

LEAD-BASED PAINT

A Guide to Complying With The Federal EPA/HUD Disclosure Regulations



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Notes

Preface

In 1992, Congress enacted into law the Residential Lead-Based Paint Hazard Reduction Act (Title X of Public Law 102-550).

This law directs the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Housing and Urban Development (HUD) to regulate disclosure of lead-based paint hazards in the sale or lease of pre-1978 residential properties. On March 6, 1996, EPA and HUD issued the final Title X Regulations, and those Regulations went into effect for all covered properties on December 6, 1996.

This guide provides valuable information about how Title X and the Regulations apply to sellers, lessors and real estate brokers and agents. Please read it carefully.

Compliance with federal requirements **does not**, however, satisfy or otherwise eliminate any obligations of sellers, lessors or agents to comply with state or local statutory, regulatory, or common law principles regarding discovery or disclosure of material defects in real estate transactions.

Notes

Lead-Based Paint Compliance Checklist for Lease Transactions

If the property was built prior to 1978, did I...

- Inform the lessor of his obligations to disclose his actual knowledge of the presence of any lead-based paint and/or lead-based paint hazardson the property?

If copies of the test results were available, did I...

- Secure copies of the test results, including other units and common areas in multi-family properties even if the unit in question was never tested, and provide copies to the lessee?

Before executing the lease, did I...

- Disclose to the lessee the presence of lead-based paint and/or lead-based paint hazards on the property and, if available, give copies of any lead-based paint test results to the lessee?
- Ensure that the lead-based paint warning language and lead-based paint disclosure acknowledgment form was read and signed by the lessor, lessee and any other agents involved in the transaction?

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Lead-Based Paint Compliance Checklist for Sales Transactions

If the property was built before 1978, did I...

- Inform the seller of his obligation to disclose his actual knowledge of the presence of any lead-based paint or lead-based paint hazards on the property?

If copies of test results were available, did I...

- Secure copies of the test results from the seller and provide copies to the purchaser?

Before the seller accepted the offer, did I...

- Confirm that the offer included a disclosure statement with the specified lead-based paint warning language?
- Obtain a signed acknowledgment from the purchaser that he had or reserved the right, for a period of up to 10 days, to have the property tested for lead-based paint, or expressly waived the right?
- Obtain a signed acknowledgment from the purchaser that he had received a copy of the federal pamphlet, *Protect Your Family From Lead In Your Home*?
- Obtain a signed acknowledgment from the purchaser that he had received disclosures concerning the presence of lead-based paint or lead-based paint hazards on the property and, if available, copies of any lead-based paint test results?

If the purchaser signed the acknowledgment, did I...

- Ensure that the purchaser's acknowledgment was also signed by the seller and the other agent(s)?

- U.S. Environmental Protection Agency
National Program Chemicals Division
Office of Pollution Prevention and Toxics
401 M St., S.W.
Washington, D.C. 20460

Phone(202) 260-1866
Internet Site<http://www.epa.gov/oppintr/lead>

- EPA Regional Offices


Region 1 (Boston, MA) Phone: 617/565-3933
Region 2 (Edison, NJ) Phone: 732/321-6773
Region 3 (Philadelphia, PA) Phone: 215/566-2091
Region 4 (Atlanta, GA) Phone: 404/562-8998
Region 5 (Chicago, IL) Phone: 312/866-1332
Region 6 (Dallas, TX) Phone: 214/665-8348
Region 7 (Kansas City, MO) Phone: 913/551-7518
Region 8 (Denver, CO) Phone: 303/312-6204
Region 9 (San Francisco, CA) Phone: 415/744-1126
Region 10 (Seattle, WA) Phone: 206/553-1985

Introduction

This guide is organized into two main parts. Pages 2-17 contain information content, while pages 17-22 contain helpful tools and resources.

A brief explanation of why lead-based paint is potentially dangerous is discussed in the section, "A Closer Look at Lead." Additional information can be found in the federal pamphlet, *Protect Your Family From Lead in Your Home*. Distribution of this pamphlet, or an EPA-approved state lead-based paint information pamphlet, is a requirement of the new Regulations. Agents will want to secure a copy of the federal pamphlet.

This guide uses a step-by-step approach to illustrate how the new Regulations apply to a typical sales or lease transaction.

