

Lead-Based Paint Disclosures

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Introduction

The new federal rules for the disclosure of lead-based paint have been announced by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). These rules require that sellers and landlords of older residential real estate disclose lead-based paint and lead-based paint hazards (collectively referred to as LBP), and provide lead-based paint information and warnings to buyers and tenants before they become contractually obligated to buy or rent. Real estate agents involved in these transactions are required to advise the owners of their obligations and ensure compliance with the rules.

This *Legal Update* reviews these new LBP disclosure requirements in detail. The issues covered include: the properties and transactions covered by the new rules; real estate agents covered by the new rules; the type of LBP information that must be disclosed by sellers and landlords; the requirement for providing LBP records and reports to buyers and tenants; the EPA-approved lead hazard information pamphlet; buyers' LBP inspection rights; the timing of

LBP disclosures to buyers and tenants; contract and lease disclosure and acknowledgment provisions; the responsibility of real estate agents; and the federal LBP disclosure rule enforcement provisions.

The *Update* also contains a brief summary of the extent of the LBP problem in Wisconsin, and concludes with an LBP question-and-answer section. This *Update* also contains a Lead Information Directory special insert. This directory contains federal, state and local contact numbers for information about all aspects of LBP education, testing, reduction and prevention.

Federal LBP Disclosure Rules

The federal disclosure rules specifically require that sellers and landlords of most residential housing built before 1978 must: 1) disclose the presence of known LBP; 2) provide buyers and tenants with any available records or reports about any LBP present in the housing; and 3) provide buyers and tenants with a federally-approved lead hazard information pamphlet. Offers to purchase and leases must contain certain disclosures and acknowledgments. Sellers

must also provide buyers with an opportunity to inspect for LBP. Finally, real estate agents must ensure compliance with these requirements. These new LBP disclosure requirements take effect for the owners of properties containing five or more residential dwelling units on Sept. 6, 1996, while the effective date for owners of properties containing four or less residential dwelling units is Dec. 6, 1996.

The new rules do not require that any testing be conducted for LBP, nor do they require the removal of such paint or hazards. The rules also do not affect the validity of offers to purchase or leases if the parties or agents fail to comply with the federal rule requirements.

Covered Properties and Transactions

The new EPA/HUD requirements for the disclosure of LBP apply to all transactions to sell or rent target housing, subject to certain exceptions. The following discussion specifies what types of residential properties are covered under the new LBP rules and those which are not subject to the rules' requirements.

Covered Properties

"Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age lives in or expects to live in such housing), and except for any "0-bedroom" dwellings.

Excluded Properties

A. *Housing for the Elderly (No Resident Children Under 6)*. Housing for the elderly means retirement communities or similar types of housing designed specifically for households where at least one person

is 62 years of age or older at the time of initial occupancy.

B. *Housing for Persons with Disabilities (No Resident Children Under 6)*.

With both housing for the elderly and housing for persons with disabilities, the exclusion from the LBP disclosure rules is lost if children under the age of 6 live there or are expected to live there. The parties to any sales or lease transaction involving housing for the elderly or persons with disabilities where children under 6 live or are expected to live would need to comply with the federal LBP disclosure rules.

C. *"0-Bedroom" Dwellings*.

"0-bedroom" dwellings means residential dwelling units where the living area is not separated from the sleeping area. This includes efficiencies, studio apartments, lofts, dormitory housing, military barracks and rentals of individual rooms in residential dwellings.

Covered Transactions

A. *Sales*. A sale is a transaction where the seller transfers legal title to target housing, in whole or in part, to the buyer in return for consideration. It also includes the transfer of shares in a cooperatively owned project, and the transfer of an interest in a leasehold. Sellers and buyers may include, but are not limited to, individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

B. *Leases (Includes Subleases & Oral Leases)*. A lease is a transaction where the tenant or lessee enters into an agreement with the landlord or lessor to lease, rent or sublease target housing. Tenants and landlords may include, but are not limited to, individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

Subleases are included so that the subtenant or sublessee (i.e., the new tenant) receives the LBP disclosures and information. Informal rental agreements not involving a written lease, for example, oral leases, are included despite the difficulties in complying with the rules requirements during a process handled verbally without written documentation. Oral leases were included because they make up a significant portion of the housing arrangements in many areas, including many low-income, disadvantaged communities which are generally at greater risk of exposure to LBP. There also was concern that explicitly excluding oral leases would motivate landlords to avoid written leases, eliminating not only the applicability of the LBP disclosure and information requirements but also the protections normally afforded the parties in written leases.

Exempted Transactions

A. *Foreclosures*. Foreclosures are exempted transactions because the EPA and HUD believe the circumstances typically surrounding foreclosure transactions make pre-sale disclosures and evaluation unworkable. This exclusion does not apply, however, to the sale of housing acquired through foreclosure and then subsequently resold. Thus the lender which forecloses on a home must comply with the LBP disclosure rule requirements when the home is resold to a buyer.

B. *Leases of Housing Found to be Lead Free*. Leasing transactions involving target housing that has been found to be LBP free by a certified inspector are excluded from the LBP disclosure rules. "Lead-based paint free housing" means target housing that has been found to be free of 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.

This exemption was created to motivate building owners to conduct LBP inspections and remove LBP where present. Having rental housing evaluated for LBP then permits the owner to plan what education, management practices and hazard reduction activities are appropriate.

