

Selling or Leasing Residential Property?

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Practice Area: Real Estate

This fall, a long-awaited rule regarding the disclosure of lead-based paint and lead-based paint hazards in transactions involving residential housing will go into effect.

The federal rule, issued by EPA and HUD, applies to the sale or rental of residential housing built prior to 1978. It goes into effect September 6 for owners of five or more units of housing and December 6 for owners of one to four units of housing.

Transactions in which a lender forecloses and subsequently re-sells target housing are also subject to the new rule.

In issuing this rule, the agencies cited some startling statistics. Almost 1.7 million children in the U.S. – nine percent – have blood-lead levels high enough to raise health concerns. Nearly 64 million homes may contain potentially hazardous lead-based paint.

In Wisconsin, the statistics are even worse. Reports indicate that 35 percent of children in Milwaukee and 16 percent state-wide have elevated blood-lead levels. In Milwaukee, more than half of the city's children under age six live in properties built before 1940.

Lead poisoning is known as the "silent disease." The effects of lead poisoning occur gradually and can include learning disabilities, growth impairment, and hearing and visual impairment. High levels of lead can cause brain damage, convulsions, and death. Exposure to lead during pregnancy can lead to miscarriage or birth defects.

The new rule does not require property owners to test for or to abate lead-based paint or lead-based paint hazards. If the presence of this substance is known to the owners, however, it must be disclosed.

Exempt from these requirements are housing for the elderly or persons with disabilities, unless a child under the age of six resides in or is expected to reside in the housing. Also exempt are short-term leases of 100 days or less.

Rental transactions with an open-ended, month-to-month renewal provision are covered by the rule, however, unless the lease clearly states that the rental term will be no longer than 100 days.

The required disclosures include:

- A federally approved lead-hazard information pamphlet;
- Notice of the presence of any known lead hazards on the property;
- Any available records or reports pertaining to lead-based paint or hazards on the property; and
- An acknowledgment that the purchaser or lessee has received the required information.

Lead hazard disclosures need not be provided to all prospective purchasers or lessees. However, disclosures must be made prior to the time a purchaser or lessee becomes obligated under the terms of a purchase contract or a lease.

In addition, purchasers must be given ten days to conduct an inspection of the property for the presence of lead-based paint. The seller or lessor is not required to conduct any additional investigations of the property.

Agents working on behalf of a seller or lessor are required to assure compliance with the rule's requirements.

A seller or lessor who knowingly fails to provide these disclosures may be liable to a purchaser or lessor for triple damages as well as attorney's fees, court costs, and expert witness fees.

In addition, both EPA and HUD may bring civil or criminal actions against the violator, and may impose penalties of up to \$10,000 for each violation and imprisonment for not more than one year, or both.

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