

## **Lead-Based Paint**

Office of New York State Attorney General Eliot Spitzer

# **Lead-Based Paint: Your Rights and Responsibilities**

The federal government has announced new regulations that make owners of most housing built before 1978 responsible for providing information to prospective buyers and renters about lead-based paint in their buildings. These new rules apply not only to owners of rental property, but also to anyone selling a house or an apartment. This means that individual co-op and condominium owners must also comply with these new regulations which were promulgated by the Department of Housing and Urban Development and the Environmental Protection Agency. These regulations act as a complement to existing state and local codes, which generally classify lead-based paint hazards as building and/or public health violations.

### **DO THE NEW REGULATIONS AFFECT YOU?**

The federal regulations require that individuals receive certain information before renting or buying any kind of housing constructed before 1978, when the use of lead-based paint in residential housing was phased out. There are some exemptions, but these are limited to: foreclosure sales; leases for a time period of less than a hundred days; studio apartments (unless a child six or under lives there); and property that has been tested and found to be free of lead-based paint.

### **WHAT DO THE REGULATIONS REQUIRE?**

There are four basic requirements that sellers or lessors and their agents must comply with:

1) They must provide purchasers and lessees with a specific federally approved lead-based paint information pamphlet. The publication is put out by the United States Consumer Product Safety Commission and is entitled "Protect Your Family From Lead in Your Home." This pamphlet (also referred to as EPA747-K-94-001) can be ordered by calling (212) 620-4120 or by writing to:

U. S. Consumer Product Safety Commission  
Eastern Regional Center  
201 Varick Street, Room 903  
New York, NY 10014-4811

2) They must disclose the presence of known lead-based paint hazards in the housing. Hazards include lead-based paint, contaminated soil and lead in household dust.

3) They must provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint or lead-based paint hazards. Sellers and lessors of residential housing do not have to undertake any new testing or investigation to determine whether lead-based paint or any lead-based paint hazards are present. Conversely, prospective buyers and renters should be aware that an owner's lack of knowledge or information does not mean that lead-based paint or lead paint hazards could not be present.

4) Sellers must provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection before the purchaser is obligated under any purchase contract. This 10-day inspection opportunity provision of the federal rule does not apply to lessors of rental housing. However, landlords in New York State do have certain obligations under state and local laws concerning lead-based paint hazards. These obligations and tenants' rights and alternatives are described in the Attorney General's publication entitled "Look Out for Lead! A Guide for Tenants With Preschool-Age Children," which is available for free by calling 1 (518) 474-7330. You may also request the pamphlet by writing to:

Office of the Attorney General  
The Capitol  
Room 220  
Albany, New York 12224

This publication, prepared with the particular circumstances of families who rent their homes in mind, provides practical information to help parents recognize and address lead-poisoning hazards in their rental homes. It also contains information on childhood lead poisoning prevention that is important for all parents of preschool-age children.

5) The federal government has promulgated a form to document that there has been compliance with all federal requirements. This form, or an equivalent, must be completed and signed by all parties.

#### **CAN THE INSPECTION PERIOD BE WAIVED?**

The ten-day opportunity to conduct a risk assessment or inspection can be waived at the purchaser's request. The ten-day period may also be extended or abbreviated if mutually agreed upon by all parties.

#### **WHAT DOES THE NEW YORK STATE ATTORNEY GENERAL'S OFFICE REQUIRE?**

The New York State Department of Law, which regulates the offer and sale of cooperative apartments, condominium units and homes associated with homeowners associations, has promulgated a regulation that requires sponsors of offering plans to disclose the existence of all applicable local, state and federal laws concerning lead-based

paint and whether the sponsor will comply with such laws and the regulations promulgated thereunder.

In addition, the engineering report contained in Part II of the offering plans must include any and all available records and reports pertaining to the presence of lead-based paint hazards, including any state or local law violations relating to lead-based paint.

## **CHECKING A HOME FOR LEAD**

If you are considering buying a home, you can get it checked for lead hazards in one of two ways, or both:

A paint **inspection** tells you the lead content of every painted surface in your home. It won't tell you whether the paint is a hazard or how you should deal with it.

A **risk assessment** tells you if there are any sources of exposure to lead from paint (such as peeling paint and lead dust). It also tells you what actions to take to address these hazards. Trained professionals use a range of methods when checking your home, including a portable x-ray fluorescence machine to determine the content of lead in the paint on your walls; visual inspection of paint condition and location; and lab tests of paint samples and household dust from window sills, etc.

Home test kits for lead are available, but the federal government is still testing their reliability. These tests should not be the only methods used before doing renovations or to assure safety.

If lead paint hazards are found, the risk assessment should provide recommendations for abating the hazards. These may include removal of lead paint; enclosure or encapsulation of lead-paint surfaces; replacement of lead-painted building components such as windows, doors, and wooden trim; or some combination of these methods, depending on the hazards found. The usual goal of such abatement work is to make the home "lead-safe." It is not necessary to remove all lead-based paint regardless of its condition or location.

## **HIRING PROFESSIONALS**

You should have a qualified professional do the inspection. Effective March 1, 2000, the U.S. Environmental Protection Agency will be issuing licenses to inspectors and workers who have completed an approved course of study and passed an examination. Licensed inspectors can be found by calling the Environmental Protection Agency at (732) 321-6671 or by writing to them at 2890 Woodbridge Avenue, Edison, N.J. 08837. You can also look in your local yellow pages under the heading "Lead Paint Detection and Removal Services," but you should inquire whether they are licensed.

If hazard abatement is found to be necessary, it is extremely important that the work be done by professionals who are equipped to follow all necessary safety protocols.

Carelessly or improperly conducted lead paint repairs can actually increase exposure and cause lead poisoning.

## **FOR MORE INFORMATION**

If you have small children in your home, you should be especially concerned about the health risks posed by lead. Even at low levels, exposure to lead can cause serious and permanent damage to the health of young children. Because lead poisoning is usually discovered only by testing, and because virtually all pre-school children are at some risk of becoming lead poisoned, the New York State Department of Health regulations provide for lead screening of all children under six years of age. The Federal Centers for Disease Control call lead poisoning one of the most common and preventable pediatric health problems. If you do have young children, the Attorney General strongly urges you to read the pamphlet mentioned on page 2, entitled "Look Out for Lead!: A Guide for Tenants with Preschool-Age Children."

Also helpful is a publication entitled "Reducing Lead Hazards When Remodeling Your Home" (EPA 747-R-94-002). It can be obtained by calling (732) 321-6671 or by writing to the U.S. Environmental Protection Agency at the address given above.

The United States government maintains a National Lead Information Center. Call 1-800-LEAD-FYI or 1-800-424-LEAD to learn how to protect children from lead poisoning, and for other useful information on lead hazards.

For information about lead in drinking water, call The Environmental Protection Agency's Safe Drinking Water Hotline at 1-800-426-4791.

To request information on lead in consumer products, or to report an unsafe consumer product or a product related injury, call The Consumer Product Safety Commission at 1-800-638-2772.

## **For help and additional information**

If you want help or additional information write or call:  
New York State Attorney General  
Investment Protection Bureau - Real Estate Financing Section  
120 Broadway - 23rd floor  
New York, New York 10271  
(212) 416-8122.