Owners may wish to have their rental properties inspected for LBP, according to the federal rules commentators, to correct for possible false or outdated positive findings from previous LBP testing. If new testing shows that the previous positive LBP results were false (i.e., a false positive due to sampling; testing error; older, less technologically-advanced testing methods; etc.), and that there is in fact no LBP present, then the landlord qualifies for the LBP-free exemption. Perhaps more importantly, owners who remove all LBP from the rental property in response to an earlier LBP positive inspection may have a new inspection performed and if LBP is no longer present, the landlord will qualify for the LBP-free exemption.

The federal program for training and certification of LBP inspectors will not take effect for some time after the effective date of the disclosure rules. Therefore, an interim provision permits inspectors qualified under any existing state certification program and using state-approved methods to conduct inspections for the purpose of determining whether housing is LBP free. Once a federal or a federally-authorized state certification program has taken effect in a particular state, this interim provision will expire and subsequent inspections for the purpose of this exclusion will have to be performed by inspectors with federal or federally-authorized state certification.

C. Short-Term Leases of 100 Days or Less (No Renewals or Extensions). The new LBP disclosure rules exclude target housing transactions

involving leases of 100 days or less provided no lease renewal or extension may occur. This will exclude most seasonal vacation rentals and hotel and motel transactions from the disclosure rules. The limitation on renewals and extensions was enacted to ensure that month-to-month leasing transactions remain subject to the rules. In an open-ended month-to-month tenancy, for example, the rules will apply as long as the leasing arrangement fails to limit the total tenancy to 100 days or less. If both parties wish to extend a previously exempted short-term lease beyond the 100-day limit, all provisions of the federal LBP disclosure rules must be complied with in full before the extension occurs, even if the lease itself is oral and not written.

D. Lease Renewals if Disclosures Done and No New Information. LBP disclosures need not be repeated for the renewal or extension of existing leases where the landlord previously disclosed all information required by the rules and no new information concerning LBP on the premises has come to the attention of the landlord. In situations with no formal renewal process involved, i.e., a month-to-month holdover after the expiration of a one-year lease term, “renewal” shall be interpreted to occur at the point where the parties agree to a significant written change in the terms of the lease such as a rent rate adjustment. Then disclosure would be required as to any new LBP information not previously disclosed to the tenant.

E. Purchase, Sale or Servicing of Mortgages. The rules do not and were never intended to cover the purchase, sale or servicing of mortgages.

Agents Covered

The definitions section of the rules indicates that “agent” means any party who enters into a contract with a seller or landlord to sell or lease target housing, including any party who enters into a contract with a representative of the seller or landlord for this purpose. The definition of “agent” also excludes buyers and buyer representatives who receive all compensation from the buyer. This is being interpreted to mean that all agents of sellers, landlords, tenants and buyers are subject to the federal LBP disclosure rules, except for buyer’s agents who receive all of their compensation from the buyer.

Disclosure of LBP Information

The new LBP disclosure rules require that sellers and landlords disclose to buyers, tenants and agents the presence of any known LBP, as well as any additional information about the basis for the determination that LBP exists on the property, the location of any LBP on the premises, and the condition of painted surfaces.

“Lead-based paint” means 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 hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

These disclosures shall be based upon the actual knowledge of the sellers and landlords. In other words, is there lead-based paint that is peeling or

chipping, or on friction, impact or chewable surfaces such as door frames, window sills, floorboards, etc.? Is there lead-contaminated dust or soil present on the property to the actual knowledge of the seller or landlord? If so, this must be disclosed to buyers, tenants and agents.

While the EPA and HUD hope to encourage lead hazard evaluation and reduction, this LBP information disclosure requirement does not mean that the seller or landlord must engage in any LBP inspections or evaluations prior to the sale or lease transaction or closing. It only relates to what is already known.

LBP Records, Reports Provided to Buyers and Tenants

Sellers and landlords must provide to buyers and tenants any reports and records available to them pertaining to LBP in the target housing being sold or rented. This includes records and reports regarding common areas, and records and reports regarding other residential dwelling units in multifamily target housing, provided that such information is part of an evaluation or reduction of LBP in the target housing as a whole. In other words, LBP reports about the unit in question must be provided, along with LBP reports on other units in the multifamily housing complex.

An “evaluation” means a risk assessment or inspection. A “risk assessment” means an on-site investigation to determine and report the existence, nature, severity and location of LBP in residential dwellings. This includes gathering information about the age and history of the housing and the occupancy by children under the age of 6; visual inspection; limited wipe and other

sampling; and a report explaining the results of the investigation. “Reduction” means measures designed to reduce or eliminate human exposure to LBP.

Records and reports are “available” if they are in the seller’s or landlord’s possession or “reasonably obtainable” by the seller or landlord at the time of the disclosure. “Reasonably obtainable” records and reports include records retained by a separate or outside entity on behalf of the seller or landlord (i.e., property manager, attorney, etc.), and copies of reports retained by the original inspector or risk assessor that would be available to the owner in cases where original records were lost or destroyed. “Reasonably obtainable” does not mean that the seller or landlord must conduct further LBP evaluation or testing so as to obtain additional records.

“Common areas” means those portions of a multifamily target housing property which are generally accessible to all residents and building users including, but not limited to, hallways, stairways, lobbies, laundry and recreational rooms, playgrounds, community centers and boundary fences. “Common areas” is intended to include any LBP associated with both the interior and exterior portions of multifamily target housing.

The EPA and HUD believe that information and reports about other units in multifamily housing are directly relevant to prospective buyers and tenants if the information stems from evaluations or LBP reductions of the target housing as a whole. In large multifamily projects, evaluations do not necessarily examine every dwelling unit in the housing project. Rather, inspectors examine a representative sampling of the dwelling units and apply the finding to the housing complex as a whole.

furnish copies of the LBP reports and records to the buyers and tenants. Simply making the reports and records accessible to them is not sufficient.

