

The Lead-Based Paint Disclosure Manual

***Your key to working with
Federal HUD/EPA
Disclosure Regulations***



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Residential Lead-Based Paint Hazard Reduction Act - Title X

Federal regulations exist regarding disclosure of lead-based paint and lead-based paint hazards and are enforced by the Department of Housing and Urban Development (HUD).

The regulations focus on disclosure and REALTOR® liability. The sellers are not required to test for lead-based paint hazards. Through the distribution of an EPA approved lead-based paint hazard pamphlet and ensuring sellers and lessors disclose known lead-based paint hazards, agents and brokers perform an important role in providing this vital public health information and avoid liability for themselves.

As a general 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.

The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead paint poisoning in children. Lead is also harmful to adults. Adults can suffer from difficulties during pregnancy, high blood pressure, digestive problems, nerve disorders, memory and concentration problems and muscle and joint pain.

There are three 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.

Definitions

AGENT means 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 apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

AVAILABLE means in the seller's or lessor's possession or reasonably obtainable by the seller or lessor at the time of the disclosure.

COMMON AREA means a portion 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.

FORECLOSURE means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

HOUSING for the ELDERLY means retirement communities or similar types of housing specifically designed for households composed of one or more persons 62 years of age or other age if recognized as elderly by a specific Federal housing assistance program.

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 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.

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 as established by the appropriate Federal agency.

LESSEE means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

LESSOR means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

OWNER means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, governmental agencies, housing agencies,

Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner is considered the mortgagor.

PURCHASER means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

RISK ASSESSMENT means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) information gathering regarding the age and history of the housing and occupancy by children under age six; (2) visual inspection; (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5) provision of a report explaining the results of the investigation.

SELLER means 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, and nonprofit organizations. The term “seller” also includes; (1) An entity that transfers shares in a cooperatively owned project, in return for consideration and (2) an entity that 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.

Listings

There are four things you *must* do at the time you obtain the listing to ensure you are in compliance with the law.

- Determine if the property is pre-1978, by asking the seller or lessor, or by consulting the property records.
- Advise the seller or lessor of obligations under the regulations. (If the agent has informed the seller of the obligation to disclose and the seller/lessor has completed the disclosure form, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.)
- 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.
- Have the seller or lessor complete and sign seller's/lessor's portion of the Information Disclosure and Acknowledgement Form.

Target Housing and Exemptions

“Target Housing” is defined as all properties for which construction was completed prior to 1978 with the following exemptions:

- Property sold at foreclosure. **However, when it is resold the regulations do apply.**
- Rental property inspected and found to be *lead-based paint free* by an inspector certified under a federal certification program or a federally authorized state certification program.
- Property leased for 100 days or less, where no lease renewal or extension can occur.
- 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.
- Purchase, sale, or servicing of a mortgage.

- Zero-bedroom dwellings where the sleeping area is not separated from the living area (this includes studio apartments, efficiencies, dormitories, military barracks, and rental or individual rooms in residential dwellings.)
- Housing for the elderly or disabled where children under the age of 6 are not expected to reside.

Marketing and Showing the Property

As the property is marketed, the listing agent should advise potential cooperating agents that the property is target housing requiring disclosure of lead-based paint 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, and a “lessee” is defined as any entity that enters into an agreement to lease, rent or sublease.

Roles and Responsibilities

of Sellers, Lessors and Real Estate Agents

- Sellers and Lessors of properties built before 1978 ***must*** disclose their ***actual knowledge*** (e.g. prior test results or other first-hand information) of lead-based paint or lead-based paint hazards.
- The ***agent*** has the responsibility to ensure that the seller or lessor satisfies the disclosure obligations.
- The listing agent has the responsibility to advise the seller or lessor of the obligation to make the required lead-based paint disclosures and to ensure that the seller or lessor satisfies this obligation.
- Any other agent involved in the transaction, such as a cooperating agent, is also responsible to ensure that the seller or lessor satisfies the obligations, especially if there is no listing agent. The only agents who are exempt are buyer agents who receive ***all*** their compensation from the ***purchaser***.

