ✓ Wash children's hands often, especially before they eat and before nap time and bed time.
- ✓ Keep play areas clean. Wash bottles, pacifiers, toys, and stuffed animals regularly.
- ✓ Keep children from chewing window-sills or other painted surfaces.
- ✓ Clean or remove shoes before entering your home to avoid tracking in lead from soil.
- ✓ Make sure children eat nutritious, low-fat meals high in iron and calcium, such as spinach and low-fat dairy products. Children with good diets absorb less lead.

(Reprinted from the EPA Pamphlet)