Lead Hazard Information Pamphlet

Sellers and landlords must provide a lead hazard information pamphlet approved by the EPA to buyers and tenants. The EPA has developed such a pamphlet entitled “Protect Your Family From Lead in Your Home.” Information about how to obtain copies of this 14-page, color pamphlet may be found in the Federal Government Agencies section of the Lead Information Directory (see page 4 of special insert in this *Update*). Camera-ready versions for copying purposes are also available.

States and other groups are also permitted under the LBP disclosure rules to develop their own lead hazard information pamphlet, provided that they obtain the prior written authorization and approval of both the EPA and HUD. Believing that the same lead hazard information may be presented to consumers in a more meaningful and cost-effective manner, the WRA is seeking EPA and HUD approval to produce the EPA pamphlet in a shorter, more concise format. The WRA will update members about the availability of the WRA-produced lead hazard brochure as soon as the necessary approvals have been secured and the brochure has been finalized. REALTORS® wishing to use the EPA pamphlet in the interim should refer to the Federal Government Agencies section of the Lead Information Directory (see page 4 of special insert) included in this *Update*.

Buyer Opportunity to Inspect for LBP

The LBP disclosure rules require that sellers provide buyers with a 10-day opportunity to conduct an LBP risk assessment or inspection of the target housing before becoming obligated under the offer to purchase. The length of time may be shortened or lengthened by mutual agreement of the parties. This requirement does not mean that the buyer must be permitted to conduct an LBP inspection before signing an offer to purchase.

This requirement may be met by having an LBP inspection contingency in the offer, similar to the home inspection contingencies typically used in residential offers. There is no mandatory language or provision for this purpose, so the contingency may be negotiated by the parties. Thus the terms and conditions for the conduct and completion of the LBP inspection or evaluation will be reached by mutual agreement and not by federal mandate. The WRA will be drafting a lead-based paint inspection contingency which will be included in the LBP disclosure and acknowledgment addendum to the offer discussed later in this *Update*.

Buyers may choose to waive their opportunity to inspect for LBP. This might occur in situations where the seller has disclosed significant amounts of LBP information about the premises, or where no children are expected to live in the housing. If a buyer waives the inspection opportunity, the buyer must still acknowledge that he or she was offered the opportunity to conduct an LBP evaluation. This acknowledgment must appear on the mandatory LBP disclosure and acknowledgment attachment to the offer. The rules do not contain any requirement for providing tenants with the opportunity to conduct an LBP inspection.

Timing of LBP Disclosures

The federal LBP disclosure rules do not specify exactly when in the transaction the seller or landlord must make his or her LBP disclosures and provide his or her LBP records and reports and the lead hazard information pamphlet. The rules only identify the latest point at which full disclosure must occur, that is, before the buyer or the tenant becomes obligated under the offer to purchase or the lease. Ideally the LBP disclosures will occur as part of the offer or lease negotiations immediately before the offer or lease is drafted, but this may often be easier said than done. The LBP disclosures can be incorporated into the rental application process, i.e., given to approved applicants before they are given the lease.

However, it may be more difficult to find a routine way to focus only on serious buyers who intend to make offers to purchase.

The rules do not require mass disclosure to every prospective buyer and tenant, regardless of their degree of interest. The rules do not require, for example, that lead hazard information pamphlets and LBP records and reports be handed out to every person attending an open house. On the other hand, the seller must complete the disclosures prior to accepting a buyer's offer to purchase. The rules distinctly state that if any of the required disclosure activities occur after the buyer has submitted an offer to purchase or after the tenant ~~has submitted a lease proposal or~~ signed the lease, the seller or landlord must complete the required disclosure activities prior to accepting the offer or lease, and allow the buyer or tenant an opportunity to review the information and possibly amend the offer or lease.

Disclosures and Acknowledgments

The rules require that offers to purchase and leases for target housing include mandatory LBP warning language and signed acknowledgments which confirm that all required disclosures have been made, that all required records, reports and information pamphlets have been provided and that buyers have been given the opportunity to conduct an LBP inspection or evaluation. The process of completing and signing these acknowledgments ensures that all parties are aware of their rights and obligations and are able to confirm that the appropriate actions have occurred. The confirmation provisions also provide a clear record of compliance.

There is no mandatory form for this purpose. Instead, the parties are given the flexibility to develop their own language and forms, as long as the LBP disclosure and acknowledgment form contains the mandatory elements prescribed in the rules. The following discussion specifies the required elements for sales transactions and for leases.

Sales — Seller, Agent and Buyer Requirements

Each contract for the sale of target housing (offer to purchase) must include an attachment or addendum containing the following disclosure and acknowledgment elements:

A. *Lead Warning Statement.* The rules contain a specific mandatory lead warning statement which must appear verbatim in the offer attachment or addendum.

B. *Seller's Disclosure of Known LBP on the Premises.* The rules require the offer addendum to include a statement disclosing the presence of

any known LBP in the target housing, or indicating that the seller has no knowledge of any LBP on the property. The seller must also provide any additional information available concerning the known LBP such as the basis for the determination that LBP is present, the location of the LBP and the condition of painted surfaces. The seller's statement must also list all records and reports pertaining to LBP on the premises which have been furnished to the buyer, or if no records or reports have been furnished, the seller must indicate that fact.

C. Buyer's Receipt of Information. The rules require the offer addendum to include a statement by the buyer confirming that the buyer has received the seller's LBP disclosures, the seller's LBP records and reports, and an EPA-approved lead hazard pamphlet.