Completing the Disclosure and Acknowledgement Form

Upon receipt of an offer for the property the listing agent should confirm that the offer includes an ***attached*** completed Disclosure of Information and Acknowledgement Form indicating that the disclosure requirements have been satisfied. As an alternative, the Disclosure of Information and Acknowledgment Form may also be incorporated directly into form contracts.

Whatever form is used must include the following:

- ❖ The “Lead Warning Language” exactly as written in the EPA form.
- ❖ Seller or lessor acknowledgement of disclosure of the presence of any known lead-based paint and/or lead-based paint hazards, including test results.
- ❖ Purchaser or lessee acknowledgement of receipt of all the required disclosures and lead-based paint information pamphlet.
- ❖ Purchaser acknowledgement of receipt of a ten-day opportunity to conduct a lead test that was agreed to, a shorter testing period, or waived it completely.
- ❖ Agent acknowledgment that the seller/lessor was advised of their disclosure obligations, and that seller/lessor is aware of their duty to ensure the seller/lessor’s compliance with the disclosure requirements.
- ❖ Certification by all parties of the accuracy of the information they provided.
- ❖ The disclosure form ***must*** be completed even in the case of an oral lease agreement.

Five Basic (Must) Requirements

1. Disclose the presence of known lead-based paint or lead-based paint hazards in *residential dwellings* built before 1978.
2. Provide purchasers and lessees with copies of any available records or reports pertaining to the presence of lead-based paint hazards.
3. Provide purchasers and lessees with a federally approved lead-based hazard information pamphlet.
4. Provide purchasers with a period of up to ten days (or other mutually agreed upon 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, but the seller may not refuse all offers containing a request for inspection.
5. Sales and lease contracts *must* include certain specified disclosure and acknowledgement language.

LISTED BELOW ARE LINKS FOR ADDITIONAL INFORMATION

Disclosure of Information and Acknowledgement of Lead-Based Paint and/or Lead-based Paint Hazards

<http://www.illinoisrealtors.org/downloads>

Housing Rental and Leases Disclosure of Information Lead-Based Paint and/or Lead-Based Paint Hazards

<http://www.illinoisrealtors.org/downloads>

Information from the United States Environmental Protection Agency

<https://www.epa.gov/lead>

Roles and Responsibilities of Purchasers, Lessees and Real Estate Agents

Offer/Contract Negotiations

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

- * Give the purchaser or lessee an EPA-approved lead-based paint hazard information pamphlet. (*Protect Your Family From Lead In Your Home*) <https://www.epa.gov/lead/protect-your-family-lead-your-home>
- * Provide the purchaser or lessee with 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 (by providing the disclosure form).
- * Advise the purchaser of their opportunity to have the property tested for lead-based paint hazard.
- * Incorporate lead-based paint testing contingency language into the contract.

Lead-Based Paint Testing Contingency Language

There is no mandatory federal contract contingency language. Local associations, sellers and buyers are free to develop contract language that best suits their needs and circumstances. 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.
- * The purchaser's right to waive testing.

Disclosure to the Purchaser/Lessee

Disclosure of all information, including providing copies of records and reports on lead-based paint testing previously done, ***must*** be made to the purchaser or the lessee.

Disclosure 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 seller may not accept that offer until:

- * Disclosure activities are completed, including providing the EPA pamphlet and the disclosure form.
- * The potential purchaser has had an opportunity to review the information and consider whether to amend their offer.
- * Disclosure prior to entering into a lease applies to the lessor/lessee.

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 the sellers provide potential purchasers up to ten days to have the property tested for lead-based paint before they become obligated under the contract. Purchasers may agree to a different time period to perform the testing, or may even agree to waive their opportunity to test altogether. The purchaser may elect to test even though the seller has already tested.

The ten-day testing period does not apply to lease transactions.

