

# Lead-Based Paint Disclosure

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If you sell or lease residential property built before 1978, you may be subject to EPA's and HUD's lead-based paint disclosure requirements. The law applies to purchase-sale and lease transactions involving most housing constructed prior to 1978. However, the law does not apply to transactions involving housing for the elderly or disabled (unless a child less than six-years-old is expected to live there) or "0-bedroom" dwellings such as efficiencies, studios, and room rentals within residential housing. In addition, if a lessor has had the property certified by a federally certified inspector to be lead-free, then no disclosure requirements apply.

Essentially, the law mandates four requirements:

- (1) Sellers and landlords must disclose known lead-based paint associated hazards and provide available records to buyers and renters;
- (2) Sellers and landlords must provide buyers and renters with an EPA/HUD lead hazard information pamphlet ("Protect Your Family From Lead In Your Home");
- (3) Sellers must provide buyers with a 10-day inspection period, although the time period may be modified or waived altogether; and
- (4) Purchase-sale and lease agreements must contain certain language and certifications, discussed below in detail.

No provision of this law requires a seller or landlord to undertake any inspection or determination process. This is a disclosure law only.

## Purchase-Sale Transactions

The following elements must be incorporated into a purchase-sale agreement

-- all of which must be in the same language as the contract:

- (a) A "Lead Warning Statement" must be attached to the contract on a separate piece of paper, which reads: 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.
- (b) A statement from the seller detailing the presence of lead-based paint or associated hazards, including pertinent information such as location of the lead-based paint or lead-based paint hazard, the basis for the seller having determined the hazard exists, and condition of the painted surfaces, or a statement indicating no knowledge on the part of the seller of the presence of lead-based paint.
- (c) A list of the records or reports (if any) regarding lead-based paint or associated hazards which are provided to the buyer or a statement that none are available.
- (d) A statement from the buyer affirming buyer's receipt of (b) and (c) as well as the HUD/EPA lead hazard information pamphlet referred to

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above.

- (e) A statement from the buyer either waiving or electing to have a lead-based paint risk assessment or inspection performed. This statement must specifically recite the 10-day (or modified) inspection period or that the period has been waived.
- (f) A statement from the real estate agent that the seller has been informed of his legal requirements regarding lead-based paint and acknowledging the agent's duty to ensure compliance with each. If an agent is solely compensated by the purchaser, he or she is not subject to this law.

Finally, these statements must be signed and dated by buyer, seller and agent with a certification as to the accuracy of the statements (to the best of their knowledge). The seller and agent must retain a copy of the aforesaid items for at least three years from the date of sale.

### **Lease Transactions**

The requirements for a lease agreement differ in that the "Lead Warning Statement" language is modified 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 remaining contractual elements mirror those for a sale transaction, with the exception that acknowledgment of an inspection or waiver period is not required to be a part of a lease contract (notwithstanding an inspection period may be afforded a renter under the law). The retention requirement is equally three years and extends from the lease commencement date.

A new disclosure need not be made on lease renewals unless new information has come into the hands of the landlord. If a landlord receives federal subsidies such as under "Section 8" or federal assistance for rehabilitation, there may be requirement for actual removal of lead-based paint, this not otherwise being required (only disclosure is generally mandated).

These requirements are beyond the scope of this article. Further information is available from the HUD Lead Paint Compliance Assistance Center in Washington, D.C.

### **Penalties**

A seller, landlord and his or her agent may be subject to criminal penalties of up to \$10,000 for failing or refusing to comply with the lead-based paint disclosure laws. Further, each may be held civilly liable for three times the amount of the purchaser or tenant's damages, plus court costs, reasonable attorney fees and expert witness fees. These risks are not likely to be covered in a typical insurance policy. However, any failure by a seller or landlord to follow the requirements will not invalidate a contract or lease, nor will it create a defect in title.

The pamphlet, "Protect Your Family From Lead In Your Home," along with the leasing disclosure form, may be downloaded from the Web at BullRealty.com. See the menu at "Management Resources, Real Estate Forms & Dictionary." You may also contact the Environmental Protection Agency in Atlanta at (404) 562-8998 or HUD's Office of Lead Hazard Control in Washington at (202) 755-1785.

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