D. Lead Inspection Opportunity Confirmation. The rules require the offer addendum to include a statement confirming that the buyer received the opportunity to conduct an LBP inspection or evaluation before becoming obligated under the offer to purchase. If the buyer has waived the right to an LBP inspection opportunity or contingency, the buyer must indicate this on the addendum statement.

E. Agent Acknowledgment. The rules require the offer addendum to contain a statement by the agents involved in the transaction, confirming that the agents have informed the seller of the seller's obligations under the rules and acknowledging the agents' duty to ensure compliance with the rules.

F. Certifying Signatures. The seller, buyer and agents must all sign the LBP offer addendum to certify the accuracy of their respective statements.

Sellers and agents are required to retain a copy of the completed LBP offer addendum for three years after closing.

Leases — Landlord, Agent and Tenant Requirements

Each contract for the lease or rental of target housing (lease) must include the following disclosure and acknowledgment elements within the lease or in an attachment or addendum to the lease:

A. Lead Warning Statement. The rules contain a specific mandatory lead warning statement which must appear verbatim in the lease or in the lease attachment or addendum.

B. Landlord's Disclosure of Known LBP on the Premises. The rules require the lease or lease addendum to include a statement disclosing the presence of any known LBP in the target housing, or indicating that the landlord has no knowledge of any LBP on the property. The landlord must also provide any additional information available concerning the known LBP such as the basis for the determination that LBP is present, the location of the LBP and the condition of painted surfaces. The landlord's statement must also list all records and reports pertaining to LBP on the premises which have been furnished to the tenant, or if no records or reports have been furnished, the landlord must indicate that fact.

C. Tenant's Receipt of Information. The rules require the lease or lease addendum to include a statement by the tenant confirming that the tenant has received the landlord's LBP disclosures, the landlord's LBP records and reports, and an EPA-approved lead hazard pamphlet.

D. Agent Acknowledgment. The rules require the lease or lease addendum to contain a statement by the agents involved in the transaction, confirm-

ing that the agents have informed the landlord of the landlord's obligations under the rules and acknowledging the agents' duty to ensure compliance with the rules.

E. Certifying Signatures. The landlord, tenant and agents must all sign the lease or the LBP lease addendum to certify the accuracy of their respective statements.

Landlords and agents are required to retain a copy of the completed lease or LBP lease addendum for three years after the commencement of the lease term.

The WRA will be publishing both a LBP offer addendum and an LBP lease addendum which comply with these requirements. The reverse side of each addendum will include a listing of the requirements that the seller or the landlord, as the case may be, must fulfill. This listing may be reviewed with the seller or landlord as part of the process of informing sellers and landlords of their obligations under the federal LBP rules. The LBP offer addendum will also contain the LBP inspection contingency. REALTORS® should watch future *Wisconsin REALTOR® Updates* and *Legal Updates* for information about the availability of these addendum forms. Real estate agent checklists and specific guidance for the implementation of the LBP disclosure rules will also be forthcoming.

Agent Responsibilities

Each agent involved in a sale or lease transaction shall be responsible for ensuring compliance with all the requirements imposed by the rules.

To ensure compliance, the agent must inform the seller or landlord of his or her duties to disclose known LBP on the target housing, and furnish LBP

records and reports and the EPA-approved lead hazard information pamphlet to buyers and tenants. The agent must also advise the seller that he or she must permit the buyer to have a 10-day opportunity or inspection contingency to conduct an inspection or evaluation of the premises with respect to LBP. The seller and landlord must also be told about his or her duty to certify compliance with these obligations on and retain a copy of a signed LBP disclosure and acknowledgment document or addendum.

The agent then must ensure compliance with all of these requirements. This may be done by making sure that the seller or the landlord has performed all of these required activities, or by personally performing these activities on behalf of that party. If the agent has informed the client about all of his or her obligations under the federal LBP disclosure rule, the agent shall not be liable for the failure to disclose LBP to a buyer or tenant if the LBP is known by the seller or landlord but not disclosed to the agent. The new LBP disclosure rules require that sellers and landlords disclose to agents the presence of any known LBP as well as any additional information about the basis for the determination that LBP exists on the property, the location of any LBP on the premises, and the condition of painted surfaces. Sellers and landlords must also disclose to agents the existence of any available records or reports pertaining to LBP on the premises.

Rule Enforcement Provisions

The federal LBP disclosure rules provide for both government enforcement and civil lawsuits by injured parties.

Government Enforcement

The federal LBP disclosure rules authorize civil penalties of up to \$10,000 for each violation by those who knowingly violate or refuse to comply with the rules. Persons who knowingly or willfully violate the LBP disclosure rules are also potentially subject to criminal fines of up to \$10,000 for each day of violation, imprisonment for not more than one year, or both.

The EPA and HUD, however, are adopting enforcement policies to develop a common-sense approach to the appropriate enforcement responses to different violations. They have indicated that they are more interested in informing individuals of the new LBP disclosure requirements and providing compliance assistance than in invoking harsh penalties. They will be issuing warning notices (without any penalties) to alert people that they must comply with the LBP disclosure rules and to give them the opportunity to do so, while at the same time maintaining provisions that will ensure that willful and repeat violators are appropriately penalized. Penalties will be determined based upon factors such as the gravity of the offense, the violator's awareness of the correct procedures, the violator's ability to pay a penalty, the injury to the public, any benefits received by the violator, deterrence to other violators, and other factors relevant to the violation.

Civil Litigation

Any persons who knowingly violate the federal LBP disclosure rules shall be liable to an injured buyer or tenant in an amount equal to three times the amount of damages suffered by the injured party. Thus sellers, landlords and agents may be sued for treble damages if their noncompliance with the federal LBP disclosure rules causes injury to a buyer or tenant. The court may also award reasonable

attorneys fees and expert witness fees to the prevailing party.