Boxes with this symbol  will appear in the text at each point where the Regulations impose particular or different requirements in leasing transactions.

A Closer Look at Lead

Lead and Our Children

Lead is a highly toxic metal which, when present in the human body, attacks the central nervous system. Children, fetuses and women of childbearing age are particularly susceptible. Anemia, hyperactivity, kidney dysfunction, lowered intelligence, stunted growth, mental retardation and even death have been linked to lead.

In 1978, lead-based paint was banned for use in all homes and most other buildings. It can still be used for some exterior industrial purposes.

Lead and Our Environment

Sources of lead in the environment include water (lead pipes), soil and dust (gasoline combustion), air (industrial emissions), and lead-based paint.

In recent years, federal, state and local entities have sought to limit exposure to lead by increasing regulation of lead-based paint, plumbing, fixtures, automobile exhaust, and other sources of lead. Consequently, the result is a substantial decline in average blood lead levels in the United States since the 1970s. Lead is still considered one of the major environmental concerns in residential dwellings, commercial buildings and work places.

Lead and Our Homes

According to the U.S. Department of Housing and Urban Development (HUD), more than one-half the entire U.S. housing stock – and more than three-quarters of units built before 1978 – are believed to contain some lead-based paint.

There are three key things to remember about lead-based paint:

- Intact lead-based paint that is in good condition is usually **not** a hazard.
- Peeling, chipping or cracking lead-based paint is a **hazard** and is potentially harmful.
- Lead dust generated from friction sources such as windows, door frames, and stairs is a particularly significant source of lead exposure.

As a rule, the older the house, the more likely it is that it will contain lead-based paint. The only way to be sure if the home contains lead-based paint is to have an inspection by a trained and EPA-certified lead testing company.

Virginia.....(804) 225-4455
Washington(360) 236-3381
West Virginia(304) 558-2981
Wisconsin(608) 266-5817
Wyoming(307) 777-6951

Federal Information Resources

The EPA pamphlet, *Protect Your Family From Lead In Your Home* (EPA747-K-94-001), is a good basic information source on lead-based paint information. This pamphlet or an EPA-approved pamphlet must be given to the purchaser.

To obtain a free copy of the pamphlet, the final regulations, and other information contact the following sources:

- Environmental Protection Agency
EPA Internet Site<http://www.epa.gov/lead/leadprot.htm>
.....<http://www.epa.gov/lead/leadbase.htm>
- National Lead Information Center
Internet Site.....<http://www.epa.gov/lead/nlic.htm>
Toll Free(800) 424-LEAD
E-mailhotline.lead@epamail.epa.gov
- National Safety Council
Internet Site<http://www.nsc.org/ehc.htm>

For technical advice on complying with the final lead-based paint real estate disclosure regulations, or questions or concerns regarding agency enforcement activities, contact:

- U.S. Department of Housing & Urban Development
Office of Lead Hazard Control
451 7th St., S.W.
Washington, D.C. 20410
Phone.....(202) 755-1785
Internet Site<http://www.hud.gov/progdsc/leadfn.html>

| | |
|------------------------|----------------|
| California | (510) 450-2453 |
| Colorado | (303) 692-2685 |
| Connecticut | (860) 509-7293 |
| D.C., Washington | (202) 727-9850 |
| Delaware | (302) 739-4731 |
| Florida | (850) 488-3385 |
| Georgia | (404) 657-6514 |
| Hawaii | (808) 586-4424 |
| Idaho | (208) 334-6584 |
| Illinois | (217) 782-3517 |
| Indiana | (317) 233-1232 |
| Iowa | (800) 972-2026 |
| Kansas | (785) 296-0189 |
| Kentucky | (502) 564-4856 |
| Louisiana | (225) 765-2567 |
| Maine | (207) 287-4311 |
| Maryland | (410) 631-3859 |
| Massachusetts | (617) 735-8401 |
| Michigan | (517) 335-9390 |
| Minnesota | (651) 215-0890 |
| Mississippi | (601) 576-7463 |
| Missouri | (573) 526-5873 |
| Montana | (406) 444-6697 |
| Nebraska | (402) 471-0782 |
| Nevada | (702) 687-6615 |
| New Hampshire | (603) 271-4507 |
| New Jersey | (609) 633-2043 |
| New Mexico | (505) 827-0006 |
| New York | (800) 458-1158 |
| North Carolina | (919) 773-2870 |
| North Dakota | (701) 328-5188 |
| Ohio | (614) 466-1450 |
| Oklahoma | (405) 271-4000 |
| Oregon | (503) 248-5240 |
| Pennsylvania | (717) 782-2884 |
| Rhode Island | (401) 222-3424 |
| South Carolina | (803) 935-7945 |
| South Dakota | (605) 773-3153 |
| Tennessee | (615) 741-0327 |
| Texas | (512) 834-6600 |
| Utah | (801) 536-4000 |
| Vermont | (802) 863-7231 |

