

HUD and EPA Disclosure Regulations

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of Public Law 102-550) directed the U.S. Environmental Protection Agency and the Department of Housing and Urban Development to jointly issue regulations requiring disclosure of certain information about lead-based paint and lead-based paint hazards in residential real estate transactions. After considerable delay, those regulations (which appear at 24 C.F.R. Part 35 and 40 C.F.R. Part 745) were issued in final form on March 6, 1996, and are summarized below.

NAR has developed a publication describing the requirements of the Regulations and how to comply with them entitled *Lead-Based Paint - A Guide To Complying With the New Federal EPA/HUD Disclosure Regulations*. This publication is available for \$5.00 per copy (with discounts also available on larger orders), and can be ordered by calling NAR Customer Service at (800) 874-6500. Overnight or next day delivery is also available.

1. Properties To Which the Requirements Apply. The Regulations apply to sale or lease transactions of "target housing," that is, residential property completed before 1978, with certain exceptions:

- Sales at foreclosure;
- Leases of property which has been inspected and found to be lead-based paint free by an inspector certified by a Federal or Federally accredited State or tribal certification program;
- Short term leases of 100 days or less where no lease renewal or extension can occur;
- Renewal of existing leases, so long as no new information about lead-based paint on the premises has come into the possession of the owner, and the required information was disclosed when the lease was originally created. (In the case of leases which automatically convert to "month-to-month" after a expiration of a fixed term, disclosure must be made when the lease first converts (if not made at the time the lease was created), but not each month thereafter);
- 0-bedroom dwellings;
- Housing designed for the elderly or disabled, but only if no children under the age of 6 reside or are expected to reside in such housing.

Housing completed before 1978 has been interpreted to mean not only that which was completed and/or occupied before January 1, 1978, but also that for which a building permit was issued before that date, or if no permit was required, where construction began before that date.

2. Effective Date. The effective date of the Regulations is September 6, 1996 for owners of 5 residential dwellings (apartment or condominium units, as well as townhouses or single-family homes), and December 6, 1996 for owners of fewer than 5 dwellings.

HUD has announced in Mortgagee Letter 96-29 that the form presently required to be signed in the case of properties financed by FHA-insured mortgage loans will not be required after December 6, 1996.

3. Obligations of Sellers, Lessors and Real Estate Agents. Sellers and lessors of housing to which the regulations apply must provide the information and perform the other duties described below to purchasers/lessees. Any agent hired by a seller or lessor to market the property must insure the seller or lessor's compliance with the requirements of the Regulations.

(a) The agent must specifically inform the seller/lessor of his disclosure obligations, described below.

(b) The purchaser or lessee must be provided the following:

- All information the seller or lessor may have regarding known lead-based paint or lead-based paint hazards on the property;
- Copies of any prior reports of testing for lead-based paint or lead-based paint hazard evaluation of the property;
- A copy of the EPA publication Protect Your Family From Lead In Your Home, or a federally-approved equivalent publication;

(c) Sales contracts and leases must include specific lead-based paint warning" language, which is specifically prescribed in the Regulations.

(d) A "Disclosure and Acknowledgment" statement confirming that the disclosures have been made, signed by both parties to the transaction and the broker(s) involved, must be included as a part of the contract for sale or lease;

(e) Property purchasers (but not renters) must be provided an opportunity to have the property tested for lead-based paint or lead-based paint hazards during a ten day period prior to the time when the purchaser becomes obligated under the contract, although that period may be modified by agreement between the seller and purchaser, or waived by the purchaser entirely.

- If a purchaser or lessee makes an offer to buy or lease prior to receiving the required disclosures, the seller or lessor may not accept the offer until the information is provided and the purchaser or lessee has the opportunity to review it and, if desired, to change the terms of the offer.
- Sellers, lessors and their agents have no duty to conduct testing of the property for lead-based paint or lead-based paint hazards. Their only obligation is to provide known information, as described above, regarding lead-based paint or lead-based paint or lead-based paint hazards on the premises.
- Copies of EPA's publication Protect Your Family From Lead In Your Home may be purchased by calling (800) 424-LEAD. The publication is also available on NAR's Website at REALTOR.com, on both the EPA and HUD Websites (EPA.gov and HUD.gov), as well as that of the National Safety Council (nsc.org.nsc/ehc/ehc.html) A copy was also published in the July, 1996 issue of Today's REALTOR®. It is not copyrighted and may be photocopied freely.

4. Who Is An Agent? The Regulations define an agent as "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" a property to which the Regulations apply. The duty of an agent to insure the seller's or lessor's compliance with these disclosure requirements is imposed on any agent hired by the seller or lessor to market the property, including both listing agents and selling agents (whether they are buyer's agents, subagents, or, it would appear, "facilitators" or transaction brokers), and excludes only agents retained and compensated exclusively by the buyer.

5. The Ten-Day Testing Period. Although the Regulations do not explicitly so provide, EPA and HUD have indicated that they intend that the 10-day testing period be conducted much like home inspection contingencies operate. That is, pursuant to language incorporated in the sales contract, the purchaser is permitted conduct such lead-based paint testing or risk assessment as he deems appropriate and, if the results are unacceptable, can seek the seller's correction of the problem, void the contract or exercise such other rights as are provided in the contract. The length or other terms and conditions of the testing period, and the rights and obligations of the parties in the event lead-based paint or hazards are identified, are matters for negotiation and agreement by the parties. In particular, they may agree to a longer or shorter period for testing, or no testing period at all.

EPA is in the process of establishing a lead-based paint contractor training and certification program, also as required by Title X, to train and certify those who perform lead-based paint inspection, risk assessment and abatement activities. Until that process is in operation, however, lead-based paint activities need not be performed by certified contractors unless required by state or local law.

6. State and Local Requirements. Compliance with these Regulations does not eliminate the need to satisfy any other applicable requirements of state or local law relating to lead-based paint. It is important to recognize that this may include common law duties to disclose known material facts, though compliance with the Regulations will probably result in the disclosure of all such facts relating to lead-based paint.

7. Penalties. Substantial penalties may be imposed on sellers, lessors and their agents for non-compliance: fines of up to \$10,000 and civil liability of three times the damages suffered by an injured purchaser/lessee. EPA has announced, however, that in the first year following the effective dates their enforcement focus will be on compliance assistance, and they will pursue civil penalty actions only in response to egregious violations which put the public at risk.

8. Record keeping Requirements. The seller or lessor, and any agent employed to market the property, must retain a copy of the disclosure and acknowledgment statement included as a part of the contract for three years from the date of completion of the sale or commencement of the lease.