



RE20R13: LEAD PAINT - RESIDENTIAL SALES AND RENTALS~A DESCRIPTION OF LEAD PAINT RULES

Updated Course as of June 13, 2013

1. **LEAD:**
 - a. Why lead paint is a vital concern
 - b. Lead poisoning is a serious disease
 - c. Small amount of lead in both adults and children is toxic. Effects nervous system and brain in children causing learning and behavior disorders
 - d. Lead generally ingested via paint chips, dust or particles by eating or breathing
 - e. Lead in paint, clear varnishes & stains -1600's – 1978
 - f. Not all paints contained lead
2. **History of Lead Paint Law:**
 - a. Original MA law 1971 - first in Nation
 - b. MA law amended 1978
 - c. Lead added to paint to speed drying, improve durability and resist moisture
 - d. 1978 - Lead in paint declared illegal – federal law
 - e. Many states enacted lead paint statutes modeled after Massachusetts
 - f. Lead law complex and important
 - g. Additional MA amendments 1987 & 1993
 - h. 1992 & 1994 amended Federal regulations
 - i. Law only targets children under six years of age
 - j. Doctors required to report lead poisoning
 - k. New 2010 Federal and MA Renovation, Repair and Painting rule. Require certified contractors.
3. **COMMON TERMS:**
 - d. **Mouthable Surfaces:**
 - i. Only surfaces below five feet that can be mouthed by a child must be delead or encapsulated even if intact.
 - ii. Could include but not limited to wall corners, doors, stairs, railings, windows, baseboards, chair rails and parts of windows (with sills below five feet) that move or touch moving parts.
 - iii. Window sashes major concern due to moving parts and paint chipping
 - e. **Lead Abatement Services:**
 - i. Abatement or containment of lead paint or materials only performed by individuals licensed by the state to perform such services or (in certain instances) by owner who has completed state-approved training before undertaking these activities.
 - ii. Illegal for an individual who has not received approved training to delead their property.
 - f. **Letter of Compliance:**
 - i. Letter of Compliance is issued by a licensed lead inspector upon





successful inspection of a dwelling unit after it has been delead or encapsulated.

ii. This document protects owner against liability concerning the presence of lead in the unit.

g. **Letter of Interim Control:**

i. Letter of Interim Control is a written statement issued by licensed lead inspector certifying a dwelling unit and common areas are determined to be in compliance for a period of one year from the date of issuance.

ii. Upon re-inspection and recertification letter may be renewed once for additional one-year period.

h. **Discrimination against children:**

i. Owner cannot evict or refuse to rent to anyone because of existence of lead paint.

ii. Unlawful to discriminate against any person because of cost or requirements to delead or encapsulate premises according to law.

i. **Vacation Rentals:**

i. Vacation rentals defined as dwelling units including but not limited to private residence, condominium, hotel, motel or bed and breakfast establishments, rented for vacation or recreational purposes for period not to exceed 31 days.

ii. Vacation rentals are exempt from most lead paint requirements. These dwelling units not required to obtain letter of compliance or letter of interim control when child under six years of age is an occupant provided the same tenant with child under six years of age does not occupy same dwelling unit for a period of more than 31 days in any 12-month period.

iii. Note: M.G.L. c. 186, § 15B defines as not to exceed 100 days, but this is exclusive of lead paint law.

j. **Rooming House:** Under MA law the term rooming house includes Boarding houses, hotels, inns, lodging houses, dormitories and other similar dwelling places.

k. **Target Housing:** Dwelling units built before January 1, 1978

l. **Exempt Housing:** Dwelling units built after December 31, 1977

m. **The Lead Law:** "The Lead Law" is both federal and state law, with state law requiring affirmative duties on the part of owners to de-lead or make their properties "lead safe" rather than simple notification.

n. **CLPPP:** Childhood Lead Poisoning Prevention Program (MA DPH)

4. **LEAD PAINT LAW: M.G.L. c. 111, §§ 189A, 199 and 105 CMR 460.000**

a. MA law satisfies Federal

b. All lead paint laws are directed to protect children under six years old.

c. 5' height for governed (mouthable) areas

d. Law is silent regarding older children and adults based upon the unwritten theory that they do not ingest paint.

e. Lead paint law requires removal or covering (encapsulation) of lead paint hazards in dwelling units where a child under 6 resides.

f. Federal law explicitly states the lead notification must be given "before the purchaser or lessee is obligated under contract to purchase or lease".

g. Owner must have a Letter of Compliance or a Letter of Interim Control





if the dwelling unit was built before 1978 and a child younger than six years old resides there.

h. All references to owners include owners living in their own dwellings as well as owners of rental property, but excluding "Vacation Rentals".

i. LEAD PAINT LAWS ARE ONLY APPLICABLE TO RESIDENTIAL PROPERTY BUILT PRIOR TO 1978.