Sample Contract (Rider) ***for Lead-Based Paint Testing Contingency****

This contract is contingent upon a risk assessment or inspection of the property, at Purchaser's expense, for the presence of lead-based paint and lead-based paint hazards at levels determined unacceptable by federal law or regulation. Purchaser shall have until _____, 20____, at 5:00 p.m. (insert date ten (10) days after the date of the contract) to complete the inspection or risk assessment. If the inspection or risk assessment discloses the presence of lead-based paint or lead-based paint hazards then Purchaser shall notify Seller, in writing, of such findings and provide Seller with a copy of the inspection report within forty-eight (48) hours after the time for conducting the inspection. Failure to give written notice to Seller within said time period shall mean that the contingency has been satisfied and the Purchaser is bound by this contract. If Purchaser gives the appropriate notice to Seller then: (check one)

_____ Purchaser may terminate this contract by written notice to the Seller by 5:00 p.m. on _____20____ and have all earnest money returned to Purchaser.

_____ Purchaser shall provide Seller a written list of the existing deficiencies and the corrections needed. Seller shall notify Purchaser in writing within ten (10) days after receipt of the list of existing deficiencies as to what conditions, if any, will be remedied by Seller prior to closing. Purchaser shall have three (3) days to notify Seller whether the proposed remediations are acceptable, and if the proposed remediations are accepted by Purchaser the contract will be binding on both sides and Seller shall be obligated to make the proposed remediations using a certified contractor prior to closing. If Purchaser fails to respond within three (3) days or does not accept the proposed remediations then this contract shall be void and the earnest money returned to Purchaser.

You should add signature lines if you use this language as a rider.

NOTE: The form entitled "Disclosure of Information and Acknowledgement Lead-Based Paint and/or Lead-Based Paint Hazards" must be completed and attached to the contract for purchase of pre-1978 residential dwellings. If the Purchaser does not waive the ten (10) day opportunity for inspection in that form then the sample contract language (or similar language) must appear in the contract or a rider to the contract. All brokers should make sure they keep copies of the completed form in their transaction file for three (3) years, pursuant to federal regulations. But note that the Illinois Real Estate License Act of 2000 requires certain disclosure forms, including lead-based paint forms, to be kept for five (5) years.

Agent Liabilities and Penalties for Non-Compliance

* Federal penalties are severe. Civil penalties can range up to \$19,507 (as of 2022) for each violation. (24 CFR 30.65)

* The penalty for those who knowingly and willfully violate the law and habitually fail to comply can include substantial monetary penalties for each violation and possible imprisonment.

* Federal penalties are *in addition to* claims under state law for failure to disclose a material hazardous condition.

* The seller, lessor, or agent may be jointly and severally liable for three times the damages for injuries 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. (40 CFR 745.118)

* Agents cannot be held liable for their failure to provide information withheld by the sellers/lessors.

* All agents involved in a transaction are equally liable. The listing agent must advise the seller not to accept the offer until compliance is achieved. The selling agent should confirm with the listing agent that the seller was advised of their obligations under the Regulations. Likewise, the listing agent should make sure that the selling agent provided an approved lead-based paint information pamphlet and that the offer includes the Disclosure of Information and Acknowledgement form. The selling agent can also inquire as to whether the housing is target housing and if it is target housing, advise the buyer not to make an offer until the disclosure form is received or, if an offer is made, to make it contingent upon receipt of the disclosure form and pamphlet.

Lead-Based Paint Inspection and Record Keeping

The Regulations require inspector certification under a federal program or a federally authorized state certification program.

Agents *must* keep a copy of the Disclosure of Information and Acknowledgement 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 (under federal regulations). Note that the Illinois Real Estate License Act of 2000 will require you to keep these forms for five (5) years.

Questions and Answers

1. Should I add a sellers' acknowledgement to my listing sheet, so the sellers can sign off on the age of the house?

It would be a good idea to have a check-off or a data entry square, for the MLS data sheet to inform the showing agents whether the house is pre-1978 or not. Written acknowledgement of the date by the seller should be a part of every listing contract or data entry form.

