

Lead-Based Paint Disclosure (from Arizona Association of Realtors website) **Revised August 2001**

Sellers must make the required disclosures before the buyer is obligated under contract to buy target housing (pre-1978)*

I. The Law

In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (also referred to as Title X or the Act). The law required the EPA and HUD to promulgate joint rules and regulations for lead-based paint disclosure. As a result, the Code of Federal Regulations (24 CFR Part 35, Subpart H and 40 CFR Part 745, Subpart F) and the final joint EPA and HUD Rule (61 FR 9064) were promulgated to implement the Act. There are literally hundreds of pages of statutes, regulations and rules addressing this issue.

II. Disclosures required before buyer is obligated

The federal law (42 USCS § 4852d) and subsequent rules and regulations require that before a buyer (or tenant) is obligated under any contract to purchase a home constructed prior to 1978 ("target housing"), the seller must:

1. provide the EPA-approved lead hazard pamphlet, *Protect Your Family From Lead in Your Home*
2. disclose any known information regarding lead based paint hazards to buyers and brokers
3. disclose and provide any available lead paint records or reports to buyers
4. permit a ten-day opportunity (or other agreed upon time period) to conduct a lead paint risk assessment or inspection, unless waived by the buyer.

"If any of the disclosure activities identified [above] occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer." (24 CFR Part 35, Subpart H, § 35.88(b); 40 CFR Part 745, Subpart F § 745.107; see also 61 FR 9064).

III. Contract requirement

Every Contract to sell target housing must contain (or provide as an attachment):

1. a Lead Warning Statement consisting of the required language
2. a statement by the seller disclosing any known information regarding lead-based paint hazards
3. a disclosure of the lead-based paint records or reports available to the seller
4. a statement signed by the seller that the seller has complied with all notification requirements
5. a statement signed by the buyer that the buyer:
 - affirms the receipt of the above disclosures
 - received the pamphlet *Protect Your Family From Lead in Your Home*
 - has read and understands the Lead Warning Statement
 - received or waived an opportunity to conduct a lead risk assessment or inspection before becoming obligated under the contract

6. a statement that:

- the broker has informed the seller of the seller's obligations under 42 USC 4852d
- the broker is aware of his/her duty to ensure compliance with these requirements (See 24 CFR § 35.92)

The AAR DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS (SALES) form may be used to satisfy these requirements. Sellers and Brokers must retain a copy of the executed disclosure form for at least three (3) years.

IV. Further guidance from the EPA and HUD

At times, the necessary lead-based paint disclosures are not available until after contract acceptance. When AAR was in the process of revising the new contract, the EPA and legal counsel for NAR were contacted. AAR worked closely with NAR's legal counsel to draft contract language that would accommodate both the practice in Arizona and the concerns of the EPA.

HUD and the EPA subsequently issued Part III of the *Interpretive Guidance for the Real Estate Community on the Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing* (August 2, 2000). The *Interpretive Guidance* contains questions and answers concerning the lead-based paint disclosure requirements. The document may be obtained from the HUD website at www.hud.gov/offices/lead/ or the EPA website at www.epa.gov/lead/ig3rjm.pdf.

In the *Interpretive Guidance*, the EPA and HUD confirmed that the California Association of REALTORS® residential contract, which allows the lead-based paint disclosure information to be provided to the buyer after contract acceptance, complied with federal law because the buyer had the unilateral right to cancel the contract after receipt of the disclosures (the "California Rule"). The EPA issued its third interpretive guidance on August 2, 2000, which contains the correspondence between NAR, HUD and the EPA, in which the "California Rule" was approved.

In correspondence dated August 16, 2001, the EPA and HUD stated that the "California Rule" applies nationwide. The EPA and HUD will state this in a future *Interpretive Guidance*. Therefore, either lead-based paint disclosure option in the AAR Residential Purchase Contract should be acceptable to the EPA and HUD. A copy of the correspondence in its entirety has been posted below.

V. Penalties for violations

The EPA and HUD recently issued *Guidelines for Assessments of Civil Penalties for Violations of the Disclosure Rule ("Guidelines")*, which addresses violations of the disclosure requirements and provides procedures to determine the appropriate enforcement response to violations. NO WARNINGS WILL BE GIVEN. Immediate civil penalties will be issued. Responsible parties include listing brokers, selling brokers, buyer's brokers, real estate brokerage firms, and property management firms. This *Guideline* also contains a matrix of different types of violations and the suggested penalties. The *Guideline* may be found at <http://www.epa.gov/compliance>.

In addition to civil sanctions, a person who knowingly or willfully violates this law is subject to criminal sanctions. (15 USC § 2615(b)). These sanctions include imprisonment for not more than one year and criminal fines of \$25,000 for each day of violation.

VI. Exempted properties



The following properties are excluded from the lead-based paint disclosure requirements:

- property constructed after 1977
- housing for elderly (retirement communities composed of persons over the age of 62) or disabled housing unless a child under 6 will reside therein

- foreclosure transactions
- short-term leases (100 days or less where no renewal or extension can occur)
- lease renewals where the disclosures were previously made and no new information since the initial disclosure was provided
- purchase, sale or servicing of mortgages
- sale or lease of 0-bedroom dwellings

61 FR 9064 at Section IV(A).

VII. For additional information contact:

- National Lead Information Clearinghouse – 800/424-LEAD
- HUD Office of Lead Hazard Control – www.hud.gov/offices/lead/index.cfm 
- EPA website – www.epa.gov/opptintr/lead 

*Landlords are also obligated to make these lead-based paint disclosures before the tenant is obligated under a lease agreement. The AAR DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS (RENTALS) may be used for this purpose. However, the Act does not require that tenants be given an opportunity to conduct a lead-risk assessment or inspection. Further, landlords may have their properties certified lead-free by an approved lead paint inspector.

[Click here to view the EPA and HUD correspondence](#) 