Lead Poisoning & LBP in Wisconsin

The federal LBP rules have been adopted to help ensure that families receive information necessary to protect their children from lead-based paint hazards in housing. Lead is a powerful neurotoxin which can have serious health consequences for young children, especially those under the age of 6. Lead poisoning can cause neurological damage, behavior problems, learning disabilities, loss of IQ, as well as hearing and growth deficiencies.

Between July 1, 1994, and June 30, 1995, 41,033 Wisconsin children were screened for lead poisoning and 11,713 or 20.7% tested positive. Roughly 34% of the children tested in Milwaukee and Racine Counties tested positive for lead poisoning while approximately 15% of the children tested from outside of Milwaukee and Racine Counties tested positive. The national average is about 9%.

Children most often become poisoned by ingesting lead paint chips, dust and contaminated soil. Poorly maintained older housing and unsafe remodeling and renovation activities are often implicated in childhood lead poisoning. Lead paint is most often found on exterior walls and trim, porches, interior woodwork, doors and windows. Kitchens and bathrooms are also likely to have lead paint. The Wisconsin Division of Housing indicates that at least 50% of the housing in every Wisconsin county contains some LBP. Milwaukee's rate exceeds 75%.

Lead-Based Paint Questions & Answers

Following are some questions and answers about the federal LBP disclosure regulations which might be asked by your clients, customers and agents.

What is the purpose of this rule and who is affected?

To protect the public from exposure to lead from paint, dust and soil, Congress passed the Residential LBP Hazard Reduction Act of 1992, also known as Title X. Section 1018 of this law directed HUD and EPA to require disclosure of information on LBP before the sale or lease of most housing built before 1978. The rule would ensure that buyers and tenants of housing built before 1978 receive the information necessary to protect themselves and their families from LBP.

When does the rule take effect?

The rule's effective date depends on the number of housing units owned. For owners of more than four dwelling units, the effective date is Sept. 6, 1996. For owners of four or fewer dwelling units, the effective date is Dec. 6, 1996.

What type of housing is affected by this rule?

This rule applies to all housing defined as "target housing," which includes most private housing, public housing, housing receiving federal assistance, and federally-owned housing built before 1978.

What type of housing is not affected by this rule?

Housing that is not affected by this rule includes: 1) "0-bedroom" dwellings, such as lofts, efficiencies, and studio apartments; 2) leases of

dwelling units for 100 days or less, such as vacation homes or short-term rentals; 3) designated housing for the elderly and the handicapped unless children under the age of 6 live or are expected to live there; and 4) rental housing that has been inspected by a certified inspector and is found to be free of lead-based paint.

How does this rule apply to housing common areas such as stairwells, lobbies, and laundry rooms?

Common areas are those areas in multifamily housing structures that are used or are accessible to all occupants. The rule requires that sellers and landlords disclose available LBP information about common areas so that families can be informed about preventive actions.

What if I'm selling target housing?

Property owners who sell target housing must: 1) disclose all known LBP in the housing and provide any available reports on LBP in the housing to buyers; 2) give buyers an EPA-approved LBP pamphlet, such as "Protect Your Family from Lead in Your Home;" 3) include certain warning language in the contract as well as signed statements from all parties verifying that all requirements were completed; 4) retain signed acknowledgments for three years, as proof of compliance; and 5) give buyers an opportunity to test the housing for LBP.

What if I'm renting target housing?

Property owners who rent out target housing must: 1) disclose all known LBP in the home and provide any available reports on LBP in the housing to tenants; 2) give tenants an EPA-approved LBP pamphlet, such as "Protect Your Family from Lead in Your Home;" 3) include certain warning language in the lease as well as signed statements from all parties verifying that all requirements were completed; and 4) retain signed acknowledgments for three years, as

proof of compliance. There is no requirement for an LBP inspection.

Am I required to give an EPA-approved LBP pamphlet, such as "Protect Your Family from Lead in Your Home," to existing tenants?

No, but when existing tenants renew their leases, you must give them the pamphlet and any available LBP reports. In other words, you must give them the same information that you are required to provide new tenants.

What if the buyers/tenants don't speak English?

In cases where the buyer or tenant signed a purchase or lease agreement in a language other than English, the rule requires that the disclosure language be provided in the alternate language. The EPA pamphlet "Protect Your Family from Lead in Your Home" is printed in English and Spanish and will be made available to the public. EPA and HUD are considering publishing the pamphlet in other languages as well.

Must I check my house for lead prior to sale?

No. The rule does not require that a seller conduct or finance an inspection or risk assessment. The seller, however, is required to give the buyer an LBP inspection period.

Is the seller required to remove any LBP that is discovered during an inspection?

No. Nothing in the rule requires a building owner to remove LBP discovered during an inspection or risk assessment. The rule does not, however, prevent the parties from negotiating hazard reduction activities as a contingency in the offer to purchase.

What if I know there is LBP in my home?

If you know there is LBP in your

home, you are required to disclose this information to the buyer or tenant along with any available reports on LBP in the property.

What if the landlord knows that there is no LBP in my rental building?

If your rental housing has been found to be free of LBP by a certified inspector, this rule does not apply. However, landlords seeking an exclusion to this rule, must use state-certified inspectors. If your state does not have a certification program, a certified inspector from another state may be used. The EPA is currently developing federal certification requirements for individuals and firms conducting LBP inspections, risk assessments, and abatements.

What are my responsibilities as an agent?

