

WHAT YOU NEED TO KNOW ABOUT LEAD PAINT REGULATIONS

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Do you own an older home or apartment house? If you do you may be subject to new governmental regulations regarding lead based paint that could affect both you, the prospective purchaser of your home, and your tenants.

Environmental concerns have long been a part of most commercial real estate transactions, but until recently, were not a significant consideration in sales and leases of residential property. Studies have shown that exposure to lead, including lead-based paint common in older homes, may cause health problems, particularly in children. In response to the known hazards of exposure to lead-based paint, the Environmental Protection Agency ("EPA") and Department of Housing and Urban Development ("HUD") recently passed new federal regulations that will significantly affect virtually everyone who buys, sells, or leases residential property built prior to 1978. These regulations are noteworthy for the breadth and scope of their application in the residential setting.

The regulations require sellers and lessors of residential real-estate built prior to 1978 to provide disclosures to the potential buyer or lessee of any known lead-based paint, and to provide any and all records relating to the lead-based paint on the property. Lead-hazard information pamphlets approved by the EPA must also be provided to the prospective purchaser or lessee. Additionally, the contract for sale or lease must include an acknowledgement of the required disclosures by the purchaser or lessee. Finally, sellers must provide buyers with a 10 day period following the signing of the agreement in which to inspect the property. If the purchaser discovers lead-based paint, the purchaser may cancel the agreement within the 10 day period. A purchaser may waive the 10 day inspection period by signing a written waiver.

Sellers and lessors are not the only persons impacted by these regulations. The regulations specifically apply to the agents of sellers and lessors (real estate agents/brokers and property managers). The penalties for failing to meet the regulation's requirements includes both civil and criminal penalties. The civil penalties may be as much as \$10,000 for each violation, in addition to possible civil liability in an amount equal to three times the amount of damages incurred by the buyer or lessee, plus attorneys' fees. Criminal penalties may also be imposed, with possible imprisonment for up to 1 year and fines up to \$10,000 for each violation.

These requirements became effective on September 6, 1996, for owners of more than four residential dwellings, and on December 6, 1996, for owners of fewer than four residential dwellings. The regulations do exempt a few limited transactions from the requirements, including leases of 100 days or less where no lease renewal or extension can occur, transactions involving dwellings with no bedrooms, and sales of property upon foreclosure. Almost all other transactions, including oral leases, are covered by the regulations.

A careful analysis of your real estate holdings is necessary to ensure that you comply with these new regulations.