2. 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. However, if the seller does check the house for lead-based paint hazards then the results of that inspection must be provided to the buyer. The seller however, is required to provide the buyer a ten-day period to test for lead-based paint hazards, or to negotiate a waiver of that requirement during contract negotiations.

3. Is the seller required to remove any lead-base paint that is discovered during inspection?

No. Nothing in the rule requires a building owner to remove lead-based paint or lead-based paint hazards discovered during an inspection. In addition, the rule does not prevent the two parties from negotiating hazard reduction activities as a contingency of the purchase and the sale of the housing.

4. When should the disclosure occur and the pamphlet be distributed?

For sales transactions, the disclosure must occur prior to the seller's acceptance of a written offer to purchase. If the purchaser makes an offer before the proper disclosures are made, the seller may not accept the offer until the disclosures are completed and the purchaser has had an opportunity to review the information and consider whether to amend the offer prior to becoming obligated under the contract.

For lease transactions the lessor must provide the information and complete the disclosure portions of the form before accepting the lessee's offer and must provide the lessee the opportunity to review the disclosed information and amend the lease offer before becoming obligated under the lease.

5. What if the buyers/lessees don't speak English?

In cases where the buyer/lessee signed a purchase or lease agreement in a language other than English, the rule requires that the disclosure language be provided in the alternative language. The EPA pamphlet is published in many different languages.

6. Should the disclosure form be attached to the contract to purchase or lease?

Yes. The disclosure form should be attached to the contract to purchase or lease. This will not only ensure compliance but will also indicate whether the buyer waives the ten day right of inspection on a contract to purchase.

7. Will the agent be held liable if the seller/ lessor fails to disclose information known to the seller/lessor about the presence of lead-base paint?

As long as the agent has informed the seller/lessor of the seller's obligation to disclose, and the seller/lessor has signed the Disclosure and Acknowledgement Form, the agent won't be liable for the failure to disclose to a purchaser/lessee the presence of lead-based paint or lead-based paint hazards known to the seller/lessor but not disclosed to the agent, unless the agent is otherwise knowledgeable of that information.

8. Am I required to give the EPA pamphlet "Protect Your Family from Lead in Your Home" to tenants?

Yes, when tenants enter an initial lease, you must give them the pamphlet and any available reports, whether the lease is written or oral.

9. What is the responsibility of the agent if the seller or lessor fails to comply with this rule?

The agent is responsible for informing the seller or lessor of their obligation under this rule and either by making sure that the seller/lessor completes those obligations or the agent completes those obligations on seller's/lessor's behalf.

Any agent involved in the transaction, except "buyer's agents" who are compensated solely by the buyer, must ensure that the seller/lessor satisfies this obligation. For practical purposes, this probably means that in most cases the agent(s) involved in the transaction will be performing the duties required by the regulations.

10. Do these regulations affect the requirements for disclosure under Illinois law?

No. The requirement that the seller complete and provide to the buyer the Residential Real Property Disclosure Form remains effective as well.

11. If a prospective seller at the time of listing refuses to disclose whether the house was built prior to 1978 and refuses to fill out the disclosure form should I refuse the listing?

Illinois REALTORS[®] recommends that you refuse any such listing unless you can independently verify that the house was not constructed prior to 1978.

12. Is a residential dwelling target housing if construction began in 1977 and was completed in 1978?

A. The regulations define target housing as "housing constructed prior to 1978." *Otherwise*, the regulations do not directly address this question. It is suggested that disclosure would be advisable because of the severity of the penalties that can be imposed if a court determines that disclosure is required.

Sources

EPA Regional Offices

Your Regional EPA office can provide further information regarding regulations and lead protection programs.

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

77 West Jackson Boulevard, Chicago, IL, 60604-3590

(312) 353-2000 (800) 223-0425

<https://www.epa.gov/aboutepa/forms/contact-epa-region-5>

EPA Publications are available at:

<https://www.epa.gov/lead>

Illinois EPA (217) 782-3397

<https://www2.illinois.gov/epa/>