Roles and Responsibilities of Sellers, Lessors, and Real Estate Agents

The Regulations impose a series of obligations on sellers and lessors of residential real estate. Sellers and lessors of properties built before 1978 must disclose their actual knowledge (e.g., prior test results or other firsthand information) of lead-based paint or lead-based paint hazards.

Where a seller or lessor uses the services of a real estate agent in marketing the property, the agent has the responsibility to ensure that the seller or lessor satisfies the disclosure obligations.

The listing agent must advise the seller or lessor of his obligation to make the required lead-based paint disclosures and must ensure that the seller or lessor satisfies his disclosure obligations.

Any other agent involved in the transaction, such as a cooperating agent (whether a subagent, buyer's agent, or "facilitator"), is also responsible to ensure that the seller or lessor satisfies his obligations. The only agents who are exempt from any obligation under these disclosure Regulations are buyer agents who receive all their compensation from the purchaser.

The Five Basic Requirements

This section gives an overview of the basic requirements of the Regulations. Read each basic requirement carefully so that you are able to recognize it when it is discussed in more detail in the next section.

The Regulations require that sellers and lessors do the following:

- 1 Disclose the presence of known lead-based paint and/or lead-based paint hazards in residential dwellings built before 1978.
- 2 Provide purchasers and lessees with copies of any available records or reports, such as lead-based paint test or inspection results pertaining to the presence of lead-based paint and/or lead-based paint hazards.

Indicates Glossary term.

3. Provide purchasers and lessees with a federally approved lead-based paint hazard information pamphlet.
4. Provide purchasers with a period of up to 10 days (or mutually agreed period) prior to becoming obligated under the purchase contract, during which time the purchaser may conduct a risk assessment or *inspection* for the presence of lead-based paint and/or lead-based paint hazards. The purchaser may agree to waive this testing opportunity.
5. Include in the sales or lease contract certain specified disclosure and acknowledgment language.

Disclosure and the Sales/Lease Transaction

Step 1 - Listing

There are four things you **must** do at the time you list a home that is "target housing" to comply with the Regulations:

- Determine if the property is *target housing*. You can do that by asking the seller or lessor or by consulting the property records for the date the home was constructed.
- Advise the seller or lessor of his disclosure obligations under the Regulations.
- Obtain from the seller or lessor any records, test reports, or other information related to the presence of lead-based paint or lead-based paint hazards on the property, such as copies of reports prepared in connection with any testing inspection for lead-based paint hazards previously done on the property.
- Have the seller or lessor complete and sign his portion of the Information Disclosure and Acknowledgment Form.

Target Housing and Exemptions

Target housing is defined as all properties for which construction was completed prior to 1978, except the following properties:

- Property sold at foreclosure. The Regulations do apply, however, when the property is resold.
- Rental property inspected and found to be *lead-based paint free* by a certified inspector, that is, one certified under a federal certification program or a federally authorized state certification program.

Answers to Frequently Asked Questions

| <u>Question</u> | <u>See Page</u> |
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| How much lead may be found in paint for rental housing to qualify as "lead-based paint free housing"? | 15 |
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| How do the federal regulations affect the need to comply with lead-based paint disclosure, testing or abatement rules imposed under states or local law? | Preface |

Tools and Resources

State Information Resources

Some states and localities have their own laws and rules regulating disclosure or abatement of lead-based paint in housing. Check with your state to see how your state laws work with the new Regulations, for a list of lead testing and abatement firms in your area, and for a list of possible sources of financial aid for reducing lead-based paint hazards.

