

New Lead-Based Paint Required Disclosures

by Joseph W. DeCarlo, CPM, CCIM, CRE

The Law -

Federal legislation entitled, Residential Lead Based Paint Reduction Act of 1992, also known as Title X, Section 1018, directed HUD and EPA to develop lead disclosure regulations for residential housing built prior to 1978. These regulations were made public March 6, 1996.

Effects of Lead Poisoning -

Lead poisoning can cause permanent damage to the brain, behavior disorders, kidney failure, convulsions and can cause abnormal fetal development in pregnant women. Children apt to ingest lead through paint chips are at risk of lead poisoning, as well as those subject to breathing lead dust, as the lead can enter the blood stream in this manner. The government standard for lead in paint or surface coatings is excess of 1.0 milligram per square centimeter or 0.5 percent by weight. It is estimated over 1.7 million children show levels of lead paint in their blood above the safe limit.

Lead Paint in Housing -

HUD has estimated that three quarters of the nation's housing built prior to 1977, approximately 64 million units, have lead present. The older the dwelling, the greater the probability of lead paint present. In those, the pre-1940 units, have an almost 90% probability. Lead is most commonly found in semi-gloss and enamel paint covered doors, window sills, door frames and molding.

Prior to 1978, when lead was banned as a residential-use paint additive, lead was a common component of the more expensive paints because it enhanced durability and surface adherence. HUD estimates nine million renters and three million home buyers each year will be affected.

Type of Dwellings Affected -

Single family homes and apartments are both covered under the 1992 law and new regulations.

Exemptions -

- Zero bedroom units, i.e., efficiencies, bachelor units and dormitories.
- Leases or rentals less than 100 days, i.e., vacation rentals, motels.
- Housing for the elderly, i.e., persons over 62 years of age.
- Housing for the Handicapped, unless children live on premises.
- Rental housing inspected by a certified inspector and found to have a lead content below 1.0 milligrams per square centimeter or .05 by weight.

Effective Dates -

- Owners of 1-4 units - December 6, 1996
- Owners of more than 4 units - September 6, 1996

Required Disclosures -

- Sale
 1. Sellers/agents must give buyer pamphlet by HUD/EPA entitled, "Protect Your Family From Lead in Your Home".
 2. Buyer gets a 10 day period to conduct lead base paint inspection. This can be waived by mutual consent.
 3. Sales contract must contain notification and disclosure of any knowledge of lead paint, or copies of any tests completed.
 4. Signed and dated disclosure by buyer and seller/agent and record retained for three years.
- Rentals
 1. Landlords/agents must give prospective tenant pamphlet by HUD/EPA entitled, "Protect Your Family From Lead in Your Home". They must also disclose any knowledge of lead paint or the results of any related tests.
 2. Lease must contain notification and disclosure language. This covers both oral and written leases of more than 100 days.
 3. Lease renewals or rent increases must contain any new lead paint information obtained subsequent to original disclosure.
 4. Signed and dated disclosure by tenants and landlord/manager and record retained for three years.
 5. Manager, leasing agent and owner share responsibility for disclosure of any knowledge of lead paint hazards or lead related tests completed.

Enforcement -

HUD/EPA have authority to issue fines up to \$10,000 for each violation. The law also provides any person knowing or willfully violating this law is subject to \$25,000 per day fine and imprisonment for up to one year. These penalties are in addition to any civil penalties awarded in lawsuits.

Ramifications for the Property Manager -

- If the landlord/manager conducts lead paint testing and the results are negative, no further disclosures need be made to future tenants of the building. If however, lead is found in excess of the HUD/EPA limits, disclosure is mandatory to all future tenants and/or buyers of the property. This fact would, more than likely, negatively affect the building's value. Since there is no requirement for mandatory testing it may be more prudent to practice the required disclosures, (EPA pamphlet and lease clause) rather than gamble on the test results after the fact.
- There are three commonly used testing methods:
 1. portable x-ray fluorescent (XRF) testers
 2. paint chip test at a lab
 3. color changing chemical strip spot test

The new regulations require that testing be done by EPA or state-certified lead testers.

□ Lead Paint Abatement Options

1. **Removal in place such as wet sanding - need to use Tyvek suits, HEPA vacuum and TSP washing. (This is a very costly method.)**
2. **Removal of doors, window casings, molding, etc. and replace with new, lead free materials. (This is probably the most cost effective method.)**
3. **Encapsulation with special chemicals or additional layers of drywall.**
4. **Repainting or wall papering over the lead paint.**

Only the completion of the first two methods would eliminate the need for future disclosures.

Conclusion –

The Residential Lead Based Paint Reduction Act of 1992 and the recent HUD/EPA guidelines mandate lead paint disclosures in pre-1977 housing. These disclosures include distribution of the EPA pamphlet entitled, "Protect Your Family From Lead in Your Home", as well as a lead paint clause in the lease. The effective date for apartments is September 6, 1996 and one-four units, December 6, 1996. Enforcement is by HUD/EPA with fines, imprisonment and civil penalties. There are three testing methods commonly used; x-ray, paint chip testing and color changing chemical strips, all of which must be conducted by EPA or state-certified testers. Abatement can be handled in four ways; removal in place, removal of effected surfaces, encapsulation and resurfacing by paint or wall covering.

To obtain a free copy of the aforementioned forms write to:

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About the Author –

Joseph W. DeCarlo is a Certified Property Manager (CPM). He is a licensed Real Estate Broker in California and New York and is managing partner of JD Property Management, Inc. in Costa Mesa, with a branch office in Syracuse, New York. He achieved his MBA from Syracuse University. As managing partner, Joe is responsible for over 2,500 residential units and ½ million square feet of commercial space. Joe is also on the National Faculty for the Institute of Real Estate Management (IREM) and has been a professor of real estate at Coastline Community College since 1979. He is the author of the textbook, Property Management in California, which is being used by over 45 colleges, Real Estate: Adventures, Principles and Practices an educational novel on real estate and the newly released, Essential Facts: Real Estate Management, published by Boston based, Warren, Gorham & Lamont. Joe's office phone number is 714-751-2787.