

**Disclosure Requirements Concerning
Lead-Based Paint in Housing:
Questions and Answers**

By Legislative Affairs

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Disclosure Requirements Concerning Lead-Based Paint in Housing: Questions and Answers

On March 6, 1996, the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) issued final regulations on Title X of P.L. 102-553, the Residential Lead-Based Paint Hazard Reduction Act. These regulations, which took effect in 1996, deal specifically with disclosure of the presence of lead-based paint and lead-based paint hazards in properties offered for sale or for lease that were built before 1978, the year lead-based paint was banned for use in most homes and buildings.

Basic Provisions of the Rule

Who is affected by the regulations?

The regulations apply to most residential real estate that was constructed before 1978, when the Consumer Product Safety Commission banned the use of lead-based paint in housing.

However, *the regulations do not apply to the following types of housing:*

- € Properties sold at foreclosure.
- € Rental housing that has been inspected by a certified inspector and found to be free of lead-based paint.
- € Properties that are leased for less than 100 days with no renewals, such as summer vacation or short-term rentals.
- € Renewals of existing leases where disclosure has already taken place and no subsequent testing or information has become available (i.e. for renewal of annual leases property managers would only have to disclose when the lease is originally signed, not every year).
- € "Zero-bedroom dwellings," such as dormitories, lofts, efficiencies, and studios.
- € Housing for the elderly and the handicapped unless children reside or are expected to reside there.

What actions are required of property managers under the regulations?

- € The landlord must provide the lessee with an EPA-approved lead hazard information pamphlet, entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use in that state by the EPA.
- € The landlord must disclose the presence of any *known* lead-based paint or lead-based paint hazards in the housing being sold or leased. Any additional available information concerning the known lead-based paint or lead-based paint hazard such as its location, the basis of the determination that the hazard exists, and the condition of the painted surfaces. *The regulations apply only to previously known conditions and do not require landlords to test their property for the presence of lead.*
- € The landlord must provide the lessee with any records or reports available to them pertaining to lead-based paint or lead-based paint hazards in the housing being leased. This requirement includes records and reports regarding other units in multifamily housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the housing as a whole.
- € If the above information is provided to the lessee after they have made an offer to lease the housing, they must be given an opportunity to amend their offer before it is accepted by the landlord.
- € The landlord must include warning language in the lease that reads as follows:
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust

can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

The lease must also contain a statement disclosing the presence and details of known lead-based paint and/or lead-based paint hazards in the housing being leased or indicating no knowledge of the presence of lead-based paint or lead-based paint hazards.

- € When an agent leases a unit on behalf of the lessor, the lease must also contain a statement that the agent has informed the lessor of his or her obligations under the statute and that the agent is aware of his or her duties to ensure compliance with the regulations. These signed acknowledgements must be retained for three years as proof of compliance.

Must property managers provide the EPA pamphlet to existing tenants?

No, but when tenants renew their leases, the pamphlet and any available reports must be given to them. At renewal they must receive the same information that is required to be given to new tenants.

What if the renters don't speak English?

If a renter signed a lease agreement in a language other than English, the rule requires that the disclosure language be provided in the alternate language. The EPA pamphlet *Protect Your Family from Lead in Your Home* is printed in English, Spanish, and Vietnamese.

Where can I obtain the EPA pamphlet?

Single copies of the information pamphlet, *Protect Your Family from Lead in Your Home* are available from the National Lead Information Clearinghouse (NLIC) by calling (800)424-LEAD. Bulk copies are available from the Government Printing Office at the price of \$26.00 for 50 copies. Alternatively, the pamphlet may be downloaded from Internet at the following address: <http://www.epa.gov/opptintr/lead/leadprot.htm>.

What are the penalties for noncompliance?

Penalties for noncompliance with the regulations vary in severity, but may include:

- € Warning without penalties (to allow people to come into compliance).
- € \$10,000 per violation for each civil penalty.
- € \$10,000 per violation and up to one year imprisonment for criminal penalties by repeat offenders or intentional violators.

These penalties are in addition to any traditional claims under state law for failure to disclose a material hazardous condition. The seller, lessor or agent may be liable for triple the damages for any injuries sustained by the purchaser or lessee.

How will the federal regulations affect the need to comply with lead-based paint disclosure testing or abatement rules imposed under state or local law?