| <u>State</u> | <u>Phone Number</u> |
|----------------|---------------------|
| Alabama | (334) 206-5373 |
| Alaska | (907) 465-5152 |
| Arkansas | (501) 661-2534 |
| Arizona | (602) 230-5943 |

Residential Dwelling

1) A single-family dwelling, including attached structures such as porches and stoops; or 2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Seller

Any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, or nonprofit organizations. The term seller also includes:

1) An entity which transfers shares in a cooperatively owned project, in return for consideration; and 2) An entity which transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target Housing

Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling. For this purpose, "constructed prior to 1978" includes housing completed and occupied before that date as well as housing for which a building permit was issued prior to that date or, if no permit was required, where construction began before that date.

- Property leased for 100 days or less, where no lease renewal or extension can occur.

Note: This would cover most summer beach rental property.

- Renewal of an existing lease where disclosure has already taken place and no subsequent testing or information has become available. Disclosure is required when the lease is originally signed. Disclosure **must** therefore be made for renewals of leases which were in place prior to December 6, 1996, the effective date of the Regulations.
- Purchase, sale or servicing of a mortgage.
- Zero-bedroom dwellings where the sleeping area is not separated from the living area.

Note: This includes studio apartments, efficiencies, dormitories, military barracks, and rental of individual rooms in residential dwellings.

- Housing for the elderly or disabled where children under the age of 6 are not expected to reside.

Note also the following with respect to "Target housing:"

- The Regulations apply to mobile homes and manufactured housing, even if it is known or believed not to contain any paint (lead-based or otherwise) whatsoever, as well as to the sale or lease of time share units that are "target housing" unless an exception (such as the exception for nonrenewable leases of 100 days or less) applies.
- The Regulations apply to oral as well as written leases. This include oral month to month leases, although it is not necessary to satisfy the disclosure requirements each month the lease continues. New disclosure is required however, if any terms or conditions of the lease are changed or new information about lead-based paint hazards comes into possession of the lessor.
- The Regulations apply to housing constructed "prior to January 1, 1978". This means not only housing completed and occupied before that date, but also that for which a building permit was issued prior to that date even if construction was completed after January 1, 1978, or in the case of properties for which no building permit was required, if construction was commenced before that date.

Glossary

Agent

Any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not include a purchasers' representative who receives all compensation from the purchaser.

Common Areas

Portions 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.

Inspection

1) A surface-by-surface investigation to determine the presence of lead-based paint as provided by section 302(c) of the Lead-Based Paint Poisoning and Prevention Act (42 U.S.C. 4822) and; 2) The provision of a report explaining the results of the investigation.

Lead-Based Paint

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 Free Housing

Target housing that has been found to be free of paint or other surface coating that contains lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-Based Paint Hazard

Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that has deteriorated or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

Advise Seller/Lessor of Obligation to Disclose

If you determine that your listing is target housing, you must advise the seller/lessor of his obligations under the Regulations. If the agent has informed the seller/lessor of his obligation to disclose, the agent will not be held liable for the failure to disclose to a purchaser/lessee information not provided to the agent by the seller/lessor.

Obtain Any Known Lead-Based Paint Information

If the seller or lessor indicates that prior testing for lead-based paint or lead-based paint hazards had been done, the agent should obtain from the seller or lessor copies of all records and reports resulting from such testing and must provide to the purchaser/lessee copies of those test results.

In the case of multi-family properties (e.g., apartments, condos, or co-ops), the Regulations require that, even if the unit in question has not actually been tested, records and reports of any testing done in *common areas* on the property (e.g., hallways, playgrounds) must be disclosed. Records and reports of testing in other units done as a part of an evaluation of the property as a whole must also be disclosed.

The disclosure obligations also extend to require disclosure of any information concerning lead-based paint or lead-based paint hazards in sheds, garages, outbuildings, signs or fences affixed to the property.

Although no disclosure is required if rental property has been found to be lead-based paint free by a certified inspector, the listing agent should secure a copy of those results.

Step 2 - Marketing and Showing the Property

As the property is marketed, the listing agent should advise potential cooperating agents (whether subagents, buyer's brokers, or "facilitators") that the property is target housing requiring disclosure of lead-based paint hazard information.

