

EPA and HUD Real Estate Notification and Disclosure Rule Questions and Answers (#747-F-96-001)

The Rule

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

A: To protect the public from exposure to lead from paint, dust, and soil, Congress passed the

Residential Lead-Based Paint 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 lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. The rule would ensure that purchasers and renters of housing built before 1978 receive the information necessary to protect themselves and their families from lead-based paint hazards.

Q: When does the rule take effect?

A: The rule's effective date depends on the number of housing units owned.

- For owners of more than 4 dwelling units, the effective date is September 6, 1996.
- For owners of 4 or fewer dwelling units, the effective date is December 6, 1996.

Affected Housing

Q: What type of housing is affected by this rule?

A: 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.

Q: What type of housing is not affected by this rule?

A: Housing that is not affected by this rule includes:

- "0-bedroom dwellings," such as lofts, efficiencies, and studios.
- Leases of dwelling units of 100 days or fewer, such as vacation homes or short-term rentals.
- Designated housing for the elderly and the handicapped unless children reside or are expected to reside there.
- Rental housing that has been inspected by a certified inspector and is found to be free of lead-based paint.

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

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

Q: Why doesn't this rule affect housing built after 1978?

A: Congress did not extend the law to housing built after 1978 because the Consumer Product Safety Commission banned the use of lead-based paint in housing in 1978.

Q: Is my home unsafe if it contains lead-based paint?

A: Approximately three-quarters of the nation's housing built before 1978 contains some lead-based paint. This paint, if properly managed and maintained, poses little risk. If allowed to deteriorate, lead from paint can threaten the health of occupants, especially children under 6 years old. If families and building owners are aware of the presence of lead-based paint and the proper actions to take, most lead-based paint hazards can be managed. The EPA pamphlet *Protect Your Family From Lead in Your Home* provides important information for families and home owners to help them identify when lead-based paint is likely to be a hazard and how to get their home checked.

Seller & Lessor Responsibilities

Q: What if I'm selling target housing?

A: Property owners who sell target housing must:

- ❑ Disclose all known lead-based paint and lead-based paint hazards in the housing and any available reports on lead in the housing.
- ❑ Give buyers the EPA pamphlet *Protect Your Family from Lead in Your Home*.
- ❑ Include certain warning language in the contract as well as signed statements from all parties verifying that all requirements were completed.
- ❑ Retain signed acknowledgments for 3 years, as proof of compliance.
- ❑ Give buyers a 10-day opportunity to test the housing for lead.

Q: What if I'm renting target housing?

A: Property owners who rent out target housing must:

- ❑ Disclose all known lead-based paint and lead-based paint hazards in the home and any available reports on lead in the housing.
- ❑ Give renters the EPA pamphlet *Protect Your Family From Lead in Your Home*.
- ❑ Include certain warning language in the lease as well as signed statements from all parties verifying that all requirements were completed.
- ❑ Retain signed acknowledgments for 3 years, as proof of compliance.

Q: Am I required to give the EPA pamphlet *Protect Your Family From Lead in Your Home* to existing tenants?

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

Q: What if the buyers/renters don't speak English?

A: In cases where the buyer or renter 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.

Q: Must I check my house for lead prior to sale?

A: No. The rule does not require that a seller conduct or finance an inspection or risk assessment. The seller, however, is required to provide the buyer a 10-day period to test for lead-based paint or lead-based paint hazards.

Q: Is the seller required to remove any lead-based paint that is discovered during an inspection?

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

Q: What if I know there is lead-based paint in my home?

A: If you know there is lead-based paint in your home, you are required to disclose this information to the buyer or renter along with any other available reports on lead.

Q: What if the lessor knows that there is no lead-based paint in my rental housing?

A: If your rental housing has been found to be free of lead-based paint 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, you may use a certified inspector from another state. *Indiana has a certification program.*

Agent Responsibilities

Q: What are my responsibilities as an agent?

A: Agents must ensure that:

- Sellers and landlords are made aware of their obligations under this rule.
- Sellers and landlords disclose the proper information to lessors, buyers, and tenants.
- Sellers give purchasers the opportunity to conduct an inspection.
- Lease and sales contracts contain the appropriate notification and disclosure language and proper signatures.

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

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

Purchaser & Renter Rights

Q: As a purchaser, am I required to conduct and finance an inspection?

A: No. The rule simply ensures that you have the opportunity to test for lead before purchase.

Q: Can the inspection/risk assessment period be waived?

A: Yes. The inspection or risk assessment period can be lengthened, shortened, or waived by mutual written consent between the purchaser and the seller.

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

A: Under the law, the 10-day inspection period is limited to sales transactions, but nothing prevents the renter from negotiating with the lessor to allow time for an inspection before rental.

Q: Where can I find a qualified professional to conduct an inspection?

A: State agencies can provide helpful information for locating qualified professionals in your area. The EPA pamphlet *Protect Your Family From Lead in Your Home* provides the phone numbers of these state agencies. It is important to verify the qualifications of individuals and firms before hiring them.

Q: Must inspectors be certified?

A: Yes, professionals who offer to perform lead-based paint assessments, inspections, or abatements must be certified. The certification will ensure that inspectors, assessors, and those who perform abatements engaged in lead-based paint activities have completed an EPA-certified training program or an EPA-approved state program. EPA and HUD recommend that people inspect the qualifications and training of individuals and firms before hiring them to conduct risk assessments, inspections, or abatements.

Liability

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

A: 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 the amount of damages.

Q: Are mortgage lenders liable under these rules if the seller or lessor fails to disclose?

A: Under the disclosure regulation, the rule does not identify mortgage lenders as liable parties. This rule does not affect other state and federal provisions regarding the obligations and responsibilities of lenders.

Q: What if a seller or lessor fails to comply with these regulations?

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

