

## GET THE LEAD OUT:

### A Summary of the Residential Lead-Based Paint Hazard Reduction Act

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#### INTRODUCTION

Lead-poisoning poses a significant health hazard for young children and the environment. Although the incidence of lead poisoning has dropped steadily since the Environmental Protection Agency (EPA) barred the use of lead-based paint in 1977, approximately 1.7 million children still suffer from this tragedy. In order to reduce the number of lead-poisoning cases, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (hereafter referred to as the Act or Title X) of 1992 (42 U.S.C. Sec. 4852d). This article will review the Act, as set out in the Federal Register, March 6, 1996, Volume 61, Number 45, pages 9064-87.

#### SECTION 1018: REQUIREMENTS

Under Section 1018 of the Act, the Department of Housing and Urban Development (HUD) and the EPA promulgated the following regulations for disclosure of lead-based paint in residential housing:

- ♦ Sellers and lessors must provide purchasers and lessees with any available documentation of lead-based paint in the house or apartment. *Availability* in this matter is defined as any records or reports concerning lead-based paint in the Seller's possession or reasonably obtainable at the time of disclosure.
- ♦ Sellers and lessors must provide purchasers and lessees with a federally approved hazard information pamphlet. These pamphlets may be obtained from Chicago Title Insurance Company by calling toll free at (800) 621-1919 x2232.
- ♦ Sellers must provide purchasers with a 10-day period to conduct tests for the existence and or level of lead-based paint in the dwelling. If the existence of lead is present, the purchaser has the option to rescind the contract. Sample contingency language is set forth in Exhibit A.
- ♦ Sellers and lessors of residential housing built before 1978 must disclose to prospective purchasers and lessees the presence of lead-based paint, as set forth in Exhibit B.
- ♦ All sales and leasing contracts must contain acknowledgement language. This language is contained at the bottom of the disclosure form in Exhibit B.

♦ Agents must ensure compliance with these requirements. An *agent*, as defined in the Act, is any party who enters into a contract with the Seller or Lessor for purposes of selling or leasing the property. Therefore, listing agents, selling agents and buying agents who are paid through an arrangement with the listing broker are all "agents" under the Act. Buyers' agents who are paid wholly by the purchaser are *not* deemed to be agents under this Act.

♦ All of the above requirements shall be completed prior to the time when a purchaser or lessee becomes obligated to purchase or lease the house.

It is not clear from the Act whether the attorney would be considered an agent when the home was sold without the service of a real estate broker or salesperson.

#### DEADLINE REQUIREMENTS

These requirements must be met in accordance with the following timetables: (1) For owners of more than four residential dwellings, the requirements became applicable on September 6, 1996; (2) For owners of one to four residential dwellings the requirements became applicable on December 6, 1996.

#### EXEMPT TRANSACTIONS

Certain types of residential properties have been exempted from the Act. They are:

1. Transactions involving sale of foreclosure properties.
2. Rental housing that is free of lead-based paint as determined by a certified inspector. It should be noted that this exemption only applies to rental properties. The EPA and HUD decided that purchasers of real estate have a 10 day period to conduct their own assessment of the housing.
3. Short-term leases of 100 days or less in duration, where there are no renewal options, such as vacation rentals.
4. Renewal of leases, where the requirements satisfied the original lease transaction.

5.The requirements do not apply where the mortgage on the property is merely sold or purchased or where the servicing rights have been transferred.

6.The sale or lease of a zero-bedroom dwelling does not come under the purview of the Act. Zero-bedroom units are defined as residential housing where the sleeping area is not separated from the living area such as studios, efficiencies, dormitories, military barracks and the rental of individual rooms in residential dwellings.

7.Oral leases are likewise exempt from the Act, due to the issue of enforcement.

♦The Act requires the seller to perform five affirmative actions -- disclosure, documentation, pamphlet distribution, inspection opportunity and acknowledgment. Invariably, a seller without wrongful intent will not fully comply with the Act. This will undoubtedly lead to additional lawsuits.

♦In a typical residential real estate transaction, a buyer's attorney must monitor the mortgage contingency and home inspection contingency. An additional burden is now placed on the attorney with the imposition of the lead-based paint contingency. Likewise, this date may be missed resulting in further complaints.

♦The Act specifically defines agents, those responsible for overseeing compliance with the requirements, as real estate salespersons and property managers. However, the Act is silent about the role of the attorney. What about the instance where the home is sold without the services of a real estate salesperson -- is the attorney then considered an agent?

### **PENALTIES FOR NON-COMPLIANCE**

Penalties for non-compliance are discussed under Section 1018 (6) (3) of Title X which state that any person who knowingly violates the Act shall be jointly and severally liable to the purchaser for up to three (3) times the amount of damages incurred. Section 1018 (6) (4) allows the imposition of court costs, attorney fees and expert witness fees.

Non-compliance does not, however, affect the validity or enforceability of the contract. In such a case, the purchaser is still bound to the terms of the contract and may only seek remedies limited to civil liability under the Act and causes of action brought under state law. In addition, nothing in the Act creates a defect in the title to the real estate.

### **ISSUES RAISED BY THE ACT**

Outlined below are some possible issues to be raised now that the new law is in effect:

♦In an instance where the purchaser is an elderly couple or childless, the 10-day inspection clause, should the results be positive, may give the buyers an opportunity to back out of the contract, provided the sellers do not remedy the problem.

### **CONCLUSION**

The symptoms of lead poisoning are not always obvious, but with prolonged exposure, lead poisoning can lead to learning disabilities, brain damage, and even death. The Residential Lead-Based Paint Reduction Act was put into effect to deter these threats.

An estimated 83 million homes still contain some level of lead-based paint. Lawsuits may result with non-compliance, leading to civil penalties. Like most laws, the intent of this Act is laudable. However, as of yet, there is no case law to answer many of the issues raised.

## **EXHIBIT A**

### **Sample Contract Contingency Language**

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead based paint hazards at the Purchaser's expense until 9:00 p.m. on the tenth calendar-day after ratification [*Insert date 10 days after contract ratification or a date mutually agreed upon*]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet *Protect Your Family From Lead in Your Home* for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Purchaser shall have \_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

## EXHIBIT B

(Sample Disclosure Format for Target Housing Sales)

### Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

#### Lead Warning Statement

*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.*

#### Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i)  Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

\_\_\_\_\_

(ii)  Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i)  Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list document below).

\_\_\_\_\_

(ii)  Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

#### Purchaser's Acknowledgement (initial)

(c)  Purchaser has received copies of all information listed above.

(d)  Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e)  Purchaser has (check (i) or (ii) below):

(i)  received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii)  waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

#### Agent's Acknowledgement (initial)

(f)  Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

#### Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Seller	_____ Date	_____ Seller	_____ Date
_____ Purchaser	_____ Date	_____ Purchaser	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

We welcome your topic suggestions for future **Title Issues**. If you are interested in submitting your ideas, please complete this form and return to:



**Chicago Title Insurance Company**

171 North Clark Street, ML 03MC

Chicago, Illinois 60601-3294

Attn: Melanie Strah, Illinois Regional Communications Department

TOPIC: \_\_\_\_\_

Submitted By: \_\_\_\_\_

Company/Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



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