- The rule does not require mass disclosure to all prospective purchasers or lessees, regardless of their degree of interest.
- Only the actual purchaser or lessee must receive the information. The regulations define a "purchaser" as any entity that enters into an agreement to purchase. "Lessee" is defined as any entity that enters into an agreement to lease, rent or sublease.

unacceptable. Sellers and purchasers are free to negotiate such contractual provisions which address the rights and duties of the purchaser and seller if the test results are unacceptable.

My seller wants copies of the purchaser's test results to ensure that there is a legitimate reason to back out of the deal.

If the purchaser has paid for the test, he is only obligated to give the test results to the seller if the contract of sale (or lease, in a rental transaction) requires this to be done. Also, thinking that it is not necessary to disclose to the next purchaser, the seller may not want a copy of test results since the Regulations require sellers only to disclose lead-based paint information of which they have actual knowledge. Although the Regulations do not expressly address this issue, even without seeing or receiving a copy of the test results a seller probably is required to disclose to any subsequent potential purchasers that a previous party had a lead-based paint test done, and then canceled the contract.

Can my seller designate someone to make the required disclosures?

A seller or lessor may authorize an agent to fulfill the disclosure responsibilities. Such responsibilities include the provision of information known to the seller, lessor or agent about lead-based paint or lead-based paint hazards on the premises as well as execution of the disclosure acknowledgment. *Even if the seller designates another to make those disclosures, he (and any agent he employs) is still responsible to see that they are made and liable if they are not.*

Is my seller required to provide the purchaser with the original disclosure acknowledgment form?

It is permissible to provide purchasers or lessees with a photocopy of the disclosure form executed by a seller or lessor. It is not necessary to provide a form bearing the original signature of the seller or lessor.

Step 3 - Offer/Contract Negotiations

When a purchaser or lessee wishes to make an offer, the listing or cooperating agent should begin the disclosure process, as follows:

- Give the purchaser or lessee an EPA-approved lead-based paint hazard information pamphlet.
- Disclose to the purchaser or lessee the seller's or lessor's knowledge about (or inform the purchaser or lessee that the seller or lessor has no knowledge of) lead-based paint or lead-based paint hazards, including copies of any reports of lead-based paint inspections that have been performed.
- Advise the purchaser of his right to a period of up to 10 days to have the property tested for lead-based paint hazards.
- Ensure that the parties incorporate into the contract language addressing lead-based paint testing, as negotiated between purchaser and seller or the purchaser's waiver of the opportunity for such testing.

Lead-Based Paint Information Pamphlet

The purchaser or lessee must be provided with a copy of a lead-based paint hazard information pamphlet developed or approved by EPA. A federal pamphlet, *Protect Your Family From Lead in Your Home*, is available from EPA, or on the Internet at <http://www.epa.gov/lead/leadprot.htm>. A state disclosure approved by EPA may be substituted for the federal pamphlet.

Disclosure to the Purchaser/Lessee

All information in the possession of the seller or lessor, including copies of records and reports of lead-based paint hazard testing previously done, must be made available to the purchaser or the lessee.

The Regulations provide that all disclosures must occur prior to the seller's acceptance of the purchaser's written offer to purchase. If the potential purchaser makes an offer before the requisite disclosures are provided, the Regulations indicate that the seller may not accept that offer until:

- Disclosure activities are completed.
- The potential purchaser has had an opportunity to review the information and consider whether to amend his offer.

Although the Regulations require that the disclosures be provided to the purchasers before the seller's acceptance of the purchasers' offer, EPA and HUD have approved a procedure in California whereby property condition disclosure (including, but not limited to those related to lead-based paint hazards, as required by the Regulations) are provided by the purchaser after the parties have executed a contract for sale of the property. The contract of sale used in connection with that procedure expressly gives the purchaser an unconditional right to unilaterally cancel the contract, without penalty or obligation of any kind, for three days after the date those disclosures are provided to the purchaser (or five days if the disclosures are mailed). That cancellation right is critical to this procedure; without the purchaser having such an unconditional and unilateral right to cancel his obligation to purchase the home, this procedure would not be approved by EPA and HUD. Approval of this procedure in California indicates that EPA and HUD find it acceptable for a purchaser to receive the required lead-based paint disclosures after the seller's acceptance of the offer to purchase so long as the purchaser retains an unequivocal right, for a limited but reasonable period of time, to cancel the sale upon receipt and review of that lead-based paint hazard information.