Agents must ensure that: 1) sellers and landlords are made aware of their obligations under this rule; 2) sellers and landlords disclose the proper information to buyers and tenants; 3) sellers give buyers the opportunity to conduct an inspection; and 4) offers and leases contain the appropriate notification and disclosure language and proper signatures.

What is the responsibility of an agent if the seller or landlord fails to comply with this rule?

The agent is responsible for informing the seller or landlord of his or her obligations under this rule. In addition, the agent is responsible if the seller or landlord fails to comply. However, an agent is not responsible for information withheld by the seller or landlord.

As a buyer, am I required to conduct and finance an inspection?

No. The rule simply ensures that you have the opportunity to test for lead in the offer to purchase. Mortgage lenders, however, may require a lead inspection as a condition for a loan on target housing.

Can the 10-day inspection/risk assessment period be waived?

Yes. The inspection or risk assessment period can be lengthened, shortened or waived by mutual written consent of the buyer and seller.

If I am renting, do I have the same opportunity to test for lead?

Under the law, the inspection period is limited to sales transactions, but nothing prevents the tenant from negotiating with the landlord to allow time for an inspection before rental.

Must inspectors be certified?

Some cities and states have their own rules concerning inspector certification. The federal lead inspector certification program, which may be administered at the state or federal level, may not be in place for several years. Once these requirements are in place, professionals who offer to perform LBP inspections must be certified. The certification requirements that EPA is developing will ensure that inspectors engaged in LBP activities have completed an EPA-certified training program or an EPA-approved state program. Meanwhile, EPA and HUD recommend that people review the qualifications and training of individuals and firms before hiring them to conduct risk assessments, inspections or abatements. In Wisconsin, people may call 608/267-2297 or 608/267-0928 for a list of qualified lead contractors.

Does this rule increase my liability for future lead poisoning on my property?

In some cases, disclosure may actually reduce the owner's liability since occupants may be able to prevent exposure from the beginning. Under this rule, however, sellers, landlords, or agents who fail to provide the required notices and information are liable for triple damages.

What if a seller or landlord fails to comply with these regulations?

A seller, landlord or agent who fails to give the proper information can be sued for triple damages. In addition, they may be subject to civil and criminal penalties. Ensuring that the required LBP disclosure information is given to home buyers and tenants helps all parties avoid misunderstandings before, during, and after sales and leasing transactions.

Conclusion

Compliance with the new federal LBP disclosure regulations should generally be simple and straightforward for most REALTORS®. The LBP disclosure and acknowledgment addenda for offers and leases provide a compliance checklist. Once the requirements listed on the addendum have been completed and the parties have certified the accuracy of the addendum statements, rule compliance will be complete. REALTORS® should watch future issues of the *Wisconsin REALTOR® Update* and *Legal Update* for information about the availability of the WRA lead hazard information brochure and the LBP offer and lease addendum forms which are designed to expedite rule compliance in a concise and cost-efficient manner.

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Lead Information Directory

STATE & REGIONAL GOVERNMENT AGENCIES

Agriculture, Trade and Consumer Protection, Dept. of

For consumer complaints against lead contractors for unprofessional work,
or regarding landlord/tenant law concerning unsafe conditions, call

800/422-7128 (Statewide)
608/224-4960 (Madison)

Health and Social Services, Dept. of (DHSS)

Division of Health, Bureau of Public Health

For inspection procedures, technical assistance statewide, basic lead clean-up
procedures, abatement options & information on borrowing HEPA vacuums,
call your local city or county health agency or call Mark H. Chamberlain

608/266-7897

For information on lead training and certification, and a list of qualified
lead-based paint contractors, call:

Perry Manor
Shelley Bruce

608/267-2297
608/267-0928

For a brochure describing funding resources for lead hazard reduction,
call Marie Kielley (Division of Housing)

608/267-2726

For questions concerning lead in state-owned buildings or the Dept. of
Administration guidelines on lead abatement, call Leroy Binger

608/266-2333

For information on childhood lead poisoning reporting requirements, care
coordination and health effects, call:

Margie Joosse Coons
Mary Musholt

608/267-0473
608/266-1826

For lead poisoning prevention educational materials, call

608/266-5817
608/267-2488

For information on the state's OSHA Consultation Program which
provides technical assistance to the private sector, call Terry Moen

608/266-8579

For information about lead exposure in the workplace, call

608/266-2074

For information about adult lead exposure and reporting requirements,
call Valerie Ingram-Stewart

608/267-3256

Lead Laboratory Analysis (DHSS)

Blood

State Lab, Toxicology
City Milwaukee Health Department
Marshfield Clinics

608/262-1146
414/286-3526
715/387-5317

Water

State Lab of Hygiene
For a list of private certified labs for water testing,
call your nearest DNR district office or call

608/262-1293
608/266-0821

Soils

UW Soils Lab: Madison
Milwaukee

608/262-4364
414/229-4894

Pottery

State Lab of Hygiene
Milwaukee Health Dept.

608/262-1146
414/286-3526

Paint chip, dust & air sample analysis (approx. \$20/sample)
call the State Occupational Health Lab

608/263-6550

For a list of other labs in the Environmental Lead Proficiency Analytical
Testing Program for paint chips, wipe samples & soil samples, call

800/424-LEAD
800/356-4674

Industry, Labor and Human Relations, Dept. of

DILHR has the responsibility for worker protection of public employees.
For information, call Gordon Helmeid

608/266-1818

Justice, Dept. of

The Dept. of Justice handles the liability litigation on exposure to lead hazards.