While the EPA and HUD cannot delegate the enforcement and administration of Title X to the states, they have tried to avoid duplication and to allow for the incorporation of the federal requirements into existing state laws. If state law already requires use of a disclosure pamphlet that addresses lead paint, the state may apply to EPA for approval to have that document used in lieu of the federal pamphlet. Compliance with these federal requirements does not, however, satisfy or otherwise eliminate any obligations of sellers, lessors or agents to comply with any lead-based paint disclosure, testing or remediation requirements under state or local law.

How much lead may be found in paint for rental housing to qualify as "lead-based paint free housing?"

Pre-1978 housing that has been found to be free of paint or other surface coatings that are in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. The only way to tell whether the

paint meets these requirements is to have it tested by a state or federally-certified licensed lead testing firm.

How does the disclosure rule apply to common areas?

The rule requires that sellers and lessors disclose available lead information about common areas so that families can be informed about preventive actions. Common areas means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Does a renter have the same opportunity to test for lead as a purchaser?

Under the law, the 10-day 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.

When should the disclosure occur and the pamphlet be distributed?

In leasing transactions, the parties are free to negotiate when the disclosure process occurs; however, lessors must provide the information and complete the disclosure portions of the lease (or attachment) before the lessee becomes obligated under a contract to lease the housing. Requiring the disclosure information to be included in, or as an attachment to, the lease ensures that disclosure occurs during the lease negotiations.

HUD/EPA Interpretive Guidance

Subsequent to issuing the final rule, the EPA and HUD have published three “Interpretive Guidance” documents to supplement information contained in the final rule and to answer commonly asked questions from the real estate industry. IREM legislative division staff has excerpted these documents below to answer questions that may arise regarding the Lead-Based Paint Disclosure Rule.

Applicability of the Rule:

Is a pre-1978 residential property subject to the rule if the property has been completely rehabilitated, such that all pre-1978 painted components have been removed or replaced after 1977?

EPA and HUD will consider amending the disclosure rule to exempt residential properties in which all interior and exterior architectural components, such as doors, windows, walls and all other painted surfaces (including any outbuildings, fences, signs, etc) that were painted prior to December 31, 1977 have been removed or replaced after December 31, 1977.

Does the purchase of a rental unit require the new owner (buyer), who has received disclosure, to disclose that information to the current renter?

In this situation, disclosure is required only if there is a new lease or when renewal of the lease takes place. If there is a significant change in the lease, i.e., a new owner decides to change the name on the lease or the amount of rent is changed, this constitutes renewal, and disclosure of any information not previously disclosed should take place at that time.

Does the disclosure requirement extend to garages, tool sheds, other outbuildings, signs, fences, and mechanical equipment on the property?

Yes, if these items are affixed to the residential portion of the property. The Lead Warning Statement required by the statute states that the purchaser is notified that the residential real property may present exposure to lead. Thus, disclosure of known lead-based paint or lead-based paint hazards associated with any items that are affixed to the property must be made. However, because section 1018 is limited to contracts for sale or lease of housing, the regulations apply only to those items that

are located on that part of the real property that is used primarily for purposes associated with residential use. EPA and HUD consider garages for personal vehicles, storage sheds, play areas and play equipment, air conditioners, storage tanks for home fuel, yards, driveways, fences and signs to be examples of items that are associated with residential use, in addition to structures actually used by people as living quarters. For most urban and many suburban residential lots, the entire property is normally considered as being devoted to residential use. In the case of real property that is used for nonresidential as well as residential purposes, a judgment should be made as to which part of the property is used primarily for residential purposes.

If I own a number of pre-1978 homes which I lease to the public, and I "abate" them through encapsulation and/or enclosure, can I take advantage of the lead-based paint free exemption?

The regulations exclude from coverage leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal program. Lead-based paint free housing is target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. Lead-based paint that has been encapsulated or enclosed would not result in a finding by a certified inspector that the target housing is free of lead-based paint. Therefore, the lead-based paint free exemption would not be available to excuse a lessor from the disclosure requirements under the final rule.

Does the rule extend to lead in pavement paint, such as striping on parking lots or roadways on the property?

No. It is unlikely that the lead contained in pavement paint applied for pedestrian or vehicle traffic control, such as on parking lots, roadways or driveways, will degrade into dust or leach into soil in significant amounts under normal conditions of use, repair and removal. Measuring lead in pavement paint is not part of a risk assessment or inspection.