■ For lease transactions the lessor must provide the information before he accepts the lessee's offer, and likewise must provide the lessee an opportunity to review the disclosed information before signing the lease.

Ten Day Testing Period

Neither the law nor the Regulations require a seller or lessor to test for lead-based paint. The law simply requires that sellers provide potential purchasers up to 10 days to have the property tested for lead-based paint before they become obligated under the contract. Sellers may not deny purchasers the opportunity to test, and may not advertise or offer a property for sale on condition that purchasers decline the opportunity to test.

Purchasers may agree to a shorter (or longer) time period to perform the testing, or may even agree to waive their opportunity to test altogether. The purchaser may elect to test even if the seller has already had the property tested and has provided those test results to the purchaser.

■ The 10-day testing option does not apply to lease transactions.

Practical Advice

My buyers want to have the property tested but the seller refuses. Can the seller do that?

Sellers may not refuse buyers the opportunity to test, nor may they advertise or offer a property for sale on condition that buyers decline the opportunity to test. The seller may, however, decline to agree to permit the buyer to cancel or otherwise modify the contract if the test results indicate lead-based paint hazards are present. See page 8-9 of this guide for more details about testing.

My seller had his property tested but can't find the reports. Can he just tell the purchaser the results?

Check with the company that did the testing. If the company has the test results and no effort is made to obtain them, it might be argued that the seller or the agent is nevertheless liable for failure to disclose. Even if the test results cannot be found, be sure the seller discloses that the property was tested and communicates as much about the test results as he can remember.

I just got an unexpected offer for my listing. It looks like the selling agent didn't follow the procedures for disclosure. What happens now?

All agents involved in a transaction are equally responsible to ensure that the seller complies with his duty to disclose. As the listing agent, you should advise the seller not to accept the offer until compliance is achieved. If you have not already done so, you must provide to the selling agent the seller's lead-based paint disclosures, including the executed Disclosure of Information and Acknowledgment form, as soon as possible. Remind the selling agent of the requirement and his duty to provide those disclosures to the purchaser and ask him to confirm when the purchaser has received them and executed the Disclosure of Information and Acknowledgment form. When that is accomplished, the seller is permitted to accept the offer.

The buyers had the property tested, the results were positive, and now they want to back out of the deal. My seller is really angry!

The purchaser's right to back out of a deal is governed by the sales contract. Although purchasers are entitled to an opportunity to test, they are not entitled to cancel or amend the contract if testing results are

Enforcement

EPA and HUD have joint responsibility for enforcement of the Regulations, although EPA has the primary enforcement responsibility.

EPA undertakes enforcement actions against violators identified primarily through two mechanisms: 1) response to complaints; 2) unannounced compliance inspections of property owners and real estate firms.

A compliance inspection entails an inspection of files and records related to lead-based paint disclosure. In addition, EPA may also seek business records regarding sales, pricing, revenues and other business operation information. EPA may consider this information relevant to a violator's ability to pay penalties or the extent to which a violator may have benefited financially from a violation.

Compliance inspections are typically made without prior notice. The party being inspected may decline to admit the inspectors or to provide access to lead-based paint disclosure records. When admission is denied, however, EPA is likely to follow up with a written request for admission or seek a subpoena requiring admission and access to reports.

EPA's enforcement policy states that penalties imposed for violations are to be gauged to the seriousness of the violation. The policy also provides that, in most cases, a first non-egregious violation will result only in a letter of reprimand and no financial penalty. Egregious violations will almost always be found where there is a young child residing in the premise involved in the violation.

Enforcement activities are carried out by EPA Regional Offices (see Contact List p. 20). HUD focuses its enforcement efforts on rental properties in large urban areas with identified elevated blood lead level problems.

Lead-Based Paint Testing Contingency Language

In developing the Regulations, EPA and HUD intended that the potential purchaser and seller include a lead-based paint hazard testing "contingency provision" in the sales contract similar to that already in common use with respect to home inspections for other kinds of property conditions and defects. Neither the law nor the Regulations require such a contingency, however. Although purchasers are entitled to an opportunity to have the property inspected for lead-based paint hazards, the Regulations do not require that the sales contract also give the purchaser the right to cancel or amend the contract if testing results are unacceptable. Sellers and purchasers are free to negotiate the contract provisions related to testing, and may agree, for example, that the purchaser be obligated to purchase the property even if the test results indicate that lead-based paint hazards are present. **There is no mandatory federal contingency language**, though the Regulations suggest a format. As noted, sellers, and buyers, assisted by their attorneys and agents, are free to develop and include in the contract lead-based paint inspection or testing language that best suits their needs, desires and circumstances.