For information in this area, call Chuck Hoornstra

608/266-9946

For questions about enforcement of Wis. Stats. Chapter 254,

call your County District Attorney, or Steve Tinker

608/266-0764

For complaints against lead contractors,

call Consumer Protection of the Legal Services Division

608/266-1852

Natural Resources, Dept. of

The Bureau of Solid and Hazardous Waste Management regulates lead removal and disposal. Questions regarding lead should be referred to: Fred Johnson

608/264-6015

Eau Claire	715/839-3759	Rhineland	715/365-8910
Green Bay	414/492-5870	Spooner	715/635-4065
La Crosse	608/785-9984	Superior	715/392-7831
Madison	608/275-3208	Wausau	715/359-4843
Milwaukee	414/229-0864	Wisconsin Rapids	715/421-7821

For questions regarding hazardous waste hauling

(some lead waste is considered hazardous), call the above DNR district numbers or Deb Reddeman

608/267-7576

For questions regarding air emissions of lead from factories, or lead paint removal

projects for homes, bridges, or water towers call: Joe Brehm

608/267-0567

Sue Lindem

608/267-0567

Occupational Safety and Health Administration (OSHA)

Questions regarding the OSHA regulations and histories of citations

for a particular lead abatement company, can be directed to OSHA's regional office

or to one of the four branch offices in Wisconsin. OSHA has the

responsibility for worker protection of private sector employees.

Chicago Reg. 1 Office 312/353-2220 OSHA Office, Madison 608/264-5388

OSHA Office, Appleton 414/734-4521 OSHA Office, Milwaukee 414/291-3315

OSHA Office, Eau Claire 715/832-9019

Public Instruction, Dept. of

For information on lead in the state's public schools, call Brad Adams

608/266-2803

Regulation and Licensing, Dept. of**Bureau of Direct Licensing and Real Estate**

For complaints against real estate agents and brokers for failure to

disclose regarding the presence of adverse factors, call Marlene Maly

608/266-0648

LOCAL COUNTY AND CITY HEALTH AGENCIES

<u>County</u>	<u>Health Agency</u>	<u>Telephone Number</u>
Adams	Adams County Public Health Dept.	608/339-4253
Ashland	Ashland County Health Dept.	715/682-7028
Barron	Barron County Health Dept.	715/537-6502
Bayfield	Bayfield County Health Dept.	715/373-6109
Brown	Brown County Health Dept.	414/448-6400
	De Pere Department of Public Health	414/339-4054
Buffalo	Buffalo County Health & Human Services Dept.	608/685-4412
Burnett	Burnett County Health Dept.	715/349-2141
Calumet	Calumet County Health Dept.	414/849-1427
Chippewa	Chippewa County Dept. of Public Health	715/726-7900
Clark	Clark County Health Dept.	715/743-5105
Columbia	Columbia County Health Dept.	608/742-9251
Crawford	Crawford County Public Health	608/326-0229
Dane	Dane County Public Health Dept.	608/242-6520
	Madison Dept. of Public Health	608/266-4815
Dodge	Dodge County Health Dept.	414/386-3670
Door	Door County Health Dept.	414/746-2234
Douglas	Douglas County Health Dept.	715/394-0296
Dunn	Dunn County Health Dept.	715/232-2388
Eau Claire	Eau Claire City/County Health Dept.	715/839-4718

LOCAL COUNTY AND CITY HEALTH AGENCIES (cont.)

<u>County</u>	<u>Health Agency</u>	<u>Telephone Number</u>
Florence	Florence County Health Dept.	715/528-4837
Fond du Lac	Fond du Lac County Health Dept.	414/929-3085
Forest	Forest County Health Dept.	715/478-3371
Grant	Grant County Health Dept.	608/723-6416
Green	Green County Health Dept.	608/328-9390
Green Lake	Green Lake County Nursing Service	414/294-4070, ext. 4109
Iowa	Iowa County Health Dept.	608/935-2810
Iron	Iron County Health Dept.	715/561-2191
Jackson	Jackson County Health and Human Services Dept.	715/284-4301
Jefferson	Jefferson County Health Dept.	414/674-7275
	Watertown Dept. of Public Health	414/262-8090
Juneau	Juneau County Public Health Service	608/847-9373
Kenosha	Kenosha County Health Dept.	414/653-6434
Kewaunee	Kewaunee County Health Dept.	414/388-4410, ext. 160
La Crosse	La Crosse County Health Dept.	608/785-9872
Lafayette	Lafayette County Health Dept.	608/776-4895
Langlade	Langlade County Health Dept.	715/627-6250
Lincoln	Lincoln County Health Dept.	715/536-0307
Manitowoc	Manitowoc County Health Dept.	414/683-4155
Marathon	Marathon County Health Dept.	715/848-9060
Marinette	Marinette County Health Dept.	715/732-7670
Marquette	Marquette County Health Dept.	608/297-9116
Menominee	Menominee County Human Services	715/799-3861, ext. 112
Milwaukee	Bayside Village Health Dept.	414/357-0138
	Brown Deer Health Dept.	414/354-3520
	Cudahy Health Dept.	414/769-2239
	Fox Point Village	414/354-3520
	Franklin Health Dept.	414/425-9101
	Glendale Health Dept.	414/228-1715
	Greendale Health Dept.	414/423-2110
	Greenfield Health Dept.	414/543-5500
	Hales Corners Health Dept.	414/529-6155
	Milwaukee City Health Dept.	414/286-3521
	Oak Creek Health Dept.	414/768-6525
	River Hills Village	414/871-8686
	St. Francis Health Dept.	414/481-2300, ext. 33
	Shorewood Health Dept.	414/963-6986
	South Milwaukee Health Dept.	414/764-5060
	Wauwatosa Health Dept.	414/471-8400, ext. 280
	West Allis Health Dept.	414/256-8400
	West Milwaukee Village	414/256-8400
	Whitefish Bay Village	414/963-6986
Monroe	Monroe County Health Dept.	608/269-8666
Oconto	Oconto County Dept. of Human Services	414/834-7033
Oneida	Oneida County Health Dept.	715/369-6111
Outagamie	Outagamie County Public Health Division	414/832-5100
	Appleton City Health Dept.	414/832-6429
Ozaukee	Ozaukee County Public Health	414/284-8170
Pepin	Pepin County Health Dept.	715/672-5961
Pierce	Pierce County Health Dept.	715/273-6755
Polk	Polk County Health Dept.	715/485-3938
Portage	Portage County Health and Human Services Dept.	715/345-5350
Price	Price County Health Dept.	715/339-3054
Racine	Burlington Health Dept.	414/763-4923
	Caledonia (Franksville)	414/835-6429
	Community Health Dept. of Western Racine County	414/763-4923
	Elmwood	414/554-9239
	Mt. Pleasant Town Hall	414/554-8750
	North Bay	414/639-9444
	Norway (Wind Lake) Community Health Dept.	414/763-4923
	Racine City Health Dept.	414/636-9201
	Racine County	414/554-6440
	Raymond Community Health Dept.	414/763-4923
	Rochester Comm. Health Dept.	414/763-4923