Will increases in rent permitted by local rent control ordinances trigger the Lead Disclosure Statement?

Any significant change to an existing lease is considered to be a renewal of the lease for purposes of the rule. An adjustment in the amount of the rent payment is considered a significant change, and therefore would be considered a renewal. For lease transactions, lead disclosures are required under the rule for (1) all new leases entered into after the applicable effective date of the rule; and (2) all renewals of existing leases after the applicable effective date of the rule unless (a) disclosures have been previously made, and (b) and no new information pertaining to lead-based paint or lead-based paint hazards has become available since the previous disclosure. An increase in rent permitted by a local rent control ordinance, therefore, would trigger the lead disclosure requirement unless the requirement was previously satisfied and no new lead information has become available, as described above.

Lessor's Agents:

May a lessor authorize a representative or agent to discharge his or her responsibilities under the rule, including signing the certification of accuracy required in the leasing agreement?

Yes. The seller or lessor may authorize a representative or agent to fulfill the seller or lessor's requirements under this rule; however, the seller or lessor is ultimately responsible for full compliance with the requirements of the rule. The representative must disclose the presence of lead-based paint or lead-based paint hazards if known by either the representative or the seller or lessor and disclose and provide records available to the representative and the seller or lessor. The

designated representative or agent may sign on behalf of the seller or lessor. If the representative or agent acting on behalf of the lessor by leasing housing, they are also required to carry out those duties and sign the certification in that capacity.

Disclosure Forms and Informational Pamphlet:

If a renter has a month-to-month lease arrangement, what is the responsibility of the owner (lessor) with respect to providing copies of the booklet and disclosure forms?

The rule excludes from its requirements short-term leases of 100 days or less, where no lease renewal or extension can occur. If both parties wish to extend a previously exempted short-term lease beyond the 100-day limit, all provisions of this rule must be satisfied in full before any such "extension" occurs.

In an "open-ended" month-to-month lease arrangement (i.e., an arrangement with no specified termination date), whether written or unwritten, the rule applies at the time of the initial lease agreement, since the parties have not limited the lease term to 100 days or less.

In some cases, leasing arrangements switch to "open-ended" month-to-month arrangements after an initial period of occupancy and may continue indefinitely. Under such circumstances, EPA and HUD interpret renewal to occur at the point when the lessee becomes obligated to this change in the rental period. Another significant change in the lease agreement constituting lease renewal would be a rental rate adjustment. Following any such alteration of terms, either an initial disclosure would be required if no disclosure had been made, or disclosure would be required of any new information obtained subsequent to an initial disclosure.

Can an owner send the disclosure forms to all existing tenants at one time, without waiting for the tenants to renew their leases or must the owner wait for each tenant's renewal to come up?

Disclosure may be made any time before the lessee becomes obligated under a new lease. However, if disclosure is made in advance of lease renewal and the owner subsequently obtains new information relevant to disclosure, this new information must be disclosed before the lessee becomes obligated under a new lease.

How many lead information pamphlets must be distributed in a lease transaction involving multiple lessees? In college towns, large living units are frequently rented on a yearly basis by groups of students, all of whom are required to sign as lessees. In those cases, must each individual lessee be given a pamphlet, or can one copy be provided per lease transaction?

Lessors must provide one copy of the pamphlet per lease transaction; however, in cases involving multiple lessees, lessors should make additional copies of the pamphlet readily available and offer them to everyone who signs the lease.

How do lessors fulfill their disclosure requirements when lessees refuse to accept the lead information pamphlet and/or refuse to sign the disclosure forms?

When a lessee is unavailable for signature or refuses to accept the pamphlet and/or sign the disclosure form, lessors may certify attempted delivery of the pamphlet, disclosure information, and disclosure form. This certification may be included on the copy of the disclosure form retained by the lessor or attached to that disclosure form and should indicate exactly how delivery was attempted and what occurred (e.g., sent material certified mail and never heard from lessee; lessee refused to sign disclosure form).

For example, lessors may deliver the pamphlet, disclosure information, and disclosure form by certified mail, return receipt requested. Lessors should then retain the signed certified mail receipt in their records as evidence that the material was delivered to the lessees. In cases where the lessee refuses to sign the disclosure form, lessors may certify in writing that the delivery was attempted and indicate why a signed and dated disclosure form could not be obtained.