Where the purchaser and seller agree that the buyer's obligation to purchase the property is contingent on satisfactory lead-based paint hazard test results, typical testing contingency language will provide:

- The purchaser with the right to cancel the contract if test results show unacceptable amounts of lead-based paint in the home.
- The seller with the right to elect to remove the lead-based paint and correct the problem, in which case the purchaser will be bound by the contract.
- The starting and ending time for the testing period.
- Each party's options if lead-based paint is found.
- The disposition of earnest money in the event the contract is voided.

As noted, the purchaser may also agree to waive his opportunity for testing.

Step 4 - Completing the Disclosure and Acknowledgment Form

Upon receipt of an offer for the property, the listing agent should confirm that the offer includes a completed Disclosure of Information and Acknowledgment Form indicating that the disclosure requirements have been satisfied.

The Regulations provide a form which may be, but is not required to be, used for this purpose. A Disclosure of Information and Acknowledgment Form satisfying the requirements is incorporated directly into form contracts developed by state and local associations and boards. A form that can be used for this purpose is also available from EPA at <http://www.epa.gov/lead/leadbase.htm>

Whatever form is used **must** include the following:

- The "Lead Warning Language" exactly as specified in the Regulations. This required language also appears in the EPA form.
- Seller or lessor acknowledgment of disclosure of the presence of any known lead-based paint and/or lead-based paint hazards, including copies of test results.
- Purchaser or lesser acknowledgment of receipt of all the required disclosures and the EPA-approved lead-based paint information pamphlet.
- Purchaser acknowledgment of receipt of a 10-day opportunity to conduct a lead test (or a shorter period, if the purchaser agrees), or waiver of that testing opportunity completely.
- Agent acknowledgment that the seller/lessor was advised of his disclosure obligations, and the agent's awareness of his duty to ensure the seller's/lessor's compliance with the disclosure requirements.
- Certification by all parties of the accuracy of the information they provided.

■ The disclosure acknowledgment form **must** be completed even in the case of an oral lease agreement.

Step 5 - Lead-Based Paint Inspection and Closing

After the sales contract (including the Disclosure of Information and Acknowledgment Form) is executed, the purchaser may have the property tested for lead-based paint if he has reserved the right to do so.

If lead-based paint or lead-based paint hazards are discovered, both the seller and purchaser may exercise their rights as defined in the testing-related language in the contract. For example, the purchaser may elect to void the contract and/or the seller may elect to correct the problem if the testing language provides such options.

In some communities, state or local agency-provided financial assistance and aid may be available for sellers to correct lead-based paint hazards on the property as part of the final negotiations. A list of state phone numbers is located on pages 17-19 of the guide.

Lead-Based Paint Inspection

The Regulations require that lead-based paint hazard inspections be conducted by an inspector certified under a federal certification program or a federally authorized state certification program. Most states have implemented an EPA-approved training and certification program. In states without an EPA-approved program, inspectors must be certified by the federal training and certification program, developed by EPA.

Record Keeping

Agents **must** keep a copy of the Disclosure of Information and Acknowledgment Form for three years from "completion date of the sale" (i.e., the closing date) or three years from the commencement of the leasing period.

Agent Liability, Penalties for Non-Compliance and Enforcement

- Federal penalties are severe. Civil penalties can range up to \$11,000 for each violation.
- The penalty for those who knowingly and willfully violate the law and habitually fail to comply can be \$11,000 for each violation and imprisonment for up to one year, or both.
- Federal penalties are **in addition** to claims under state law for failure to disclose a hazardous material condition.
- The seller, lessor, or agent may be liable for three times the damages sustained by the purchaser or lessee. These damages may include costs of correcting lead-based paint hazards and medical costs related to lead-based paint poisoning.
- Agents **cannot** be held liable for their failure to provide information withheld from them by the seller or lessor.