LOCAL COUNTY AND CITY HEALTH AGENCIES (cont.)

<u>County</u>	<u>Health Agency</u>	<u>Telephone Number</u>
Racine	Sturtevant	414/636-9036
	Union Grove Community Health Dept.	414/763-4923
	Yorkville Community Health Dept.	414/763-4923
	Waterford Community Health Dept.	414/763-4923
	Wind Point	414/835-4451
Richland	Richland County Health Dept.	608/647-2166
Rock	Rock County Public Health Dept.	608/757-5442
Rusk	Rusk County Health Department	715/532-2177
St. Croix	St. Croix County Health & Human Services Dept.	715/246-8263
Sauk	Sauk County Public Health Dept.	608/355-4200
Sawyer	Sawyer County Health Dept.	715/634-4874
Shawano	Shawano County Health Dept.	715/526-4808
Sheboygan	Sheboygan County Human Services	414/459-3438
Taylor	Taylor County Health Dept.	715/748-1410
Trempealeau	Trempealeau County Health Dept.	715/538-2311, ext. 220
Vernon	Vernon County Health Dept.	608/637-2233
Vilas	Vilas County Health Dept.	715/479-3656
Walworth	Walworth Co. Human Services Public Health Nursing Services	414/741-3140
Washburn	Washburn County Health Dept.	715/635-7616
Washington	Washington County Community Health Nursing Service	414/335-4462
Waukesha	Waukesha County Public Health Division	414/896-8430
Waupaca	Waupaca County Human Services	715/258-6385
Waushara	Waushara County Health Dept.	414/787-4661
Winnebago	Winnebago County Health Dept.	414/232-3000
	City of Menasha Health Dept.	414/751-5119
	Neenah Department of Public Health	414/751-4650
	Oshkosh Health Dept.	414/236-5031
Wood	Wood County Health Dept.	715/421-8911
	Marshfield Office Annex	715/387-8646

FEDERAL GOVERNMENT AGENCIES

Alliance To End Childhood Lead Poisoning, Washington, D.C. 202/543-1147
 FAX NUMBER 202/643-4466

Environmental Protection Agency (EPA)

For general information on lead and EPA guidelines, call EPA Lead Hotline at 800/LEAD-FYI

Government Printing Office

Bulk copies of the EPA's pamphlet "Protect Your Family from Lead in Your Home" are available from the Government Printing Office (GPO) at 202/512-1800. Refer to the complete title or GPO stock number 055-000-00507-9. The price is \$26 for a pack of 50. Alternatively, persons may reproduce the pamphlet for use or distribution if the text and graphics are reproduced in full. Camera-ready copies of the pamphlet are available from the National Lead Information Clearinghouse (see below). The EPA pamphlet and rule are available electronically through the Internet:

Gopher: gopher.epa.gov/70/11/Offices/PestPreventToxic/Toxic/lead_pm

WWW: http://www.epa.gov/docs/lead_pm

<http://www.hud.gov>

Dial up: 919/558-0335

FTP: [ftp.epa.gov](ftp://ftp.epa.gov) (To log in, type "anonymous." Your password is your E-mail address.)

Health and Human Services, Centers for Disease Control, Dept. of

For information on Childhood Lead Poisoning Prevention Programs or the current standards for health risk call 404/488-4880

Housing and Urban Development, Dept. of

Office of Lead-Based Paint Poisoning Prevention 202/755-1805
 For copies of documents regarding lead paint hazards, call 800/245-2691

National Center for Lead Safe Housing

For publications about how to make private housing lead safe, call 410/992-0712

National Lead Information Clearinghouse (NLIC)

For a copy of "Protect Your Family from Lead in Your Home," the sample disclosure forms, the rule, or a camera-ready copy of the pamphlet, call the NLIC at 800/424-LEAD, or TDD 800/526-5456 for the hearing impaired. You may also fax your request to 202/659-1192 or E-mail it to ehc@cais.com. Visit the NLIC on the Internet at <http://www.nsc.org/nsc/ehc/ehc.html>.

Legal Update Index for 1994

Below is an index of topics for 1994 issues of the *Legal Update*, which a number of callers have requested. We will continue to revise the Index and run it when room permits. In using the index, it should be remembered that the information provided is believed to be accurate as of the date of publication. When reading older *Legal Updates*, it is worthwhile to contact the Hotline or private counsel to verify that the applicable laws have not changed.

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