j. Only licensed persons - inspect or de-lead

k. Lenders cannot discriminate or be liable

l. Discrimination due to lead paint violates Fair Housing laws

m. \$1,500 tax credit per DU for de-leading

n. Includes all residential properties built prior to 1978

o. Occupancy by child under 6 must de-lead

p. Letter of Compliance exempts

q. Letter of Interim Control delay up to 2 years

r. Rooming houses & vacation rentals exempt

s. Encapsulation approved method

t. Owner deleading with special permit

u. 90-day window (compliance or interim control)

v. Must disclose prior to sale or rental

w. Sales contracts must include disclosure

x. Licensees/sellers/lessors provide CLPPP pamphlet

y. Licensees responsible for compliance

z. Note: No federal law requiring testing

aa. Landlord must delead or make lead-safe where a child under six resides

5. **Compliance-home sellers built prior to 1978 – 105 CMR 460.720**

c. CLPPP Property Transfer Lead Paint Notification Certification

iii. Disclosure by the Seller

iv. Buyer Acknowledges Receipt of FILLED OUT Notification/Certification, which includes reports, if any.

v. Licensee acknowledges compliance with duties to inform owner and prospective buyers and tenants

vi. Certification signed by all parties

vii. Verbally discuss with prospective purchaser

viii. Seller may never discriminate under Lead Law.

d. Lead Paint Inspection

iii. Statutory Right to Inspect – 10 days

iv. Duty to delead or encapsulate

v. Contingencies in Offers to Purchase or Purchase and Sale Agreements

e. Required with options to purchase

f. Required by sellers not using a licensee

6. **Compliance-home rentals built prior to 1978 – 105 CMR 460.725**

1. CLPPP Tenant Lead Law Notification Certification

a. Disclosure by the Landlord

b. Tenant Acknowledges Receipt of FILLED OUT Notification/Certification,





which includes reports, if any.

c. Licensee acknowledges compliance with duties to inform owner and prospective tenants

d. Certification signed three times

e. Verbally discuss with prospective purchaser

f. If property has lead and prospective tenant has a child under six,

landlord may delay tenancy for up to 30 days.

2. Lead Paint Inspection

a. The Right to Inspect – 30 days (cost of alternate housing)

b. Tenant right to obtain inspection

c. Only landlord can delead or encapsulate

3. Required with lease options to purchase

4. A Landlord may NOT:

1. refuse to rent to because of the presence of lead

2. charge a tenant for the cost of the deleading

3. enter into a contract limiting a landlord's obligation to delead or liability

under the statute

4. refuse to rent to families with children less than six years of age in order to avoid lead law responsibilities.

5. avoid obligation, as duties are always landlord's to delead or make their properties "lead safe".

6. file a cross-complaint or counter-suit against the parents for negligence when sued by the parents acting on behalf of a child who suffered lead paint poisoning. Rather, Landlord must defend the suit, and if found liable, sue the parents in a separate action within one year of the entry of judgment against the Landlord.

7. **Compliance -vacation Rentals built prior to 1978 when occupancy includes a child less than six years of age – M.G.L. c. 111, § 199B and 105 CMR 460.100 (D)**

a. Short-Term Vacation or Rental Exemption Notification

1. Visual inspection and Disclosure by Licensee or Owner

2. Tenant Acknowledges Receipt of FILLED OUT Notification

3. Notification signed three times

4. Verbally discuss with prospective tenant

5. Lease term limited to 31 days per year

8. **Compliance-Rooming Houses built prior to 1978**

1. Less than 250 square feet

2. Visual inspection no peeling/chipping paint

9. **Penalties for Non-Compliance with Lead Law-Sellers, Landlords and**

Real Estate Agents

i. Federal and State law allow civil and criminal penalties for failure to provide lead notification and violations

1. Civil liability and costs: Any person who knowingly violates the Lead Paint Law shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred under federal law.

2. Federal law: A court may award court costs to the party commencing





such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

3. Massachusetts law: Real estate agents, property managers and certain landlords and sellers, where applicable, may be subject to civil liability under the Consumer Protection Statute, M.G.L. c. 93A, which allows award of up to two or three times actual damages and attorneys fees.

10. **TAXES and FUNDING**

- i. Tax Credits
- ii. Funding Options

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Laws and Resources:

- Federal - 42 U.S.C. Sec. 4851-4856 (Specifically Discuss Section 4852d)
- Massachusetts - M.G.L, c. 111 §§ 189A-199B (Lead poisoning, prevention and control)
 - M.G.L, c. 111 § 127 B ½. (**M.G.L. 111 s. 127B ½** (Removal of Dangerous Levels of Lead Paint)
 - M.G.L. 93A, §§ 2, 9, 11 (Consumer Protection)
 - M.G.L. c.151B, § 4 (11) (Discrimination Against Families with Young Children)
 - M.G.L. c.186 § 18 (Reprisals Against Tenants for Reporting Violations)
 - **105 CMR 410.502** State Sanitary Code- Use of Lead Paint Prohibited
 - **105 CMR 460** Lead Poisoning Prevention & Control
 - **454 CMR 22** De-leading Regulations.
 - **760 CMR 14** Lead Paint Abatement Loan Program

Case Law:

- Piers v. Wheeler & Taylor, Inc. (broker liability) No. 960088 (Jan. 26, 1998) Superior Court, Berkshire SS

Suggested Handouts:

- Property Transfer Lead Paint Notification
- Property Transfer Notification Certification
- Tenant Lead Law Notification
- Tenant Certification Form
- Short-term Vacation or Rental Exemption Notification