Records and Reports:

The rule states that lessors must give each lessee copies of all records or reports relating to lead-based paint hazards in the target housing. But in some cases it may be impractical to give each lessee his or her own report—the document’s length may make copying costs prohibitively high. In such situations, what steps may a lessor take to make the document available to a lessee without actually giving the lessee his or her own copy? May the lessor give the lessee a summary of the document and give the lessee an opportunity to read a copy of the full document in the lessor’s office?

The rule requires lessors to provide lessees with available records or reports pertaining to lead-based paint and/or lead-based paint hazards. However, EPA and HUD recognize that in some cases, the actual transfer of multiple voluminous technical documents may be burdensome for both lessors and lessees.

For lengthy court documents and construction documents, EPA and HUD have determined that these documents may be excerpted, provided that all information regarding lead-based paint and lead-based paint hazards is included along with sufficient background information, so that the context of the excerpt is clear.

For paint inspection and risk assessment reports, EPA and HUD have determined that lessors may provide lessees with a summary of all paint inspection and risk assessment reports, provided that the summary is prepared by a certified paint inspector or risk assessor. Where information about specific units is inconsistent with the conclusions as a whole, this information should be included along with the summary of general conclusions.

In situations where documents are excerpted or summarized, they must be accompanied by a list of all complete records and reports available to the lessee. If the lessor chooses to provide excerpts or summaries in lieu of complete copies, the lessor must provide the lessee with the opportunity to review the complete documents in a central location on the premises, if feasible, and the opportunity to receive copies of any documents not provide, upon request, and at no cost to the lessee.

What methods of distribution are available to a seller or lessor when providing copies of relevant materials to a purchaser or lessee? May records and reports be provided via the Internet?

While EPA and HUD recognize that electronic transfer may be acceptable to some purchasers and lessees, the Agencies are concerned that relying exclusively on electronic distribution may deny some purchasers or lessees access to the information, due to the lack of access to the necessary technology. Therefore, EPA and HUD would deem electronic transfer of documents acceptable only if the purchaser or lessee agrees in writing to accept the documents in that format.

In cases where there have been building-wide evaluation or reduction activities, must the contents of the reports be disclosed to every prospective purchaser or lessee of individual units that may not have been specifically addressed?

EPA and HUD believe that information and reports on other units in the target housing are directly relevant to prospective purchasers and lessees, if the information results from evaluation or reduction efforts in the target housing as a whole. In large multifamily properties, evaluations do not necessarily examine every dwelling unit in the housing. Rather, inspectors or risk assessors examine a representative sample of the dwelling units and apply the findings to the housing as a whole. While such evaluations might not include data on a specific unit, the fact that the evaluation was designed to provide information on the housing as a whole makes the report’s findings relevant. If there is unit-specific information that was not part of a building-wide evaluation, such information must be disclosed only during sales or rentals of the specific units that were evaluated.

What type of paperwork should a rental property owner maintain to prove that the property is lead-based paint free? Should the inspector or risk assessor provide a lead-based paint free certificate, or a letter to the owner?

A rental property owner should maintain a copy of the inspection report that is prepared by a certified inspector and indicates there is no lead-based paint in or on the target housing in order to prove that the property is lead-based paint free.

Further Information:

For further information about the Lead-Based Paint Disclosure Rule can be found on EPA and HUD web sites:

- € EPA web site: **<http://www.epa.gov/lead/leadbase.htm>**
Contains in-depth information about the rule and about lead poisoning, contamination, assessment, and abatement, including:
 - € Sample Disclosure Forms;
 - € Informational Pamphlets
 - € Fact Sheets
 - € Full text of the statute, rules, and interpretive guidance

- € HUD web site: **<http://www.hud.gov/offices/lead/index.cfm>**
Contains in-depth information about the rule and about regulations governing lead-based paint in public and assisted housing, including:
 - € Office of Healthy Housing and Lead Hazard Control
 - € The Lead-Safe Housing Rule
 - € Healthy Homes Program
 - € Lead Hazard Control Grant Program
 - € Technical Studies
 - € Compliance Assistance

Also, questions regarding the Lead-Based Paint Disclosure Rule and other regulatory and legislative issues may be addressed to Joshua Goldberg, IREM Legislative Liaison, at **(312)329-6021** or, via e-mail, at **jgoldberg@irem.org**.