

LEAD BASED PAINT – THE LAW AND LANDLORDS

Lead based paint is cited as the number one environmental threat to children. Abnormally high levels of lead can cause damage to the nervous system and cause other health problems, particularly to young still developing ones.

The federal Environmental Protection Agency (EPA) and Housing and Urban Development (HUD) issued joint regulations, known as the “Disclosure Rule”, which became effective September 6, 1996. The rule requires that landlords and their agents of certain rental housing disclose the possible presence of lead based paint on the premises before the effective date of any lease or rental agreement. Landlords and their agents must provide the tenant with an EPA approved lead hazard information pamphlet and comply with other requirements as set forth below.

The property is covered if it was constructed (that is, the first construction permits were pulled) before 1978, and it does not fit into the following *exceptions*:

1. 0-bedroom units such as lofts, efficiencies and studios.
2. rentals of dwelling units for less than a total of 100 days (but periodic tenancies, e.g. month to month, which may go on for more than 100 days are covered). This exception is designed to cover arrangements such as vacation homes.
3. designated housing for the elderly or handicapped unless it is expected children will live there.
4. housing that has been inspected by a certified inspector and found to be free of lead based paint.

The disclosure must be made before the effective date of the rental agreement.

There are consequences to the failure to disclose. In the event of lead poisoning which can be traced to lead hazard in the rental unit, the landlord would be liable for triple the tenant’s actual damages plus penalties. This would probably not be covered by the landlord’s insurance. These would probably be in the nature of a penalty, which insurance cannot cover as a matter of public policy.

The disclosure form (available at IERA) requires the landlord to disclose and explain known lead based paint or lead based paint hazards on the premises, or the state that the lessor has no knowledge of such paint or hazards. The landlord must provide to the tenant any records or reports in the landlord’s possession disclosing such hazards. If, for example, the owner received a report through escrow from the former owner when the building was sold to him disclosing areas of lead based paint hazard, copies of such reports would have to be provided to the prospective tenant. If the report is voluminous, it may be extracted, so long as the extracts are in context and understandable. If there are no such reports, the disclosure requires the landlord to say so. There is space on the form for the lessee to acknowledge that he has received such reports and information that exist, and a federally composed lead hazard pamphlet. (also available at IERA) If the disclosure is made by an agent for the owner, the agent must certify that he has informed the

owner of his responsibilities regarding disclosure, which is provided for under “Agent’s Acknowledgement.” Then all

parties must sign. A preprinted or rubber stamp signature is sufficient for the owner.

The landlord is obligated to provide one copy of the EPA pamphlet for each rental unit, but not one for each rental agreement signatory. Each time a fixed term lease is extended or a new lease with an existing tenant executed, a new disclosure must be made. The rule is not entirely clear about periodic tenancies, but a prudent landlord will want to give a new disclosure whenever he obtains new information about lead hazards on the premises.

The law neither exculpates the landlord if he complies, nor does it increase his potential exposure through disclosure. The landlord assumes no duty to remove lead based paint or for that matter, to correct lead based paint hazards (although there are probably local building codes which will have to be complied with in any event). The federal law, at this point, simply requires the disclosure of these things, permitting the tenant to make an informed choice of whether he wishes to rent the premises.

The following documents are available for download in PDF format and were published by the Environmental Protection Agency on line as of March 3, 1999.

Interpretive Guidance for the Real Estate Community on the Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing _ Part I and Part II.

EPA/HUD Fact Sheet.

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